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Los Angeles Superior Court

JUN 16 2008

John A. Clarke, Executive Officer/Clerk  
*M. Garcia*  
BY MARY GARCIA, Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES --UNLIMITED

11	CONSUMER ADVOCACY GROUP, INC.,	)	CASE NO.	<b>BC392718</b>
12	in the public interest,	)		
13	Plaintiff,	)	COMPLAINT FOR PENALTY,	
14		)	INJUNCTION, AND RESTITUTION	
15	v.	)	Violation of Proposition 65, the Safe	
16	EMPL, INC., and DOES 1-50;	)	Drinking Water and Toxic Enforcement	
17	Defendants.	)	Act of 1986 (Health & Saf. Code., §§	
18		)	25249.5, et seq.)	
19		)	ACTION IS AN UNLIMITED CIVIL	
20		)	CASE (exceeds \$25,000)	

21 COMES NOW plaintiff, Consumer Advocacy Group, Inc., who, for a cause of action,  
22 alleges as follows.

23 **BACKGROUND AND PRELIMINARY FACTS**

24 1. In 1986, California voters approved an initiative to address growing concerns about  
25 exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic  
26 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5 et seq.  
27 ("Proposition 65"), helps to protect California's drinking water sources from  
28

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1           contamination, to allow consumers to make informed choices about the products they  
2           buy, and to enable persons to protect themselves from toxic chemicals as they see fit.

3           2. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
4           the state to cause cancer, birth defects, or other reproductive harm. Health & Saf. Code,  
5           § 25249.8. The list, which the Governor updates at least once a year, contains over 550  
6           chemicals. Proposition 65 imposes warning requirements and other controls that apply to  
7           Proposition 65 listed chemicals.  
8

9           3. All businesses with ten or more employees that operate or sell products in California  
10           must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
11           from knowingly discharging Proposition 65 listed chemicals into sources of drinking  
12           water (Health & Saf. Code, § 25249.5), and (2) required to provide "clear and  
13           reasonable" warnings before exposing a person, knowingly and intentionally, to a  
14           Proposition 65 listed chemical (Health & Saf. Code, § 25249.6.)  
15

16           4. Plaintiff, Consumer Advocacy Group, Inc. ("CAG" or "Plaintiff"), is a non-profit  
17           California corporation that protects and educates the public about harmful products and  
18           the injurious activities of various companies. It brings this action in the public interest as  
19           defined under Health and Safety Code section 25249.7, subdivision (d).  
20

21           5. Defendant, EMPI, Inc. is a corporation based in California.  
22

23           6. Plaintiff is informed, believes, and thereon alleges that EMPI, Inc., at all times mentioned  
24           here, has conducted business within the State of California.

25           7. At all times mentioned here, "Defendants" include EMPI, Inc. and Does 1-50.  
26

27           8. Plaintiff is ignorant of the true names and capacities of defendants Does 1-50, and  
28           therefore sues these defendants by such fictitious names. Plaintiff will amend this

1 complaint to allege their true names and capacities when ascertained. Plaintiff is  
2 informed, believes, and thereon alleges that each fictitiously named defendant is  
3 responsible in some manner for the occurrences herein alleged and the damages caused  
4 thereby.

5  
6 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each  
7 defendant was a person doing business within the meaning of Health and Safety Code  
8 section 25249.11, subdivision (a), and that each defendant had 10 or more employees.

9  
10 10. Plaintiff conducted research, by which it learned that many products for use on  
11 automobile batteries contain lead, a Proposition 65 listed. Plaintiff also determined that  
12 manufacturers and distributors of many such products have been exposing, knowingly  
13 and intentionally, persons in California to the Lead contained in such products without  
14 first providing clear and reasonable warnings of such to the exposed persons prior to  
15 exposure. Plaintiff discerned that Defendants engaged in such practice.

#### 16 JURISDICTION

17  
18 11. The Court has jurisdiction over this lawsuit pursuant California Constitution Article VI,  
19 Section 10, which grants the Superior Court original jurisdiction in all causes except  
20 those given by statute to other trial courts.

#### 21 FIRST CAUSE OF ACTION

22  
23 **(BY Consumer Advocacy Group, Inc. and against EMPI, Inc. and Does 1-50 For Violation**  
24 **Of Proposition 65, The Safe Drinking Water And Toxic Enforcement Act Of 1986 (Health**  
25 **& Saf. Code, §§ 25249.5, et seq.)**

26  
27 12. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference the  
28 previous paragraphs of this complaint as though fully set forth herein.



1 each city with a population of at least 750,000 people in whose jurisdictions the  
2 violations allegedly occurred. The notices concerned Battery Ground Strap.

3  
4 17. Plaintiff's notices of alleged violation included certificates of merit executed by the  
5 attorney for the noticing party, Plaintiff. The certificates of merit stated that the attorney  
6 for Plaintiff who executed the certificate had consulted with at least one person with  
7 relevant and appropriate expertise who had reviewed data regarding the exposure to  
8 Lead, the subject Proposition 65 listed chemical of this action. Based on that  
9 information, the attorney for Plaintiff who executed the certificates believed there was a  
10 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
11 to the certificates of merit served on the Attorney General information sufficient to  
12 establish the basis of the certificates of merit.  
13

14  
15 18. Plaintiff is commencing this action more than sixty days from the date that Plaintiff gave  
16 notice of the alleged violations to EMPI, Inc. and applicable public prosecutors, and after  
17 Lead had become subject fully to Proposition 65 warning requirements and discharge  
18 prohibitions.

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

23  
24 20. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that  
25 results from a person's acquisition, purchase, storage, consumption, or other reasonably  
26 foreseeable use of a consumer good. Battery Ground Strap is a consumer product.

27  
28 21. Plaintiff also is informed, believes, and thereon alleges that Defendants caused and  
continue to cause occupational exposures in violation of Proposition 65 by producing or

1 making available for distribution grounds straps containing lead, including Battery  
2 Ground Strap. The exposures took place in and around automobile mechanics' shops,  
3 whereby mechanics suffered occupational exposures to Lead.  
4

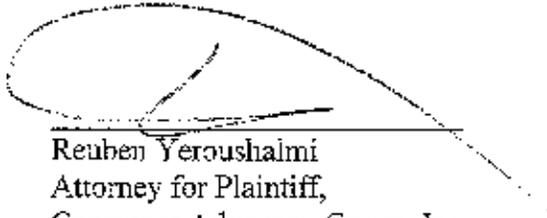
5  
6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each Defendant as follows:

- 8  
9 1. A permanent injunction mandating Proposition 65 complaint warnings;  
10 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
11 3. Costs of suit;  
12 4. Reasonable attorney fees and costs; and  
13 5. Any further relief that the court may deem just and equitable.  
14

15 Dated: June 5, 2008

YEROUSHALMI & ASSOCIATES

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20 Reuben Yeroushalmi  
21 Attorney for Plaintiff,  
22 Consumer Advocacy Group, Inc.  
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