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By SHAUNYA WESLEY, Deputy

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10 Consumer Advocacy Group, Inc.

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

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

17 Plaintiff,

18 v.

19 EUROSTAR, INC., a California corporation,
20 and DOES 1-20;

21 Defendants.

CASE NO. **BC 463475**

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)

22 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants,
23 EUROSTAR, INC. and DOES 1-20 as follows:

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THE PARTIES

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

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

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

17 10. Venue is proper in the County of Los Angeles because one or more of the instances of
18 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
19 because Defendants conducted, and continue to conduct, business in the County of Los
20 Angeles with respect to the consumer product that is the subject of this action.

21 **BACKGROUND AND PRELIMINARY FACTS**

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

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1 they buy, and to enable persons to protect themselves from toxic chemicals as they see
2 fit.

3 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to
4 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
5 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
6 chemicals and chemical families. Proposition 65 imposes warning requirements and
7 other controls that apply to Proposition 65-listed chemicals.

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

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

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

25 16. On October 1, 1992, the Governor of California added Lead and Lead compounds to the
26 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).
27 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
28 after addition of Lead and lead compounds to the list of chemicals known to the State to

1 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
2 requirements and discharge prohibitions.

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

10 **SATISFACTION OF PRIOR NOTICE**

11 18. On or about December 23, 2010, Plaintiff gave notice of alleged violations of Health and
12 Safety Code section 25249.6, concerning consumer products exposures, occupational
13 exposures, and environmental exposures subject to a private action to EUROSTAR and
14 to the California Attorney General, County District Attorneys, and City Attorneys for
15 each city containing a population of at least 750,000 people in whose jurisdictions the
16 violations allegedly occurred, concerning the product Cobra Black Fisherman Sandals
17 Item #000465197 (SKU #465197).

18 19. Before sending the notices 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 20. 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, which are
25 the subject Proposition 65-listed chemicals of this action. Based on that information, the
26 attorney for Plaintiff who executed the Certificate of Merit believed there was a
27 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
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1 to the Certificate of Merit served on the Attorney General the confidential factual
2 information sufficient to establish the basis of the Certificate of Merit.

3 21. Plaintiff's notices 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 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
7 gave notices of the alleged violations to EUROSTAR, and the public prosecutors
8 referenced in Paragraph 18.

9 23. 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.

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13 **FIRST CAUSE OF ACTION**

14 **(By Consumer Advocacy Group, Inc. and against EUROSTAR, and Does 1-20 for**
15 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
16 **(*Health & Safety Code*, §§ 25249.5, *et seq.*)**

17 **Cobra Black Fisherman Sandals Item #000465197 (SKU #465197)**

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

20 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
21 distributor, promoter, or retailer of "Cobra Black Fisherman Sandals Item #000465197
22 (SKU #465197)" (hereinafter "Sandals"), a consumer product designed as footwear.

23 26. Plaintiff is informed, believes, and thereon alleges that Sandals contain Lead.

24 27. Defendants knew or should have known that Lead has been identified by the State of
25 California as a chemical known to cause cancer and reproductive toxicity and therefore
26 was subject to Proposition 65 warning requirements. Defendants were also informed of
27 the presence of Lead in Sandals within Plaintiff's notice of alleged violations further
28 discussed above at Paragraph 18.

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

7 29. Plaintiff's allegations regarding Sandals also concern "[o]ccupational exposure[s],"
8 which are exposures "to any employees in his or her employer's workplace." *Cal. Code*
9 *Reg.* tit. 27, § 25602(f). As mentioned herein, employees were exposed to Lead in their
10 employer's workplace as a result of handling Sandals, in conjunction with packaging,
11 shipping, distributing and/or selling Sandals, among other activities, without having first
12 been given clear and reasonable warnings that such handling would cause exposures to
13 Lead.

14 30. Plaintiff's allegations regarding Sandals also concern "[e]nvironmental exposure[s],"
15 which are exposures "which may foreseeably occur as the result of contact with an
16 environmental medium, including, but not limited to, ambient air, indoor air, drinking
17 water, standing water, running water, soil vegetation, or manmade or natural substances,
18 either through inhalation, ingestion, skin contact or otherwise. Environmental exposures
19 include all exposures which are not consumer products exposures, or occupational
20 exposures." *Cal. Code Regs.* tit. 27, § 25602(c). Defendants caused environmental
21 exposures by not providing any Proposition 65-compliant warnings at their distributing,
22 shipping, warehousing, and retail facilities located at 1603 Wilshire Boulevard, Los
23 Angeles, California 90017, among other locations where such exposures could
24 foreseeably occur, to persons who could foreseeably come into contact with Sandals.
25 Such exposures also occurred beyond the property owned or controlled by Defendants.

26 31. Plaintiff is informed, believes, and thereon alleges that between October 17, 2007 and the
27 present, each of the Defendants knowingly and intentionally exposed their employees and
28 California consumers and users of Sandals, which Defendants manufactured, distributed,

1 or sold as mentioned above, to Lead, without first providing any type of clear and
2 reasonable warning of such to the exposed persons before the time of exposure.

3 Defendants have distributed and sold Sandals in California. Defendants know and intend
4 that California consumers will use and consume Sandals thereby exposing them to Lead.

5 Defendants thereby violated Proposition 65.

6 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.

7 Persons sustain exposures by handling Sandals without wearing gloves or any other
8 personal protective equipment, or by touching bare skin or mucous membranes with
9 gloves after handling Sandals, as well as through hand to mouth contact, hand to mucous
10 membrane, or breathing in particulate matter dispersed from Sandals.

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

18 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
20 violations alleged herein will continue to occur into the future.

21 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
22 \$2,500.00 per day per individual exposure to Lead from Sandals, pursuant to Health and
23 Safety Code section 25249.7(b).

24 36. In the absence of equitable relief, the general public and Defendants' employees will
25 continue to be involuntarily exposed to Lead that is contained in Sandals, creating a
26 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
27 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
28 remedy at law.

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

3 **PRAYER FOR RELIEF**

4 Plaintiff demands against each of the Defendants as follows:

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

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11 Dated: June 13, 2011

YEROUSHALMI & ASSOCIATES

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14 BY: 

15 Reuben Yeroushalmi
16 Attorneys for Plaintiff,
17 Consumer Advocacy Group, Inc.
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