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9 CONSUMER ADVOCACY GROUP, INC.

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 11 2020

CLERK OF THE SUPERIOR COURT  
By AMRIT KHAN Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 v.

16 DICK'S SPORTING GOODS, INC., a  
17 Delaware Corporation;  
18 RIO BRANDS, INC. DBA ALL-LUMINUM  
19 PRODUCTS, INC.; a Pennsylvania  
20 Corporation;  
21 SHELTERLOGIC CORP.; a Delaware  
22 Corporation;  
23 and DOES 1-10,

24 Defendants.

CASE NO. **RG20058234**

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)

25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
26 defendants DICK'S SPORTING GOODS, INC.; RIO BRANDS, INC. DBA ALL-LUMINUM  
27 PRODUCTS, INC.; SHELTERLOGIC CORP.; and DOES 1-10 as follows:  
28

Filed By Fax

**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 as a private attorney general, brings this action in the public interest as defined under Health and Safety Code Section 25249.7, subdivision (d).
2. Defendant DICK’S SPORTING GOODS, INC. (“DICK’S”) is a Delaware Corporation; doing business in the State of California at all relevant times herein.
3. Defendant RIO BRANDS, INC. DBA ALL-LUMINUM PRODUCTS, INC. (“RIO”) is a Pennsylvania Corporation doing business in the State of California at all relevant times herein.
4. Defendant SHELTERLOGIC CORP. (“SHELTERLOGIC”) is a Delaware Corporation, doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
6. At all times mentioned herein, the term “Defendants” includes DICK’S, RIO, SHELTERLOGIC, and DOES 1-10.
7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-10, was an agent, servant, or employee of each of the other Defendants. SHELTERLOGIC is the parent company of RIO. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course

1 and scope of this agency, service, or employment, and was acting with the consent,  
2 permission, and authorization of each of the other Defendants. All actions of each of  
3 the Defendants alleged in this Complaint were ratified and approved by every other  
4 Defendant or their officers or managing agents. Alternatively, each of the Defendants  
5 aided, conspired with and/or facilitated the alleged wrongful conduct of each of the  
6 other Defendants.

7 9. 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 10. 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 11. 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 12. Venue is proper in the County of Alameda because one or more of the instances of  
26 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or  
27

1 because Defendants conducted, and continue to conduct, business in the County of  
2 Alameda with respect to the consumer product that is the subject of this action.

3 **BACKGROUND AND PRELIMINARY FACTS**

4 13. 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 14. 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 15. 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 16. 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* §

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 17. Plaintiff identified certain practices of manufacturers and distributors of Personal Shade  
4 products of exposing, knowingly and intentionally, persons in California to Di(2-  
5 ethylhexyl)phthalate ("DEHP") of such products without first providing clear and  
6 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 18. 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 19. 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 20. On or about September 5, 2019, Plaintiff gave notice of alleged violations of Health and  
23 Safety Code Section 25249.6, concerning consumer products exposures, subject to a  
24 private action to DICK'S, RIO and to the California Attorney General, County District  
25 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
26 people in whose jurisdictions the violations allegedly occurred, concerning the Personal  
27 Shade with Plastic Components.

28

1 21. . On or about October 18, 2019, Plaintiff gave notice of alleged violations of Health and  
2 Safety Code Section 25249.6, concerning consumer products exposures, subject to a  
3 private action to SHELTERLOGIC and to the California Attorney General, County  
4 District Attorneys, and City Attorneys for each city containing a population of at least  
5 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the  
6 Personal Shade with Plastic Components

7 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
8 products involved, the likelihood that such products would cause users to suffer  
9 significant exposures to DEHP, and the corporate structure of each of the Defendants.

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

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

22 25. Plaintiff is commencing this action more than sixty (60) days from the dates that  
23 Plaintiff gave notice of the alleged violations to DICK'S, RIO, SHELTERLOGIC and  
24 the public prosecutors referenced in Paragraphs 20 and 21.

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

28

**FIRST CAUSE OF ACTION**

**(By CONSUMER ADVOCACY GROUP, INC. and DICK'S, RIO, SHELTERLOGIC, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

**Personal Shade**

27. Plaintiff repeats and incorporates by reference paragraphs 1 through 26 of this complaint as though fully set forth herein.

28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Personal Shade with Plastic Components, including but not limited to "RIO beach;" "Capture The Spirit;" "MyCanopy;" "Personal Shade;" "UPF 50+;" "RIO Brands;" "Philadelphia, PA 19154;" "www.riobrands.com;" "Made in China;" "USA Pat.D725,424;" "CAN-DKS;" "0 80958 36173 6" ("Personal Shades").

29. Personal Shade contains DEHP.

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

31. Plaintiff's allegations regarding Personal Shades concern "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, 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, § 25602(b)*. Personal Shade products are consumer products, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable consumption and use.

32. Plaintiff is informed, believes, and thereon alleges that between September 5, 2016 and the present, each of the Defendants knowingly and intentionally exposed California

1 consumers and users of , Personal Shades, which Defendants manufactured, distributed,  
2 or sold as mentioned above, to DEHP, without first providing any type of clear and  
3 reasonable warning of such to the exposed persons before the time of exposure.

4 Defendants have distributed and sold Personal Shades in California. Defendants know  
5 and intend that California consumers will use Personal Shades thereby exposing them to  
6 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 Personal Shades without wearing gloves or any  
9 other personal protective equipment, or by touching bare skin or mucous membranes  
10 with gloves after handling Personal Shades, as well as through direct and indirect hand  
11 to mouth contact, hand to mucous membrane, or breathing in particulate matter  
12 dispersed from Personal Shades.

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

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

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

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



1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

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

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9 Dated: March 11, 2020

YEROUSHALMI & YEROUSHALMI\*

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12 \_\_\_\_\_  
13 Reuben Yeroushalmi  
14 Attorneys for Plaintiff,  
15 CONSUMER ADVOCACY GROUP, INC.