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FILED

MAY 10 2021

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: N. Johnson, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,
Plaintiff,
v.
DUKAL CORPORATION, 4MD MEDICAL
SOLUTIONS LLC and DOES 1-150,
Defendants.

Case No. CIV 2101807

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff SUSAN DAVIA, in the
3 public interest of the citizens of the State of California, to enforce the People’s right to be informed
4 of the presence of di(2-ethylhexyl)phthalate (“DEHP”) and di(isononyl)phthalate (DINP), toxic
5 chemicals found in certain Tech-Med medical supply products with vinyl components
6 manufactured, distributed and/or otherwise sold by defendants in California.

7 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
8 California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “No person in the course
9 of doing business shall knowingly and intentionally expose any individual to a chemical known to
10 the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
11 to such individual. . .” (*Cal. Health & Safety Code § 25249.6.*)

12 3. On October 24, 2003, the State listed di(2-ethylhexyl)phthalate as a chemical known to
13 cause birth defects and other reproductive harm. DEHP became subject to the warning
14 requirement one year later and was therefore subject to the “clear and reasonable warning”
15 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001(c); Cal. Health &*
16 *Safety Code § 25249.8.*) On December 20, 2013, the State listed DINP as a chemical known to cause
17 cancer. DINP became subject to the warning requirement on December 20, 2014.

18 4. DEHP and DINP shall hereinafter be referred to as “LISTED CHEMICAL.”

19 5. Significant levels of the LISTED CHEMICAL have been discovered in or on
20 vinyl/PVC components of Tech-Med medical supply products, including, but not limited to, blood
21 pressure monitor kits and cervical traction sets, such as Tech-Med Standard Sphygmomanometer
22 Kit (Item 2024 T) and Tech Med 6030 Overdoor Traction Set with Vinyl Bag. All such Tech-Med
23 medical supply products comprised of vinyl/PVC materials containing any LISTED CHEMICAL
24 shall hereinafter be referred to as the “PRODUCTS.”

25 6. Defendants’ failure to warn consumers and/or other individuals in the State of
26 California about their exposures to the LISTED CHEMICAL in conjunction with defendants’ sale of
27 the PRODUCTS is a violation of Proposition 65.

1 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
2 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in the
3 State of California.

4 16. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
5 business within the meaning of California Health & Safety Code Section 25249.11.

6 17. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State
7 of California.

8 18. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
9 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code
10 of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that
11 each of the fictitiously named defendants is responsible for the acts and occurrences herein alleged.
12 When ascertained, their true names shall be reflected in an amended complaint.

13 19. DUKAL CORPORATION, 4MD MEDICAL SOLUTIONS LLC, MANUFACTURER
14 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where
15 appropriate, collectively be referred to hereinafter as "DEFENDANTS".

16 **VENUE AND JURISDICTION**

17 20. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
18 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,
19 because one or more instances of wrongful conduct occurred, and continues to occur, in the County
20 of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this
21 County with respect to the PRODUCTS.

22 21. The California Superior Court has jurisdiction over this action pursuant to California
23 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
24 causes except those given by statute to other trial courts." The statute under which this action is
25 brought does not specify any other basis of subject matter jurisdiction.

26 22. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
28 association that either are citizens of the State of California, have sufficient minimum contacts in the

1 State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**
5 **(Violation of Proposition 65 - Against All Defendants)**

6 23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 22, inclusive.

8 24. In passing Proposition 65, the citizens of the State of California expressed their intent
9 through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that they must
10 be "informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
11 harm."

12 25. Proposition 65 states, "[n]o person in the course of doing business shall knowingly
13 and intentionally expose any individual to a chemical known to the state to cause cancer or
14 reproductive toxicity without first giving clear and reasonable warning to such individual . . ."
15 Health & Safety Code § 25249.6.

16 26. On March 27, 2019, a valid and compliant Proposition 65 60-Day Notice of Violation
17 ("60-Day Notice"), together with a valid, requisite Certificate of Merit, were provided to DUKAL
18 CORPORATION, 4MD MEDICAL SOLUTIONS LLC and various public enforcement agencies
19 stating that as a result of the DEFENDANTS' manufacture, distribution and sales of the
20 PRODUCTS, workers, purchasers and users in the State of California are being exposed to the
21 Listed Chemical resulting from the reasonably foreseeable uses of certain of the PRODUCTS,
22 without the individual purchasers and users first having been provided with a "clear and
23 reasonable warning" regarding such toxic exposures.

24 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
25 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
26 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering
27 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
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1 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further
2 alleges and believes that such violations will continue to occur into the future.

3 28. After receipt of the claims asserted in the 60-Day Notice and Supplemental 60-Day
4 Notice, the appropriate public enforcement agencies have failed to commence and diligently
5 prosecute a cause of action against DEFENDANTS under Proposition 65.

6 29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS, contain one or more LISTED CHEMICAL.

8 30. DEFENDANTS knew or should have known that the PRODUCTS contained such
9 LISTED CHEMICAL.

10 31. A LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
11 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
12 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence of
13 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
14 well as the reasonably foreseeable use of the PRODUCTS.

15 32. DEFENDANTS knew or should have known that the packing, shipping, unpacking,
16 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable
17 use of the PRODUCTS exposes individuals to a LISTED CHEMICAL through dermal contact
18 and/or ingestion and/or inhalation.

19 33. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale
20 or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

21 34. DEFENDANTS failed to provide a "clear and reasonable warning" to those
22 employees, consumers and/or other individuals in the State of California who were or who could
23 become exposed to a LISTED CHEMICAL during the reasonably foreseeable retail receipt, display
24 and organization of PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

25 35. Contrary to the express policy and statutory prohibition of Proposition 65,
26 employees and individuals exposed to a LISTED CHEMICAL through dermal contact and/or
27 ingestion and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold
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1 by DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to suffer,
2 irreparable harm, for which harm they have no other plain, speedy or adequate remedy at law.

3 36. As a consequence of the above-described acts, DEFENDANTS are liable for a
4 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to California
5 Health & Safety Code Section 25249.7(b).

6 37. As a consequence of the above-described acts, California Health & Safety Code
7 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
11 follows:

12 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),
13 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
14 alleged herein;

15 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering
17 the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as
18 defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED
19 CHEMICAL;

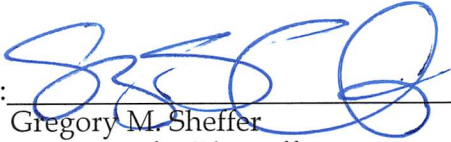
20 3. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and

21 4. That the Court grant such other and further relief as may be just and proper.

22 Dated: May 7, 2021

Respectfully submitted,

23 SHEFFER LAW FIRM

24
25 By: 
26 Gregory M. Sheffer
27 Attorneys for Plaintiff
28 SUSAN DAVIA