

FOR COURT USE ONLY

**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 01 2021

CLERK OF THE SUPERIOR COURT

By JERRIE MOYER
Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)

Joseph D. Agliozzo (SBN 167292)
1601 N. Sepulveda Boulevard, #649
Manhattan Beach, CA 90266

TELEPHONE NO. (424) 241-3614

FAX NO. (Optional)

ATTORNEY FOR (Name) Plaintiff SARA HAMMOND

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

STREET ADDRESS 1225 Fallon Street

MAILING ADDRESS 1225 Fallon Street

CITY AND ZIP CODE Oakland, California 94612

BRANCH NAME Rene C. Davidson Courthouse

CASE NAME:

Sara Hammond v. Orly Shoe Corp.

CIVIL CASE COVER SHEET

☒ **Unlimited** ☐ **Limited**
(Amount **(Amount**
demanded **demanded is**
exceeds \$25,000) **\$25,000)**

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER

JUDGE

DEPT.

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)
**Other PI/PD/WD (Personal Injury/Property
Damage/Wrongful Death) Tort**

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)

☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse
condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the
above listed provisionally complex case
types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☒ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 1 (Violation of Proposition 65)

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 1, 2021

Joseph D. Agliozzo

(TYPE OR PRINT NAME)

NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

COPY

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2 JOSEPH D. AGLIOZZO LAW CORPORATION
3 1601 N. Sepulveda Boulevard, #649
4 Manhattan Beach, CA 90266
5 Telephone: (424) 241-3614

6 Attorney for Plaintiff SARA HAMMOND

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA

9
10 SARA HAMMOND, an individual,

11 Plaintiff,

12 v.

13 ORLY SHOE CORP., a New York
14 corporation,

15 Defendant.

CASE NO.:

RG21103455
COMPLAINT FOR PENALTY AND
INJUNCTIVE RELIEF

(Health & Safety Code, § 25249.5, et seq.)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff Sara Hammond
3 (“Plaintiff”) in the public interest of the citizens of the State of California to enforce the public’s
4 right to be informed of the presence of Di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 found in a variety of products.

6 2. By this Complaint, Plaintiff seeks to remedy Defendant’s continuing failure to
7 warn California citizens about the risk of exposure to DEHP present in and on PVC components
8 manufactured, distributed, imported, and/or offered for sale to consumers throughout the State of
9 California.

10 3. Detectable levels of DEHP have been found on or in PVC reusable carrying cases
11 for face mask kits that Defendant manufactures, imports, distributes, and/or offers for sale to
12 consumers throughout the State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”), “[n]o person in the course of doing
15 business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual ...” Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on January 1, 1988, California identified and listed
19 DEHP as a chemical known to cause cancer, and as a chemical known to cause reproductive
20 toxicity on October 24, 2003. DEHP became subject to the “clear and reasonable warning”
21 requirements of Proposition 65 one year later (for cancer) on January 1, 1989 and on October 24,
22 2004 (for reproductive toxicity). 27 California Code of Regulations (“C.C.R.”) § 27001(c);
23 Health and Safety Code §§ 25249.8 & 25249.10(b).

24 6. DEHP is hereinafter referred to as the “Listed Chemical”.

25 7. Defendant manufactures, distributes, imports, sells and/or offers for sale in
26 California PVC reusable carrying cases for face mask kits, including by not limited to, the
27 French Connection travel kit, containing DEHP that were sold or distributed for sale in
28

California (collectively the “Products”) without a Proposition 65 warning. A list of the Products is attached as Exhibit A.

8. Defendant’s failure to warn consumers in the State of California about their exposures to the Listed Chemical in conjunction with Defendant’s manufacture, distribution, import, and/or sale of the Products is a violation of Proposition 65 and subjects Defendant to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.8(a) & (b)(1).

9. For Defendant’s violations of Proposition 65, Plaintiff seeks permanent injunctive relief to compel Defendant to provide purchases or users of the Products with the required warning regarding the health hazards of the Listed Chemical in the Products. Health & Safety Code § 25249.7(a).

10. Pursuant to Health & Safety Code § 25249.7(b), Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65.

PARTIES

11. Plaintiff Sara Hammond (“Plaintiff”) is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products, and she brings this action in the public interest pursuant to Health & Safety Code § 25249.7(d).

12. Defendant Orly Shoe Corp. is a New York corporation, and is considered a “person in the course of doing business” within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

13. Defendant manufactures, imports, distributes, sells, and/or offers for sale the Products in the State of California.

VENUE AND JURISDICTION

14. Venue is proper in Alameda Superior Court, pursuant to Code of Civil Procedure §§ 393, 395 and 395.5 because this Court is a court of competent jurisdiction, because Plaintiff seeks civil penalties against Defendant, because one of more instances of wrongful conduct

1 occurred, and continue to occur, in the County of Alameda, and/or because Defendant
2 conducted, and continues to conduct, business in this county with respect to the Products.

3 15. The Court has jurisdiction over this action pursuant to Health & Safety Code §
4 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
5 California Constitution Article VI, section 10, which grants the Superior Court “original
6 jurisdiction in all causes except those given by statute to other trial courts” because this case is
7 not given by statute to other trial courts.

8 16. This Court has jurisdiction over Defendant because Defendant is a business entity
9 that does sufficient business, has sufficient minimum contacts in California or otherwise
10 intentionally avails itself of the California market through the sale, marketing, importation,
11 distribution or use of the Products in California.

12 **FIRST CAUSE OF ACTION**

13 **(Violation of Proposition 65)**

14 17. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
15 Paragraphs 1 through 16, inclusive.

16 18. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
17 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
18 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
19 harm.” Proposition 65, § 1(b).

20 19. Proposition 65 states, “No person in the course of doing business shall knowingly
21 and intentionally expose any individual to a chemical known to the state to cause cancer or
22 reproductive toxicity without first giving clear and reasonable warning to such individual ...”
23 Health & Safety Code § 25249.6.

24 20. On or about February 1, 2021 Plaintiff served a 60-Day Notice of Violation,
25 together with the requisite certificate of merit, on TJX Companies, Inc., Marmaxx Operating
26 Corp., and Marshalls (collectively “TJX”), the California Attorney General, the District
27 Attorneys of every county in California, and the City Attorneys of every California City with a
28 population greater than 750,000 (collectively, “Public Prosecutors”). The 60-Day Notice of

1 Violation stated that, as a result of TJX's sale of the Products within California, purchasers and
2 users in California were being exposed to DEHP resulting from their reasonably foreseeable use
3 of the Products, without having been provided with a "clear and reasonable warning" regarding
4 such toxic exposures as required by Proposition 65. TJX was also served with "Appendix A:
5 Office of Environmental Health Hazard Assessment California Environmental Protection
6 Agency, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
7 Summary" as required by 27 C.C.R. § 25903(b)(1).

8 21. Shortly thereafter, on February 17, 2021, Plaintiff served a Supplemental 60-Day
9 Notice of Violation (the "Notice"), together with the requisite certificate of merit, on Defendant
10 and the Public Prosecutors, identifying Defendant as the manufacturer, distributor, and/or
11 importer of the Products. The Notice alleged that, as a result of Defendant's manufacture,
12 distribution, and/or import of the Products within California, purchasers and users in California
13 were being exposed to DEHP resulting from their reasonably foreseeable use of the Products,
14 without having been provided with a "clear and reasonable warning" regarding such toxic
15 exposures as required by Proposition 65. Defendant was also served with "Appendix A: Office
16 of Environmental Health Hazard Assessment California Environmental Protection Agency, The
17 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" as
18 required by 27 C.C.R. § 25903(b)(1).

19 22. After receiving Plaintiff's Notice, the appropriate public prosecutors and
20 enforcement agencies have declined to commence a cause of action against Defendant under
21 Proposition 65.

22 23. The Products manufactured, imported, distributed, sold, and/or offered for sale in
23 California by Defendant contain the Listed Chemical such that they require a "clear and
24 reasonable" warning under Proposition 65.

25 24. Defendant knew or should have known that the Products it manufactures, imports,
26 distributes, sells, and/or offers for sale in California contain the Listed Chemical.

25. The Listed Chemical is present in or on the Products in such a way as to expose individuals to the Listed Chemical through dermal contact and/or ingestion during reasonably foreseeable use of the Products.

26. Defendant had knowledge that the normal and reasonably foreseeable use of the Products may expose individuals to the Listed Chemical through dermal contact and/or ingestion.

27. Defendant failed to provide a “clear and reasonable warning” to those consumers and other individuals in the State of California who were or could become exposed to the Listed Chemical through dermal contact and/or ingestion during reasonably foreseeable use of the Products.

28. Contrary to the express policy and statutory prohibition of Proposition 65, individuals exposed to the Listed Chemical through dermal contact and/or ingestion during reasonably foreseeable use of the Products sold by Defendant without a “clear and reasonable warning,” have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

29. Pursuant to Health & Safety Code § 25249.7(b), as a consequence of the above-described acts, Defendant are liable for a maximum civil penalty of \$2,500 per day for each violation.

30. As a consequence of the above described acts, Health & Safety Code § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties against Defendant in the amount of \$2,500 per day for each violation;

2. That the Court, pursuant to Health & Safety Code § 25249.7(a), permanently enjoin Defendant from manufacturing, importing, distributing, or offering the Products for sale in California without first providing a “clear and reasonable warning” as defined by the

1 California Code of Regulations title 27, § 25600 *et seq.*, as to the harms associated with
2 exposures to the Listed Chemical;

3 3. That the Court grant Plaintiff her reasonable attorneys' fees and costs of suit; and

4 4. That the Court grant such other and further relief as may be just and proper.

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6 Dated: July 1, 2021

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8 Respectfully Submitted,

9 By: Joe Aglio
10 Joseph D. Aglio
11 Attorney for Plaintiff SARA HAMMOND
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EXHIBIT A

EXHIBIT A

PRODUCTS

The Products are all PVC reusable carrying cases for face mask kits that are composed of plastic components manufactured by Orly Shoe Corp. A non-exhaustive list of the Style and UPC codes associated with the Products are listed below.

Style	UPC Number
HB-SURVIVEKIT	691466213716
HB-SURVIVEKIT-C	691466213815
HB-SURVIVEKIT-D	691466198211
HB-SURVIVEKIT-L	691466213877
HB-SURVIVEKIT-S	691466213914
HB-SURVIVEKIT-U	691466214102
HB-SURVKITADT-D	691466058348
HB-SURVKITADT-D	691466058423
HB-SURVKITADT-D	691466058478
HB-SURVKITADT-D	691466252593
HB-SURVKITADT-D	691466252654
HB-SURVKITKID-D	691466058393
HB-SURVKITKID-D	691466252753
HB-SURVKITKID-D	691466252760
HB-SURVKITKID-D	691466252814
HB-SURVKITKID-D	691466253026



Superior Court of California
County of Alameda

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse
1225 Fallon Street
Oakland, CA 94612

Receipt Nbr: 984915
Clerk: jmoyer
Date: 07/01/2021

Type	Case Number	Description	Amount
Filing	RG21103455	Complaint - Other	\$435.00

Total Amount Due: \$435.00
Prior Payment:
Current Payment: \$435.00
Balance Due: \$0.00
Overage:
Excess Fee:
Change:

Payment Method:
Cash:
Check: \$435.00