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Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CONSUMER ADVOCACY GROUP, INC., in the public interest, Plaintiff, v. DICK'S SPORTING GOODS, INC., a Delaware Corporation; RIO BRANDS, INC. DBA ALL-LUMINUM PRODUCTS, INC., a Pennsylvania Corporation; SHELTERLOGIC CORP., a Delaware Corporation, and DOES 1-10, Defendants.	CASE NO. RG20058234 [Assigned for All Purposes to the Hon. James Reilly, Dept. 25] **[PROPOSED] CONSENT JUDGMENT** Health & Safety Code § 25249.5 *et seq.* FAC filed: July 7, 2020 Trial Date: April 4, 2022

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself and in the public interest, and Defendants Shelterlogic Corp. and Rio Brands, LLC (collectively "Defendant") with each a Party to the action and collectively referred to as "Parties."

1.2 **Defendant and Covered Products**

1.2.1 CAG alleges that Defendant is a Delaware corporation which employs ten or more persons. For purposes of this Consent Judgment only, Defendant is deemed a person in the course of doing business in California and subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").

1.2.2 CAG alleges that Defendant manufactures, sells, or distributes Personal Shade products in California.

1.3 **Listed Chemicals**

1.3.1 Di (2-ethylhexyl) Phthalate ("DEHP"), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) Phthalate, has been listed by the State of California as a chemical known to cause cancer and birth defects or other reproductive harm.

1.4 **Notices of Violation**

1.4.1 On or about September 5, 2019, CAG served a "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("September 5, 2019 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in certain Personal Shade products sold, manufactured, and/or distributed by Defendant in California. No public enforcer has commenced or diligently prosecuted the allegations set forth in the September 5, 2019 Notice.

1.4.2 On or about October 18, 2019, CAG served a "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("September 5, 2019 Notice") that provided the Defendant with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in certain Personal Shade products sold, manufactured, and/or distributed by Defendant in California. No public enforcer has commenced or diligently prosecuted the allegations set forth in the October 18, 2019 Notice.

1.4.3 On or about July 28, 2020, CAG served a "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("July 28, 2020 Notice") that provided the Defendant with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in certain Personal Shade products sold, manufactured, and/or distributed by Defendant in California. No public enforcer has commenced or diligently prosecuted the allegations set forth in the July 28, 2020 Notice.

1.5 **Complaint**

1.5.1 On March 11, 2020 CAG filed a Complaint for civil penalties and injunctive relief in Alameda County Superior Court, Case No. RG20058234, against Defendant. The Complaint alleges that Defendant violated Proposition 65 for allegedly failing to give clear and reasonable warnings of alleged exposure to DEHP in certain Personal Shade products that Defendant distributed, manufactured, and/or sold in California.

1.5.2 On July 7, 2020 CAG filed a First Amended Complaint for Case No. RG20058234 which alleges that Defendant violated Proposition 65 for allegedly failing to give clear and reasonable warnings of alleged exposure to DEHP in certain Personal Shade products that Defendant distributed, manufactured, and/or sold in California.

1.6 **Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations against Defendant contained in the Complaints, and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

1.7 **No Admission**

This Consent Judgment resolves claims that are denied and disputed. The Parties enter into

this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall be construed as an admission by the Parties of any material allegation in the Notice or the Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind, including without limitation, any admission concerning any alleged or actual violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, including but not limited to the meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

2. DEFINITIONS

2.1 "Covered Products" means Personal Chair Shade Accessory with Plastic Components, including but not limited to : "MyCanopy;" "Personal Shade;" "USA Pat.D725,424;" "CAN-DKS;" "0 80958 36173 6", sold by or supplied by Defendant.

2.2 "Effective Date" means the date that this Consent Judgment is approved by the Court.

2.3 "DEHP" means Di (2-ethylhexyl) Phthalate, also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) Phthalate

2.4 "Listed Chemical" means DEHP.

2.5 "Notices" means the September 5, 2019, October 18, 2019, and July 28, 2020 notices.

3. INJUNCTIVE RELIEF/REFORMULATION

3.1 After the Effective Date, Defendant shall not directly sell, offer for sale, or ship for sale in California any Covered Products unless the level of DEHP in the Covered Products does not exceed more than 0.1% (1,000 parts per million) by weight unless the Covered Products are in existing inventory as of the Effective Date and sold with a warning pursuant to Section 3.2. .

3.2 For any Covered Products still existing in Defendant's inventory as of the Effective Date that do not meet the reformulation levels in Section 3.1 and that are sold in California, Defendant shall place a Proposition 65 compliant warning on them. Any warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products, and be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. The equilateral triangle pictogram shall be in yellow with a black exclamation mark; provided however, the pictogram may be in white instead of yellow if the Covered Product label does not contain the color yellow. The warning shall state:

⚠ **WARNING**: This product can expose you to chemicals including DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

or

⚠ WARNING: Cancer and reproductive harm – for more information, visit www.P65Warnings.ca.gov

or

⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov

4. SETTLEMENT PAYMENT

4.1 **Payment and Due Date**: Within ten (10) days of the Effective Date, Defendant shall pay a total of one hundred and fifty thousand dollars ($150,000) in full and complete

settlement of any and all claims for civil penalties, damages, attorney's fees, expert fees or any other claim for costs, expenses or monetary relief of any kind for claims that were or could have been asserted in the Notice or Complaint, as follows:

4.1.1 **Civil Penalty**: Defendant shall issue two separate checks totaling thirty-four thousand three hundred dollars ($34,300) as follows for alleged civil penalties pursuant to Health & Safety Code § 25249.12:

(a) Defendant will issue one check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of twenty-five thousand seven hundred and twenty-five dollars ($25,725) representing 75% of the total civil penalty and Defendant will issue a second check to CAG in the amount of eight thousand five hundred and seventy-five dollars ($8,575) representing 25% of the total civil penalty;

(b) Separate 1099s shall be issued for each of the above payments: Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of $25,725. Defendant will also issue a 1099 to CAG in the amount of $8,575 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4.1.2 **Additional Settlement Payments:** Defendant shall issue one check for twenty-five thousand seven hundred dollars ($25,700) to "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG will use this portion of the Total Settlement Payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing for the Proposition 65 Listed Chemical in various products, and for expert fees for evaluating exposures through various mediums, including but not limited to consumer product, occupational, and environmental exposures to the Proposition 65 Listed Chemical, and the cost of hiring consulting and retaining experts who assist with the extensive scientific analysis necessary for those files in litigation and to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees; fifteen percent (15%) for administrative costs incurred during investigation and litigation to reduce the public's exposure to

the Proposition 65 Listed Chemical by notifying those persons and/or entities believed to be responsible for such exposures and attempting to persuade those persons and/or entities to reformulate their products or the source of exposure to completely eliminate or lower the level of the Proposition 65 Listed Chemical including but not limited to costs of documentation and tracking of products investigated, storage of products, website enhancement and maintenance, computer and software maintenance, investigative equipment, CAG's member's time for work done on investigations, office supplies, mailing supplies and postage Within 30 days of a request from the Attorney General, CAG shall provide to the Attorney General copies of documentation demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such additional settlement payment.

4.1.3 **Reimbursement of Attorney Fees and Costs:** Defendant shall issue a check in the amount of ninety thousand dollars ($90,000) payable to "Yeroushalmi & Yeroushalmi" as complete reimbursement for any and all reasonable investigation fees and costs, attorneys' fees, expert fees, and any and all other costs and expenses incurred as a result of investigating, bringing this matter to the Defendant's attention, litigating, negotiating a settlement in the public interest, and seeking and obtaining court approval of this Consent Judgment.

4.2 Other than the payment to OEHHA described above, all payments referenced in paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Defendant shall provide written confirmation to CAG concurrently with payment to OEHHA.

5. MATTERS COVERED BY THIS CONSENT JUDGMENT

5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on behalf of itself and in the public interest, and Defendant and their owners, officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies, predecessors, and their successors and assigns ("Defendant

Releasees"), and all entities to whom Defendant directly or indirectly distribute or sell Covered Products, including, but not limited to, Dick's Sporting Goods, Inc. and all other downstream distributors, downstream wholesalers, customers, retailers, marketplace hosts, franchisees, cooperative members, licensees, and the successors and assigns of any of them, who may use, maintain, distribute or sell Covered Products ("Downstream Defendant Releasees"), of all claims for alleged or actual violations of Proposition 65 for alleged exposures to the Listed Chemical from the Covered Products manufactured, distributed or sold by Defendant up through the Effective Date as set forth in the Notices and Complaint. Defendant and Defendant Releasees' compliance with this Consent Judgment shall constitute compliance with Proposition 65 with respect to alleged exposures to the Listed Chemical from the Covered Products sold by Defendant Releasees or Downstream Defendant Releasees after the Effective Date. Nothing in this Section affects CAG's right to commence or prosecute an action under Proposition 65 against any person other than Defendant, Defendant Releasees, or Downstream Defendant Releasees. Defendant, Defendant Releasees and Downstream Defendant Releasees are collectively defined as the "Released Parties."

5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against the Released Parties arising from any actual or alleged violation of Proposition 65 or any other statutory or common law claim regarding the Covered Products manufactured, distributed or sold by the Released Parties through the Effective Date regarding any actual or alleged failure to warn about exposure to the Listed Chemical from the Covered Products. In furtherance of the foregoing, CAG on behalf of itself only, hereby waives any and all rights and benefits which it now has, or in the future may have, conferred

upon it with respect to Claims regarding the Covered Products manufactured, distributed or sold by the Released Parties through the Effective Date arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to the Listed Chemical from the Covered Products by virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

CAG understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if CAG suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any violation of Proposition 65 or any other statutory or common law regarding the Covered Products manufactured, distributed or sold by the Released Parties through the Effective Date regarding the failure to warn about actual or alleged exposure to the Listed Chemical from the Covered Products, CAG will not be able to make any claim for those damages, penalties or other relief against the Released Parties. Furthermore, CAG acknowledges that it intends these consequences for any such Claims arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to the Listed Chemical from the Covered Products as may exist as of the date of this release but which CAG does not know exist, and which, if known, would materially affect their decision to enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

5.3 Upon Court approval of this Consent Judgment and Defendant's compliance with its payment obligations outlined in Section 4, CAG shall promptly file a request for dismissal without prejudice in this action against the other defendants, including Dick's Sporting Goods, Inc., Rio Brands, Inc. dba All-Luminum Products, Inc.

6. ENTRY OF CONSENT JUDGMENT

6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to California Health & Safety Code § 25249.7(f). The Parties agree to act in good faith to obtain Court approval of the Consent Judgment. Upon entry of the Consent Judgment, CAG and Defendant waive their respective rights to a hearing and trial on the allegations in the Notices and Complaint.

6.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent Judgment and any and all prior agreements between the Parties merged herein shall terminate and become null and void, and the actions shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

7. MODIFICATION OF JUDGMENT

7.1 This Consent Judgment may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

8. RETENTION OF JURISDICTION

8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms of this Consent Judgment under Code of Civil Procedure section 664.6.

8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

9. SERVICE ON THE ATTORNEY GENERAL

9.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the California Attorney General so that the Attorney General may review this Consent Judgment prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney General has received the aforementioned copy of this Consent Judgment, CAG may then submit it to the Court for approval.

10. ENTIRE AGREEMENT

10.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

11. ATTORNEY FEES

11.1 Except as specifically provided in Sections 4.1.3 and 8.2, each Party shall bear its own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

12. GOVERNING LAW

12.1 The validity, construction, terms, and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.

12.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered Products, then Defendant may provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve

Defendant from any obligation to comply with any other pertinent state or federal law or regulation.

12.3 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.

13. EXECUTION AND COUNTERPARTS

13.1 This Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document and have the same force and effect as original signatures.

14. NOTICES

14.1 Any notices under this Consent Judgment shall be by delivery of First-Class Mail.

If to CAG:

Reuben Yeroushalmi, Esq.
Yeroushalmi & Yeroushalmi
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

If to Defendants SHELTERLOGIC CORP. and RIO BRANDS, LLC:

Stacy E. Don
LAW OFFICE OF STACY E. DON
2998 Douglas Blvd., Suite 375
Roseville, CA 95661

15. AUTHORITY TO STIPULATE

15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the Party represented and legally to bind that party.

AGREED TO:

Date: May 25, 2021

Michael Marcus

Name: Michael Marcus

Title: Director

CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date: MAY 25, 2021

James D. Hayward

Name: JAMES D. HAYWARD

Title: CEO

SHELTERLOGIC CORP.

AGREED TO:

Date: MAY 25, 2021

James D. Hayward

Name: JAMES D. HAYWARD

Title: CEO

RIO BRANDS, LLC

ROUSHALMI & ROUSHALMI An Independent ociation of Law porations

IT IS SO ORDERED.

Date:_____

_____

JUDGE OF THE SUPERIOR COURT