

Gregory M. Sheffer, State Bar No. 173124  
SHEFFER LAW FIRM  
232 E. Blithedale Ave., Suite 210  
Mill Valley, CA 94941  
Telephone: 415.388.0911  
Facsimile: 415.388.9911

Attorneys for Plaintiff  
SUSAN DAVIA

**FILED**

**MAY 17 2021**

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

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

SUSAN DAVIA,

Plaintiff,

v.

CORE PRODUCTS INTERNATIONAL, INC.,  
SCRIP, INC., ALLEGRO MEDICAL SUPPLIES,  
INC., ALLEGROMEDICAL.COM AND DOES  
1-150,

Defendants.

Case No. CIV

**2101860**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

RECEIVED  
MARIN COUNTY  
SUPERIOR COURT

FILED

2021 MAY 17 PM 12:58

MAY 17 2021

MAILED TO MAIL ROOM  
MARIN COUNTY SUPERIOR COURT  
CLERK'S OFFICE

210120

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff SUSAN DAVIA, in the public interest of the citizens of the State of California, to enforce the People's right to be informed of the presence of di(2-ethylhexyl)phthalate ("DEHP") and di-isodecyl phthalate ("DIDP"), toxic chemicals found in certain CORE cervical traction water bag products manufactured, distributed and/or otherwise sold by defendants in California.

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

3. On October 24, 2003, the State listed DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became subject to the warning requirement one year later and was therefore subject to the "clear and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (27 CCR § 27001(c); *Cal. Health & Safety Code* § 25249.8.) On April 20, 2007, the state listed DIDP as a chemical known to cause developmental toxicity. DIDP became subject to the statutory "clear and reasonable" warning requirement on April 20, 2008. (27 CCR § 27001(c); *Cal. Health & Safety Code* § 25249.8.)

4. DEHP and DIDP shall hereinafter be collectively referred to as "LISTED CHEMICAL."

5. Significant levels of the LISTED CHEMICAL have been discovered in or on the vinyl/PVC components of CORE cervical traction water bag products that defendants design, manufacture, distribute, and/or offer for sale to consumers throughout the State of California including, as example, but not limited to, Cervical Traction Replacement Water Bag 860 0078 (578459) and all other traction water bag models. All such CORE traction water bag products including vinyl/PVC materials containing any LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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

**PARTIES**

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

10. Based upon publicly available information, plaintiff is informed and believes, and thereupon alleges, that each defendant CORE PRODUCTS INTERNATIONAL, INC., SCRIP, INC., ALLEGRO MEDICAL SUPPLIES, INC. and ALLEGROMEDICAL.COM is a person doing business within the meaning of California Health & Safety Code Section 25249.11.

11. Based upon publicly available information, plaintiff is informed and believes, and thereupon alleges, that each defendant CORE PRODUCTS INTERNATIONAL, INC., SCRIP, INC., ALLEGRO MEDICAL SUPPLIES, INC. and ALLEGROMEDICAL.COM is legally responsible for the design, manufacture, distribution, and/or offer of the PRODUCTS for sale or use in the State of California or implies by its conduct that it designs, manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.

13. MANUFACTURER DEFENDANTS engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they

1 engage in the process of research, testing, designing, assembling, fabricating, and/or  
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

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

10 17. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State  
11 of California.

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

17 19. CORE PRODUCTS INTERNATIONAL, INC., SCRIP, INC., ALLEGRO MEDICAL  
18 SUPPLIES, INC., ALLEGROMEDICAL.COM, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
19 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to  
20 hereinafter as "DEFENDANTS".

21 **VENUE AND JURISDICTION**

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

27 21. The California Superior Court has jurisdiction over this action pursuant to  
28 California Constitution Article VI, Section 10, which grants the Superior Court "original

1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**  
10 **(Violation of Proposition 65 - Against All Defendants)**

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

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

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

21 26. On February 26, 2021, a valid and compliant Proposition 65 60-Day Notice of  
22 Violation (“60-Day Notice”), together with a valid, requisite Certificate of Merit, was served on  
23 CORE PRODUCTS INTERNATIONAL, INC., SCRIP, INC., ALLEGRO MEDICAL  
24 SUPPLIES, INC., ALLEGROMEDICAL.COM and various public enforcement agencies stating  
25 that as a result of the DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS,  
26 purchasers and users in the State of California are being exposed to the Listed Chemical resulting  
27 from the reasonably foreseeable uses of certain PRODUCTS, without the individual purchasers  
28

1 and users first having been provided with a “clear and reasonable warning” regarding such toxic  
2 exposures.

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

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

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

14 30. DEFENDANTS knew or should have known that the PRODUCTS contained such  
15 LISTED CHEMICAL.

16 31. A LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
17 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section  
18 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence  
19 of the packing, shipping, unpacking, display and daily organization and movement of  
20 PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

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

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

27 34. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
28 consumers and/or other individuals in the State of California who were or who could become

1 exposed to a LISTED CHEMICAL during the reasonably foreseeable retail receipt, display and  
2 organization of PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

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

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

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

15 **PRAYER FOR RELIEF**

16 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
17 follows:

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

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

26 ///

27 ///

28 ///




- 1           3.       That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and  
2           4.       That the Court grant such other and further relief as may be just and proper.

3       Dated: May 14, 2021

Respectfully submitted,

SHEFFER LAW FIRM

5  
6       By:   
7           Gregory M. Sheffer  
8           Attorneys for Plaintiff  
9           SUSAN DAVIA

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28