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ENDORSED
FILED
San Francisco County Superior Court

JAN 26 2005

GORDON PARK-LI, Clerk
TERESA E. BAUTISTA
Deputy Clerk

Attorney for Plaintiff,
Consumer Advocacy Group, Inc.

CASE MANAGEMENT CONFERENCE

PLAN I JUN 24 2005 9:00AM

DEPARTMENT 212
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO--UNLIMITED

CGC 05-438118

Case No.

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

14 Plaintiff,)
15)
16)
17)

18 v.)
19)
20)

18 THE SWATCH GROUP (U.S.))
19 INC., and DOES 1-100,)

20 Defendants.)
21)
22)

COMPLAINT FOR VIOLATION OF
PROPOSITION 65, THE SAFE DRINKING
WATER AND TOXIC ENFORCEMENT ACT OF
1986 (HEALTH AND SAFETY CODE
SECTIONS 25249.5, ET SEQ.)

23 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff") is a non-profit
24 corporation qualified to do business in the State of California. It brings this action in the
25 public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
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- 1 2. Defendant **THE SWATCH GROUP (U.S.) INC.**, is and at all times mentioned herein
2 was qualified to do business in California, and at all times mentioned herein has
3 conducted business within California.
4
- 5 3. Plaintiff is ignorant of the true names and capacities of defendants Does 1-100, and
6 therefore sues these defendants by such fictitious names. Plaintiff will amend this
7 complaint to allege their true names and capacities when ascertained. Plaintiff is
8 informed, believes, and thereon alleges that each fictitiously named defendant is
9 responsible in some manner for the occurrences herein alleged and the damages caused
10 thereby.
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- 12 4. At all times mentioned herein, "Defendants" include **THE SWATCH GROUP (U.S.)**
13 **INC.** as well as Does 1-100.
14
- 15 5. At all times mentioned each defendant was a "[p]erson in the course of doing business"
16 within the meaning of Health and Safety Code section 25249.11, subdivision (b).
17 Plaintiff is informed, believes, and thereon alleges that at all times mentioned herein each
18 defendant had ten or more employees.
19
- 20 6. The Court has jurisdiction over this lawsuit pursuant California Constitution Article VI,
21 Section 10, which grants the Superior Court original jurisdiction in all causes except
22 those given by statute to other trial courts.

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FIRST CAUSE OF ACTION

(BY CONSUMER ADVOCACY GROUP, INC. AGAINST THE SWATCH GROUP (U.S.) INC., and DOES 1-100 FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (HEALTH AND SAFETY CODE SECTIONS 25249.5, ET SEQ.)

7. Plaintiff **CONSUMER ADVOCACY GROUP, INC.** repeats and incorporates by reference the previous paragraphs of this complaint as though fully set forth herein.
8. Defendants are and at all times mentioned herein were manufacturers or distributors of a wristwatch type consumer product known as Swatch Skin Red Illusion SUYR 100 and by other names similar to Swatch Skin Red Illusion SUYR 100 ("Swatch Skin Red Illusion"). Plaintiff is informed, believes, and thereon alleges that Defendants knowingly and intentionally exposed wearers and other users of Swatch Skin Red Illusion to lead and lead compounds, chemicals designated by the State of California to cause cancer or developmental toxicity without first giving clear and reasonable warning of such to the persons exposed. Defendants thereby violated Health and Safety Code sections 25249.5, et seq ("Proposition 65").
9. On February 27, 1987, lead first appeared on the Governor's Proposition 65 list of Chemicals known to cause developmental toxicity. (Cal. Code Regs., tit 22, §12000, subd. (b).) Pursuant to Health and Safety Code section 25249.9, twenty months after first appearing on the Governor's Proposition 65 list, lead became subject to Proposition 65 warning requirements.
10. On October 1, 1992, lead and lead compounds first appeared on the Governor's Proposition 65 list of Chemicals known to cause cancer. (Cal. Code Regs., tit 22,

1 §12000, subd. (b).) Pursuant to Health and Safety Code section 25249.9, twenty months
2 after first appearing on the Governor's Proposition 65 list, lead and lead compounds
3 became subject to Proposition 65 warning requirements.
4

5 11. Wearers and other users of Swatch Skin Red Illusion sustained exposures by dermal
6 contact to lead and lead and lead compounds contained in the watchband of Swatch Skin
7 Red Illusion by touching the same with their hands and other portions of their exposed
8 skin. Such persons also sustained exposures by wrapping the watchband around their
9 arms and by wearing Swatch Skin Red Illusion around their wrists so that the wristband
10 was in contact with their skin for prolonged periods. Furthermore, as wearers and other
11 users of Swatch Skin Red Illusion encountered human perspiration or water while
12 wearing the watchband on their arms, the moisture from the perspiration or water caused
13 exposure to lead through dermal absorption, as both perspiration and water facilitate the
14 absorption of lead into human skin.
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17 12. On October 19, 2004, Plaintiff gave notice of alleged violations of Health and Safety
18 Code section 25249.6 subject to a private action, as described in the foregoing
19 paragraphs, to the Attorney General and applicable district attorneys and city attorneys in
20 whose jurisdictions the violations allegedly occurred, and to the alleged violator, **THE**
21 **SWATCH GROUP (U.S.) INC.**
22

23 13. Plaintiff gave this notice, and filed this action, more than twenty months after lead and
24 lead and lead compounds first appeared on the Governor's Proposition 65 list, and after
25 lead and lead and lead compounds became subject to Proposition 65 warning
26 requirements.
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1 14. Plaintiff's notice of the alleged violation included a certificate of merit executed by the
2 attorney for the noticing party, Plaintiff. The certificate of merit stated that the attorney
3 for Plaintiff who executed the certificate had consulted with at least one person with
4 relevant and appropriate expertise who had reviewed data regarding the exposure to lead
5 and lead and lead compounds that are the subjects of the action. Based on that
6 information, the attorney for Plaintiff who executed the certificate believed there was a
7 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
8 to the certificate of merit served on the Attorney General information sufficient to
9 establish the basis of the certificate of merit.
10

11
12 15. Plaintiff is commencing this action more than sixty days from the date that Plaintiff gave
13 notice of the alleged violations to **THE SWATCH GROUP (U.S.) INC.**, to the Attorney
14 General, and to applicable district attorneys and city attorneys in whose jurisdictions the
15 violations allegedly occurred.
16

17 16. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
18 any applicable district attorney or city attorney has commenced and is diligently
19 prosecuting an action against the violation.
20

21 17. At all times relevant to this action, Defendants knew it was exposing wearers and other
22 users of Swatch Skin Red Illusion to lead and lead and lead compounds, chemicals
23 designated by the State of California to cause cancer or developmental toxicity, without
24 first giving clear and reasonable warning of such to the persons exposed.. Therefore,
25 during the times listed in **Exhibit A**, Defendants, without first giving clear and
26 reasonable warning, knowingly and intentionally exposed wearers and other users of
27
28

- 1 Swatch Skin Red Illusion to lead and lead and lead compounds in Swatch Skin Red
2 Illusion and known to the State of California to cause cancer or developmental toxicity.
- 3 18. Plaintiff's allegations concern a "consumer product exposure." A "consumer product
4 exposure" is an exposure that results from a person's acquisition, purchase, storage,
5 consumption, or other reasonably foreseeable use of a consumer good. A wristwatch is a
6 consumer product. Since Swatch Skin Red Illusion contains lead and lead and lead
7 compounds, the reasonably foreseeable use of Swatch Skin Red Illusion results in
8 exposures through dermal contact with lead and lead and lead compounds. Users of
9 Swatch Skin Red Illusion touch the product with their bare hands when they pick up the
10 product and carry it, when they fasten it around their arms, when they touch the
11 wristband already attached to their arms, as well as the prolonged exposure that occurs
12 from the wristband touching their arms as they wear it.
- 13 19. The route of exposure for lead and lead and lead compounds has been dermal contact via
14 skin and mucous membranes.
- 15 20. Individuals exposed to the lead and lead and lead compounds suffered and continue to
16 suffer irreparable harm due to exposure to lead and lead and lead compounds without
17 prior clear and reasonable warning.

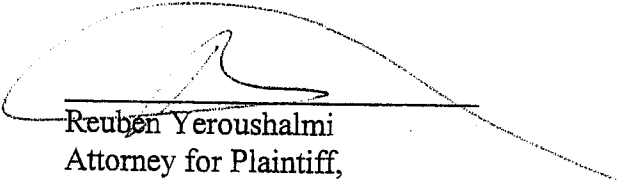
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23 **PRAYER FOR RELIEF**

24 Plaintiff demands against each defendant as follows:

- 25 1. A permanent injunction;
- 26 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b) of
27 \$2,500.00 per day per violation;
- 28

- 1 3. Costs of suit;
2 5. Reasonable attorney's fees and costs; and
3
4 6. Any further relief that the court may deem just and equitable.
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6 Dated: 1/14/05
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10 Reuben Yeroushalmi
11 Attorney for Plaintiff,
12 Consumer Advocacy Group, Inc.
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