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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

NOV 12 2010

John A. Clarke, Executive Officer/Clerk  
BY *[Signature]*  
Tanya Alvarez

6 Attorneys for Plaintiffs,  
7 Consumer Advocacy Group, Inc.

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

BC449318

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

CASE NO.

14 Plaintiff,

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

15 v.

16 Watch Club, Inc., Tectron International, and  
17 Does 1-50

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

18 Defendants.

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

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20  
21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against Defendants as  
22 follows:

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COPY

1 THE PARTIES

- 2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a corporation  
3 qualified to do business in the State of California. CAG is a person within the meaning  
4 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private  
5 attorney general, brings this action in the public interest as defined under Health and  
6 Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant Watch Club, Inc. ("Watch Club") is a company incorporated in the State of  
8 California.
- 9 ~~3. Defendant Tectron International, Inc. ("Tectron") is a company incorporated in the State~~  
10 ~~of California.~~
- 11 4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,  
12 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
13 complaint to allege their true names and capacities when ascertained. Plaintiff is  
14 informed, believes, and thereon alleges that each fictitiously named defendant is  
15 responsible in some manner for the occurrences herein alleged and the damages caused  
16 thereby.
- 17 5. At all times mentioned herein, the term "Defendants" includes Watch Club, Inc., Tectron  
18 International, and Does 1-50.
- 19 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
20 times mentioned herein have conducted business within the State of California.
- 21 7. At all times relevant to this action, each of the Defendants, including Does 1-50, was an  
22 agent, servant, or employee of each of the other Defendants. In conducting the activities  
23 alleged in this Complaint, each of the Defendants was acting within the course and scope  
24 of this agency, service, or employment, and was acting with the consent, permission, and  
25 authorization of each of the other Defendants. All actions of each of the Defendants  
26 alleged in this Complaint were ratified and approved by every other Defendant or their  
27 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
28 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

1 8. Alternatively, at times relevant to this action, Defendant Watch Club so controlled  
2 Defendant Tectron as to render Tectron the mere instrumentality of Watch Club.  
3 Therefore, it is in furtherance of the ends of justice, that the Corporate form of Defendant  
4 Tectron should be disregarded.

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

9 JURISDICTION

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

15 11. This Court has jurisdiction over Defendants named herein because Defendants either  
16 reside or are located in this State or are foreign corporations authorized to do business in  
17 California, are registered with the California Secretary of State, or who do sufficient  
18 business in California, have sufficient minimum contacts with California, or otherwise  
19 intentionally avail themselves of the markets within California through their manufacture,  
20 distribution, promotion, marketing, or sale of their products within California to render  
21 the exercise of jurisdiction by the California courts permissible under traditional notions  
22 of fair play and substantial justice. Furthermore, Defendants have purposefully availed  
23 themselves of California by deliberately placing products within the stream of commerce  
24 and thereby directed their activities towards, and had a substantial connection with, the  
25 State of California.

26 12. Venue is proper in the County of Los Angeles because one or more of the instances of  
27 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
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1 because Defendants conducted, and continue to conduct, business in the County of Los  
2 Angeles with respect to the consumer product that is the subject of this action.

### 3 BACKGROUND AND PRELIMINARY FACTS

4 13. In 1986, California voters approved an initiative to address growing concerns about  
5 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
7 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
8 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
9 ~~25249.5, et seq.~~ (“Proposition 65”), helps to protect California’s drinking water sources  
10 from contamination, to allow consumers to make informed choices about the products  
11 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
12 fit.

13 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
14 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
15 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
16 chemicals and chemical families. Proposition 65 imposes warning requirements and  
17 other controls that apply to Proposition 65-listed chemicals.

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

24 16. Proposition 65 provides that any person “violating or threatening to violate” the statute  
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
26 “Threaten to violate” means “to create a condition in which there is a substantial  
27 probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).

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

3 17. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing  
4 products of exposing, knowingly and intentionally, persons in California to the  
5 Proposition 65-listed chemicals of such products without first providing clear and  
6 reasonable warnings of such to the exposed persons prior to the time of exposure.  
7 Plaintiff later discerned that Defendants engaged in such practice.

8 18. On October 1, 1992, the Governor of California added Lead and Lead Compounds to the  
9 ~~list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).~~  
10 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
11 after addition of Lead and lead compounds to the list of chemicals known to the State to  
12 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning  
13 requirements and discharge prohibitions.

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

#### 21 SATISFACTION OF PRIOR NOTICE

22 20. On or about December 18, 2009 Plaintiff gave notice of alleged violations of Health and  
23 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
24 private action to Watch Club, identified in the notice as "Watch Club, Inc.," to Tectron  
25 identified in the notice as "Tectron International," as well as to the California Attorney  
26 General, County District Attorneys, and City Attorneys for each city containing a  
27 population of at least 750,000 people in whose jurisdictions the violations allegedly  
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1 occurred, concerning the consumer product identified as "Simi® Heavy Duty Flashlight  
2 with Rubber Grip and Carrying Strap Super Bright."

- 3 21. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
4 products involved, the likelihood that such products would cause users to suffer  
5 significant exposures to lead, and the corporate structure of each of the Defendants.
- 6 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
7 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
8 Plaintiff who executed the certificate had consulted with at least one person with relevant  
9 ~~and appropriate expertise who reviewed data regarding the exposures to lead,~~  
10 respectively, which are the subject Proposition 65-listed chemicals of this action. Based  
11 on that information, the attorney for Plaintiff who executed the Certificate of Merit  
12 believed there was a reasonable and meritorious case for this private action. The attorney  
13 for Plaintiff attached to the Certificate of Merit served on the Attorney General the  
14 confidential factual information sufficient to establish the basis of the Certificate of  
15 Merit.
- 16 23. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
17 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
18 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
- 19 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
20 gave notice of the alleged violations to Watch Club, Tectron, and the public prosecutors  
21 referenced in Paragraph 20.
- 22 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
23 any applicable district attorney or city attorney has commenced and is diligently  
24 prosecuting an action against the Defendants.
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1 **FIRST CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against Northeastern and American for**  
3 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
4 **(Health & Safety Code, §§ 25249.5, et seq.))**

5 **Simi® Heavy Duty Flashlight with Rubber Grip and Carrying Strap Super Bright**

6 26. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 24 of this complaint as though fully set forth herein.

8 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of "Simi® Heavy Duty Flashlight with Rubber Grip and  
10 Carrying Strap Super Bright, Item Number FL5: ("Flashlight"), a consumer product  
11 designed for personal use.

12 28. Plaintiff is informed, believes, and thereon alleges that Flashlight contains Lead.

13 29. Defendants knew or should have known that Lead has been identified by the State of  
14 California as a chemical known to cause cancer and reproductive toxicity and therefore  
15 was subject to Proposition 65 warning requirements. Defendants were also informed of  
16 the presence of Lead in the Flashlight within Plaintiff's notice of alleged violations  
17 further discussed above at Paragraph 20.

18 30. Plaintiff's allegations regarding Flashlight concern "[c]onsumer products exposure[s],"  
19 which "is an exposure that results from a person's acquisition, purchase, storage,  
20 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
21 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.  
22 Booster Cable is a consumer product, and, as mentioned in herein, exposures to Lead  
23 took place as a result of such normal and foreseeable consumption and use.

24 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
25 Persons sustain exposures by handling Flashlight without wearing gloves or by touching  
26 bare skin or mucous membranes with gloves after handling Flashlight as well as hand to  
27 mouth contact (e.g., by inserting surfaces, such as hands, that have contacted Flashlight  
28 into their mouths), hand to mucous membrane, or breathing in particulate matter released  
or emanating from Flashlight during application and installation, as well as through

1 environmental mediums that carry the Lead and Lead Compounds once contained within  
2 the Flashlight.

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

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

13 34. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Flashlight, pursuant to Health  
15 and Safety Code section 25249.7(b).

16 35. In the absence of equitable relief, the general public and Defendants' employees will  
17 continue to be involuntarily exposed to Lead that is contained in Flashlight, creating a  
18 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
19 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
20 remedy at law.

21 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
22 filing this Complaint.

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1 **PRAYER FOR RELIEF**

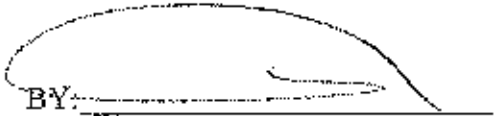
2 Plaintiff demands against each of the Defendants as follows:

- 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.
- 8

9 Dated: 4/11, 2010

~~YERUSHALMI & ASSOCIATES~~

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12 BY: \_\_\_\_\_

13 Reuben Yeroushalmi

14 Attorneys for Plaintiff,

15 Consumer Advocacy Group, Inc.

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