

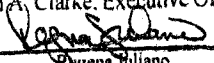
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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 14 2011

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

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

17 Plaintiff,

18 v.

19 SANYO NORTH AMERICA
20 CORPORATION, a Delaware Corporation,
21 SANYO ELECTRONIC DEVICE (USA)
22 CORP., a Delaware Corporation, and
23 SANYO ENERGY (USA) CORP., a
24 Delaware Corporation and DOES 1-50;

25 Defendants.

CASE NO.

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)

BC475862

26 Plaintiff CONSUMER ADVOCACY GROUP, Inc. alleges a cause of action against
27 defendants, as follows:

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THE PARTIES

- 1
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
3 organization qualified to do business in the State of California. CAG is a person within
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
5 as a private attorney general, brings this action in the public interest as defined under
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant SANYO NORTH AMERICA CORP. (“SANYO”) is a Delaware corporation,
8 qualified to do business and doing business in the State of California at all relevant times
9 herein.
- 10 3. Defendant SANYO ELECTRONIC DEVICE (USA) CORP.. (“SANYO
11 ELECTRONIC”) is a Delaware corporation, qualified to do business and doing business
12 in the State of California at all relevant times herein.
- 13 4. Defendant SANYO ENERGY (USA) CORP. (“SANYO ENERGY”) is a Delaware
14 corporation, qualified to do business and doing business in the State of California at all
15 relevant times herein.
- 16 5. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,
17 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
18 complaint to allege their true names and capacities when ascertained. Plaintiff is
19 informed, believes, and thereon alleges that each fictitiously named defendant is
20 responsible in some manner for the occurrences herein alleged and the damages caused
21 thereby.
- 22 6. At all times mentioned herein, the term “Defendants” includes Sanyo, Sanyo Energy,
23 Sanyo Electronic, and Does 1-50.
- 24 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
25 times mentioned herein have conducted business within the State of California.
- 26 8. At all times relevant to this action, each of the Defendants, including Does 1-50, was an
27 agent, servant, or employee of each of the other Defendants. In conducting the activities
28 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.

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2 **BACKGROUND AND PRELIMINARY FACTS**

3 13. In 1986, California voters approved an initiative to address growing concerns about
4 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
5 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
6 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
7 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
8 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
9 from contamination, to allow consumers to make informed choices about the products
10 they buy, and to enable persons to protect themselves from toxic chemicals as they see
11 fit.

12 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to
13 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
14 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
15 chemicals and chemical families. Proposition 65 imposes warning requirements and
16 other controls that apply to Proposition 65-listed chemicals.

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

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

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

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

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

19 **SATISFACTION OF PRIOR NOTICE**

20 20. On or about December 27, 2010, Plaintiff gave notice of alleged violations of Health and
21 Safety Code section 25249.6, concerning consumer products exposures, subject to a
22 private action to Sanyo, Sanyo Electric, Sanyo Energy, and to the California Attorney
23 General, County District Attorneys, and City Attorneys for each city containing a
24 population of at least 750,000 people in whose jurisdictions the violations allegedly
25 occurred, concerning the consumer product GE Sanyo Cellular Hands Free Kit: Ear Bud
26 Type with On/Off Switch (For use with Nokia 5100, 6100 & 7100 Series cellular
27 phone)(Blue and Red Packaging) (Order No. 45885).

- 1 21. Before sending the notices 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 notices 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 notices of the alleged violations to SANYO, SANYO ENERGY, SANYO
19 ELECTRIC, and the public prosecutors referenced in Paragraph 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 **FIRST CAUSE OF ACTION**

24 **(By CONSUMER ADVOCACY GROUP, INC. and against SANYO, SANYO ELECTRIC,**
25 **SANYO ENERGY, and Does 1-50 for Violations of Proposition 65, The Safe Drinking**
26 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**
27 **GE Sanyo Cellular Hands Free Kits**

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 is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of GE Sanyo Cellular Hands Free Kits, an example of
5 which is: Ear Bud Type with On/Off Switch (For use with Nokia 5100, 6100 & 7100
6 Series cellular phone)(Blue and Red Packaging) (Order No. 45885) (hereinafter "Hands
7 Free Kit"), a consumer product designed for personal use with a cellular telephone.

8 28. Plaintiff is informed, believes, and thereon alleges that Hands Free Kit contains Lead.

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

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

20 31. Plaintiff is informed, believes, and thereon alleges that between December 27, 2007 and
21 the present, each of the Defendants knowingly and intentionally exposed California
22 consumers and users of Hands Free Kit, which Defendants manufactured, distributed, or
23 sold as mentioned above, to Lead, without first providing any type of clear and
24 reasonable warning of such to the exposed persons before the time of exposure.
25 Defendants have distributed and sold Hands Free Kit in California. Defendants know and
26 intend that California consumers will use and consume Hands Free Kit thereby exposing
27 them to Lead. Defendants thereby violated Proposition 65.

- 1 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.
2 Persons sustain exposures by handling Hands Free Kit without wearing gloves or any
3 other personal protective equipment, or by touching bare skin or mucous membranes with
4 gloves after handling Hands Free Kit, as well as through hand to mouth contact, hand to
5 mucous membrane, or breathing in particulate matter dispersed from Hands Free Kit.
- 6 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
7 Proposition 65 as to Hands Free Kit have been ongoing and continuous to the date of the
8 signing of this complaint, as Defendants engaged and continue to engage in conduct
9 which violates Health and Safety Code section 25249.6, including the manufacture,
10 distribution, promotion, and sale of Hands Free Kit, so that a separate and distinct
11 violation of Proposition 65 occurred each and every time a person was exposed to Lead
12 by Hands Free Kit as mentioned herein.
- 13 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
14 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
15 violations alleged herein will continue to occur into the future.
- 16 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to Lead from Hands Free Kit, pursuant to
18 Health and Safety Code section 25249.7(b).
- 19 36. In the absence of equitable relief, the general public will continue to be involuntarily
20 exposed to Lead that is contained in Hands Free Kit, creating a substantial risk of
21 irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused
22 irreparable harm for which there is no plain, speedy, or adequate remedy at law.
- 23 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
24 filing this Complaint.

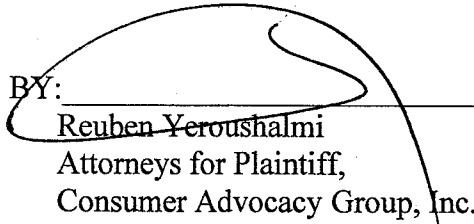
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27 **PRAYER FOR RELIEF**

28 Plaintiff demands against each of the Defendants as follows:

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

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7 Dated: 12 / 13, 2011

YEROUSHALMI & ASSOCIATES

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10 BY: 
11 Reuben Yeroushalmi
12 Attorneys for Plaintiff,
13 Consumer Advocacy Group, Inc.
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