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**FILED**

MAY 31 2022

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11  
12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 PERFORMANCE HEALTH SUPPLY, INC.,  
4MD MEDICAL SOLUTIONS LLC,  
16 ANATOMY SUPPLY PRODUCTS, LLC,  
ANATOMY SUPPLY PARTNERS, LLC, ASP  
17 GLOBAL, LLC and DOES 1-150,

18 Defendants.

Case No. CIV **2201606**

**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(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in certain cervical  
5 traction sets with vinyl water bag products manufactured, distributed and/or otherwise sold by  
6 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 di(2-ethylhexyl)phthalate as a chemical known to  
13 cause birth defects and other reproductive harm. DEHP became subject to the warning requirement  
14 one year later and was therefore subject to the “clear and reasonable warning” requirements of  
15 Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001(c); Cal. Health & Safety Code*  
16 *§ 25249.8.*)

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

18 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the  
19 vinyl/PVC components of certain cervical traction set products that defendants design,  
20 manufacture, distribute, and/or offer for sale to consumers throughout the State of California  
21 including, as example, but not limited to, Sammons Preston Economy Overdoor Traction with Water  
22 Bag (551544, 01-00885914009567). All such cervical traction set products with vinyl water bags  
23 containing any LISTED CHEMICAL shall hereinafter be referred to as the “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 PERFORMANCE HEALTH SUPPLY, INC., 4MD MEDICAL  
12 SOLUTIONS LLC, ANATOMY SUPPLY PRODUCTS, LLC, ANATOMY SUPPLY PARTNERS, LLC  
13 and ASP GLOBAL, LLC is a person doing business within the meaning of California Health & Safety  
14 Code Section 25249.11.

15 11. Based upon publicly available information, plaintiff is informed and believes, and  
16 thereupon alleges, that each defendant PERFORMANCE HEALTH SUPPLY, INC., 4MD MEDICAL  
17 SOLUTIONS LLC, ANATOMY SUPPLY PRODUCTS, LLC, ANATOMY SUPPLY PARTNERS, LLC  
18 and ASP GLOBAL, LLC is legally responsible for the design, manufacture, distribution, and/or offer  
19 of the PRODUCTS for sale or use in the State of California or implies by its conduct that it designs,  
20 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

27 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing  
28 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 and 4MD MEDICAL SOLUTIONS LLC offer of the  
7 PRODUCTS for sale to individuals in the State 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 each  
11 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. PERFORMANCE HEALTH SUPPLY, INC., 4MD MEDICAL SOLUTIONS LLC,  
14 ANATOMY SUPPLY PRODUCTS, LLC, ANATOMY SUPPLY PARTNERS, LLC, ASP GLOBAL,  
15 LLC, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL  
16 DEFENDANTS shall, where appropriate, collectively 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 County  
21 of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this  
22 County with respect to the PRODUCTS.

23 21. The California Superior Court has jurisdiction over this action pursuant to California  
24 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all  
25 causes except those given by statute to other trial courts." The statute under which this action is  
26 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 the  
2 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 intent  
10 through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that they must  
11 be "informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
12 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 October 22, 2022, a valid and compliant Proposition 65 60-Day Notice of Violation  
18 ("60-Day Notice"), together with a valid, requisite Certificate of Merit, was served on  
19 PERFORMANCE HEALTH SUPPLY, INC., 4MD MEDICAL SOLUTIONS LLC and various public  
20 enforcement agencies stating that as a result of these DEFENDANTS' manufacture, distribution and  
21 sales of the PRODUCTS, purchasers and users in the State of California are being exposed to the  
22 Listed Chemical resulting from the reasonably foreseeable uses of PRODUCTS, without the  
23 individual purchasers and users first having been provided with a "clear and reasonable"  
24 regarding such toxic exposures.

25 27. On February 16, 2022, a valid and compliant Supplemental Proposition 65 60-Day  
26 Notice of Violation ("Supplemental 60-Day Notice"), together with a valid, requisite Certificate of  
27 Merit, was served on ANATOMY SUPPLY PRODUCTS, LLC, ANATOMY SUPPLY PARTNERS,  
28 LLC, ASP GLOBAL, LLC and various public enforcement agencies stating that as a result of these

1 DEFENDANTS' manufacture, distribution and sales of the PRODUCTS, purchasers and users in the  
2 State of California are being exposed to the Listed Chemical resulting from the reasonably  
3 foreseeable uses of PRODUCTS, without the individual purchasers and users first having been  
4 provided with a "clear and reasonable warning" regarding such toxic exposures.

5 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the  
6 PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and  
7 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering of  
8 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 has  
9 continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice and Supplemental  
10 60-Day Notice. Plaintiff further alleges and believes that such violations will continue to occur into  
11 the future.

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

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

17 31. DEFENDANTS knew or should have known that the PRODUCTS contained such  
18 LISTED CHEMICAL.

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

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

28

1           34. Each of the RETAIL DEFENDANTS and 4MD MEDICAL SOLUTIONS LLC has  
2 actual knowledge of the potential consumer product exposures to the LISTED CHEMICAL both  
3 pursuant to information obtained by them from reliable sources in the course of doing business and  
4 pursuant to the 60-Day Notice.

5           35. No manufacturer, producer, packager, importer, supplier, or distributor of the  
6 exemplar PRODUCTS sold by RETAIL DEFENDANTS and 4MD MEDICAL SOLUTIONS LLC has  
7 designated an agent for service of process in California or has a place of business in California.

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

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

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

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

22          40. As a consequence of the above-described acts, California Health & Safety Code  
23 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
24 DEFENDANTS.

25          41. In addition to the commission of all acts and actions identified hereinabove,  
26 defendants 4MD MEDICAL SOLUTIONS LLC further violated 27 C.C.R. 25600.2(g), by failing to  
27 promptly provide the name and contact information for the manufacturer, producer, packager,  
28

1 importer, supplier, and distributor of the product to plaintiff as demanded in her 60-Day Notice to  
2 them.

3 **PRAYER FOR RELIEF**

4 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
5 follows:

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

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

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

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

16 Dated: May 26, 2022

SHEFFER LAW FIRM

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18 Gregory M. Sheffer  
19 Attorneys for Plaintiff