

ORIGINAL

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

DB SHOE COMPANY, LLC, a California Corporation; and DOES
1-20.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CONSUMER ADVOCACY GROUP, INC., in the public interest.



FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

ALAMEDA COUNTY

MAY 01 2013

CLERK OF THE SUPERIOR COURT

By Kenneth Dutton Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

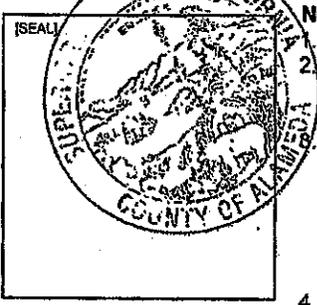
The name and address of the court is:
(El nombre y dirección de la corte es): **Rene C. Davidson Courthouse**
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER:
(Número del Caso): **CG13 677800**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Yeroushalmi & Assoc., 9100 Wilshire Blvd. Suite 610E, Beverly Hills, CA 90212, 310.623.1926

DATE: **MAY 01 2013** **Leah T. Wilson** Clerk, by Kenneth Dutton Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify):
 - under:
 - CCP 416.10 (corporation)
 - CCP 416.20 (defunct corporation)
 - CCP 416.40 (association or partnership)
 - other (specify):
 - CCP 416.60 (minor)
 - CCP 416.70 (conservatee)
 - CCP 416.90 (authorized person)
 - 4. by personal delivery on (date):



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Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
Ben Yeroushalmi (SBN 232540)
YEROUSHALMI & ASSOCIATES
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, California 90212
Telephone: 310.623.1926
Facsimile: 310.623.1930

Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

FILED
ALAMEDA COUNTY

MAY 01 2013

CLERK OF THE SUPERIOR COURT
By *Kim O'Connell* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

Plaintiff,

v.

DB SHOE COMPANY, LLC, a California
Corporation; and DOES 1-20;

Defendants.

CASE NO.

RG13 677893

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

**FILE BY
FAX**

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
defendants DB SHOE COMPANY, LLC, and DOES 1-20 as follows:

THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
organization qualified to do business in the State of California. CAG is a person within
the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting

1 as a private attorney general, brings this action in the public interest as defined under
2 Health and Safety Code section 25249.7, subdivision (d).

3 2. Defendant DB SHOE COMPANY, LLC. ("DB SHOE") is a California corporation,
4 doing business in the State of California at all relevant times herein.

5 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
6 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
7 complaint to allege their true names and capacities when ascertained. Plaintiff is
8 informed, believes, and thereon alleges that each fictitiously named defendant is
9 responsible in some manner for the occurrences herein alleged and the damages caused
10 thereby.

11 4. At all times mentioned herein, the term "Defendants" includes DB SHOE and DOES 1-
12 20.

13 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
14 times mentioned herein have conducted business within the State of California.

15 6. Upon information and belief, at all times relevant to this action, each of the Defendants,
16 including DOES 1-20, was an agent, servant, or employee of each of the other
17 Defendants. In conducting the activities alleged in this Complaint, each of the
18 Defendants was acting within the course and scope of this agency, service, or
19 employment, and was acting with the consent, permission, and authorization of each of
20 the other Defendants. All actions of each of the Defendants alleged in this Complaint
21 were ratified and approved by every other Defendant or their officers or managing agents.
22 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
23 wrongful conduct of each of the other Defendants.

24 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
25 Defendants was a person doing business within the meaning of Health and Safety Code
26 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
27 employees at all relevant times.

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JURISDICTION

- 1
- 2 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
- 3 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
- 4 those given by statute to other trial courts. This Court has jurisdiction over this action
- 5 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
- 6 violations of Proposition 65 in any Court of competent jurisdiction.
- 7 9. This Court has jurisdiction over Defendants named herein because Defendants either
- 8 reside or are located in this State or are foreign corporations authorized to do business in
- 9 California, are registered with the California Secretary of State, or who do sufficient
- 10 business in California, have sufficient minimum contacts with California, or otherwise
- 11 intentionally avail themselves of the markets within California through their manufacture,
- 12 distribution, promotion, marketing, or sale of their products within California to render
- 13 the exercise of jurisdiction by the California courts permissible under traditional notions
- 14 of fair play and substantial justice.
- 15 10. Venue is proper in the County of Alameda because one or more of the instances of
- 16 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
- 17 because Defendants conducted, and continue to conduct, business in the County of
- 18 Alameda with respect to the consumer product that is the subject of this action.

BACKGROUND AND PRELIMINARY FACTS

- 19
- 20 11. In 1986, California voters approved an initiative to address growing concerns about
- 21 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
- 22 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
- 23 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
- 24 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
- 25 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
- 26 from contamination, to allow consumers to make informed choices about the products
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- they buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
12. Proposition 65 requires the Governor of California to publish a list of chemicals known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code* § 25249.8. The list, which the Governor updates at least once a year, contains over 700 chemicals and chemical families. Proposition 65 imposes warning requirements and other controls that apply to Proposition 65-listed chemicals.
13. All businesses with ten (10) or more employees that operate or sell products in California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and reasonable" warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
14. Proposition 65 provides that any person "violating or threatening to violate" the statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7. "Threaten to violate" means "to create a condition in which there is a substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
15. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl Phthalate ("DEHP") and Di-n-Butyl Phthalate ("DBP")-bearing products of exposing, knowingly and intentionally, persons in California to the Proposition 65-listed chemicals of such products without first providing clear and reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.
16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP

1 to the list of chemicals known to the State to cause developmental male reproductive
2 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
3 months after addition of DEHP to the list of chemicals known to the State to cause
4 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
5 requirements and discharge prohibitions.

6 17. On December 2, 2005, the Governor of California added DBP to the list of chemicals
7 known to the state to cause developmental, female, and male reproductive toxicity.
8 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
9 after addition of DBP to the list of chemicals known to the State to cause reproductive
10 toxicity, DBP became fully subject to Proposition 65 warning requirements and discharge
11 prohibitions.

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13 **SATISFACTION OF PRIOR NOTICE**

14 18. On or about July 27, 2012, Plaintiff gave notice of alleged violations of Health and Safety
15 Code section 25249.6, concerning consumer products exposures and occupational
16 exposures, subject to a private action to DB SHOE, and to the California Attorney
17 General, County District Attorneys, and City Attorneys for each city containing a
18 population of at least 750,000 people in whose jurisdictions the violations allegedly
19 occurred, concerning the product Footwear.

20 19. On or about September 7, 2012, Plaintiff gave notice of alleged violations of Health and
21 Safety Code section 25249.6, concerning consumer products exposures and occupational
22 exposures, subject to a private action to DB SHOE, and to the California Attorney
23 General, County District Attorneys, and City Attorneys for each city containing a
24 population of at least 750,000 people in whose jurisdictions the violations allegedly
25 occurred, concerning the product Footwear.

26 20. On or about November 14, 2012, Plaintiff gave notice of alleged violations of Health and
27 Safety Code section 25249.6, concerning consumer products exposures and occupational
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exposures, subject to a private action to DB SHOE, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Footwear.

21. Before sending the notices of alleged violation, Plaintiff investigated the consumer products involved, the likelihood that such products would cause users to suffer significant exposures to DEHP and DBP, and the corporate structure of each of the Defendants.

22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for Plaintiff who executed the certificate had consulted with at least one person with relevant and appropriate expertise who reviewed data regarding the exposures to DEHP and DBP, the subject Proposition 65-listed chemical of this action. Based on that information, the attorney for Plaintiff who executed the Certificate of Merit believed there was a reasonable and meritorious case for this private action. The attorney for Plaintiff attached to the Certificate of Merit served on the Attorney General the confidential factual information sufficient to establish the basis of the Certificate of Merit.

23. Plaintiff's notices of alleged violations also included a Certificate of Service and a document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d)*.

24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave notices of the alleged violations to DB SHOE, and the public prosecutors referenced in Paragraph 18, 19, and 20.

25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor any applicable district attorney or city attorney has commenced and is diligently prosecuting an action against the Defendants.

1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against DB SHOE, and DOES**
3 **1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

5 **Footwear**

- 6 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 25 of this complaint as though fully set forth herein.
- 8 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Footwear, which includes but is not limited to "Plastic
10 Multicolor Garden Boots Item #10701" ("FOOTWEAR").
- 11 28. FOOTWEAR contain DEHP.
- 12 29. Defendants knew or should have known that DEHP has been identified by the State of
13 California as a chemical known to cause cancer and reproductive toxicity and therefore
14 was subject to Proposition 65 warning requirements. Defendants were also informed of
15 the presence of DEHP in FOOTWEAR within Plaintiff's notice of alleged violations
16 further discussed above at Paragraph 18.
- 17 30. Plaintiff's allegations regarding FOOTWEAR concerns "[c]onsumer products
18 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
20 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
21 *25602(b)*. FOOTWEAR are consumer products, and, as mentioned herein, exposures to
22 DEHP took place as a result of such normal and foreseeable consumption and use.
- 23 31. Plaintiff's allegations regarding FOOTWEAR also concern occupational exposures,
24 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
25 *Code Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Defendants' employees occurred
26 through the course of their employment in their employers' workplaces.
- 27 32. Plaintiff is informed, believes, and thereon alleges that between July 27, 2009 and the
28 present, each of the Defendants knowingly and intentionally exposed their employees and

1 California consumers and users of FOOTWEAR, which Defendants manufactured,
2 distributed, or sold as mentioned above, to DEHP, without first providing any type of
3 clear and reasonable warning of such to the exposed persons before the time of exposure.
4 Defendants have distributed and sold FOOTWEAR in California. Defendants know and
5 intend that California consumers will use and consume FOOTWEAR, thereby exposing
6 them to DEHP. Defendants thereby violated Proposition 65.

7 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.
8 Persons sustain exposures by handling FOOTWEAR without wearing gloves or any other
9 personal protective equipment, or by touching bare skin or mucous membranes with
10 gloves after handling FOOTWEAR, as well as through direct and indirect hand to mouth
11 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
12 FOOTWEAR. And as to Defendants' employees, employees may be exposed to DEHP in
13 the course of their employment by handling, distributing, and selling FOOTWEAR.

14 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
15 Proposition 65 as to FOOTWEAR have been ongoing and continuous to the date of the
16 signing of this complaint, as Defendants engaged and continue to engage in conduct
17 which violates Health and Safety Code section 25249.6, including the manufacture,
18 distribution, promotion, and sale of FOOTWEAR, so that a separate and distinct violation
19 of Proposition 65 occurred each and every time a person was exposed to DEHP by
20 FOOTWEAR as mentioned herein.

21 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
22 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
23 violations alleged herein will continue to occur into the future.

24 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
25 \$2,500.00 per day per individual exposure to DEHP from FOOTWEAR, pursuant to
26 Health and Safety Code section 25249.7(b).

1 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

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4 **SECOND CAUSE OF ACTION**

5 (By CONSUMER ADVOCACY GROUP, INC. and against DB SHOE, and DOES
6 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic
7 Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

8 **Footwear**

9 38. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
10 reference paragraphs 1 through 37 of this complaint as though fully set forth herein.

11 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Footwear, which includes but is not limited to
13 "Dizzy® Black/White DZY W REJOICE, #6419, Size 9, JDL-2010, 40"
14 ("FOOTWEAR").

15 40. FOOTWEAR contain DEHP and DBP.

16 41. Defendants knew or should have known that DEHP and DBP have been identified by the
17 State of California as chemicals known to cause cancer and reproductive toxicity and
18 therefore was subject to Proposition 65 warning requirements. Defendants were also
19 informed of the presence of DEHP and DBP in FOOTWEAR within Plaintiff's notice of
20 alleged violations further discussed above at Paragraph 19.

21 42. Plaintiff's allegations regarding FOOTWEAR concerns "[c]onsumer products
22 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
23 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
24 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
25 *25602(b)*. FOOTWEAR are consumer products, and, as mentioned herein, exposures to
26 DEHP and DBP took place as a result of such normal and foreseeable consumption and
27 use.

28 43. Plaintiff's allegations regarding FOOTWEAR also concern occupational exposures,
which "means an exposure to any employee in his or her employer's workplace." *Cal.*

1 *Code Regs. tit. 27, § 25602(f)*. Exposures of DEHP and DBP to Defendants' employees
2 occurred through the course of their employment in their employers' workplaces.

3 44. Plaintiff is informed, believes, and thereon alleges that between September 7, 2009 and
4 the present, each of the Defendants knowingly and intentionally exposed their employees
5 and California consumers and users of FOOTWEAR, which Defendants manufactured,
6 distributed, or sold as mentioned above, to DEHP and DBP, without first providing any
7 type of clear and reasonable warning of such to the exposed persons before the time of
8 exposure. Defendants have distributed and sold FOOTWEAR in California. Defendants
9 know and intend that California consumers will use and consume FOOTWEAR, thereby
10 exposing them to DEHP and DBP. Defendants thereby violated Proposition 65.

11 45. The principal routes of exposure are through dermal contact, ingestion and inhalation.
12 Persons sustain exposures by handling FOOTWEAR without wearing gloves or any other
13 personal protective equipment, or by touching bare skin or mucous membranes with
14 gloves after handling FOOTWEAR, as well as through direct and indirect hand to mouth
15 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
16 FOOTWEAR. And as to Defendants' employees, employees may be exposed to DEHP
17 and DBP in the course of their employment by handling, distributing, and selling
18 FOOTWEAR.

19 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
20 Proposition 65 as to FOOTWEAR have been ongoing and continuous to the date of the
21 signing of this complaint, as Defendants engaged and continue to engage in conduct
22 which violates Health and Safety Code section 25249.6, including the manufacture,
23 distribution, promotion, and sale of FOOTWEAR, so that a separate and distinct violation
24 of Proposition 65 occurred each and every time a person was exposed to DEHP and DBP
25 by FOOTWEAR as mentioned herein.

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1 47. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 48. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DEHP and DBP from FOOTWEAR,
6 pursuant to Health and Safety Code section 25249.7(b).

7 49. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

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10 **THIRD CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against DB SHOE, and DOES**
12 **1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
13 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

14 **Footwear**

15 50. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
16 reference paragraphs 1 through 49 of this complaint as though fully set forth herein.

17 51. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Footwear, which includes but is not limited to "Plastic
19 Multicolor Garden Boots Item #10701 SWB W DEER 1" ("FOOTWEAR").

20 52. FOOTWEAR contain DEHP.

21 53. Defendants knew or should have known that DEHP has been identified by the State of
22 California as a chemical known to cause cancer and reproductive toxicity and therefore
23 was subject to Proposition 65 warning requirements. Defendants were also informed of
24 the presence of DEHP in FOOTWEAR within Plaintiff's notice of alleged violations
25 further discussed above at Paragraph 20.

26 54. Plaintiff's allegations regarding FOOTWEAR concerns "[c]onsumer products
27 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
28 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*

1 25602(b). FOOTWEAR are consumer products, and, as mentioned herein, exposures to
2 DEHP took place as a result of such normal and foreseeable consumption and use.

3 55. Plaintiff's allegations regarding FOOTWEAR also concern occupational exposures,
4 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
5 *Code Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendants' employees occurred
6 through the course of their employment in their employers' workplaces.

7 56. Plaintiff is informed, believes, and thereon alleges that between November 14, 2009 and
8 the present, each of the Defendants knowingly and intentionally exposed their employees
9 and California consumers and users of FOOTWEAR, which Defendants manufactured,
10 distributed, or sold as mentioned above, to DEHP, without first providing any type of
11 clear and reasonable warning of such to the exposed persons before the time of exposure.
12 Defendants have distributed and sold FOOTWEAR in California. Defendants know and
13 intend that California consumers will use and consume FOOTWEAR, thereby exposing
14 them to DEHP. Defendants thereby violated Proposition 65.

15 57. The principal routes of exposure are through dermal contact, ingestion and inhalation.
16 Persons sustain exposures by handling FOOTWEAR without wearing gloves or any other
17 personal protective equipment, or by touching bare skin or mucous membranes with
18 gloves after handling FOOTWEAR, as well as through direct and indirect hand to mouth
19 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
20 FOOTWEAR. And as to Defendants' employees, employees may be exposed to DEHP in
21 the course of their employment by handling, distributing, and selling FOOTWEAR.

22 58. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
23 Proposition 65 as to FOOTWEAR have been ongoing and continuous to the date of the
24 signing of this complaint, as Defendants engaged and continue to engage in conduct
25 which violates Health and Safety Code section 25249.6, including the manufacture,
26 distribution, promotion, and sale of FOOTWEAR, so that a separate and distinct violation
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of Proposition 65 occurred each and every time a person was exposed to DEHP by FOOTWEAR as mentioned herein.

59. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations alleged herein will continue to occur into the future.

60. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00 per day per individual exposure to DEHP from FOOTWEAR, pursuant to Health and Safety Code section 25249.7(b).

61. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to filing this Complaint.

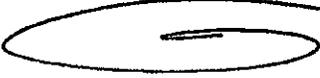
PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

1. A permanent injunction mandating Proposition 65-compliant warnings;
2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
3. Costs of suit;
4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

Dated: May 1, 2013

YEROUSHALMI & ASSOCIATES

BY: 
 Reuben Yeroushalmi
 Attorneys for Plaintiff,
 Consumer Advocacy Group, Inc.

ORIGINAL



11310813

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Reuben Yeroushalmi
 Yeroushalmi & Associates
 9100 Wilshire Blvd., Suite 610E
 Beverly Hills, CA 90212
 TELEPHONE NO.: 310.623.1926 FAX NO.: 310.623.1930
 ATTORNEY FOR (Name): Consumer Advocacy Group, Inc.

FILED
ALAMEDA COUNTY
 MAY 01 2013
 CLERK OF THE SUPERIOR COURT
 By [Signature] Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda
 STREET ADDRESS: 1225 Fallon St.
 MAILING ADDRESS: 1225 Fallon St.
 CITY AND ZIP CODE: Oakland, CA 94612
 BRANCH NAME: Rene C. Davidson Courthouse

CASE NAME:
 Consumer Advocacy Group, Inc. v. DB Shoe Company, LLC

CIVIL CASE COVER SHEET
 Unlimited
 (Amount demanded exceeds \$25,000)
 Limited
 (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
 Filed with first appearance by defendant
 (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
RG13 677800
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

FILE BY FAX

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
<p>Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other P/IPD/WD (23)
<p>Non-P/IPD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input checked="" type="checkbox"/> Other non-P/IPD/WD tort (35)
<p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
<p>Real Property</p> <input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
<p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
<p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation
 (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20)
<p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
<p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify):
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 05/01/2013
 Reuben Yeroushalmi
 (TYPE OR PRINT NAME)

[Signature]
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (not asbestos or toxic/environmental) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (not medical or legal)
- Other Non-PI/PD/WD Tort (35)
- Employment
 - Wrongful Termination (36)
 - Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
 - Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
 - Negligent Breach of Contract/Warranty
 - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage (not provisionally complex) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (non-domestic relations)
 - Sister State Judgment
 - Administrative Agency Award (not unpaid taxes)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

- Other Complaint (not specified above) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (non-harassment)
 - Mechanics Lien
 - Other Commercial Complaint Case (non-tort/non-complex)
 - Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (not specified above) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

Yeroushalmi & Associates
Attn: Yeroushalmi, Reuben
9100 Wilshire Boulevard,
Suite 610E
Beverly Hills, CA 90212

Superior Court of California, County of Alameda

Consumer Advocacy Group, Inc.
Plaintiff/Petitioner(s)
vs.
DB Shoe Company, LLC
Defendant/Respondent(s)
(Abbreviated Title)

No. RG13677808

**NOTICE OF CASE MANAGEMENT
CONFERENCE AND ORDER**
Unlimited Jurisdiction

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD.

Notice is given that a Case Management Conference has been scheduled as follows:

Date: 09/13/2013 Time: 09:00 AM	Department: 16 Location: Administration Building Third Floor 1221 Oak Street, Oakland CA 94612 Internet: http://www.alameda.courts.ca.gov	Judge: Lawrence John Appel Clerk: Ana Liza Tumonong Clerk telephone: (510) 267-6932 E-mail: Fax:
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ORDERS

1. You must:
 - a. Serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (CRC 3.110(b));
 - b. Give notice of this conference to any party not included in this notice and file proof of service;
 - c. Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 3.724 no later than 30 calendar days before the date set for the Case Management Conference;
 - d. File and serve a completed Case Management Statement (use of Judicial Council Form CM-110 is mandatory) at least 15 days before the Case Management Conference (CRC 3.725)*

2. If you do not follow the orders above, you are hereby ordered to show cause why you should not be sanctioned under CRC 2.30. The hearing on the Order to Show Cause re: Sanctions will be at the same time as the Case Management Conference. Sanctions may include monetary sanctions and any other sanction permitted by law, including striking pleadings or dismissing the action.

3. You are further ordered to appear in person† (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.

4. The Direct Calendar Judge will issue orders at the conclusion of the conference that should include:
 - a. Referring to ADR and setting an ADR completion date
 - b. Dismissing or severing claims or parties
 - c. Setting a trial date.

* Case Management Statements may be filed by E-delivery, by emailing them to the following address: EDelivery@alameda.courts.ca.gov. No fee is charged for this service. For further information, go to Direct Calendar Departments at <http://apps.alameda.courts.ca.gov/domainweb>.

†Telephonic appearances at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties may make arrangements by calling 1-888-882-6878, or faxing a service request to 1-888-882-2946. This service is subject to charges by the vendor.

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice of Hearing by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 05/03/2013.

By


Digital

Deputy Clerk

Superior Court of California, County of Alameda



Notice of Assignment of Judge for All Purposes

Case Number: RG13677808

Case Title: Consumer Advocacy Group, Inc. VS DB Shoe Company, LLC

Date of Filing: 05/01/2013

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 3.734 of the California Rules of Court and Title 3 Chapter 2 of the Local Rules of the Superior Court of California, County of Alameda, this action is hereby assigned by the Presiding Judge for all purposes to:

Judge: Lawrence John Appel
Department: 16
Address: Administration Building
1221 Oak Street
Oakland CA 94612
Phone Number: (510) 267-6932
Fax Number:
Email Address:

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedure section 170.6 must be exercised within the time period provided by law. (See Code Civ. Proc. §§ 170.6, subd. (a)(2) and 1013.)

NOTICE OF NONAVAILABILITY OF COURT REPORTERS: Effective June 4, 2012, the court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). Parties may arrange and pay for the attendance of a certified shorthand reporter. In limited jurisdiction cases, parties may request electronic recording.

Amended Local Rule 3.95 states: "Except as otherwise required by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter."

IT IS THE DUTY OF EACH PLAINTIFF AND CROSS COMPLAINANT TO SERVE A COPY OF THIS NOTICE IN ACCORDANCE WITH LOCAL RULES.

General Procedures

Following assignment of a civil case to a specific department, all pleadings must be filed at the court facility where that department is located. The René C. Davidson Courthouse is the filing location for departments situated in the Alameda County Administration Building and the United States Post Office (see Local Rule, rule 1.9(d) effective as of 01/01/2013). All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

ASSIGNED FOR ALL PURPOSES TO
JUDGE Lawrence John Appel
DEPARTMENT 16

All parties are expected to know and comply with the Local Rules of this Court, which are available on the Court's website at:
<http://www.alameda.courts.ca.gov/courts/rules/index.shtml> and with the California Rules of Court, which are available at www.courtinfo.ca.gov.

Parties must meet and confer to discuss the effective use of mediation or other alternative dispute processes (ADR) prior to the Initial Case Management Conference. The court encourages parties to file a "Stipulation to Attend ADR and Delay Initial Case Management Conference for 90 Days". Plaintiff received that form in the ADR information package at the time the complaint was filed. The court's Web site also contains this form and other ADR information. If the parties do not stipulate to attend ADR, the parties must be prepared to discuss referral to ADR at the Initial Case Management Conference.

Schedule for Department 16

The following scheduling information is subject to change at any time, without notice. Please contact the department at the phone number or email address noted above if you have questions.

- Trials generally are held: Monday through Thursday from 9:30 AM to 4:30 PM.
- Case Management Conferences are held: Initial Case Management Conferences: Monday, Tuesday, Thursday and Friday at 9:00 AM.
- Case Management Conference Continuances: Monday, Tuesday, Thursday and Friday at 9:00 AM.
- Law and Motion matters are heard: Tuesday at 9:00 AM.
- Settlement Conferences are heard: At such times as will be specially set by the court.
- Ex Parte matters are heard: Monday, Tuesday, Thursday and Friday at 9:00 AM.
- Pretrial Conferences: Friday at 9:00 AM.
- Order of Examination: Friday at 9:00 AM.

Law and Motion Procedures

To obtain a hearing date for a Law and Motion or ex parte matter, parties must contact the department as follows:

- Motion Reservations
Phone: (510) 267-6932

Parties must comply with Local Rule 3.30(b). Department 16 does not employ email.

- Ex Parte Matters
Phone: (510) 267-6932

Tentative Rulings

The court may issue tentative rulings in accordance with the Local Rules. Tentative rulings will become the Court's order unless contested in accordance with the Local Rules. Tentative rulings will be available at:

- Website: www.alameda.courts.ca.gov/domainweb, Calendar Information for Dept. 16
- Phone: 1-866-223-2244

Dated: 05/02/2013


Facsimile

Presiding Judge,
Superior Court of California, County of Alameda

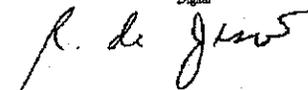
CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown on the attached Notice of Initial Case Management Conference and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 05/03/2013

By

Digital



Deputy Clerk