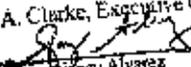


1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 **YEROUSHALMI & ASSOCIATES**
5 9100 Wilshire Boulevard, Suite 610E
6 Beverly Hills, California 90212
7 Telephone: 310.623.1926
8 Facsimile: 310.623.1930

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

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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

NOV 12 2010

John A. Clarke, Executive Officer/Clerk
BY  Deputy
Nancy Alvarez

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 **BC449319**

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

16 Plaintiff,

17 v.

18 G.R. SALES, INC., a California Corporation,
19 and DOES 1-50;

20 Defendants.

CASE NO.

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)

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

23 **THE PARTIES**

- 24 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit
25 corporation qualified to do business in the State of California. CAG is a person within
26 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
27

28
COMPLAINT FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986 (HEALTH AND SAFETY CODE § 25249.5, ET SEQ.)

COPY

1 as a private attorney general, brings this action in the public interest as defined under
2 Health and Safety Code section 25249.7, subdivision (d).

- 3
4 2. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,
5 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
6 Complaint to allege their true names and capacities when ascertained. Plaintiff is
7 informed, believes, and thereon alleges that each fictitiously named defendant is
8 responsible in some manner for the occurrences herein alleged and the damages caused
9 thereby.
- 10
11 3. At all times mentioned herein, the term "Defendants" includes G.R. Sales, Inc., and Does
12 1-50.
- 13
14 4. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
15 times mentioned herein has conducted business within the State of California.
- 16
17 5. At all times relevant to this action, each of the Defendants, including Does 1-50, was an
18 agent, servant, or employee of each of the other Defendants. In conducting the activities
19 alleged in this Complaint, each of the Defendants was acting within the course and scope
20 of this agency, service, or employment, and was acting with the consent, permission, and
21 authorization of each of the other Defendants. All actions of each of the Defendants
22 alleged in this Complaint were ratified and approved by every other Defendant or their
23 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
24 and/or facilitated the alleged wrongful conduct of each of the other Defendants.
- 25
26 6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
27 Defendants was a person doing business within the meaning of Health and Safety Code
28

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

3 JURISDICTION

- 4
- 5 7. 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
- 11 8. This Court has jurisdiction over Defendants named herein because Defendants either
12 reside or are located in this State or are foreign corporations authorized to do business in
13 California, are registered with the California Secretary of State, or who do sufficient
14 business in California, have sufficient minimum contacts with California, or otherwise
15 intentionally avail themselves of the markets within California through their manufacture,
16 distribution, promotion, marketing, or sale of their products within California to render
17 the exercise of jurisdiction by the California courts permissible under traditional notions
18 of fair play and substantial justice.
- 19
- 20 9. 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 BACKGROUND AND PRELIMINARY FACTS

- 25
- 26 10. 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

1 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
2 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
3 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
4 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
5 from contamination, to allow consumers to make informed choices about the products
6 they buy, and to enable persons to protect themselves from toxic chemicals as they see
7 fit.
8

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

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

22
23 13. Proposition 65 provides that any person "violating or threatening to violate" the statute
24 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

25 "Threaten to violate" means "to create a condition in which there is a substantial
26 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
4 14. Through research and investigation, Plaintiff identified certain practices of Defendants of
5 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed
6 chemicals of the consumer products discussed below without first providing clear and
7 reasonable warnings of such to the exposed persons prior to the time of exposure.

8 **SATISFACTION OF PRIOR NOTICE**

- 9
10 15. On or about July 7, 2010, Plaintiff gave notice of alleged violations of Health and Safety
11 Code section 25249.6, concerning consumer products exposures, subject to a private
12 action to G.R. Sales, Inc., and to the California Attorney General, County District
13 Attorneys, and City Attorneys for each city containing a population of at least 750,000
14 people in whose jurisdictions the violations allegedly occurred, concerning the consumer
15 product G.R. Sales Automotive Accessories Comfort Grip Steering Wheel Cover SKU
16 401056250126.

- 17
18 16. Before sending the notice of alleged violations, Plaintiff investigated the consumer
19 product involved, and the likelihood that such product would cause users to suffer
20 significant exposures to the relevant Proposition 65-listed chemical at issue.

- 21
22 17. Plaintiff's notice of alleged violations included a Certificate of Merit executed by the
23 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
24 Plaintiff who executed the certificate had consulted with at least one person with relevant
25 and appropriate expertise who reviewed data regarding the exposures to lead, which is the
26 subject Proposition 65-listed chemical of this action. Based on that information, the
27 attorney for Plaintiff who executed the Certificate of Merit believed there was a
28

1 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
2 to the Certificate of Merit served on the Attorney General the confidential factual
3 information sufficient to establish the bases of the Certificate of Merit.

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

8
9 19. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
10 gave notice of the alleged violations to G.R. Sales, Inc., and the public prosecutors
11 referenced in Paragraph 18.

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

15 //

16 //

17 //

18
19 **FIRST CAUSE OF ACTION**

20 **(By Consumer Advocacy Group, Inc. and against G.R. Sales, Inc., and Does 1-50 for**
21 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
22 **(Health & Safety Code, §§ 25249.5, et seq.))**

23 **G.R. Sales Automotive Accessories Comfort Grip Steering Wheel Cover SKU**
24 **401056250126**

25 21. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
26 paragraphs 1 through 23 of this Complaint as though fully set forth herein.

27 22. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of G.R. Sales Automotive Accessories Comfort Grip

1 Steering Wheel Cover SKU 401056250126 (hereinafter "Steering Wheel Cover"), a
2 consumer product designed for use to cover the steering wheel in an automobile.

3 23. Plaintiff is informed, believes, and thereon alleges that Steering Wheel Cover contains
4 lead.

5
6 24. On February 27, 1987, the Governor of California added lead to the list of chemicals
7 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).

8 On October 1, 1992 the Governor added lead and lead components to the list of
9 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 to the list of chemicals known to the State to cause cancer, lead
12 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

13
14 25. 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 therefore were subject to Proposition
16 65 warning requirements. Defendants were also informed of the presence of lead in the
17 Steering Wheel Cover within Plaintiff's notice of alleged violation further discussed
18 above at Paragraph 18.

19
20 26. Plaintiff's allegations regarding Steering Wheel Cover concern "[c]onsumer products
21 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
22 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
23 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
24 25602(b). Steering Wheel Cover is a consumer product, and, as mentioned in herein,
25 exposures to lead took place as a result of such normal and foreseeable consumption and
26 use.
27
28

1 27. Plaintiff is informed, believes, and thereon alleges that between January 4, 2007 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Steering Wheel Cover, 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 Steering Wheel Cover in California. Defendants
7 know and intend that California consumers will use and consume Steering Wheel Cover
8 thereby exposing them to lead. Defendants thereby violated Proposition 65.
9

10 28. The principal routes of exposure are through dermal contact, ingestion, and inhalation.

11 Persons sustain exposures by handling the Steering Wheel Cover without wearing gloves
12 or by touching bare skin or mucous membranes with gloves after handling Steering
13 Wheel Cover, as well as hand to mouth contact, hand to mucous membrane, or breathing
14 in particulate matter emanating from the Steering Wheel Cover during use and
15 installation, as well as through environmental mediums that carry the lead and lead
16 compounds once contained within the Steering Wheel Cover. The foregoing routes of
17 exposure assume use of the product in accordance with its instructions.
18

19 29. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
20 Proposition 65 as to Steering Wheel Cover have been ongoing and continuous to the date
21 of the signing of this Complaint, as Defendants engaged and continue to engage in
22 conduct which violates Health and Safety Code section 25249.6, including the
23 manufacture, distribution, promotion, and sale of Steering Wheel Cover, so that a
24 separate and distinct violation of Proposition 65 occurred each and every time a person
25 was exposed to lead by Steering Wheel Cover as mentioned herein.
26
27
28

1 30. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4
5 31. Based on the allegations herein, Defendants are liable for civil penalties of up to
6 \$2,500.00 per day per individual exposure to lead from Steering Wheel Cover, pursuant
7 to Health and Safety Code section 25249.7(b).

8 32. In the absence of equitable relief, California consumers, the general public, and others
9 will continue to be involuntarily exposed to lead that is contained in Steering Wheel
10 Cover, creating a substantial risk of irreparable harm. Thus, by committing the acts
11 alleged herein, Defendants have caused irreparable harm for which there is no plain,
12 speedy, or adequate remedy at law.

13
14 33. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
15 filing this Complaint.

16
17 **PRAYER FOR RELIEF**

18 Plaintiff demands against each of the Defendants as follows:

- 19 1. A permanent injunction mandating Proposition 65-compliant warnings;
20 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
21 3. Costs of suit;
22 4. Reasonable attorney fees and costs; and
23 5. Any further relief that the court may deem just and equitable.
24

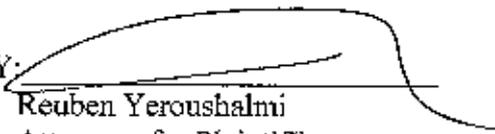
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1 Dated: 11/14/10

YEROUSHALMI & ASSOCIATES

2
3
4 BY: 
5 Reuben Yeroushalmi
6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.
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