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Los Angeles Superior Court

MAY 27 2011

John A. Clarke, Executive Officer/Clerk  
By [Signature] Deputy  
RIGENALOREZ

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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

15 Plaintiff,

16 v.

17 PLASTICOLOR MOLDED PRODUCTS,  
18 INC., a California Corporation; and DOES 1-  
19 50

20 Defendants.

CASE NO.

BC462484

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)

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COPY

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

3 **THE PARTIES**

- 4 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a corporation  
5 qualified to do business in the State of California. CAG is a person within the meaning  
6 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private  
7 attorney general, brings this action in the public interest as defined under Health and  
8 Safety Code section 25249.7, subdivision (d).
- 9 2. Defendant Plasticolor Molded Products, Inc., ("Plasticolor") is a company incorporated in  
10 the State of California.
- 11 3. 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 4. At all times mentioned herein, the term "Defendants" includes Plasticolor, Inc., and Does  
18 1-50.
- 19 5. 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 6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
22 Defendants was a person doing business within the meaning of Health and Safety Code  
23 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
24 employees at all relevant times.

25 **JURISDICTION**

- 26 7. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
27 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
28 those given by statute to other trial courts. This Court has jurisdiction over this action

1 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
2 violations of Proposition 65 in any Court of competent jurisdiction.

- 3 8. This Court has jurisdiction over Defendants named herein because Defendants either  
4 reside or are located in this State or are foreign corporations authorized to do business in  
5 California, are registered with the California Secretary of State, or who do sufficient  
6 business in California, have sufficient minimum contacts with California, or otherwise  
7 intentionally avail themselves of the markets within California through their manufacture,  
8 distribution, promotion, marketing, or sale of their products within California to render  
9 the exercise of jurisdiction by the California courts permissible under traditional notions  
10 of fair play and substantial justice. Furthermore, Defendants have purposefully availed  
11 themselves of California by deliberately placing products within the stream of commerce  
12 and thereby directed their activities towards, and had a substantial connection with, the  
13 State of California.
- 14 9. Venue is proper in the County of Los Angeles because one or more of the instances of  
15 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
16 because Defendants conducted, and continue to conduct, business in the County of Los  
17 Angeles with respect to the consumer product that is the subject of this action.

18  
19 **BACKGROUND AND PRELIMINARY FACTS**

- 20 10. In 1986, California voters approved an initiative to address growing concerns about  
21 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
22 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
23 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
24 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
25 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
26 from contamination, to allow consumers to make informed choices about the products  
27 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
28 fit.

- 1 11. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
2 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
3 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
4 chemicals and chemical families. Proposition 65 imposes warning requirements and  
5 other controls that apply to Proposition 65-listed chemicals.
- 6 12. All businesses with ten (10) or more employees that operate or sell products in California  
7 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
8 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
9 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
10 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
11 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 12 13. Proposition 65 provides that any person "violating or threatening to violate" the statute  
13 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
14 "Threaten to violate" means "to create a condition in which there is a substantial  
15 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
16 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
17 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 18 14. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing  
19 products of exposing, knowingly and intentionally, persons in California to the  
20 Proposition 65-listed chemicals of such products without first providing clear and  
21 reasonable warnings of such to the exposed persons prior to the time of exposure.  
22 Plaintiff later discerned that Defendants engaged in such practice.
- 23 15. On October 1, 1992, the Governor of California added Lead and Lead Compounds to the  
24 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).  
25 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
26 after addition of Lead and lead compounds to the list of chemicals known to the State to  
27 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning  
28 requirements and discharge prohibitions.

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

8 **SATISFACTION OF PRIOR NOTICE**

9 17. On or about July 20, 2010 Plaintiff gave notice of alleged violations of Health and Safety  
10 Code section 25249.6, concerning consumer products exposures, subject to a private  
11 action to Plasticolor, identified in the notice as “Plasticolor Molded Products, Inc.,” to  
12 Harley identified in the notice as “Harley-Davidson, Inc.,” to Harley Motor identified in  
13 the notice as “Harley-Davidson Motor Company, Inc.,” as well as to the California  
14 Attorney General, County District Attorneys, and City Attorneys for each city containing  
15 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
16 occurred, concerning the consumer product identified as “Harley Davidson Classic  
17 Steering Wheel Cover, ID# 0181134163403.”

18 18. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
19 products involved, the likelihood that such products would cause users to suffer  
20 significant exposures to lead, and the corporate structure of each of the Defendants.

21 19. Plaintiff’s notice of alleged violation 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,  
25 respectively, which are the subject Proposition 65-listed chemicals of this action. Based  
26 on that information, the attorney for Plaintiff who executed the Certificate of Merit  
27 believed there was a reasonable and meritorious case for this private action. The attorney  
28 for Plaintiff attached to the Certificate of Merit served on the Attorney General the

1 confidential factual information sufficient to establish the basis of the Certificate of  
2 Merit.

3 20. Plaintiff's notice of alleged violations 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 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
7 gave notice of the alleged violations to Plasticolor and the public prosecutors referenced  
8 in Paragraph 19.

9 22. 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 **FIRST CAUSE OF ACTION**

13 **(By Consumer Advocacy Group, Inc. and against Plasticolor for Violations of Proposition**  
14 **65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**  
15 **25249.5, *et seq.*))**

16 **Harley Davidson Classic Steering Wheel Cover, ID# 0181134163403**

17 23. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
18 paragraphs 1 through 22 of this complaint as though fully set forth herein.

19 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
20 distributor, promoter, or retailer of "Harley Davidson Classic Steering Wheel Cover, ID#  
21 0181134163403" ("Wheel Cover"), a consumer product designed for personal use.

22 25. Plaintiff is informed, believes, and thereon alleges that Wheel Cover contains Lead.

23 26. Defendants knew or should have known that Lead has been identified by the State of  
24 California as a chemical known to cause cancer and reproductive toxicity and therefore  
25 was subject to Proposition 65 warning requirements. Defendants were also informed of  
26 the presence of Lead in the Wheel Cover within Plaintiff's notice of alleged violations  
27 further discussed above at Paragraph 19.  
28

1 27. Plaintiff's allegations regarding Wheel Cover concern "[c]onsumer products  
2 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
4 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
5 *25602(b)*. Wheel Cover is a consumer product, and, as mentioned in herein, exposures to  
6 Lead took place as a result of such normal and foreseeable consumption and use.

7 28. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
8 Persons sustain exposures by handling Wheel Cover without wearing gloves or by  
9 touching bare skin or mucous membranes with gloves after handling Wheel Cover as  
10 well as hand to mouth contact (*e.g.*, by inserting surfaces, such as hands, that have  
11 contacted Wheel Cover into their mouths), hand to mucous membrane, or breathing in  
12 particulate matter released or emanating from Wheel Cover during application and  
13 installation, as well as through environmental mediums that carry the Lead and Lead  
14 Compounds once contained within the Wheel Cover.

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

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

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

1 32. In the absence of equitable relief, the general public and Defendants' employees will  
2 continue to be involuntarily exposed to Lead that is contained in Wheel Cover, creating a  
3 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
4 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
5 remedy at law.

6 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
7 filing this Complaint.

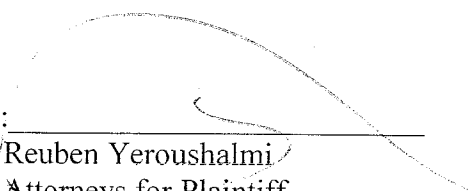
8 **PRAYER FOR RELIEF**

9 Plaintiff demands 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.

15  
16 Dated: May 26, 2010

YEROUSHALMI & ASSOCIATES

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