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

JUN 16 2011

John A. Clarke, Executive Officer/Clerk
BY Mary Flores, Deputy

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

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

11
12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,
14
15 Plaintiff,
16
17 v.
18 Sentry Industries, Inc., a New York
19 Corporation; GTM Wholesale Liquidators, a
20 business entity form unknown; and DOES 1-
21 20;
22 Defendants.

11
12 CASE NO. **BC 463718**
13
14 COMPLAINT FOR PENALTY,
15 INJUNCTION, AND RESTITUTION
16
17 Violation of Proposition 65, the Safe
18 Drinking Water and Toxic Enforcement
19 Act of 1986 (*Health & Safety Code*, §
20 25249.5, *et seq.*)
21
22 ACTION IS AN UNLIMITED CIVIL
23 CASE (exceeds \$25,000)

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

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

THE PARTIES

- 1
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 Sentry Industries, Inc. ("Sentry") is a company incorporated in the State of
8 New York.
- 9 3. Defendant GTM Wholesale Liquidators ("GTM") is a business entity, form unknown,
10 qualified to do business and doing business in the State of California at all relevant times
11 herein.
- 12 4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,
13 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
14 complaint to allege their true names and capacities when ascertained. Plaintiff is
15 informed, believes, and thereon alleges that each fictitiously named defendant is
16 responsible in some manner for the occurrences herein alleged and the damages caused
17 thereby.
- 18 5. At all times mentioned herein, the term "Defendants" includes Sentry Industries, Inc.,
19 GTM Wholesale Liquidators, and Does 1-20.
- 20 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
21 times mentioned herein have conducted business within the State of California.
- 22 7. At all times relevant to this action, each of the Defendants, including Does 1-20, was an
23 agent, servant, or employee of each of the other Defendants. In conducting the activities
24 alleged in this Complaint, each of the Defendants was acting within the course and scope
25 of this agency, service, or employment, and was acting with the consent, permission, and
26 authorization of each of the other Defendants. All actions of each of the Defendants
27 alleged in this Complaint were ratified and approved by every other Defendant or their
28

1 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
2 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

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

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

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. 3. 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 to protect California's drinking water sources
4 from contamination, to allow consumers to make informed choices about the products
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see
6 fit.

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

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

18 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
19 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
20 "Threaten to violate" means "to create a condition in which there is a substantial
21 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
22 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
23 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

24 16. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing
25 products of exposing, knowingly and intentionally, persons in California to the
26 Proposition 65-listed chemicals of such products without first providing clear and
27 reasonable warnings of such to the exposed persons prior to the time of exposure.
28 Plaintiff later discerned that Defendants engaged in such practice.

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

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

14 **SATISFACTION OF PRIOR NOTICE**

15 19. On or about October 18, 2010 Plaintiff gave notice of alleged violations of Health and
16 Safety Code section 25249.6, concerning consumer products exposures, subject to a
17 private action to Sentry, identified in the notice as "Sentry Industries, Inc." and to the
18 California Attorney General, County District Attorneys, and City Attorneys for each city
19 containing a population of at least 750,000 people in whose jurisdictions the violations
20 allegedly occurred, concerning Light-Weight Digital Stereo Headphones, Model HO415.

21 20. On or about December 27, 2010 Plaintiff gave notice of alleged violations of Health and
22 Safety Code section 25249.6, concerning consumer products exposures, subject to a
23 private action to Sentry, identified in the notice as "Sentry Industries, Inc.," GTM,
24 identified in the notice as "GTM Wholesale Liquidators," and to the California Attorney
25 General, County District Attorneys, and City Attorneys for each city containing a
26 population of at least 750,000 people in whose jurisdictions the violations allegedly
27 occurred, concerning Grip-Tite Lantern with 2 "AA" Batteries (Model:LTB1P).

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

4 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
5 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
6 Plaintiff who executed the certificate had consulted with at least one person with relevant
7 and appropriate expertise who reviewed data regarding the exposures to lead,
8 respectively, which are the subject Proposition 65-listed chemicals of this action. Based
9 on that information, the attorney for Plaintiff who executed the Certificate of Merit
10 believed there was a reasonable and meritorious case for this private action. The attorney
11 for Plaintiff attached to the Certificate of Merit served on the Attorney General the
12 confidential factual information sufficient to establish the basis of the Certificate of
13 Merit.

14 23. Plaintiff's notice of alleged violations also included a Certificate of Service and a
15 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
16 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

17 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
18 gave notice of the alleged violations to Sentry, GTM, and the public prosecutors
19 referenced in Paragraphs 19 and 20.

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

23
24 **FIRST CAUSE OF ACTION**

25 **(By Consumer Advocacy Group, Inc. and against Sentry and DOES 1-10 for Violations of**
26 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &***
***Safety Code*, §§ 25249.5, *et seq.*))**

27 **Light-Weight Digital Stereo Headphones, Model HO415**

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

3 27. Each of the defendants, Sentry and Does 1-10, is, and at all times mentioned herein was,
4 a manufacturer, distributor, promoter, or retailer of Light-Weight Digital Stereo
5 Headphones, Model HO415 ("Headphones"), a consumer product designed for personal
6 use as a listening device.

7 28. Plaintiff is informed, believes, and thereon alleges that Headphones contain Lead.

8 29. Defendants knew or should have known that Lead has been identified by the State of
9 California as a chemical known to cause cancer and reproductive toxicity and therefore
10 was subject to Proposition 65 warning requirements. Defendants were also informed of
11 the presence of Lead in the Headphones within Plaintiff's notice of alleged violations
12 further discussed above at Paragraph 19.

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

19 31. Plaintiff is informed, believes, and thereon alleges that between June 28, 2007 and the
20 present, each of the Defendants knowingly and intentionally exposed California
21 consumers and users of Headphones, which Defendants manufactured, distributed, or
22 sold as mentioned above, to Lead, without first providing any type of clear and
23 reasonable warning of such to the exposed persons before the time of exposure.

24 Defendants have distributed and sold Headphones in California. Defendants know and
25 intend that California consumers will use and consume Headphones thereby exposing
26 them to Lead. Defendants thereby violated Proposition 65

27 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.
28 Persons sustain exposures by handling Headphones without wearing gloves or by

1 touching bare skin or mucuos membranes with gloves after handling Headphones as well
2 as hand to mouth contact (*e.g.*, by inserting surfaces, such as hands, that have contacted
3 Headphones into their mouths), hand to mucous membrane, or breathing in particulate
4 matter released or emanating from Headphones.

5 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
6 Proposition 65 as to Headphones 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 Headphones, so that a separate and distinct violation
10 of Proposition 65 occurred each and every time a person was exposed to Lead by
11 Headphones as mentioned herein.

12 34. 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 35. 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 Headphones, pursuant to Health
17 and Safety Code section 25249.7(b).

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

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

24 SECOND CAUSE OF ACTION

25 **(By Consumer Advocacy Group, Inc. and against Sentry, GTM, and Does 11-20 for**
26 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
27 **(Health & Safety Code, §§ 25249.5, et seq.))**

28 **Grip-Tite Lantern with 2 "AA" Batteries (Model: LTB1P)**

1 38. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
2 paragraphs 1 through 36 of this complaint as though fully set forth herein.

3 39. Each of the defendants, Sentry, GTM, and Does 11-20, is, and at all times mentioned
4 herein was, a manufacturer, distributor, promoter, or retailer of Grip-Tite Lantern with 2
5 "AA" Batteries (Model: LTB1P ("Flashlight")), a consumer product designed for personal
6 use as an illuminating device.

7 40. Plaintiff is informed, believes, and thereon alleges that Flashlight contains Lead.

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

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

19 43. Plaintiff is informed, believes, and thereon alleges that between November 10, 2007 and
20 the present, each of the Defendants knowingly and intentionally exposed California
21 consumers and users of Flashlight, which Defendants manufactured, distributed, or sold
22 as mentioned above, to Lead, without first providing any type of clear and reasonable
23 warning of such to the exposed persons before the time of exposure. Defendants have
24 distributed and sold Flashlight in California. Defendants know and intend that California
25 consumers will use and consume Flashlight thereby exposing them to Lead. Defendants
26 thereby violated Proposition 65

27 44. The principal routes of exposure are through dermal contact, ingestion and inhalation.
28 Persons sustain exposures by handling Flashlight without wearing gloves or by touching

1 bare skin or mucous membranes with gloves after handling Flashlight as well as hand to
2 mouth contact (e.g., by inserting surfaces, such as hands, that have contacted Flashlight
3 into their mouths), hand to mucous membrane, or breathing in particulate matter released
4 or emanating from Flashlight.

5 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
6 Proposition 65 as to Flashlight 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 Flashlight, so that a separate and distinct violation of
10 Proposition 65 occurred each and every time a person was exposed to Lead by Flashlight
11 as mentioned herein.

12 46. 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 47. 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 Flashlight, pursuant to Health
17 and Safety Code section 25249.7(b).

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

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

24 **PRAYER FOR RELIEF**

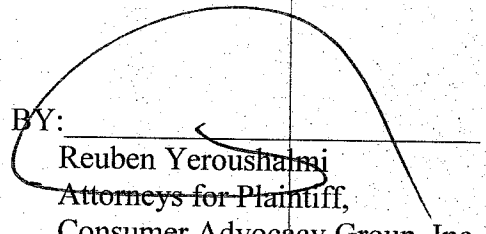
25 Plaintiff demands against each of the Defendants as follows:

- 26 1. A permanent injunction mandating Proposition 65-compliant warnings;
27 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
28 3. Costs of suit;

- 1 4. Reasonable attorney fees and costs; and
- 2 5. Any further relief that the court may deem just and equitable.

3
4 Dated: June 13, 2011

YEROUSHALMI & ASSOCIATES

5
6
7 BY: 
8 Reuben Yeroushalmi
9 Attorneys for Plaintiff,
10 Consumer Advocacy Group, Inc.