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COURT EXECUTIVE OFFICER  
MARIN CO. SUPERIOR COURT  
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6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF MARIN  
9 UNLIMITED CIVIL JURISDICTION

10  
11 SUSAN DAVIA,

12 Plaintiff,

13 v.

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

17 Defendants.

Case No. CIV 2101860

**FIRST AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

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

Action Filed: May 17, 2021  
Trial Date: None assigned

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 di(2-ethylhexyl)phthalate (“DEHP”), di-n-butyl phthalate (“DBP”) and  
5 di-isodecyl phthalate (“DIDP”), toxic chemicals found in certain CORE cervical traction products  
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  
9 course of doing business shall knowingly and intentionally expose any individual to a chemical  
10 known to the state to cause cancer or reproductive toxicity without first giving clear and  
11 reasonable warning to such individual. . . .” (*Cal. Health & Safety Code* § 25249.6.)

12 3. On October 24, 2003, the State listed DEHP as a chemical known to cause birth  
13 defects and other reproductive harm. DEHP became subject to the warning requirement one year  
14 later and was therefore subject to the “clear and reasonable warning” requirements of Proposition  
15 65, beginning on October 24, 2004. (27 CCR § 27001(c); *Cal. Health & Safety Code* § 25249.8.) On  
16 December 2, 2005, the State listed DBP as a chemical known to cause birth defects and other  
17 reproductive harm. DBP 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 December 2, 2006. (27 CCR § 27001(c); *Cal. Health & Safety Code* § 25249.8.) On April 20, 2007,  
20 the state listed DIDP as a chemical known to cause developmental toxicity. DIDP became subject  
21 to the statutory “clear and reasonable” warning requirement on April 20, 2008. (27 CCR § 27001(c);  
22 *Cal. Health & Safety Code* § 25249.8.)

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

25 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the  
26 vinyl/PVC components of CORE cervical traction products and replacement parts that defendants  
27 design, manufacture, distribute, and/or offer for sale to consumers throughout the State of  
28 California including, as examples, but not limited to, Core Cervical Traction Replacement Water

1 Bag (PRO-988, PRO-995), Core Traction Kit with Neck Roll (PRO-993), Core Traction Kit with  
2 Soothe-A-Ciser (PRO-994) and Core Overhead Traction System (PRO-990) products. All such  
3 CORE traction products and replacement parts including vinyl/PVC materials containing any  
4 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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

14 **PARTIES**

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

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

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

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

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

7 14. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
8 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

12 16. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing  
13 business within the meaning of California Health & Safety Code Section 25249.11.

14 17. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State  
15 of California.

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

21 19. CORE PRODUCTS INTERNATIONAL, INC., SCRIP, INC., ALLEGRO MEDICAL  
22 SUPPLIES, INC., ALLEGROMEDICAL.COM, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
23 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to  
24 hereinafter as “DEFENDANTS”.

25 **VENUE AND JURISDICTION**

26 20. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil  
27 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,  
28 because one or more instances of wrongful conduct occurred, and continues to occur, in the

1 County of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in  
2 this County with respect to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**  
14 **(Violation of Proposition 65 - Against All Defendants)**

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

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

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

25 26. On February 26, 2021, a valid and compliant Proposition 65 60-Day Notice of  
26 Violation ("60-Day Notice"), together with a valid, requisite Certificate of Merit, was served on  
27 CORE PRODUCTS INTERNATIONAL, INC., SCRIP, INC., ALLEGRO MEDICAL  
28 SUPPLIES, INC., ALLEGROMEDICAL.COM and various public enforcement agencies stating

1 that as a result of the DEFENDANTS' manufacture, distribution and sales of cervical traction  
2 replacement water bag PRODUCTS, purchasers and users in the State of California are being  
3 exposed to DEHP and DIDP resulting from the reasonably foreseeable uses of such PRODUCTS,  
4 without the individual purchasers and users first having been provided with a "clear and  
5 reasonable warning" regarding such toxic exposures.

6 27. On August 9, 2021, a valid and compliant Proposition 65 Supplemental 60-Day  
7 Notice of Violation ("Supplemental 60-Day Notice"), together with a valid, requisite Certificate of  
8 Merit, was served on CORE PRODUCTS INTERNATIONAL, INC. and various public  
9 enforcement agencies stating that as a result of the DEFENDANTS' manufacture, distribution and  
10 sales of cervical traction products and replacement part PRODUCTS, purchasers and users in the  
11 State of California are being exposed to the DEHP, DBP and DIDP resulting from the reasonably  
12 foreseeable uses of such PRODUCTS, without the individual purchasers and users first having  
13 been provided with a "clear and reasonable warning" regarding such toxic exposures.

14 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
15 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and  
16 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering  
17 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6  
18 continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice and CORE  
19 PRODUCTS, INTERNATIONAL, INC.'s receipt of plaintiff's Supplemental 60-Day Notice.  
20 Plaintiff further alleges and believes that such violations will continue to occur into the future.

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

24 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
25 California by DEFENDANTS, contain one or more LISTED CHEMICAL.

26 31. DEFENDANTS knew or should have known that the PRODUCTS contained such  
27 LISTED CHEMICAL.

28

1           32.     A LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
2 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section  
3 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence  
4 of the packing, shipping, unpacking, display and daily organization and movement of  
5 PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

6           33.     DEFENDANTS knew or should have known that the packing, shipping, unpacking,  
7 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable  
8 use of the PRODUCTS exposes individuals to a LISTED CHEMICAL through dermal contact  
9 and/or ingestion and/or inhalation.

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

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

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

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

27          38.     On August 9, 2021, plaintiff SUSAN DAVIA expressly demanded defendant CORE  
28 PRODUCTS INTERNATIONAL, INC. promptly provide the information required by 27 C.C.R.

1 25600.2(g). Defendant CORE PRODUCTS INTERNATIONAL, INC. never provided any such  
2 information, resulting in a separate and additional violation of Proposition 65.

3 39. 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  
5 California Health & Safety Code Section 25249.7(b).

6 40. 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  
10 PRAYER FOR RELIEF

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

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

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


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

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

23 Dated: December 20, 2021

Respectfully submitted,

24 SHEFFER LAW FIRM

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