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FILED

DEC -9 2021

JAMES M. KIM
COURT EXECUTIVE OFFICER
MARIN CO. SUPERIOR COURT

BY: N. JOHNSON

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

SUSAN DAVIA,

Plaintiff,

v.

GALAXY ENTERPRISES, INC., GALAXY
MEDICAL, SCRIP, INC., ALLEGRO MEDICAL
SUPPLIES, INC., ALLEGROMEDICAL.COM
AND DOES 1-150,

Defendants.

Case No. CIV **2104126**
**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
3 the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of diisononyl phthalate (“DINP”), a toxic chemical found in certain
5 Galaxy vinyl-covered exam stools, distributed and/or otherwise sold by defendants in California.

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

11 3. On December 20, 2013, the State listed DINP as a chemical known to cause cancer.
12 DINP became subject to the warning requirement one year later and was therefore subject to the
13 “clear and reasonable warning” requirements of Proposition 65, beginning on December 20, 2014.
14 (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

15 4. DINP shall hereinafter be referred to as “LISTED CHEMICAL.”

16 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the
17 vinyl/PVC components of Galaxy exam style stool products that defendants design, manufacture,
18 distribute, and/or offer for sale to consumers throughout the State of California including, as
19 example, but not limited to, Galaxy Doctor Stools 1125, 1135, 1145, 1150, 1151, 1060-G, 1070-G and
20 1080-G and all other patterns sizes and colors. All such Galaxy stool products including
21 vinyl/PVC materials containing any LISTED CHEMICAL shall hereinafter be referred to as the
22 “PRODUCTS.”

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

26 7. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
27 permanent injunctive relief to compel defendants to provide employees handling the PRODUCTS
28

1 and purchasers or users of the PRODUCTS with the required warning regarding the health
2 hazards of the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

5 **PARTIES**

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

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

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

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

22 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
23 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
24 engage in the process of research, testing, designing, assembling, fabricating, and/or
25 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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
3 the 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
10 Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges,
11 that each of the fictitiously named defendants is responsible for the acts and occurrences herein
12 alleged. When ascertained, their true names shall be reflected in an amended complaint.

13 19. GALAXY ENTERPRISES, INC., GALAXY MEDICAL, SCRIP, INC., ALLEGRO
14 MEDICAL SUPPLIES, INC., ALLEGROMEDICAL.COM, MANUFACTURER DEFENDANTS,
15 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively
16 be referred to hereinafter as "DEFENDANTS".

17 **VENUE AND JURISDICTION**

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

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

27 22. The California Superior Court has jurisdiction over DEFENDANTS based on
28 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or

1 association that either are citizens of the State of California, have sufficient minimum contacts in
2 the State of California, or otherwise purposefully avail themselves of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
4 courts consistent with traditional notions of fair play and substantial justice.

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

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

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

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

17 26. On April 16, 2021 and April 23, 2021, valid and compliant Proposition 65 60-Day
18 Notices of Violation (collectively "60-Day Notice"), together with valid, requisite Certificates of
19 Merit, was served on GALAXY ENTERPRISES, INC., GALAXY MEDICAL, SCRIP, INC.,
20 ALLEGRO MEDICAL SUPPLIES, INC., ALLEGROMEDICAL.COM and various public
21 enforcement agencies stating that as a result of the DEFENDANTS' manufacture, distribution and
22 sales of the PRODUCTS, purchasers and users in the State of California are being exposed to the
23 Listed Chemical resulting from the reasonably foreseeable uses of certain PRODUCTS, without the
24 individual purchasers and users first having been provided with a "clear and reasonable warning"
25 regarding such toxic exposures.

26 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
27 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
28 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering

1 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
2 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff
3 further alleges and believes that such violations will continue to occur into the future.

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

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

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

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

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

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

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

26 35. Contrary to the express policy and statutory prohibition of Proposition 65,
27 employees and individuals exposed to a LISTED CHEMICAL through dermal contact and/or
28 ingestion and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold

1 by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to
2 suffer, irreparable harm, for which harm they have no other plain, speedy or adequate remedy at
3 law.

4 36. Proposition 65 also states, “[t]he retail seller of a product that may cause a consumer
5 product exposure shall promptly provide the name and contact information for the manufacturer,
6 producer, packager, importer, supplier, and distributor of the product to ... [a]ny person who has
7 served notice under Section 25249.7(d)(1) of the Act alleging that the consumer product causes an
8 exposure that requires a warning under the Act.” (27 C.C.R. 25600.2(g).)

9 37. No defendant ever provided any such information, resulting in a separate and
10 additional violation of Proposition 65.

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

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

17 **PRAYER FOR RELIEF**

18 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
19 follows:

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

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

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3. That the Court, pursuant to 27 C.C.R. 25600.2(g), compel GALAXY ENTERPRISES, INC., GALAXY MEDICAL, SCRIP, INC., ALLEGRO MEDICAL SUPPLIES, INC. and ALLEGROMEDICAL.COM to comply with the mandatory production of information and find GALAXY ENTERPRISES, INC., GALAXY MEDICAL, SCRIP, INC., ALLEGRO MEDICAL SUPPLIES, INC. and ALLEGROMEDICAL.COM are the de facto PRODUCT manufacturers and distributors until such time as the information is produced.

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

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

Dated: December 9, 2021

Respectfully submitted,
SHEFFER LAW FIRM

By: 
Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA