

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Gregory M. Sheffer, State Bar No. 173124
SHEFFER LAW FIRM
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941
Telephone: 415.388.0911
gregs@sheffer-law.net

Attorneys for Plaintiff
SUSAN DAVIA

FILED

APR 24 2024

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

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

SUSAN DAVIA,

Plaintiff,

v.

AMAZON.COM, INC., TAPIRUS OUTDOORS
and DOES 1-150,

Defendants.

Case No. CV **0002607**
**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 Tapirus brand
5 roasting fork products manufactured, distributed and/or 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 course
8 of doing business shall knowingly and intentionally expose any individual to a chemical known to
9 the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
10 to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

11 3. On October 24, 2003, the State listed di(2-ethylhexyl)phthalate as a chemical known to
12 cause birth defects and other reproductive harm. DEHP became subject to the “clear and reasonable
13 warning” requirements of Proposition 65, one year later, beginning on October 24, 2004. (*27 CCR §*
14 *27001(c); Cal. Health & Safety Code § 25249.8.*)

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

16 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the
17 Tapirus brand roasting fork products with PVC cushioned grips that defendants design,
18 manufacture, distribute, and/or offer for sale to consumers throughout the State of California
19 including, as example, but not limited to, Tapirus Marshmallow Roasting Sticks, Set of 4, Extra Long
20 Retractable Campfire Sticks (ASIN B013T51IB2). All such Tapirus roasting fork products containing
21 any LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

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

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

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

3 **PARTIES**

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

8 10. Based upon publicly available information, plaintiff is informed and believes, and
9 thereupon alleges, that each defendant AMAZON.COM, INC. and TAPIRUS OUTDOORS is a
10 person doing business within the meaning of California Health & Safety Code Section 25249.11.

11 11. Based upon publicly available information, plaintiff is informed and believes, and
12 thereupon alleges, that each defendant AMAZON.COM, INC. and TAPIRUS OUTDOORS is legally
13 responsible for the design, manufacture, distribution, and/or offer of the PRODUCTS for sale or use
14 in the State of California or implies by its conduct that it designs, manufactures, distributes, markets
15 and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

24 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, and/or transport one
25 or more of the PRODUCTS to individuals, businesses or retailers for sale or use in California.

26 16. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
27 business within the meaning of California Health & Safety Code Section 25249.11.

1 17. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State of
2 California.

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

8 19. AMAZON.COM, INC., TAPIRUS OUTDOORS, MANUFACTURER DEFENDANTS,
9 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate, collectively
10 be referred to hereinafter as "DEFENDANTS".

11 **VENUE AND JURISDICTION**

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

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

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

27 **FIRST CAUSE OF ACTION**
28 **(Violation of Proposition 65 - Against All Defendants)**

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

3 24. In passing Proposition 65, the citizens of the State of California expressed their intent
4 through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that they must
5 be “informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
6 harm.”

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

11 26. On January 24, 2024, a valid and compliant Proposition 65 60-Day Notice of Violation
12 (“60-Day Notice”), together with a valid, requisite Certificate of Merit, was served on
13 AMAZON.COM, INC., TAPIRUS OUTDOORS and various public enforcement agencies stating that
14 as a result of these DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS,
15 purchasers and users in the State of California are being exposed to the Listed Chemical resulting
16 from the reasonably foreseeable uses of PRODUCTS, without the individual purchasers and users
17 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

18 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
19 PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
20 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering of
21 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 has
22 continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff further
23 alleges and believes that such violations will continue to occur into the future.

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

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

1 30. DEFENDANTS knew or should have known that the PRODUCTS contained such
2 LISTED CHEMICAL.

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

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

12 33. Each of the RETAIL DEFENDANTS, AMAZON.COM, INC. and TAPIRUS
13 OUTDOORS has actual knowledge of the potential consumer product exposures to the LISTED
14 CHEMICAL both pursuant to information obtained by them from reliable sources in the course of
15 doing business and pursuant to the 60-Day Notice. Neither RETAIL DEFENDANTS,
16 AMAZON.COM, INC. nor TAPIRUS OUTDOORS has designated an agent for service of process in
17 California or has a primary place of business in California.

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

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

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

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

4 38. As a consequence of the above-described acts, California Health & Safety Code
5 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
6 DEFENDANTS.

7 39. In addition to the commission of all acts and actions identified hereinabove,
8 defendants AMAZON.COM, INC. and TAPIRUS OUTDOORS further violated 27 C.C.R. 25600.2(g),
9 by failing to sufficiently and promptly provide the name and U.S. contact information for the
10 manufacturer, producer, packager, importer, supplier, and distributor of the product to plaintiff as
11 demanded in her 60-Day Notice to them.

12 **PRAYER FOR RELIEF**

13 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
14 follows:

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

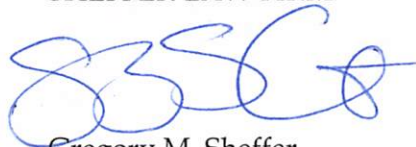
18 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
19 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering
20 the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as
21 defined by 27 CCR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

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

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

25 Dated: April 23, 2024

SHEFFER LAW FIRM

26 

27 Gregory M. Sheffer
28 Attorneys for Plaintiff