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By *Dawn Alexander* Deputy
DAWN ALEXANDER

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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

16 Plaintiff,

17 v.

18 Northeastern Plastics, Inc., a Texas
19 Corporation, American International
20 Industries, Inc., a Texas Corporation, and
21 DOES 1-50.

22 Defendants.

CASE NO. **BC 449019**

COMPLAINT FOR PENALTY,
INJUNCTION, AND RESTITUTION

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

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

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

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THE PARTIES

1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a 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 Northeastern Plastics, Inc. ("Northeastern") is a company incorporated in the State of Texas.
3. Defendant American International Industries, Inc. ("American") is a company incorporated in the State of Texas.
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 Northeastern Plastics, Inc., American International Industries, Inc., and Does 1-50.
6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have 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. Alternatively, at times relevant to this action, Defendant American so controlled
2 Defendant Northeastern as to render Northeastern the mere instrumentality of American.
3 Therefore, it is in furtherance of the ends of justice, that the Corporate form of Defendant
4 Northeastern 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 Prop.,
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 July 23, 2010 Plaintiff gave notice of alleged violations of Health and Safety
23 Code section 25249.6, concerning consumer products exposures, subject to a private
24 action to Northeastern, identified in the notice as "Northeastern Plastics, Inc.," to
25 American, identified in the notice as "American International Industries, Inc.," as well as
26 to the California Attorney General, County District Attorneys, and City Attorneys for
27 each city containing a population of at least 750,000 people in whose jurisdictions the
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1 violations allegedly occurred, concerning the consumer product identified as "Bitty
2 Booster Cable™ 10 Gauge 10 ft. Catalog No. MT 10.

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 Northeastern, American, and and the public
21 prosecutors 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.

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 **Bitty Booster Cable™ 10 Gauge 10 ft. (Catalog No. MT 10)**

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 "Bitty Booster Cable™ 10 Gauge 10 ft. Catalog No.
10 MT 10. ("Booster Cable"), a consumer product designed for personal use as a charging
11 device.

12 28. Plaintiff is informed, believes, and thereon alleges that Booster Cable 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 Booster Cable within Plaintiff's notice of alleged violations
17 further discussed above at Paragraph 20.

18 30. Plaintiff's allegations regarding Booster Cable concern "[c]onsumer products
19 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
20 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
21 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
22 *25602(b)*. Booster Cable is a consumer product, and, as mentioned in herein, exposures
23 to Lead 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 Booster Cable without wearing gloves or by
26 touching bare skin or mucous membranes with gloves after handling Booster Cable as
27 well as hand to mouth contact (e.g., by inserting surfaces, such as hands, that have
28 contacted Booster Cable into their mouths), hand to mucous membrane, or breathing in
particulate matter released or emanating from Booster Cable during application and

1 installation, as well as through environmental mediums that carry the Lead and Lead
2 Compounds once contained within the Booster Cable.

3 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
4 Proposition 65 as to Booster Cable 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 Booster Cable, so that a separate and distinct
8 violation of Proposition 65 occurred each and every time a person was exposed to Lead
9 by Booster Cable 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 Booster Cable, pursuant to
15 Health 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 Booster Cable, creating
18 a 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.
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9 Dated: November 8, 2010

YEROUSHALMI & ASSOCIATES

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12 BY: 

13 Reuben Yeroushalmi
14 Attorneys for Plaintiff,
15 Consumer Advocacy Group, Inc.

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