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Superior Court of California,
County of San Francisco

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 **CGC-22-597563**

12 ANTHONY FERREIRO,

13 Plaintiff,

14 vs.

15 SCHEELS ALL SPORTS, INC.,

16 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

19 **BACKGROUND OF THE CASE**

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

26 2. This Complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People’s right to be informed of the health
28 hazards caused by exposure to (a) carbon monoxide, (b) di(2-ethylhexyl) phthalate (DEHP), and
(c) diisononyl phthalate (DINP) (collectively, the “Listed Chemicals”), each a toxic chemical

1 found in Products (defined herein) sold and/or distributed by defendant Scheels All Sports, Inc.
2 (“Scheels” or “Defendant”) in California.

3 3. Carbon monoxide is a harmful chemical known to the State of California to cause
4 reproductive toxicity. On July 1, 1989, the State of California listed carbon monoxide as a chemical
5 known to the State to cause reproductive toxicity and it has come under the purview of Proposition
6 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
7 25249.8 & 25249.10(b).

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

14 5. DINP is a harmful chemical known to the State of California to cause cancer. On
15 December 20, 2013, the State of California listed DINP as a chemical known to the State to cause
16 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
17 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

18 6. Proposition 65 requires all businesses with ten (10) or more employees that operate
19 within California or sell products therein to comply with Proposition 65 regulations. Included in
20 such regulations is the requirement that businesses must label any product containing a Proposition
21 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
22 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
23 chemical.

24 7. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
25 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
26 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
27 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
28

1 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
2 25249.7.

3 8. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
4 without a requisite exposure warning, (a) Kamado Joe Fire Starters that expose consumers to
5 carbon monoxide, (b) BiKASE smartphone and other device holder/cases that expose users to
6 DINP, (c), Itasca PVC Chest Waders that expose users to DEHP, (d) P-Line ID tag holders that
7 expose users to DEHP, (e) Anglers’ Choice pliers – grip that expose users to DEHP, (f) Scheels
8 Outfitters tackle bags that exposes users to DEHP, (g) Troy-EZ on Spring Collar – grips that
9 expose users to DEHP, and (h) Rover Bicycle Child Trailer – flags that expose users to DEHP
10 (collectively, the “Products”).

11 9. Defendant’s failure to warn consumers and other individuals in California of the
12 health hazards associated with exposure to the Listed Chemicals in conjunction with the sale and/or
13 distribution of the Products is a violation of Proposition 65 and subjects Defendant to the
14 enjoinder and civil penalties described herein.

15 10. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65
16 in accordance with Health and Safety Code § 25249.7(b).

17 11. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
18 Defendant to provide purchasers or users of the Products with required warnings related to the
19 dangers and health hazards associated with exposure to the Listed Chemicals pursuant to Health
20 and Safety Code § 25249.7(a).

21 12. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

22 **PARTIES**

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

1 No person in the course of doing business shall knowingly and intentionally expose any
2 individual to a chemical known to the state to cause cancer or reproductive toxicity without
3 first giving clear and reasonable warning to such individual...

4 21. An exposure to a chemical in a consumer product is one “which results from a
5 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
6 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
7 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
8 shall provide a warning to any person to whom the product is sold or transferred unless the product
9 is packaged or labeled with a clear and reasonable warning.”

10 22. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
11 more of the following methods individually or in combination:¹

12 a. A warning that appears on a product’s label or other labeling.

13 b. Identification of the product at the retail outlet in a manner which provides
14 a warning. Identification may be through shelf labeling, signs, menus, or a combination
15 thereof.

16 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
17 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet
18 with such conspicuousness, as compared with other words, statements, designs, or devices
19 in the label, labeling or display as to render it likely to be read and understood by an
20 ordinary individual under customary conditions of purchase or use.

21 d. A system of signs, public advertising identifying the system and toll-free
22 information services, or any other system that provides clear and reasonable warnings.

23 23. Proposition 65 provides that any “person who violates or threatens to violate” the
24 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
25 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
26

27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, et.seq. as amended on August 30,
2016, and operative on August 30, 2018.

1 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
2 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
3 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

4 **FACTUAL BACKGROUND**

5 24. Carbon monoxide is a harmful chemical known to the State of California to cause
6 reproductive toxicity. On July 1, 1989, the State of California listed carbon monoxide as a chemical
7 known to the State to cause reproductive toxicity and it has come under the purview of Proposition
8 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
9 25249.8 & 25249.10(b).

10 25. On January 1, 1988, the State of California listed DEHP as a chemical known to
11 the State to cause cancer and it has come under the purview of Proposition 65 regulations since
12 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
13 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
14 reproductive toxicity.

15 26. DINP is a harmful chemical known to the State of California to cause cancer. On
16 December 20, 2013, the State of California listed DINP as a chemical known to the State to cause
17 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
18 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

19 27. The consumer exposures to the Listed Chemicals from use of the Products that is
20 the subject of this Complaint result primarily from dermal absorption, oral ingestion exposure
21 resulting from hand-to-mouth transfer and/or, in the case of carbon monoxide, inhalation exposure.
22 The primary route of exposure to DEHP and DINP is via dermal absorption directly through the
23 skin when consumers use, touch, or handle the Products. Some amount of exposure through
24 ingestion can occur by touching the Products with subsequent touching of the user’s hand to mouth.
25 Exposure to carbon monoxide will result from inhalation of combustion products emitted during
26 the process of using the fire starters. No clear and reasonable exposure warning is provided with
27 the Products regarding the health hazards of exposure to the Listed Chemicals.

1 35. Plaintiff received from the analytical chemist exposure assessment reports for each
2 Product which concluded that persons in California who use the Products will be exposed to levels
3 of the Listed Chemicals that require a Proposition 65 exposure warning.

4 36. On January 12, 2021 (Kamado Joe Fire Starters), January 21, 2021 (Anglers'
5 Choice pliers, Itasca chest waders, Scheels Outfitters tackle bags, Rover bike trailers), February 3,
6 2021 (BiKASE device holders), and June 22, 2021 (Troy EZ-On Spring Collars, P-Line ID
7 holders), Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the
8 collectively, the "Notices") to Defendant concerning the exposure of California citizens to the
9 Listed Chemicals from use of the Products without proper warning, subject to a private action to
10 Defendant and to the California Attorney General's office and the offices of the County District
11 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
12 the herein violations allegedly occurred. See attached at Exhibits "A - H" true and correct copies
13 of each Notice of Violation.

14 37. The Notices complied with all procedural requirements of Proposition 65 including
15 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
16 least one person with relevant and appropriate expertise who reviewed relevant data regarding
17 exposure to the Listed Chemicals, and that counsel believed there was meritorious and reasonable
18 cause for a private action.

19 38. After receiving the Notices, and to Plaintiff's best information and belief, none of
20 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
21 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
22 the subject of the Notices.

23 39. Plaintiff is commencing this action more than sixty (60) days from the date of the
24 Notices to Defendants, as required by law.

25 **FIRST CAUSE OF ACTION**

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

27 40. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 39 of
28 this Complaint as though fully set forth herein.

1 41. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
2 the Products.

3 42. Use of the Products will expose consumers to the Listed Chemicals, each a
4 hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human
5 health.

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

7 44. Plaintiff, based on his best information and belief, avers that at all relevant times
8 herein, and at least since January 12, 2021, continuing until the present, that Defendant has
9 continued to knowingly and intentionally expose California users and consumers of the Products
10 to the Listed Chemicals without providing required warnings under Proposition 65.

11 45. The exposures that are the subject of the Notices result from the purchase,
12 acquisition, handling and recommended use of the Products. The primary route of exposure to the
13 Listed Chemicals is through dermal absorption directly through the skin when consumers use,
14 touch, or handle the Products. Some amount of exposure through ingestion can occur by touching
15 the Products with subsequent touching of the user's hand to mouth. With respect to carbon
16 monoxide exposure from use of the fire starters, inhalation is the primary pathway for exposure to
17 this chemical. No clear and reasonable warning is provided with the Products regarding the health
18 hazards of exposure to the Listed Chemicals.

19 46. Plaintiff, based on his best information and belief, avers that such exposures will
20 continue every day until clear and reasonable warnings are provided to purchasers and users or
21 until these known toxic chemicals are removed from the Products.

22 47. Defendant has knowledge that the normal and reasonably foreseeable use of the
23 Products exposes individuals to the Listed Chemicals, and Defendant intends that exposures to the
24 Listed Chemicals will occur by its deliberate, non-accidental participation in the importation,
25 distribution, sale and offering of the Products to consumers in California

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

