

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Elaine Lu

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PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

**PUBLIC HEALTH AND SAFETY
ADVOCATES, LLC., a Limited Liability
Company, in the public interest,**
Plaintiff,

v.

**HITE USA, INC., a California Corporation
dba SHO INTERNATIONAL; HITE
USA, INC., a California Corporation and
DOES 1 through 50, inclusive,**
Defendant(s)

CASE NO.: 21STCV25765

**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.)**

UNLIMITED CIVIL

Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** alleges two (2) causes of
action against Defendants, **HITE USA, INC., a California Corporation dba SHO
INTERNATIONAL; HITE USA, INC., a California Corporation** and DOES 1 through 50,
inclusive as follows:

THE PARTIES

1. Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** (“PHSA” or
“Plaintiff”) is an organization qualified to do business in the state of California. PHSA is a person within

1 the meaning of *Health & Safety Code §25249.11(a)*, and is dedicated to protecting the public from
2 environmental health hazards and toxic exposures. PHSA, acting as a private attorney general, brings
3 this enforcement action in the public interest pursuant to *Health & Safety Code §25249.7(d)*.

4 **2.** Defendants, **HITE USA, INC. dba SHO INTERNATIONAL; HITE USA, INC.**
5 (“Sho International” or “Defendants”) is a California corporation qualified to do business in California.
6 Upon information and belief, Plaintiff contends that the Defendants have conducted business within
7 California at all relevant times herein.

8 **3.** Plaintiff is presently unaware of the true names and capacities of Defendants, DOES 1
9 through 50, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this
10 Complaint to allege the true names and capacities of said Defendants when the identities are ascertained.
11 Plaintiff is informed, believes and thereon alleges that each fictitiously named Defendant is responsible
12 in some manner for the occurrences herein alleged and the damages caused.

13 **4.** 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 **5.** Defendants own, administer, direct, control, sell, distribute, and/or operate facilities that
16 place two (2) products into the stream of commerce in California. The products (“Products”) are
17 outlined herein: (1) Arkshell, UPC #8809426330638; (2) Marsh Clam, UPC #8809312880214. Due to
18 several chemicals in the Product, the Defendants are required to provide “clear and reasonable”
19 warnings to consumers about the chemicals under Proposition 65.

20 **6.** At all times mentioned herein, Defendants were legally responsible for compliance with
21 the provisions of Proposition 65. Whenever an allegation regarding any act of any Defendant is made
22 herein, such allegation shall be deemed to mean that Defendants, or its agents, officers, directors,
23 managers, supervisors, or employees, did or so authorize such acts while engaged in the affairs of
24 Defendants business operations and/or while acting within the course and scope of employment.

25 **7.** Upon information and belief, at all relevant times to this action, each of the Defendants,
26 including DOES 1-50, was an agent, servant, or employee of each of the other Defendants. In
27 conducting the activities alleged in this Complaint, each of the Defendants was acting within the course
28

1 and scope of this agency, service, or employment, and was acting with the consent, permission, and
2 authorization of each of the other Defendants. All actions of each of the Defendants alleged in this
3 Complaint were ratified and approved by every other Defendant or their officers or managing agents,
4 and/or negligently failed and omitted to act or adequately and properly supervise, control, or direct its
5 employees and agents while engaged in the management, direction, operation, or control of the affairs of
6 the business organizations. Alternatively, each of the Defendants aided, conspired with and/or
7 facilitated the alleged wrongful conduct of each of the other Defendants.
8

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

12 **JURISDICTION**

13 **9.** This Court has jurisdiction over this action pursuant to *California Constitution*,
14 *Article VI, Section 10*, which grants the Superior Court original jurisdiction in all causes except
15 those given by statute to other trial courts. This Court has jurisdiction over this action pursuant to
16 *Health and Safety Code Section 25249.7*, which allows enforcement of violations of Proposition 65
17 in any Court of competent jurisdiction.

18 **10.** This Court has jurisdiction over Defendants named herein because Defendants either
19 reside in California, are located in California, are foreign corporations authorized to do business in
20 California, are registered with the California Secretary of State, do sufficient business in California,
21 have sufficient minimum contacts with California, or otherwise intentionally avail themselves of
22 the markets within California through their manufacture, distribution, promotion, marketing, or sale
23 of their products within California to render the exercise of jurisdiction by the California courts
24 permissible 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
26 of wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
27 because the Defendants conducted, and continue to conduct business in the County of Los Angeles
28 with respect to the consumer Products that are the subject of this action. Said Product is marketed,

1 offered for sale, sold, used, and/or consumed without clear and reasonable warnings in the County
2 of Los Angeles.

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 to chemicals
6 that cause cancer, birth defects, or other reproductive harm.” *Ballot Pamphlet, Proposed Law,*
7 *Gen. Election (Nov.4, 1986) at p.3.* The initiative, the Safe Drinking Water and Toxic Enforcement
8 Act of 1986, codified at *Health & Safety Code § 25249.5, et seq.* (“Proposition 65”), helps to
9 protect California’s drinking water sources from contamination, to allow consumers to make
10 informed choices about the products they buy, and to enable persons to protect themselves from
11 toxic chemicals as they see fit.
12

13 **13.** Proposition 65 requires the Governor of California to publish a list of chemicals
14 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
15 *§ 25249.8.* The list, which the Governor updates at least once a year, contains over 700 chemicals
16 and chemical families. Proposition 65 imposes warning requirements and other controls that apply
17 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) prohibited
20 from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health*
21 *& Safety Code, § 25249.5*) and (2) required to provide “clear and reasonable” warnings before
22 knowingly and/ or intentionally exposing a person to a proposition 65-listed chemical (*Health &*
23 *Safety Code, § 25249.6*).
24

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

1 **16.** Plaintiff identified certain practices of manufacturers and distributors who both in
2 the past and presently, knowingly and intentionally expose, persons in California to Lead and Lead
3 Compounds (“Lead”), and Cadmium and Cadmium Compounds (“Cadmium”) in such products
4 without first providing clear and reasonable warnings of such to the exposed persons prior to the
5 time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

6 **17.** On February 27, 1987, the Governor of California added Lead to the list of
7 chemicals known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs.*
8 *Tit. 27, §27001 (c)*. Lead is known to cause developmental and reproductive toxicity, in both males
9 and females. The Proposition 65 warning requirements and discharge prohibitions became
10 applicable to Lead within twenty (20) months after Lead was added to the list of chemicals known
11 to cause developmental and reproductive toxicity. *Health & Safety Code §§ 25249.9 and 25249.10*.

12 **18.** On October 1, 1987, the Governor of California added Cadmium to the list of
13 chemicals known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b)*. The Proposition
14 65 warning requirements and discharge prohibitions became applicable to Cadmium within twenty
15 (20) months after Cadmium was added to the list of chemicals known to cause cancer. *Health &*
16 *Safety Code §§ 25249.9 and 25249.10*.

17 **19.** On October 1, 1992, the Governor of California added Lead to the list of chemicals
18 known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b)*. The Proposition 65
19 warning requirements and discharge prohibitions became applicable to Lead within twenty (20)
20 months after Lead was added to the list of chemicals known to cause cancer. *Health & Safety Code*
21 *§§ 25249.9 and 25249.10*.

22 **20.** On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
23 known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs. Tit. 27,*
24 *§27001 (c)*. Lead is known to cause developmental and reproductive toxicity, in both males and
25 females. The Proposition 65 warning requirements and discharge prohibitions became applicable
26 to Cadmium within twenty (20) months after Cadmium was added to the list of chemicals known to
27 cause developmental and reproductive toxicity. *Health & Safety Code §§ 25249.9 and 25249.10*.

21. The level of exposure to a chemical causing cancer, or reproductive toxicity under Proposition 65 is determined by multiplying the level in question times the reasonably anticipated rate of exposure for an individual to a given medium. *27 C.C.R. § 25821(b)*. For exposure to consumer products, the level of exposure is calculated using the reasonably anticipated rate of intake or exposure for average users of the consumer product. *27 C.C.R. § 25821(C)(2)*.

22. Defendants manufacture and distribute two (2) products, (1) Arkshell, UPC #8809426330638; (2) Marsh Clam, UPC #8809312880214. (“Products”) which contain sufficient quantities of Lead and/or Cadmium such that consumers, including pregnant women, who consume the Products are exposed to Lead and/or Cadmium. The primary route of exposure for the violations happens when consumers ingest the Products orally. These exposures occur in homes, workplaces and everywhere in California where the Products are consumed.

23. During the relevant one-year period herein, no clear and reasonable warning was provided to consumers when the Products were manufactured and released into the stream of commerce to warn consumers about the possible exposure to cancer, developmental or reproductive hazards from Lead or Cadmium when the Products are consumed.

NOTICE OF VIOLATION

24. At all times relevant to this action, the Defendants have knowingly and intentionally exposed the users/consumers of the Products to Lead and/or Cadmium by recommending that consumers ingest the Products without first giving a clear and reasonable warning to such individuals.

25. The Defendants have sold the Products to consumers in California at least since July 13, 2018. The Products continues to be imported, distributed and sold in California without the requisite warning information. Consumers are exposed to Lead and/or Cadmium when the Products are ingested.

26. On or about July 13, 2020, Plaintiff gave notice (“Notice”) of the alleged violations of *Health & Safety Code §25249.6* for the Products to Defendants, the California Attorney General, the District Attorney for each county in California and the City Attorney for San Francisco, San

1 Diego, San Jose, Sacramento and Los Angeles. In compliance with *Health and Safety Code*
2 *§25249.7(d)* and *27 C.C.R. Code §25903(b)*, each Notice included the following information: the
3 name, address, and telephone number of the noticing party; the name of the alleged violator; the
4 statute violated; the approximate time period during which violations occurred; and descriptions of
5 the violations including the chemicals involved, the routes of toxic exposure, and the specific
6 product or type of product causing the violations.
7

8 **27.** Before sending the Notice of alleged violations, Plaintiff investigated the Products
9 to determine the likelihood that such a product would cause consumers to sustain significant
10 exposure to Lead and/or Cadmium. Plaintiff hired a well-respected and accredited testing
11 laboratory to test the Products. This laboratory uses testing protocols established and approved by
12 the California Attorney General.

13 **28.** Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney
14 General, the District Attorneys of every county in California, the City Attorneys of every city in
15 California with a population greater than 750,000 and to the named Defendants. In compliance with
16 *Health & Safety Code § 2521-9.7(d)* and *11 C.C.R. § 3101*, each Certificate certified that Plaintiffs'
17 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
18 expertise who reviewed facts, studies or other data regarding the exposures to lead alleged in each
19 Notice; and (2) based on the information obtained through such consultations, believes that there is
20 a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in
21 each Notice.
22

23 **29.** In reliance on the expert's evaluation of the Products, Plaintiffs' counsel is informed
24 and believes and thereon alleges that there is a reasonable and meritorious case against Defendants
25 for this private action.

26 **30.** Any person acting in the public interest has standing to enforce violations of
27 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
28 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
within such time. *Health & Safety Code § 25249.7(d)*

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

32. Plaintiff is commencing this action more than sixty (60) days from the date Plaintiff gave notice of the alleged violations to Defendants and the public prosecutor outlined above.

33. Plaintiff is informed, believes and thereon alleges that none of the public prosecutors with the authority to prosecute violations of Proposition 65 has commenced or is diligently prosecuting an action against the Defendants under *Health and Safety Code section 25249.5, et seq.* based on the allegations herein.

34. Plaintiff has engaged in good faith efforts to resolve the alleged violation prior to filing this Complaint.

FIRST CAUSE OF ACTION

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

35. Plaintiff incorporates by reference paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, importer, distributor, wholesaler, promoter, or retailer of Arkshell (“Arkshell”), UPC # 8809426330638.

37. Arkshell contains Lead and Cadmium.

38. Defendants knew or should have known that Lead and Cadmium have been identified by the State of California as chemicals known to cause cancer and reproductive toxicity and were therefore subject to Proposition 65 warnings requirement. Defendants were also informed of the presence of Lead and Cadmium in Arkshell and the Proposition 65 violations when the Plaintiff served Notice to Defendants on July 13, 2020.

39. The allegations surrounding Arkshell involve “[c]onsumer products exposure[s]” which “is an exposure that results from a person’s acquisition, purchase, storage, consumption, or

1 other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a
2 consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Arkshell is a consumer product, and as
3 mentioned herein, exposures to Lead and Cadmium took place as a result of such normal and
4 foreseeable consumption and use.

5 **40.** Plaintiff is informed, believes, and thereon alleges that at least since July 13, 2020
6 and the present, each of the Defendants knowingly and intentionally exposed California consumers
7 and users of Arkshell to Lead and Cadmium. Plaintiff is informed, believes, and thereon alleges
8 that Defendants manufactured, distributed, or sold the product Arkshell, without first providing any
9 type of clear and reasonable warning of such to the exposed persons before the time of exposure.
10 Defendants know and intend that California consumers will use and consume Arkshell, thereby
11 exposing them to Lead and Cadmium. Therefore, Defendants violated Proposition 65.

12 **41.** The primary exposure to the Lead and Cadmium found in Arkshell comes from
13 dermal contact, as well as direct and indirect ingestion and inhalation of the product. Persons
14 sustain exposures by eating and consuming Arkshell and handling Arkshell without wearing gloves
15 or any other personal equipment, or by touching bare skin or mucus membrane with after handling
16 Arkshell, as well as through direct and indirect hand to mouth contact, hand to mucous membrane,
17 or breathing in particulate matter dispersed from Arkshell.

18 **42.** Plaintiff is informed, believes and thereon alleges that each of the Defendant’s
19 violations of Proposition 65 as to Arkshell has been ongoing and continuous, as Defendants
20 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,
21 including the manufacture, distribution, promotion and sale of Arkshell, so that a separate and
22 distinct violation of Proposition 65 occurs each time a person is exposed to Lead and Cadmium by
23 Arkshell as mentioned herein.

24 **43.** Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
25 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
26 alleged herein will continue to occur into the future.

44. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00 per day per individual exposure to Lead and Cadmium from Arkshell, pursuant to Health and Safety Code §25249.7(b).

SECOND CAUSE OF ACTION

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

45. Plaintiff incorporates by reference paragraphs 1 through 44 of this Complaint as though fully set forth herein.

46. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, importer, distributor, wholesaler, promoter, or retailer of Marsh Clam (“Marsh Clam”), UPC # 8809312880214.

47. Marsh Claim contains Lead.

48. Defendants knew or should have known that Lead has been identified by the State of California as chemicals known to cause cancer and reproductive toxicity and were therefore subject to Proposition 65 warnings requirement. Defendants were also informed of the presence of Lead in Marsh Claim and the Proposition 65 violations when the Plaintiff served Notice to Defendants on July 13, 2020.

49. The allegations surrounding Marsh Claim involve “[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)*. Marsh Claim is a consumer product, and as mentioned herein, exposures to Lead took place as a result of such normal and foreseeable consumption and use.

50. Plaintiff is informed, believes, and thereon alleges that at least since July 13, 2020 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Marsh Claim to Lead. Plaintiff is informed, believes, and thereon alleges that

1 Defendants manufactured, distributed, or sold the product Marsh Claim, without first providing any
2 type of clear and reasonable warning of such to the exposed persons before the time of exposure.
3 Defendants know and intend that California consumers will use and consume Marsh Claim, thereby
4 exposing them to Lead. Therefore, Defendants violated Proposition 65.

5
6 **51.** The primary exposure to the Lead found in Marsh Claim comes from dermal
7 contact, as well as direct and indirect ingestion and inhalation of the product. Persons sustain
8 exposures by eating and consuming Marsh Claim and handling Marsh Claim without wearing
9 gloves or any other personal equipment, or by touching bare skin or mucus membrane with after
10 handling Marsh Claim, as well as through direct and indirect hand to mouth contact, hand to
11 mucous membrane, or breathing in particulate matter dispersed from Marsh Claim.

12 **52.** Plaintiff is informed, believes and thereon alleges that each of the Defendant's
13 violations of Proposition 65 as to Marsh Claim has been ongoing and continuous, as Defendants
14 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,
15 including the manufacture, distribution, promotion and sale of Marsh Claim, so that a separate and
16 distinct violation of Proposition 65 occurs each time a person is exposed to Lead by Marsh Claim
17 as mentioned herein.

18
19 **53.** Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
20 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
21 alleged herein will continue to occur into the future.

22 **54.** Based on the allegations herein, Defendants are liable for civil penalties of up to
23 \$2,500.00 per day per individual exposure to Lead from Marsh Claim, pursuant to Health and
24 Safety Code §25249.7(b).

25
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, as follows:

- 28 **1.** That the Court, pursuant to *Health & Safety Code § 25249.7(b)*, assess civil penalties

1 against the Defendants in the amount of \$2,500.00 per day for each violation of Proposition 65;

2 2. An injunctive order, pursuant to *Health and Safety Code §25249.7(b)* and *CCR title*
3 *27, §25603 and 25603.1*, compelling Defendants to adopt a compliance program by either (a)
4 reformulating the products such that no Proposition 65 warnings are required, or (b) providing
5 “clear and reasonable” warnings on the labels of the subject Products.
6

7 3. An award of reasonable attorney’s fees and cost; and

8 4. Such other and further relief that the Court may deem just and equitable.
9

10 DATED: July 12, 2021
11 _____

BY: 

12 LAW OFFICES OF DANIALPOUR &
13 ASSOCIATES
14 Davar Danialpour, Esq.
15 Attorneys for Plaintiffs,
16 PUBLIC HEALTH & SAFETY ADVOCATES,
17 LLC.
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