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FILED

MAR 28 2024

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 WALGREEN CO., WALGREENS BOOTS
16 ALLIANCE, INC., WALGREENS.COM, INC.
and DOES 1-150,

17 Defendants.

Case No. CV **0002382** -

**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 Walgreens
5 brow kit products with vinyl components 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 Walgreens brand brow kit 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, Walgreens Complete Brow Kit 9 Pieces 1 95602 00347 1.
22 All such vinyl brow kit products containing any LISTED CHEMICAL shall hereinafter be referred to
23 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 WALGREEN CO., WALGREENS BOOTS ALLIANCE, INC.
12 and WALGREENS.COM, INC. is a person doing business within the meaning of California Health &
13 Safety Code Section 25249.11.

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

20 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person
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 manufacturing,
25 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 doing
27 business within the meaning of California Health & Safety Code Section 25249.11.

28

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 the PRODUCTS for sale to individuals in the State of
7 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. WALGREEN CO., WALGREENS BOOTS ALLIANCE, INC., WALGREENS.COM,
14 INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS and RETAIL
15 DEFENDANTS 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 October 25, 2023, a valid and compliant Proposition 65 60-Day Notice of Violation
17 ("60-Day Notice"), together with a valid, requisite Certificate of Merit, was served on WALGREEN
18 CO., WALGREENS BOOTS ALLIANCE, INC. and WALGREENS.COM, INC. and various public
19 enforcement agencies stating that as a result of these DEFENDANTS' manufacture, distribution and
20 sales of the PRODUCTS, purchasers and users in the State of California are being exposed to the
21 Listed Chemical resulting from the reasonably foreseeable uses of PRODUCTS, without the
22 individual purchasers and users first having been provided with a "clear and reasonable warning"
23 regarding such toxic exposures.

24 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
25 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 of
27 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 has
28

1 continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. 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 60-Day Notice, 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 one or more LISTED CHEMICAL.

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

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

19 33. Each of the RETAIL DEFENDANTS, WALGREEN CO., WALGREENS BOOTS
20 ALLIANCE, INC. and WALGREENS.COM, INC. has actual knowledge of the potential consumer
21 product exposures to the LISTED CHEMICAL both pursuant to information obtained by them from
22 reliable sources in the course of doing business and pursuant to the 60-Day Notice.

23 34. No manufacturer, producer, packager, importer, supplier, or distributor of the
24 exemplar PRODUCTS sold by RETAIL DEFENDANTS, WALGREEN CO., WALGREENS BOOTS
25 ALLIANCE, INC. and WALGREENS.COM, INC. has designated an agent for service of process in
26 California or has a primary place of business in California.

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

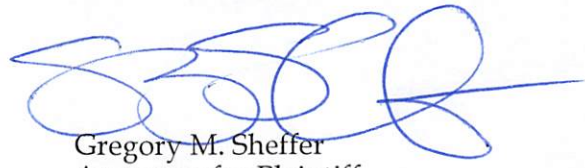
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the PRODUCTS for sale or use in California, without providing “clear and reasonable warnings” as defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED CHEMICAL;

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

Dated: March 27, 2024

SHEFFER LAW FIRM



Gregory M. Sheffer
Attorneys for Plaintiff