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FILED
DEC -9 2021
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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.

COMPASS HEALTH BRANDS CORP., 4MD
MEDICAL SOLUTIONS LLC AND DOES 1-
150,

Defendants.

Case No. CIV 2104125
**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”), a toxic chemical found in certain oxygen
5 cylinder carry bag products with vinyl windows manufactured, distributed and/or otherwise sold
6 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 DEHP as a chemical known to cause birth defects
13 and other reproductive harm. DEHP became subject to the Proposition 65 statutory “clear and
14 reasonable” warning requirement on October 24, 2004. (*27 CCR § 27001(c); Cal. Health & Safety Code*
15 *§ 25249.8.*)

16 4. DEHP shall hereinafter be referred to as “LISTED CHEMICAL.”

17 5. Significant levels of the LISTED CHEMICAL have been discovered in or on oxygen
18 cylinder carry bag products with vinyl windows manufactured, distributed and/or otherwise sold
19 by defendants, including, but not limited to, AirLift Comfort Shoulder Bag for D Cylinder (Model
20 No. 32N), AirLift Comfort Shoulder Bag for M9/C Cylinder (Model No. 34N) and Air Lift Shoulder
21 Bag for M7 Cylinders (Model No. 38N). All such oxygen cylinder carry bag products comprised of
22 or with components containing any LISTED CHEMICAL shall hereinafter be referred to as the
23 “PRODUCTS.”

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

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

1 and purchasers or users of the PRODUCTS with the required warning regarding the health hazards
2 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 COMPASS HEALTH BRANDS CORP. and 4MD MEDICAL
12 SOLUTIONS LLC is a person doing business within the meaning of California Health & Safety
13 Code Section 25249.11.

14 11. Based upon publicly available information, plaintiff is informed and believes, and
15 thereupon alleges, that defendants COMPASS HEALTH BRANDS CORP. and 4MD MEDICAL
16 SOLUTIONS LLC are legally responsible for the manufacture, distribution, and/or offer of the
17 PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures,
18 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

25 14. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons doing
26 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 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. COMPASS HEALTH BRANDS CORP., 4MD MEDICAL SOLUTIONS LLC,
14 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS
15 shall, where 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 September 14, 2021, a valid and compliant Proposition 65 60-Day Notice of
17 Violation ("60-Day Notice"), together with a valid, requisite Certificate of Merit, was provided to
18 COMPASS HEALTH BRANDS CORP., 4MD MEDICAL SOLUTIONS LLC and various public
19 enforcement agencies stating that as a result of the DEFENDANTS' manufacture, distribution and
20 sales of the PRODUCTS, workers, purchasers and users in the State of California are being exposed
21 to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of certain of the
22 PRODUCTS, without the individual purchasers and users first having been provided with a "clear
23 and 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
28

1 has continued to occur beyond DEFENDANTS' receipt of plaintiff's Notices. 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 Notices, the appropriate public
4 enforcement agencies have failed to commence and diligently prosecute a cause of action against
5 DEFENDANTS under Proposition 65.

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

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

10 31. The 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
13 of, the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS
14 as 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 the 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 the LISTED CHEMICAL during the reasonably foreseeable retail receipt,
24 display and organization of PRODUCTS as well as the reasonably foreseeable use of the
25 PRODUCTS.

26 35. Contrary to the express policy and statutory prohibition of Proposition 65,
27 employees and individuals exposed to the 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 suffer,
2 irreparable harm, for which harm they have no other plain, speedy or adequate remedy at law.

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

8 37. On September 14, 2021, plaintiff SUSAN DAVIA expressly demanded defendants
9 COMPASS HEALTH BRANDS CORP. and 4MD MEDICAL SOLUTIONS LLC promptly provide
10 the information required by 27 C.C.R. 25600.2(g). Neither defendant ever provided any such
11 information, resulting in a separate and additional violation of Proposition 65.

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

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

18 40. As a consequence of the above-described acts, defendants COMPASS HEALTH
19 BRANDS CORP. and 4MD MEDICAL SOLUTIONS LLC are liable for such other monetary and
20 injunctive relief as this court deems just and proper.

21 **PRAYER FOR RELIEF**

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

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

27 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
28 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering

1 the PRODUCTS for sale or use in California, without providing “clear and reasonable warnings” as
2 defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED
3 CHEMICAL;

4 3. That the Court, pursuant to 27 C.C.R. 25600.2(g), compel COMPASS HEALTH
5 BRANDS CORP. and 4MD MEDICAL SOLUTIONS LLC to comply with the mandatory production
6 of information and find COMPASS HEALTH BRANDS CORP. and 4MD MEDICAL SOLUTIONS
7 LLC are the de facto PRODUCT manufacturers and distributors until such time as the information
8 is produced.

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

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

11 Dated: December 9, 2021

Respectfully submitted,

12 SHEFFER LAW FIRM

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14 By: 
15 Gregory M. Sheffer
16 Attorneys for Plaintiff
17 SUSAN DAVIA
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