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

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 MARUKAI CORPORATION, a Hawai'i  
19 Corporation, DAISO CALIFORNIA LLC, a  
20 California Limited Liability Company,  
21 DAISO HOLDING, USA INC., a  
22 Washington Corporation, and DOES 1-20;

23 Defendants.

24 CASE NO.

**BC469147**

25 COMPLAINT FOR PENALTY,  
26 INJUNCTION, AND RESTITUTION

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

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

29 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants  
30 MARUKAI CORPORATION, DAISO CALIFORNIA LLC, DAISO HOLDING, USA INC.,  
31 and DOES 1-20, as follows:

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33 ///

34 ///

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

SEP 08 2011

John A. Clarke, Executive Officer/Clerk  
BY Regina Juliano Deputy

COPY

THE PARTIES

1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG") is an organization 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 MARUKAI CORPORATION ("MARUKAI") is a Hawai'i corporation, qualified to do business and doing business in the State of California at all relevant times herein.
3. Defendant DAISO CALIFORNIA LLC ("DAISO LLC") is a California limited liability company, qualified to do business and doing business in the State of California at all relevant times herein.
4. Defendant DAISO HOLDING, USA INC., ("DAISO HOLDING") is a Washington corporation, qualified to do business and doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20, 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.
6. At all times mentioned herein, the term "Defendants" includes MARUKAI, DAISO LLC, DAISO HOLDING, and Does 1-20.
7. 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.
8. At all times relevant to this action, each of the Defendants, including Does 1-20, 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

1 of this agency, service, or employment, and was acting with the consent, permission, and  
2 authorization of each of the other Defendants. All actions of each of the Defendants  
3 alleged in this Complaint were ratified and approved by every other Defendant or their  
4 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
5 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

### 10 JURISDICTION

- 11 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
12 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
13 those given by statute to other trial courts. This Court has jurisdiction over this action  
14 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
15 violations of Proposition 65 in any Court of competent jurisdiction.
- 16 11. This Court has jurisdiction over Defendants named herein because Defendants either  
17 reside or are located in this State or are foreign corporations authorized to do business in  
18 California, are registered with the California Secretary of State, or who do sufficient  
19 business in California, have sufficient minimum contacts with California, or otherwise  
20 intentionally avail themselves of the markets within California through their manufacture,  
21 distribution, promotion, marketing, or sale of their products within California to render  
22 the exercise of jurisdiction by the California courts permissible under traditional notions  
23 of fair play and substantial justice.
- 24 12. Venue is proper in the County of Los Angeles because one or more of the instances of  
25 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
26 because Defendants conducted, and continue to conduct, business in the County of Los  
27 Angeles with respect to the consumer product that is the subject of this action.



1 17. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl  
2 Phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons  
3 in California to the Proposition 65-listed chemicals of such products without first  
4 providing clear and reasonable warnings of such to the exposed persons prior to the time  
5 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

6 18. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
7 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
8 to the list of chemicals known to the State to cause developmental male reproductive  
9 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
10 months after addition of DEHP to the list of chemicals known to the State to cause  
11 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
12 requirements and discharge prohibitions.

13 **SATISFACTION OF PRIOR NOTICE**

14 19. On or about November 30, 2010 and December 23, 2010, Plaintiff gave notice of alleged  
15 violations of Health and Safety Code section 25249.6, concerning consumer products  
16 exposures, subject to a private action to Defendants and to the California Attorney  
17 General, County District Attorneys, and City Attorneys for each city containing a  
18 population of at least 750,000 people in whose jurisdictions the violations allegedly  
19 occurred, concerning the product Children's Vinyl Purse (Tissue Pouch Polka  
20 Dot/Leopard Pattern) (Pouch No. 612).

21 20. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
22 products involved, the likelihood that such products would cause users to suffer  
23 significant exposures to DEHP, and the corporate structure of each of the Defendants.

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

1 information, the attorney for Plaintiff who executed the Certificate of Merit believed  
2 there was a reasonable and meritorious case for this private action. The attorney for  
3 Plaintiff attached to the Certificate of Merit served on the Attorney General the  
4 confidential factual information sufficient to establish the basis of the Certificate of  
5 Merit.

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

9 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
10 gave notices of the alleged violations to Defendants, and the public prosecutors  
11 referenced in Paragraph 19.

12 24. 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 FIRST CAUSE OF ACTION

16 (By Consumer Advocacy Group, Inc. and against MARUKAI CORPORATION, DAISO  
17 CALIFORNIA LLC, DAISO HOLDING, USA INC., and Does 1-20 for Violations of  
18 Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &*  
19 *Safety Code*, §§ 25249.5, *et seq.*))

20 **Children's Vinyl Purse (Tissue Pouch Polka Dot/Leopard Pattern) (Pouch No. 612)**

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

23 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
24 distributor, promoter, or retailer of Children's Vinyl Purse (Tissue Pouch Polka  
25 Dot/Leopard Pattern) (Pouch No. 612) (hereinafter "Purse"), a consumer product  
26 designed for use for transporting products and goods from Defendant's stores.

27 27. Plaintiff is informed, believes, and thereon alleges that Purse contains DEHP.  
28

1 28. Defendants knew or should have known that DEHP has been identified by the State of  
2 California as a chemical known to cause cancer and reproductive toxicity and therefore  
3 was subject to Proposition 65 warning requirements. Defendants were also informed of  
4 the presence of DEHP in Purse within Plaintiff's notice of alleged violations further  
5 discussed above at Paragraph 19.

6 29. Plaintiff's allegations regarding Purse concern "[c]onsumer products exposure[s]," which  
7 "is an exposure that results from a person's acquisition, purchase, storage, consumption,  
8 or other reasonably foreseeable use of a consumer good, or any exposure that results from  
9 receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. Purse is a consumer  
10 product, and, as mentioned herein, exposures to DEHP took place as a result of such  
11 normal and foreseeable consumption and use.

12 30. Plaintiff is informed, believes, and thereon alleges that between August 3, 2007 and the  
13 present, each of the Defendants knowingly and intentionally exposed their employees and  
14 California consumers and users of Purse, which Defendants manufactured, distributed, or  
15 sold as mentioned above, to DEHP, without first providing any type of clear and  
16 reasonable warning of such to the exposed persons before the time of exposure.  
17 Defendants have distributed and sold Purse in California. Defendants know and intend  
18 that California consumers will use and consume Purse thereby exposing them to DEHP.  
19 Defendants thereby violated Proposition 65.

20 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
21 Persons sustain exposures by handling Purse without wearing gloves or any other  
22 personal protective equipment, or by touching bare skin or mucous membranes with  
23 gloves after handling Purse, as well as through hand to mouth contact, hand to mucous  
24 membrane, or breathing in particulate matter dispersed from Purse.

25 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
26 Proposition 65 as to Purse have been ongoing and continuous to the date of the signing of  
27 this complaint, as Defendants engaged and continue to engage in conduct which violates  
28 Health and Safety Code section 25249.6, including the manufacture, distribution,

1 promotion, and sale of Purse, so that a separate and distinct violation of Proposition 65  
2 occurred each and every time a person was exposed to DEHP by Purse as mentioned  
3 herein.

4 33. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
5 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
6 violations alleged herein will continue to occur into the future.

7 34. Based on the allegations herein, Defendants are liable for civil penalties of up to  
8 \$2,500.00 per day per individual exposure to DEHP from Purse, pursuant to Health and  
9 Safety Code section 25249.7(b).

10 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
11 filing this Complaint.

12  
13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

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

20  
21 Dated: September 7, 2011

YEROUSHALMI & ASSOCIATES

22  
23  
24 BY: 

25 Reuben Yeroushalmi  
26 Attorneys for Plaintiff,  
27 Consumer Advocacy Group, Inc.  
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