

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mel Red Recana

1 Reuben Yeroushalmi (SBN 193981)

2 reuben@yeroshalmi.com

3 **YEROUSHALMI & YEROUSHALMI\***

4 9100 Wilshire Boulevard, Suite 240W

5 Beverly Hills, California 90212

6 Telephone: (310) 623-1926

7 Facsimile: (310) 623-1930

8 Attorneys for Plaintiff,

9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 AAH'S ENTERPRISES, INC., a California  
17 Corporation;  
18 ATLANTIC HOSIERY & APPAREL, INC.,  
19 a Florida Corporation;  
20 and DOES 1-10,

21 Defendants.

22 CASE NO. **20STCV13812**

23 COMPLAINT FOR PENALTY AND  
24 INJUNCTION

25 Violation of Proposition 65, the Safe  
26 Drinking Water and Toxic Enforcement  
27 Act of 1986 (*Health & Safety Code*, §  
28 25249.5, *et seq.*)

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

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges three causes of action  
2 against defendants AAH'S ENTERPRISES, INC., ATLANTIC HOSIERY & APPAREL,  
3 INC., and DOES 1-10 as follows:

4 **THE PARTIES**

- 5 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
6 organization qualified to do business in the State of California. CAG is a person within  
7 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting  
8 as a private attorney general, brings this action in the public interest as defined under  
9 Health and Safety Code Section 25249.7, subdivision (d).
- 10 2. Defendant AAH'S ENTERPRISES, INC. ("AAH'S ENTERPRISES") is a California  
11 Corporation qualified to do business in California and doing business in the State of  
12 California at all relevant times herein.
- 13 3. Defendant ATLANTIC HOSIERY & APPAREL, INC., ("ATLANTIC") is a Florida  
14 Corporation and doing business in the State of California at all relevant times herein.
- 15 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-  
16 10, and therefore sues these defendants by such fictitious names. Plaintiff will amend  
17 this Complaint to allege their true names and capacities when ascertained. Plaintiff is  
18 informed, believes, and thereon alleges that each fictitiously named defendant is  
19 responsible in some manner for the occurrences herein alleged and the damages caused  
20 thereby.
- 21 5. At all times mentioned herein, the term "Defendants" includes AAH'S ENTERPRISES,  
22 ATLANTIC, and DOES 1-10.
- 23 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
24 times mentioned herein have conducted business within the State of California.
- 25 7. Upon information and belief, at all times relevant to this action, each of the Defendants,  
26 including DOES 1-10, was an agent, servant, or employee of each of the other  
27 Defendants. In conducting the activities alleged in this Complaint, each of the  
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1 Defendants was acting within the course and scope of this agency, service, or  
2 employment, and was acting with the consent, permission, and authorization of each of  
3 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
4 were ratified and approved by every other Defendant or their officers or managing  
5 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated  
6 the alleged wrongful conduct of each of the other Defendants.

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

11 **JURISDICTION**

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

3 **BACKGROUND AND PRELIMINARY FACTS**

4 12. In 1986, California voters approved an initiative to address growing concerns about  
5 exposure to toxic chemicals and declared their right “[t]o be informed about exposures  
6 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
7 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
8 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
9 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
10 from contamination, to allow consumers to make informed choices about the products  
11 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
12 fit.

13 13. Proposition 65 requires the Governor of California to publish a list of chemicals known  
14 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
15 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains  
16 over 700 chemicals and chemical families. Proposition 65 imposes warning  
17 requirements and other controls that apply to Proposition 65-listed chemicals.

18 14. All businesses with ten (10) or more employees that operate or sell products in  
19 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)  
20 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of  
21 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear  
22 and reasonable” warnings before exposing a person, knowingly and intentionally, to a  
23 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

24 15. Proposition 65 provides that any person "violating or threatening to violate" the statute  
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
26 25249.7. "Threaten to violate" means "to create a condition in which there is a  
27 substantial probability that a violation will occur." *Health & Safety Code* §

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1 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day  
2 per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

3 16. Plaintiff identified certain practices of manufacturers and distributors of Fanny Packs  
4 with PVC Components of exposing, knowingly and intentionally, persons in California  
5 to Di(2-ethylhexyl)phthalate (“DEHP”) of such products without first providing clear  
6 and reasonable warnings of such to the exposed persons prior to the time of exposure.  
7 Plaintiff later discerned that Defendants engaged in such practice.

8 17. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
9 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to  
10 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after  
11 addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP  
12 became fully subject to Proposition 65 warning requirements and discharge  
13 prohibitions.

14 18. On October 24, 2003, the Governor of California added DEHP to the list of chemicals  
15 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).  
16 DEHP is known to the State to cause developmental, and male reproductive toxicity.  
17 Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty (20)  
18 months after addition of DEHP to the list of chemicals known to the State to cause  
19 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
20 requirements and discharge prohibitions.

21 **SATISFACTION OF PRIOR NOTICE**

22 19. On or about September 13, 2019, Plaintiff gave notice of alleged violations of Health  
23 and Safety Code Section 25249.6, concerning consumer products exposures, subject to  
24 a private action to AAH’S ENTERPRISES, ATLANTIC, and to the California Attorney  
25 General, County District Attorneys, and City Attorneys for each city containing a  
26 population of at least 750,000 people in whose jurisdictions the violations allegedly  
27 occurred, concerning the Fanny Pack with PVC Components.

- 1 20. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
2 products involved, the likelihood that such products would cause users to suffer  
3 significant exposures to DEHP, and the corporate structure of each of the Defendants.
- 4 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
5 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney  
6 for Plaintiff who executed the certificate had consulted with at least one person with  
7 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP,  
8 the subject Proposition 65-listed chemical of this action. Based on that information, the  
9 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
10 reasonable and meritorious case for this private action. The attorney for Plaintiff  
11 attached to the Certificate of Merit served on the Attorney General the confidential  
12 factual information sufficient to establish the basis of the Certificate of Merit.
- 13 22. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
14 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
15 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d)*.
- 16 23. Plaintiff is commencing this action more than sixty (60) days from the dates that  
17 Plaintiff gave notice of the alleged violations to AAH'S ENTERPRISES, ATLANTIC,  
18 and the public prosecutors referenced in Paragraph 19.
- 19 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General,  
20 nor any applicable district attorney or city attorney has commenced and is diligently  
21 prosecuting an action against the Defendants.

22 **FIRST CAUSE OF ACTION**

23 **(By CONSUMER ADVOCACY GROUP, INC. and against AAH'S**  
24 **ENTERPRISES, ATLANTIC, and DOES 1-10 for Violations of Proposition 65,**  
25 **The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety***  
***Code, §§ 25249.5, et seq.))***

26 **Fashion Accessories**

- 1 25. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this  
2 complaint as though fully set forth herein.
- 3 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
4 distributor, promoter, or retailer of Fanny Pack with PVC Components (“Fanny Pack”),  
5 including but not limited Metallic Fanny Pack; “420528”; “WP304-MTLLC”; “Moda  
6 West” “UPC 7 09673 18304 0”; “Made in China”
- 7 27. Fanny Pack contains DEHP.
- 8 28. Defendants knew or should have known that DEHP has been identified by the State of  
9 California as a chemical known to cause cancer and reproductive toxicity and therefore  
10 was subject to Proposition 65 warning requirements. Defendants were also informed of  
11 the presence of DEHP in Fanny Pack within Plaintiff’s notice of alleged violations  
12 further discussed above at Paragraph 20.
- 13 29. Plaintiff’s allegations regarding Fanny Pack concerns “[c]onsumer products  
14 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
15 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
16 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
17 *25602(b)*. Fanny Packs are consumer products, and, as mentioned herein, exposures to  
18 DEHP took place as a result of such normal and foreseeable consumption and use.
- 19 30. Plaintiff is informed, believes, and thereon alleges that between September 13, 2016  
20 and the present, each of the Defendants knowingly and intentionally exposed California  
21 consumers and users of Fanny Packs, which Defendants manufactured, distributed, or  
22 sold as mentioned above, to DEHP, without first providing any type of clear and  
23 reasonable warning of such to the exposed persons before the time of exposure.  
24 Defendants have distributed and sold Fanny Pack in California. Defendants know and  
25 intend that California consumers will use and consume Fanny Pack, thereby exposing  
26 them to DEHP. Defendants thereby violated Proposition 65.
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1 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
2 Persons sustain exposures by handling Fanny Pack without wearing gloves or any other  
3 personal protective equipment, or by touching bare skin or mucous membranes with  
4 gloves after handling Fanny Pack, as well as through direct and indirect hand to mouth  
5 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
6 Fanny Pack.

7 32. And as to Defendants' employees, employees may be exposed to DEHP in the course of  
8 their employment by handling, distributing, and selling Fanny Packs.

9 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations  
10 of Proposition 65 as to Fanny Pack have been ongoing and continuous, as Defendants  
11 engaged and continue to engage in conduct which violates Health and Safety Code  
12 Section 25249.6, including the manufacture, distribution, promotion, and sale of Fanny  
13 Pack, so that a separate and distinct violation of Proposition 65 occurred each and every  
14 time a person was exposed to DEHP by Fanny Pack as mentioned herein.

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

18 35. Based on the allegations herein, Defendants are liable for civil penalties of up to  
19 \$2,500.00 per day per individual exposure to DEHP from Fanny Pack, pursuant to  
20 Health and Safety Code Section 25249.7(b).

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

### 23 **PRAYER FOR RELIEF**

24 Plaintiff demands against each of the Defendants as follows:

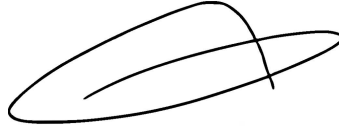
- 25 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 26 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
- 27 3. Costs of suit;
- 28 4. Reasonable attorney fees and costs; and



1 5. Any further relief that the court may deem just and equitable.

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3 Dated: April 8, 2020

YEROUSHALMI & YEROUSHALMI\*

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6 \_\_\_\_\_  
7 Reuben Yeroushalmi  
8 Attorneys for Plaintiff,  
9 CONSUMER ADVOCACY GROUP, INC.

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