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FILED

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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
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12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 JAPONESQUE, LLC, CVS HEALTH CORP.,
16 CVS PHARMACY, INC. and DOES 1-150,

17 Defendants.

Case No. CIV **2200144**

**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 of
4 the presence of di-n-butyl phthalate (“DBP”), di(2-ethylhexyl)phthalate (“DEHP”) and diisononyl
5 Phthalate (“DINP”), toxic chemicals found in certain eyelash curler products with vinyl grips
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 December 2, 2005, the State listed DBP as a chemical known to cause birth defects
13 and other reproductive harm. DBP became subject to the warning requirement one year later and
14 was therefore subject to the “clear and reasonable warning” requirements of Proposition 65,
15 beginning on December 2, 2006. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*) On October
16 24, 2003, the State listed di(2-ethylhexyl)phthalate as a chemical known to cause birth defects and
17 other reproductive harm. DEHP became subject to the warning requirement one year later and was
18 therefore subject to the “clear and reasonable warning” requirements of Proposition 65, beginning
19 on October 24, 2004. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*) On December 20, 2013,
20 the State listed DINP as a chemical known to cause cancer. DINP became subject to the statutory
21 “clear and reasonable” warning requirement on December 20, 2014.

22 4. DBP, DEHP and DINP shall hereinafter be referred to collectively as “LISTED
23 CHEMICAL.”

24 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the vinyl
25 handle components of eyelash curler products that defendants design, manufacture, distribute,
26 and/or offer for sale to consumers throughout the State of California including, as example, but not
27 limited to, Beauty 360 Perfect Eyelash Curler (050428328514). All such eyelash curler products
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1 including vinyl/PVC grips containing any LISTED CHEMICAL shall hereinafter be referred to as
2 the "PRODUCTS."

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

6 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
7 permanent injunctive relief to compel defendants to provide employees handling the PRODUCTS
8 and purchasers or users of the PRODUCTS with the required warning regarding the health hazards
9 of the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

10 8. Plaintiff also seeks civil penalties against defendants for their violations of
11 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

12 **PARTIES**

13 9. Plaintiff SUSAN DAVIA is a citizen of the State of California who is dedicated to
14 protecting the health of California citizens through the elimination or reduction of toxic exposures
15 from consumer products and brings this action in the public interest pursuant to California Health &
16 Safety Code Section 25249.7.

17 10. Based upon publicly available information, plaintiff is informed and believes, and
18 thereupon alleges, that each defendant JAPONESQUE, LLC, CVS HEALTH CORP. and CVS
19 PHARMACY, INC. is a person doing business within the meaning of California Health & Safety
20 Code Section 25249.11.

21 11. Based upon publicly available information, plaintiff is informed and believes, and
22 thereupon alleges, that each defendant JAPONESQUE, LLC, CVS HEALTH CORP. and CVS
23 PHARMACY, INC. is legally responsible for the design, manufacture, distribution, and/or offer of
24 the PRODUCTS for sale or use in the State of California or implies by its conduct that it designs,
25 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

26 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
27 doing business within the meaning of California Health & Safety Code Section 25249.11.
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1 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
2 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
3 engage in the process of research, testing, designing, assembling, fabricating, and/or manufacturing,
4 one or more of the PRODUCTS for sale or use in the State of California.

5 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing
6 business within the meaning of California Health & Safety Code Section 25249.11.

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

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

12 17. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State of
13 California.

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

19 19. JAPONESQUE, LLC, CVS HEALTH CORP., CVS PHARMACY, INC.,
20 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS
21 shall, where appropriate, collectively be referred to hereinafter as "DEFENDANTS".

22 VENUE AND JURISDICTION

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

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

5 22. The California Superior Court has jurisdiction over DEFENDANTS based on
6 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
7 association that either are citizens of the State of California, have sufficient minimum contacts in the
8 State of California, or otherwise purposefully avail themselves of the California market.
9 DEFENDANTS’ purposeful avilment renders the exercise of personal jurisdiction by California
10 courts consistent with traditional notions of fair play and substantial justice.

11 **FIRST CAUSE OF ACTION**
12 **(Violation of Proposition 65 - Against All Defendants)**

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

15 24. In passing Proposition 65, the citizens of the State of California expressed their intent
16 through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that they must
17 be “informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
18 harm.”

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

23 26. On December 10, 2020, a valid and compliant Proposition 65 60-Day Notice of
24 Violation, together with a valid, requisite Certificate of Merit (“60-Day Notice”), was served on CVS
25 HEALTH CORP. and CVS PHARMACY, INC. and various public enforcement agencies stating
26 that as a result of the DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS,
27 purchasers and users in the State of California are being exposed to the Listed Chemical resulting
28 from the reasonably foreseeable uses of certain PRODUCTS, without the individual purchasers and

1 users first having been provided with a “clear and reasonable warning” regarding such toxic
2 exposures. On February 12, 2021, a valid and compliant Proposition 65 Supplemental 60-Day
3 Notice of Violation, together with a valid, requisite Certificate of Merit (“Supplemental 60-Day
4 Notice”), was served on JAPONESQUE, LLC and various public enforcement agencies stating that
5 as a result of the DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS (including
6 an additional exemplar product), purchasers and users in the State of California are being exposed
7 to the Listed Chemical resulting from the reasonably foreseeable uses of certain PRODUCTS,
8 without the individual purchasers and users first having been provided with a “clear and reasonable
9 warning” regarding such toxic exposures.

10 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
11 PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
12 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering of
13 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 has
14 continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice and Supplemental
15 60-Day Notice. Plaintiff further alleges and believes that such violations will continue to occur into
16 the future.

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

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

22 30. DEFENDANTS knew or should have known that the PRODUCTS contained such
23 LISTED CHEMICAL.

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

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

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

7 34. DEFENDANTS failed to provide a “clear and reasonable warning” to those
8 consumers and/or other individuals in the State of California who were or who could become
9 exposed to a LISTED CHEMICAL during the reasonably foreseeable retail receipt, display and
10 organization of PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

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

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

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

22 **PRAYER FOR RELIEF**

23 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
24 follows:

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

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

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

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

Dated: January 19, 2022,

SHEFFER LAW FIRM



Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA