

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

ELECTRONICALLY FILED
Superior Court of California
County of Marin
05/27/2026

James M. Kim, Clerk of the Court
By: E. Riedel, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,

Plaintiff,

v.

DA BOMB, LLC, CVS HEALTH
CORPORATION, CVS PHARMACY, INC.
and DOES 1-150,

Defendants.

Case No. **CV0010212**

**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 Da Bomb Gift
5 Set products with vinyl cases manufactured, distributed and/or otherwise sold by defendants in
6 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 Da
19 Bomb Gift Set products with vinyl cases that defendants design, manufacture, distribute, and/or
20 offer for sale to consumers throughout the State of California including, as example, but not limited
21 to, Da Bomb Gum Drop Gift Set 8 10049 79142 1. All such Da Bomb Gift Set products with vinyl
22 cases containing any LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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 DA BOMB, LLC, CVS HEALTH CORPORATION and
12 CVS PHARMACY, 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 DA BOMB, LLC, CVS HEALTH CORPORATION and
16 CVS PHARMACY, INC. is legally responsible for the design, manufacture, distribution, and/or
17 offer of the PRODUCTS for sale or use in the State of California or implies by its conduct that it
18 designs, manufactures, distributes, markets and/or offers the PRODUCTS for sale or use in the State
19 of 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.

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. DA BOMB, LLC, CVS HEALTH CORPORATION, CVS PHARMACY, INC.,
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 February 4, 2026, 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 DA BOMB,
18 LLC, CVS HEALTH CORPORATION, CVS PHARMACY, 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 LISTED
21 CHEMICAL resulting from the reasonably foreseeable uses of PRODUCTS, without the individual
22 purchasers and users first having been provided with a "clear and reasonable warning" regarding
23 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
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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, DA BOMB, LLC, CVS HEALTH
20 CORPORATION and CVS PHARMACY, 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 or DA BOMB, LLC, CVS HEALTH
25 CORPORATION and CVS PHARMACY, 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.

1 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
2 consumers and/or other individuals in the State of California who were or who could become
3 exposed to a LISTED CHEMICAL during the reasonably foreseeable retail receipt, display and
4 organization of PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

5 37. Contrary to the express policy and statutory prohibition of Proposition 65, employees
6 and individuals exposed to a LISTED CHEMICAL through dermal contact and/or ingestion and/or
7 inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS
8 without a “clear and reasonable warning”, have suffered, and continue to suffer, irreparable harm,
9 for which harm they have no other plain, speedy or adequate remedy at law.

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

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

16 40. In addition to the commission of all acts and actions identified hereinabove,
17 defendants DA BOMB, LLC, CVS HEALTH CORPORATION and CVS PHARMACY, INC.
18 further violated 27 C.C.R. 25600.2(g), by failing to sufficiently and promptly provide the name and
19 U.S. contact information for the manufacturer, producer, packager, importer, supplier, and
20 distributor of the product to plaintiff as demanded in her 60-Day Notice to them.

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), assess
25 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged
26 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 grant plaintiff her reasonable attorneys’ fees and costs of suit; and

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

6 Dated: May 26, 2026

SHEFFER LAW FIRM

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9 Gregory M. Sheffer
10 Attorneys for Plaintiff
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