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

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 COUNTY OF LOS ANGELES -- UNLIMITED

15 CONSUMER ADVOCACY GROUP, INC.,
16 in the public interest.

17 Plaintiff,

18 v.

19 GREENBRIER INTERNATIONAL, INC., a
20 Delaware Corporation; DOLLAR TREE
21 STORES, INC., a Virginia Corporation, and
22 DOES 1-50;

23 Defendants.

CASE NO.

BC437596

COMPLAINT FOR PENALTY,
INJUNCTION, AND RESTITUTION

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

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

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

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CONFORMED COPY
OF ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 12 2010

John A. Clarke, Executive Officer/Clerk
By *Rugena Lobz*, Deputy
RUGENA LOBZ

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 Greenbrier International, Inc. is a Delaware Corporation, qualified to do business and doing business in the State of California at all relevant times herein.
3. Defendant Dollar Tree Stores, Inc. is a Virginia Corporation, qualified to do business and doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50, 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.
5. At all times mentioned herein, the term "Defendants" includes Greenbrier International, Inc., Dollar Tree Stores, Inc., and Does 1-50.
6. 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.
7. At all times relevant to this action, each of the Defendants, including Does 1-50, 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.

1 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
2 Defendants was a person doing business within the meaning of Health and Safety Code
3 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
4 employees at all relevant times.

5
6 **JURISDICTION**

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

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

20 11. Venue is proper in the County of Los Angeles because one or more of the instances of
21 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
22 because Defendants conducted, and continue to conduct, business in the County of Los
23 Angeles with respect to the consumer product that is the subject of this action.

24
25 **BACKGROUND AND PRELIMINARY FACTS**

26 12. In 1986, California voters approved an initiative to address growing concerns about
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
28 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law. Gen. Elec. (Nov. 4, 1986) at p. 53. The initiative, The Safe Drinking
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
3 25249.5, *et seq.* ("Proposition 65"), helps protect California's drinking water sources
4 from contamination, allow consumers to make informed choices about the products they
5 buy, and enable persons to protect themselves from toxic chemicals as they see fit.

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

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

17 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
18 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
19 "Threaten to violate" means "to create a condition in which there is a substantial
20 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

21 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
22 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

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28 ///

SATISFACTION OF PRIOR NOTICE

- 1
- 2 17. On or about May 27, 2009, Plaintiff gave notice of alleged violations of Health and
- 3 Safety Code section 25249.6, concerning consumer products exposures subject to a
- 4 private action to Greenbrier Intertional, Inc., and to the California Attorney General,
- 5 County District Attorneys, and City Attorneys for each city containing a population of at
- 6 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
- 7 the consumer product Cooking Concepts® 2pc Basting Brush Set.
- 8 18. On or about November 23, 2009, Plaintiff gave notice of alleged violations of Health and
- 9 Safety Code section 25249.6, concerning consumer products exposures, occupational
- 10 exposures, and environmental exposures, subject to a private action to Greenbrier
- 11 International, Inc., Dollar Tree Stores, Inc., and to the California Attorney General,
- 12 County District Attorneys, and City Attorneys for each city containing a population of at
- 13 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
- 14 the consumer products Cooking Concepts® Easy Grip Kitchen Gadget Pizza Cutter,
- 15 Cooking Concepts® 2pc Basting Brush Set, Cooking Concepts® 2 pc Pastry Brush Set,
- 16 jot™ 80 Pieces Paper Clips Assorted Colors: 50mm; and Christmas House® Crafts
- 17 Decorative Pine Pick.
- 18 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer
- 19 products involved, and the likelihood that such products would cause users to suffer
- 20 significant exposures to the relevant Proposition 65-listed chemical at issue.
- 21 20. Plaintiff's notice of alleged violations included a Certificate of Merit executed by the
- 22 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
- 23 Plaintiff who executed the certificate had consulted with at least one person with relevant
- 24 and appropriate expertise who reviewed data regarding the exposures to lead, which is the
- 25 subject Proposition 65-listed chemical of this action. Based on that information, the
- 26 attorney for Plaintiff who executed the Certificate of Merit believed there was a
- 27 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
- 28

1 to the Certificate of Merit served on the Attorney General the confidential factual
2 information sufficient to establish the bases of the Certificate of Merit.

3 21. Plaintiff's notice of alleged violation also included a Certificate of Service and a
4 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
5 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

6 22. Plaintiff is commencing this action more than sixty (60) days from the date that Plaintiff
7 gave notice of the alleged violations to Greenbrier International, Inc., Dollar Tree Stores,
8 Inc., and to the public prosecutors referenced in Paragraph 17.

9 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
10 any applicable district attorney or city attorney has commenced and is diligently
11 prosecuting an action against the Defendants.

12 GENERAL RECITATIONS

13 24. On February 27, 1987, the Governor of California added Lead to the list of chemicals
14 known to the State to cause reproductive toxicity (developmental, female, male) (*Cal.*
15 *Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and Safety Code sections 25249.9
16 and 25249.10, twenty (20) months after addition of Lead to the list of chemicals known
17 to the State to cause reproductive toxicity, Lead became fully subject to Proposition 65
18 warning requirements and discharge prohibitions.

19 25. On October 1, 1992, the Governor of California added Lead and lead compounds to the
20 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).
21 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
22 after addition of Lead and lead compounds to the list of chemicals known to the State to
23 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
24 requirements and discharge prohibitions.

25 26. Plaintiff's allegations concern "[c]onsumer products exposure[s]," which "is an exposure
26 that results from a person's acquisition, purchase, storage, consumption, or other
27 reasonably foreseeable use of a consumer good, or any exposure that results from
28 receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).

1 27. Plaintiff's allegations concern "[e]nvironmental exposure[s]." which "is an exposure that
2 may foreseeably occur as the result of contact with an environmental medium, including,
3 but not limited to, ambient air, indoor air, drinking water, standing water, running water,
4 soil vegetation, or manmade or natural substances, either through inhalation, ingestion,
5 skin contact, or otherwise. Environmental exposures include all exposures that are not
6 consumer products exposures or occupational exposures." *Cal. Code Regs.* tit. 27, §
7 25602(c).

8 28. Plaintiff's allegations concern "[o]ccupational exposure[s]," which is "an exposure to any
9 employee in his or her employer's workplace." *Cal. Code Regs.* tit. 27, § 25602(f).

10 **FIRST CAUSE OF ACTION**

11 **(By Consumer Advocacy Group, Inc. against Greenbrier International, Inc., Dollar Tree**
12 **Stores, Inc., and Does 1-50 for Violations of Proposition 65, The Safe Drinking Water and**
13 **Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

14 **Cooking Concepts® Easy Grip Kitchen Gadget Pizza Cutter**

15 29. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
16 paragraphs 1 through 28 of this Complaint as though fully set forth herein.

17 30. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Cooking Concepts® Easy Grip Kitchen Gadget Pizza
19 Cutter (hereinafter "Pizza Cutter"), a consumer product which is designed for personal
20 use in connection with the preparation of food.

21 31. Plaintiff is informed, believes, and thereon alleges that Pizza Cutter contains Lead.

22 32. Defendants knew or should have known that Lead has been identified by the State of
23 California as a chemical known to cause cancer and reproductive toxicity and therefore
24 were subject to Proposition 65 warning requirements. Defendants were also informed of
25 the presence of Lead in the Pizza Cutter within Plaintiff's notice of alleged violation
26 further discussed above at Paragraph 17.

1 33. Pizza Cutter is a consumer product, and, as mentioned in herein, exposures to Lead took
2 place as a result of such normal and foreseeable consumption and use. As a result,
3 Defendants caused consumer products exposure.

4 34. Defendants failed to provide clear and reasonable warnings at their facilities, and other
5 locations where exposures to lead would foreseeably occur to persons who could
6 foreseeably come into contact with Pizza Cutter through environmental mediums. As a
7 result, Defendants committed environmental exposure.

8 35. Exposures to Lead to Defendants' employees occurred through the scope of their
9 employment, including, but not limited to stacking, packing, promoting, and selling the
10 Pizza Cutter. As a result, Defendants caused occupational exposure.

11 36. Plaintiff is informed, believes, and thereon alleges that between November 23, 2007 and
12 the present, and continuing thereafter, Defendants knowingly and intentionally exposed
13 California consumers and users of Pizza Cutter, which Defendants manufactured,
14 distributed, or sold as mentioned above, to Lead, without first providing any type of clear
15 and reasonable warning of such to the exposed persons before the time of exposure.
16 Defendants have distributed and sold Pizza Cutter in California. Defendants know and
17 intend that California consumers will use and consume Pizza Cutter thereby exposing
18 them to Lead. Defendants thereby violated Proposition 65.

19 37. The principal routes of exposure are through dermal contact, ingestion, and inhalation
20 caused when users of Pizza Cutter handle the product without wearing gloves or any
21 other personal protective equipment, or by touching bare skin or mucous membranes with
22 gloves after handling Pizza Cutter, as well as hand to mouth contact, hand to mucous
23 membrane contact, or breathing in particulate matter dispersed from Pizza Cutter during
24 food preparation activities. Persons also suffer exposure through inadvertent ingestion by
25 handling food after handling Pizza Cutter, and then eating that food, touching Pizza
26 Cutter to food which is then eaten, or otherwise exposing food and other edibles to Pizza
27 Cutter.

1 38. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to Pizza Cutter have been ongoing and continuous to the date of the
3 signing of this Complaint, as Defendants engaged and continue to engage in conduct
4 which violates Health and Safety Code section 25249.6, including the manufacture,
5 distribution, promotion, and sale of Pizza Cutter, so that a separate and distinct violation
6 of Proposition 65 occurred each and every time a person was exposed to Lead by Pizza
7 Cutter as mentioned herein.

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

11 40. Based on the allegations herein, Defendants are liable for civil penalties of up to
12 \$2,500.00 per day per individual exposure to Lead from Pizza Cutter, pursuant to Health
13 and Safety Code section 25249.7(b).

14 41. In the absence of equitable relief, California consumers, the general public, and others
15 will continue to be involuntarily exposed to Lead that is contained in Pizza Cutter,
16 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged
17 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or
18 adequate remedy at law.

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

21 **Cooking Concepts® 2 pc Pastry Brush Set**

- 22 1. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
23 paragraphs 1 through 28 of this Complaint as though fully set forth herein.
- 24 2. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 distributor, promoter, or retailer of Cooking Concepts® 2 pc Pastry Brush Set
26 (hereinafter "Pastry Brush"), a consumer product which is designed for personal use in
27 connection with the preparation of food.
- 28 3. Plaintiff is informed, believes, and thereon alleges that Pastry Brush contains Lead.

- 1 4. Defendants knew or should have known that Lead has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 were subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of Lead in the Pastry Brush within Plaintiff's notice of alleged violation
5 further discussed above at Paragraph 17.
- 6 5. Pastry Brush is a consumer product, and, as mentioned in herein, exposures to Lead took
7 place as a result of such normal and foreseeable consumption and use. As a result,
8 defendants caused consumer product exposure.
- 9 6. Defendants failed to provide clear and reasonable warnings at their facilities, and other
10 locations where exposures to lead would foreseeably occur to persons who could
11 foreseeably come into contact with Pastry Brush through environmental mediums. As a
12 result, Defendants committed environmental exposure.
- 13 7. Exposures to Lead to Defendants' employees occurred through the scope of their
14 employment, including, but not limited to stacking, packing, promoting, and selling the
15 Pastry Brush. As a result, Defendants caused occupational exposure.
- 16 8. Plaintiff is informed, believes, and thereon alleges that between November 23, 2007 and
17 the present, and continuing thereafter, Defendants knowingly and intentionally exposed
18 California consumers and users of Pastry Brush, which Defendants manufactured,
19 distributed, or sold as mentioned above, to Lead, without first providing any type of clear
20 and reasonable warning of such to the exposed persons before the time of exposure.
21 Defendants have distributed and sold Pastry Brush in California. Defendants know and
22 intend that California consumers will use and consume Pastry Brush thereby exposing
23 them to Lead. Defendants thereby violated Proposition 65.
- 24 9. The principal routes of exposure are through dermal contact, ingestion, and inhalation
25 caused when users of Pastry Brush handle the product without wearing gloves or any
26 other personal protective equipment, or by touching bare skin or mucous membranes with
27 gloves after handling Pastry Brush, as well as hand to mouth contact, hand to mucous
28 membrane contact, or breathing in particulate matter dispersed from Pastry Brush during

1 food preparation activities. Persons also suffer exposure through inadvertent ingestion by
2 handling food after handling Pastry Brush, and then eating that food, touching Pastry
3 Brush to food which is then eaten, or otherwise exposing food and other edibles to Pastry
4 Brush.

5 10. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
6 Proposition 65 as to Pastry Brush have been ongoing and continuous to the date of the
7 signing of this Complaint, as Defendants engaged and continue to engage in conduct
8 which violates Health and Safety Code section 25249.6, including the manufacture,
9 distribution, promotion, and sale of Pastry Brush, so that a separate and distinct violation
10 of Proposition 65 occurred each and every time a person was exposed to Lead by Pastry
11 Brush as mentioned herein.

12 11. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
13 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
14 violations alleged herein will continue to occur into the future.

15 12. Based on the allegations herein, Defendants are liable for civil penalties of up to
16 \$2,500.00 per day per individual exposure to Lead from Pastry Brush, pursuant to Health
17 and Safety Code section 25249.7(b).

18 13. In the absence of equitable relief, California consumers, the general public, and others
19 will continue to be involuntarily exposed to Lead that is contained in Pastry Brush,
20 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged
21 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or
22 adequate remedy at law.

23 14. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
24 filing this Complaint.

25 **Cooking Concepts® 2 pc Basting Brush Set**

26 15. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
27 paragraphs 1 through 28 of this Complaint as though fully set forth herein.

- 1 16. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of Cooking Concepts® 2 pc Basting Brush Set
3 (hereinafter “Basting Brush”), a consumer product which is designed for personal use in
4 connection with the preparation of food.
- 5 17. Plaintiff is informed, believes, and thereon alleges that Basting Brush contains Lead.
- 6 18. Defendants knew or should have known that Lead has been identified by the State of
7 California as a chemical known to cause cancer and reproductive toxicity and therefore
8 were subject to Proposition 65 warning requirements. Defendants were also informed of
9 the presence of Lead in the Basting Brush within Plaintiff's notice of alleged violation
10 further discussed above at Paragraph 17.
- 11 19. Basting Brush is a consumer product, and, as mentioned in herein, exposures to Lead
12 took place as a result of such normal and foreseeable consumption and use. As a result,
13 Defendants caused consumer product exposure.
- 14 20. Defendants failed to provide clear and reasonable warnings at their facilities, and other
15 locations where exposures to lead would foreseeably occur to persons who could
16 foreseeably come into contact with Basting Brush through environmental mediums. As a
17 result, Defendants caused environmental exposure.
- 18 21. Exposures to Lead to Defendants' employees occurred through the scope of their
19 employment, including, but not limited to stacking, packing, promoting, and selling the
20 Basting Brush. As a result, Defendants caused occupational exposure.
- 21 22. Plaintiff is informed, believes, and thereon alleges that between November 23, 2007 and
22 the present, Defendants knowingly and intentionally exposed California consumers and
23 users of Basting Brush, which Defendants manufactured, distributed, or sold as
24 mentioned above, to Lead, without first providing any type of clear and reasonable
25 warning of such to the exposed persons before the time of exposure. Defendants have
26 distributed and sold Basting Brush in California. Defendants know and intend that
27 California consumers will use and consume Basting Brush thereby exposing them to
28 Lead. Defendants thereby violated Proposition 65.

1 23. The principal routes of exposure are through dermal contact, ingestion, and inhalation
2 caused when users of Basting Brush handle the product without wearing gloves or any
3 other personal protective equipment, or by touching bare skin or mucous membranes with
4 gloves after handling Basting Brush, as well as hand to mouth contact, hand to mucous
5 membrane contact, or breathing in particulate matter dispersed from Basting Brush
6 during food preparation activities. Persons also suffer exposure through inadvertent
7 ingestion by handling food after handling Basting Brush, and then eating that food,
8 touching Basting Brush to food which is then eaten, or otherwise exposing food and other
9 edibles to Basting Brush.

10 24. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
11 Proposition 65 as to Basting Brush have been ongoing and continuous to the date of the
12 signing of this Complaint, as Defendants engaged and continue to engage in conduct
13 which violates Health and Safety Code section 25249.6, including the manufacture,
14 distribution, promotion, and sale of Basting Brush, so that a separate and distinct
15 violation of Proposition 65 occurred each and every time a person was exposed to Lead
16 by Basting Brush as mentioned herein.

17 25. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
18 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
19 violations alleged herein will continue to occur into the future.

20 26. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to Lead from Basting Brush, pursuant to
22 Health and Safety Code section 25249.7(b).

23 27. In the absence of equitable relief, California consumers, the general public, and others
24 will continue to be involuntarily exposed to Lead that is contained in Basting Brush,
25 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged
26 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or
27 adequate remedy at law.

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1 28. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
2 filing this Complaint.

3 **jot™ 80 Pieces Paper Clips Assorted Colors: 50mm**

4 29. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
5 paragraphs 1 through 28 of this Complaint as though fully set forth herein.

6 30. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
7 distributor, promoter, or retailer of jot™ 80 Pieces Paper Clips Assorted Colors: 50mm
8 (hereinafter "Paper Clips"), a consumer product which is designed for use in connection
9 with the organization of paper documents and other office type work.

10 31. Plaintiff is informed, believes, and thereon alleges that Paper Clips contains Lead.

11 32. Defendants knew or should have known that Lead has been identified by the State of
12 California as a chemical known to cause cancer and reproductive toxicity and therefore
13 were subject to Proposition 65 warning requirements. Defendants were also informed of
14 the presence of Lead in the Paper Clips within Plaintiff's notice of alleged violation
15 further discussed above at Paragraph 17.

16 33. Paper Clips is a consumer product, and, as mentioned in herein, exposures to Lead took
17 place as a result of such normal and foreseeable consumption and use. As a result,
18 Defendants caused consumer product exposure.

19 34. Defendants failed to provide clear and reasonable warnings at their facilities, and other
20 locations where exposures to lead would foreseeably occur to persons who could
21 foreseeably come into contact with Paper Clips through environmental mediums. As a
22 result, Defendants caused environmental exposure.

23 35. Exposures to Lead to Defendants' employees occurred through the scope of their
24 employment, including, but not limited to stacking, packing, promoting, and selling the
25 Paper Clips. As a result, defendants caused occupational exposure.

26 36. Plaintiff is informed, believes, and thereon alleges that between November 23, 2007 and
27 the present, and continuing thereafter Defendants knowingly and intentionally exposed
28

1 California consumers and users of Paper Clips, which Defendants manufactured,
2 distributed, or sold as mentioned above, to Lead, without first providing any type of clear
3 and reasonable warning of such to the exposed persons before the time of exposure.
4 Defendants have distributed and sold Paper Clips in California. Defendants know and
5 intend that California consumers will use and consume Paper Clips thereby exposing
6 them to Lead. Defendants thereby violated Proposition 65.

7 37. The principal routes of exposure are through dermal contact, ingestion, and inhalation
8 caused when users of Paper Clips handle the product without wearing gloves or any other
9 personal protective equipment, or by touching bare skin or mucous membranes with
10 gloves after handling Paper Clips, as well as hand to mouth and hand to mucous
11 membrane contact after handling Paper Clips.

12 38. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
13 Proposition 65 as to Paper Clips have been ongoing and continuous to the date of the
14 signing of this Complaint, as Defendants engaged and continue to engage in conduct
15 which violates Health and Safety Code section 25249.6, including the manufacture,
16 distribution, promotion, and sale of Paper Clips, so that a separate and distinct violation
17 of Proposition 65 occurred each and every time a person was exposed to Lead by Paper
18 Clips as mentioned herein.

19 39. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
20 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
21 violations alleged herein will continue to occur into the future.

22 40. Based on the allegations herein, Defendants are liable for civil penalties of up to
23 \$2,500.00 per day per individual exposure to Lead from Paper Clips, pursuant to Health
24 and Safety Code section 25249.7(b).

25 41. In the absence of equitable relief, California consumers, the general public, and others
26 will continue to be involuntarily exposed to Lead that is contained in Paper Clips,
27 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged
28

1 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or
2 adequate remedy at law.

3 42. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
4 filing this Complaint.

5
6 **Christmas House® Crafts Decorative Pine Pick**

7 43. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
8 paragraphs 1 through 28 of this Complaint as though fully set forth herein.

9 44. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Christmas House® Crafts Decorative Pine Pick
11 (hereinafter "Pine Pick"), a consumer product which is designed for use in connection
12 with the organization of paper documents and other office type work.

13 45. Plaintiff is informed, believes, and thereon alleges that Pine Pick contains Lead.

14 46. Defendants knew or should have known that Lead has been identified by the State of
15 California as a chemical known to cause cancer and reproductive toxicity and therefore
16 were subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of Lead in the Pine Pick within Plaintiff's notice of alleged violation further

18 47. Pine Pick is a consumer product, and, as mentioned in herein, exposures to Lead took
19 place as a result of such normal and foreseeable consumption and use. As a result,
20 Defendants committed consumer product exposure.

21 48. Defendants failed to provide clear and reasonable warnings at their facilities, and other
22 locations where exposures to lead would foreseeably occur to persons who could
23 foreseeably come into contact with Pine pick through environmental mediums. As a
24 result, Defendants caused environmental exposure.

25 49. Exposures to Lead to Defendants' employees occurred through the scope of their
26 employment, including, but not limited to stacking, packing, promoting, and selling the
27 Pine Pick. As a result, Defendants caused occupational exposure.

1 50. Plaintiff is informed, believes, and thereon alleges that between November 23, 2007 the
2 present, and continuing thereafter, Defendants knowingly and intentionally exposed
3 California consumers and users of Pine Pick, which Defendants manufactured,
4 distributed, or sold as mentioned above, to Lead, without first providing any type of clear
5 and reasonable warning of such to the exposed persons before the time of exposure.
6 Defendants have distributed and sold Pine Pick in California. Defendants know and
7 intend that California consumers will use and consume Pine Pick thereby exposing them
8 to Lead. Defendants thereby violated Proposition 65.

9 51. The principal routes of exposure are through dermal contact, ingestion, and inhalation
10 caused when users of Pine Pick handle the product without wearing gloves or any other
11 personal protective equipment, or by touching bare skin or mucous membranes with
12 gloves after handling Pine Pick, as well as well as hand to mouth and hand to mucous
13 membrane contact after handling Pine Pick.

14 52. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
15 Proposition 65 as to Pine Pick have been ongoing and continuous to the date of the
16 signing of this Complaint, as Defendants engaged and continue to engage in conduct
17 which violates Health and Safety Code section 25249.6, including the manufacture,
18 distribution, promotion, and sale of Paper Clips, so that a separate and distinct violation
19 of Proposition 65 occurred each and every time a person was exposed to Lead by Pine
20 Pick as mentioned herein.

21 53. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
22 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
23 violations alleged herein will continue to occur into the future.

24 54. Based on the allegations herein, Defendants are liable for civil penalties of up to
25 \$2,500.00 per day per individual exposure to Lead from Pine Pick, pursuant to Health
26 and Safety Code section 25249.7(b).

27 55. In the absence of equitable relief, California consumers, the general public, and others
28 will continue to be involuntarily exposed to Lead that is contained in Pine Pick, creating a

1 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
2 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
3 remedy at law.

4 56. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
5 filing this Complaint.

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8 **PRAYER FOR RELIEF**

9 Plaintiff demands for each cause of action and against each of the Defendants as follows:

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

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16 Dated: May 5, 2010

YEROUSHALMI & ASSOCIATES

17
18
19 BY: 

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