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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 14 2019

Attorneys for Plaintiff

CLERK OF THE SUPERIOR COURT  
By AMRIT KHAN Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

RG19043140

ANTHONY FERREIRO,

Plaintiff,

vs.

MEMPHIS SHADES, INC., REVZILLA  
MOTORSPORTS, LLC,

Defendants.

Case No.:

COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF

(Violation of Health & Safety Code § 25249.5 et  
seq.)

Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the  
following cause of action in the public interest of the citizens of the State of California.

**BACKGROUND OF THE CASE**

1. Plaintiff brings this representative action on behalf of all California citizens to  
enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,  
"[n]o person in the course of doing business shall knowingly and intentionally expose any  
individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

2. This complaint is a representative action brought by Plaintiff in the public interest  
of the citizens of the State of California to enforce the People's right to be informed of the health  
hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
Memphis Shades windshield cleaning kits/tools sold and/or distributed by defendant Memphis

1 Shades, Inc. (“Memphis Shades”) and Revzilla Motorsports, LLC (“Revzilla”) (collectively,  
2 “Defendants”) in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
4 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
5 known to the State to cause cancer and it has come under the purview of Proposition 65  
6 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
7 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
8 known to cause reproductive toxicity.

9 4. Proposition 65 requires all businesses with ten (10) or more employees that  
10 operate within California or sell products therein to comply with Proposition 65 regulations.  
11 Included in such regulations is the requirement that businesses must label any product containing  
12 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and  
13 intentionally” exposing any person to it.

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
15 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety  
16 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
17 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety  
18 Code § 25249.7.

19 6. Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in  
20 California, without a requisite exposure warning, Memphis Shades windshield cleaning kits/tools  
21 (the “Products”) that expose persons to DEHP.

22 7. Defendants’ failure to warn consumers and other individuals in California of the  
23 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution  
24 of the Products is a violation of Proposition 65 and subjects Defendants to the injunction and  
25 civil penalties described herein.

26 8. Plaintiff seeks civil penalties against Defendants for their violations of  
27 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

28

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendants to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code § 25249.7(a).

## PARTIES

10. Plaintiff is a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items. He brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11. Defendant Memphis Shades, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Memphis Shades is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

12. Defendant Revzilla, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Revzilla is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

## VENUE AND JURISDICTION

13. Venue is proper in the County of Alameda because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because Defendants conducted, and continue to conduct, business in the County of Alameda with respect to the Products.

14. This Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the  
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
3 this Court has jurisdiction over this lawsuit.

4 15. This Court has jurisdiction over Defendants because each Defendant is either a  
5 citizen of the State of California, has sufficient minimum contacts with the State of California,  
6 has registered with the California Secretary of State as foreign corporations authorized to do  
7 business in the State of California, and/or has otherwise purposefully availed itself of the  
8 California market. Such purposeful availment has rendered the exercise of jurisdiction by  
9 California courts consistent and permissible with traditional notions of fair play and substantial  
10 justice.

11 **SATISFACTION OF NOTICE REQUIREMENTS**

12 16. On February 8, 2019, Plaintiff gave notice of alleged violation of Health and  
13 Safety Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California  
14 citizens to DEHP contained in the Products without proper warning, subject to a private action to  
15 Defendants and to the California Attorney General’s office and the offices of the County District  
16 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
17 wherein the herein violations allegedly occurred.

18 17. The Notice complied with all procedural requirements of Proposition 65 including  
19 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
20 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
21 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a  
22 private action.

23 18. After receiving the Notice, and to Plaintiff’s best information and belief, none of  
24 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
25 a cause of action against Defendants under Proposition 65 to enforce the alleged violations which  
26 are the subject of the Notice.

27 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
28 Notice to Defendants, as required by law.

**FIRST CAUSE OF ACTION**

**(By Plaintiff against Defendants for the Violation of Proposition 65)**

20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of this complaint as though fully set forth herein.

21. Defendants have, at all times mentioned herein, acted as manufacturer, distributor, and/or retailer of the Products.

22. The Products contain DEHP, a hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

23. The Products do not comply with the Proposition 65 warning requirements.

24. Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since February 8, 2019, continuing until the present, that Defendants have continued to knowingly and intentionally expose California users and consumers of the Products to DEHP without providing required warnings under Proposition 65.

25. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the Products. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Users may be exposed to DEHP by dermal absorption through direct skin contact with the Products when the Products are grasped or manipulated with bare hands. If the Products become wet due to precipitation or are handled with wet hands, aqueous DEHP skin permeation rates have been reported to be faster than neat DEHP permeation. DEHP that leaches from the Products can contaminate contents that are subsequently handled, worn, mouthed, or ingested. If the Products are stored or transported in a carrier, DEHP that leaches from the Products may contaminate other articles contained within these closed spaces are subsequently handled, worn, mouthed, or consumed. Finally, while mouthing of the Products does not seem likely, some amount of exposure through ingestion can occur by touching the Products with subsequent touching of the user's hand to mouth.

26. Plaintiff, based on his best information and belief, avers that such exposures will continue every day until clear and reasonable warnings are provided to Product purchasers and users or until this known toxic chemical is removed from the Products.

