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9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc.

11  
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF SAN FRANCISCO – UNLIMITED**

14 **CONSUMER ADVOCACY GROUP, INC.,**  
15 **in the public interest,**

16 **Plaintiff,**

17 **v.**

18 **SAWYER PRODUCTS, INC., a Florida**  
19 **corporation, and DOES 1-20;**

20 **Defendants.**

21 **CASE NO. GG C - 09 . 494169**

22 **COMPLAINT FOR PENALTY,**  
23 **INJUNCTION, AND RESTITUTION**

24 **Violation of Proposition 65, the Safe**  
25 **Drinking Water and Toxic Enforcement**  
26 **Act of 1986 (*Cal. Health & Safety Code, §***  
27 **25249.5, *et seq.*)**

28 **ACTION IS AN UNLIMITED CIVIL**  
**CASE (exceeds \$25,000)**

29 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as  
30 follows:

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**ENDORSED**  
Superior Court of California  
County of San Francisco

NOV 6 - 2008

CASE MANAGEMENT CONFERENCE SET

**GORDON PARK-LL, Clerk**  
**CRISTINA BAUTISTA**  
Deputy Clerk

APR 9 - 2010 - 9:00 AM

DEPARTMENT 212

**COPY**

THE PARTIES

1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit corporation qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant Sawyer Products, Inc. is a Florida corporation, qualified to do business and doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. At all times mentioned herein, the term "Defendants" includes Sawyer Products, Inc., and Does 1-20.
5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein has conducted business within the State of California.
6. At all times relevant to this action, each of the Defendants, including Does 1-20, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.
7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the Defendants was a person doing business within the meaning of Health and Safety Code

1 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
2 employees at all relevant times.

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4 **JURISDICTION**

5 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
6 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
7 those given by statute to other trial courts. This Court has jurisdiction over this action  
8 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
9 violations of Proposition 65 in any Court of competent jurisdiction.

10 9. This Court has jurisdiction over Defendants named herein because Defendants either  
11 reside or are located in this State or are foreign corporations authorized to do business in  
12 California, are registered with the California Secretary of State, or who do sufficient  
13 business in California, have sufficient minimum contacts with California, or otherwise  
14 intentionally avail themselves of the markets within California through their manufacture,  
15 distribution, promotion, marketing, or sale of their products within California to render  
16 the exercise of jurisdiction by the California courts permissible under traditional notions  
17 of fair play and substantial justice.

18 10. Venue is proper in the County of San Francisco because one or more of the instances of  
19 wrongful conduct occurred, and continues to occur, in the County of San Francisco  
20 and/or because Defendants conducted, and continue to conduct, business in the County of  
21 San Francisco with respect to the consumer product that is the subject of this action.

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23 **BACKGROUND AND PRELIMINARY FACTS**

24 11. In 1986, California voters approved an initiative to address growing concerns about  
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
2 from contamination, to allow consumers to make informed choices about the products  
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
4 fit.

5 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
6 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
7 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
8 chemicals and chemical families. Proposition 65 imposes warning requirements and  
9 other controls that apply to Proposition 65-listed chemicals.

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

16 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
17 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
18 "Threaten to violate" means "to create a condition in which there is a substantial  
19 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
20 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
21 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

22 15. Through research and investigation, Plaintiff identified certain practices of Defendants of  
23 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed  
24 chemicals of the consumer products discussed below without first providing clear and  
25 reasonable warnings of such to the exposed persons prior to the time of exposure.

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**SATISFACTION OF PRIOR NOTICE**

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2 16. On or about July 3, 2009, Plaintiff gave notice of alleged violations of Health and Safety  
3 Code section 25249.6, concerning consumer products exposures, subject to a private  
4 action to Sawyer Products, Inc., identified in the notice as "Sawyer Products, Inc." and to  
5 the California Attorney General, County District Attorneys, and City Attorneys for each  
6 city containing a population of at least 750,000 people in whose jurisdictions the  
7 violations allegedly occurred, concerning the consumer product Sawyer® Premium  
8 Insect Repellent Broad Spectrum.
- 9 17. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
10 product involved, and the likelihood that such product would cause users to suffer  
11 significant exposures to the relevant Proposition 65-listed chemical at issue.
- 12 18. Plaintiff's notice of alleged violations included a Certificate of Merit executed by the  
13 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
14 Plaintiff who executed the certificate had consulted with at least one person with relevant  
15 and appropriate expertise who reviewed data regarding the exposures to Di-*n*-propyl  
16 isocinchomeronate (MGK Repellent 326), which is the subject Proposition 65-listed  
17 chemical of this action. Based on that information, the attorney for Plaintiff who  
18 executed the Certificate of Merit believed there was a reasonable and meritorious case for  
19 this private action. The attorney for Plaintiff attached to the Certificate of Merit served  
20 on the Attorney General the confidential factual information sufficient to establish the  
21 bases of the Certificate of Merit.
- 22 19. Plaintiff's notice of alleged violation also included a Certificate of Service and a  
23 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
24 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
- 25 20. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
26 gave notice of the alleged violations to Sawyer Products, Inc. and the public prosecutors  
27 referenced in Paragraph 16.
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1 21. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
2 any applicable district attorney or city attorney has commenced and is diligently  
3 prosecuting an action against the Defendants.  
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6 **FIRST CAUSE OF ACTION**

7 **(By Consumer Advocacy Group, Inc. and against Sawyer Products, Inc., and Does 1-20 for**  
8 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
9 **(Health & Safety Code, §§ 25249.5, et seq.)**

10 **Sawyer® Premium Insect Repellent Broad Spectrum**

11 22. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
12 paragraphs 1 through 21 of this Complaint as though fully set forth herein.

13 23. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
14 distributor, promoter, or retailer of Sawyer® Premium Insect Repellent Broad Spectrum  
15 (hereinafter "Sawyer® Repellent"), a consumer product designed for use on humans to  
16 repel various insects on exposed skin surfaces.

17 24. Plaintiff is informed, believes, and thereon alleges that Sawyer® Repellent contains Di-*n*-  
18 propyl isocinchomeronate (MGK Repellent 326).

19 25. On May 1, 1996, the Governor of California added Di-*n*-propyl isocinchomeronate  
20 (MGK Repellent 326) to the list of chemicals known to the State to cause cancer (*Cal.*  
21 *Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9  
22 and 25249.10, twenty (20) months after addition of Di-*n*-propyl isocinchomeronate  
23 (MGK Repellent 326) to the list of chemicals known to the State to cause cancer, Di-*n*-  
24 propyl isocinchomeronate (MGK Repellent 326) became fully subject to Proposition 65  
25 warning requirements and discharge prohibitions.

26 26. Defendants knew or should have known that Di-*n*-propyl isocinchomeronate (MGK  
27 Repellent 326) has been identified by the State of California as a chemical known to  
28 cause cancer and therefore were subject to Proposition 65 warning requirements.

1 Defendants were also informed of the presence of Di-*n*-propyl isocinchomeronate (MGK  
2 Repellent 326) in the Sawyer® Repellent within Plaintiff's notice of alleged violation  
3 further discussed above at Paragraph 16.

4 27. Plaintiff's allegations regarding Sawyer® Repellent concern "[c]onsumer products  
5 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
6 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
7 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §  
8 25602(b). Sawyer® Repellent is a consumer product, and, as mentioned in herein,  
9 exposures to Di-*n*-propyl isocinchomeronate (MGK Repellent 326) took place as a result  
10 of such normal and foreseeable consumption and use.

11 28. Plaintiff is informed, believes, and thereon alleges that between July 3, 2006 and the  
12 present, each of the Defendants knowingly and intentionally exposed California  
13 consumers and users of Sawyer® Repellent, which Defendants manufactured, distributed,  
14 or sold as mentioned above, to Di-*n*-propyl isocinchomeronate (MGK Repellent 326),  
15 without first providing any type of clear and reasonable warning of such to the exposed  
16 persons before the time of exposure. Defendants have distributed and sold Sawyer®  
17 Repellent in California. Defendants know and intend that California consumers will use  
18 and consume Sawyer® Repellent thereby exposing them to Di-*n*-propyl  
19 isocinchomeronate (MGK Repellent 326). Defendants thereby violated Proposition 65.

20 29. The principal routes of exposure are dermal contact caused when users of product apply  
21 Sawyer® Repellent to skin or clothing. Thereby users and other persons in proximity to  
22 the user permit bare skin to touch the solution containing Di-*n*-propyl isocinchomeronate  
23 (MGK Repellent 326). A route of exposure by inhalation also occurs when users and  
24 other persons in proximity to the user inadvertently inhale the product spray, fumes, or  
25 mist of Sawyer® Repellent. The foregoing routes of exposure assume use of the product  
26 in accordance with its instructions.

27 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
28 Proposition 65 as to Sawyer® Repellent have been ongoing and continuous to the date of

1 the signing of this Complaint, as Defendants engaged and continue to engage in conduct  
2 which violates Health and Safety Code section 25249.6, including the manufacture,  
3 distribution, promotion, and sale of Sawyer® Repellent, so that a separate and distinct  
4 violation of Proposition 65 occurred each and every time a person was exposed to Di-*n*-  
5 propyl isocinchomeronate (MGK Repellent 326) by Sawyer® Repellent as mentioned  
6 herein.

7 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
8 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
9 violations alleged herein will continue to occur into the future.

10 32. Based on the allegations herein, Defendants are liable for civil penalties of up to  
11 \$2,500.00 per day per individual exposure to Di-*n*-propyl isocinchomeronate (MGK  
12 Repellent 326) from Sawyer® Repellent, pursuant to Health and Safety Code section  
13 25249.7(b).

14 33. In the absence of equitable relief, California consumers, the general public, and others  
15 will continue to be involuntarily exposed to Di-*n*-propyl isocinchomeronate (MGK  
16 Repellent 326) that is contained in Sawyer® Repellent, creating a substantial risk of  
17 irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused  
18 irreparable harm for which there is no plain, speedy, or adequate remedy at law.

19 34. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to  
20 filing this Complaint.

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1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:


- 3 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 4 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 5 3. Costs of suit;
- 6 4. Reasonable attorney fees and costs; and
- 7 5. Any further relief that the court may deem just and equitable.
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11 Dated: November 3, 2009

YEROUSHALMI & ASSOCIATES

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14 BY:   
Daniel D. Cho  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.

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