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FILED BY FAX
ALAMEDA COUNTY
November 26, 2019
CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy
CASE NUMBER:
HG19044772

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

KIM EMBRY, an individual,

Plaintiff,
v.

DICK'S SPORTING GOODS, INC., a
Delaware corporation, BULLET WEIGHTS,
INC., a Nebraska corporation, and DOES 1
through 100, inclusive,

Defendants.

Case No.:
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

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I. INTRODUCTION

1. This Complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the presence of Lead (“Listed Chemical”) prior to exposure. Defendants expose consumers to the Lead by manufacturing, importing, selling, and/or distributing Bullet Weights Slip Sinker, 1/8 oz, 25 pack; Bullet Weights Original Slip Sinkers Pack, 1 oz; Bullet Weights Solid Core Lead Wire, 1/4 inch; Dick’s Bullet Weights Hollow Core Lead Wire, 1/4 inch (collectively “Products”) manufactured, imported, sold, or distributed for sale in California.

2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.6 et seq. (“Proposition 65”), “[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. . . .” (Cal. Health & Safety Code, § 25249.6.)

3. California identified and listed Lead as a chemical known to cause cancer as early as October 1, 1992.

4. California identified and listed Lead as a chemical known to cause reproductive harm as early as February 27, 1987.

5. Each of the Defendants’ Products manufactured, imported, sold, or distributed in California contain prohibited levels of Lead.

6. Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to Lead in connection with Defendants’ manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.

7. Plaintiff seeks injunctive relief compelling Defendants to cease exposing consumers in California to Lead through its Products and/or sufficiently warn consumers in California before exposing them to Lead in Products pursuant to Proposition 65 and related Regulations. (Cal. Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for its violations of Proposition 65, attorney’s fees and costs. (Cal. Health &

1 Safety Code, § 25249.7.)

2 **II. PARTIES**

3 8. Plaintiff KIM EMBRY (“Embry” or “Plaintiff”) is a citizen of the State of
4 California dedicated to protecting the health of California citizens through the elimination or
5 reduction of toxic exposure from consumer products. She brings this action in the public interest
6 pursuant to California Health and Safety Code section 25249.7.

7 9. Defendant DICK’S SPORTING GOODS, INC. (“Dick’s”), is a corporation
8 organized and existing under the laws of Delaware. Dick’s is registered to do and does business
9 in California, County of Alameda, within the meaning of California Health and Safety Code
10 section 25249.11. Dick’s manufactures, imports, sells, or distributes Products in California and
11 Alameda County.

12 10. Defendant BULLET WEIGHTS, INC. (“Bullet Weights”), is a corporation
13 organized and existing under the laws of Nebraska. Bullet Weights is registered to do and does
14 business in California, County of Alameda, within the meaning of California Health and Safety
15 Code section 25249.11. Defendant manufactures, imports, sells, or distributes Products in
16 California and Alameda County.

17 11. Plaintiff does not know the true names and/or capacities, whether individual,
18 partners, or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for
19 that reason sues said defendants under fictitious names. Plaintiff will seek leave to amend this
20 Complaint when the true names and capacities of these defendants have been ascertained.
21 Plaintiff is informed and believes and thereon alleges that these defendants are responsible in
22 whole or in part for Plaintiff’s alleged damages.

23 **III. VENUE AND JURISDICTION**

24 12. California Constitution Article VI, Section 10, grants the Superior Court original
25 jurisdiction in all cases except those given by statute to other trial courts. The Health & Safety
26 Code statute upon which this action is based does not give jurisdiction to any other court. As
27 such, this Court has jurisdiction.

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1 13. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
2 Procedure sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
3 County. Defendants conducted and continue to conduct business in this County as it relates to
4 Products.

5 14. Defendants have sufficient minimum contacts in the State of California or
6 otherwise purposefully avails itself of the California market. Exercising jurisdiction over
7 Defendants would be consistent with traditional notions of fair play and substantial justice.

8 **IV. CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**
10 **(Violation of Proposition 65 – Against all Defendants)**

11 15. Plaintiff incorporates by reference each and every allegation contained above.

12 16. Proposition 65 mandates that citizens be informed about exposures to chemicals
13 that cause cancer, birth defects, and other reproductive harm.

14 17. Defendants manufactured, imported, sold, and/or distributed Products containing
15 Lead in violation of California Health and Safety Code section 25249.6 et seq. Plaintiff is
16 informed and believes such violations have continued after receipt of the Notices (defined *infra*)
17 and will continue to occur into the future.

18 18. In manufacturing, importing, selling, and/or distributing Products, Defendants
19 failed to provide a clear and reasonable warning to consumers and individuals in California who
20 may be exposed to Lead through reasonably foreseeable use of the Products.

21 19. The presence of the Lead in Products exposes individuals to the Lead.

22 20. Defendants knew or should have known that the Products contained Lead and
23 exposed individuals to Lead in the ways provided above. The Notices informed Defendants of the
24 presence of Lead in the Products. Likewise, media coverage concerning Lead and related
25 chemicals in consumer products provided constructive notice to Defendants.

26 21. Defendants' actions in this regard were deliberate and not accidental.

27 22. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff
28 issued a 60-Day Notice of Violation ("Notices") as required by and in compliance with

1 Proposition 65. Plaintiff provided the Notices to the various required public enforcement
2 agencies along with a certificate of merit. The Notices alleged that Defendants violated
3 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards
4 associated with exposures to Lead contained in the Products.

5 23. The appropriate public enforcement agencies provided with the Notices failed to
6 commence and diligently prosecute a cause of action against Defendants.

7 24. Individuals exposed to Lead contained in the Products resulting from reasonably
8 foreseeable use of the Products have suffered and continue to suffer irreparable harm. There is no
9 other plain, speedy, or adequate remedy at law.

10 25. Defendants are liable for a maximum civil penalty of \$2,500 per day for each
11 violation of Proposition 65 pursuant to California Health and Safety Code section 252497(b).
12 Injunctive relief is also appropriate pursuant to California Health and Safety Code section
13 25249.7(a).

14 **V. PRAYER FOR RELIEF**

15 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

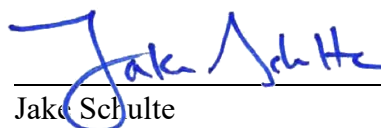
- 16 1. Civil penalties in the amount of \$2,500 per day for each violation;
- 17 2. A preliminary and permanent injunction against Defendants from manufacturing,
18 importing, selling, and/or distributing Products in California without providing a
19 clear and reasonable warning as required by Proposition 65 and related
20 Regulations;
- 21 3. Reasonable attorney's fees and costs of suit; and
- 22 4. Such other and further relief as may be just and proper.

23 Respectfully submitted:

24 Dated: November 25, 2019

NICHOLAS & TOMASEVIC, LLP

25
26 By:



Jake Schulte

27 Attorney for Plaintiff
28 Kim Embry