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10 Consumer Advocacy Group, Inc.

11  
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 ACE HARDWARE CORP., a Delaware  
20 Corporation; CROWN HARDWARE, INC.,  
21 a California Corporation; and DOES 1-20;

22 Defendants.

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

JUL 18 2011

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

BC 465555

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)

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

25 ///  
26 ///  
27 ///  
28 ///

THE PARTIES

1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit corporation 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 Ace Hardware Corp. ("Ace Hardware") is a company incorporated in the State of Delaware.
3. Defendant Crown Hardware, Inc. ("Crown Hardware") is a company incorporated in the State of California.
4. 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.
5. At all times mentioned herein, the term "Defendants" includes Ace Hardware Corp., Crown Hardware, Inc., and Does 1-20.
6. 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.
7. 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 of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

5 **JURISDICTION**

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

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

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

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24 \\\

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 December 31, 2010 Plaintiff gave notice of alleged violations of Health and  
16 Safety Code section 25249.6, concerning consumer product exposures, subject to a  
17 private action to Ace Hardware, identified in the notice as “Ace Hardware Corp.,” Crown  
18 Hardware, identified in the notice as “Crown Hardware, Inc.,” and to the California  
19 Attorney General, County District Attorneys, and City Attorneys for each city containing  
20 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
21 occurred, concerning the following consumer product:

22 (1) “Ultra LED” 15 Lights, (Green and Red Box) (UPC 5562580091)

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

26 21. Plaintiff’s notice of alleged violation included a Certificate of Merit executed by the  
27 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
28 Plaintiff who executed the certificate had consulted with at least one person with relevant

1 and appropriate expertise who reviewed data regarding the exposures to lead,  
2 respectively, which are the subject Proposition 65-listed chemicals of this action. Based  
3 on that information, the attorney for Plaintiff who executed the Certificate of Merit  
4 believed there was a reasonable and meritorious case for this private action. The attorney  
5 for Plaintiff attached to the Certificate of Merit served on the Attorney General the  
6 confidential factual information sufficient to establish the basis of the Certificate of  
7 Merit.

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

11 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
12 gave notice of the alleged violations to Ace Hardware and Crown Hardware and the  
13 public prosecutors referenced in Paragraph 19.

14 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
15 any applicable district attorney or city attorney has commenced and is diligently  
16 prosecuting an action against the Defendants.

17 25. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
18 filing this Complaint.

19  
20  
21 **FIRST CAUSE OF ACTION**

22 **(By Consumer Advocacy Group, Inc. and against Ace Hardware, Crown Hardware, and**  
23 **Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
24 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

25 **"Ultra LED" 15 Lights, (Green and Red Box) (UPC 5562580091)**

26 26. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
27 paragraphs 1 through 25 of this complaint as though fully set forth herein.  
28

- 1 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
2 distributor, promoter, or retailer of "Ultra LED" 15 Lights, (Green and Red Box) (UPC  
3 5562580091) ("Lights"), a consumer product designed for personal use.
- 4 28. Plaintiff is informed, believes, and thereon alleges that Lights contain Lead.
- 5 29. Defendants knew or should have known that Lead has been identified by the State of  
6 California as a chemical known to cause cancer and reproductive toxicity and therefore  
7 was subject to Proposition 65 warning requirements. Defendants were also informed of  
8 the presence of Lead in the Lights within Plaintiff's notice of alleged violations further  
9 discussed above at Paragraphs 19.
- 10 30. Plaintiff's allegations regarding Lights concern "[c]onsumer products exposure[s],"  
11 which "is an exposure that results from a person's acquisition, purchase, storage,  
12 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
13 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.  
14 Lights are a consumer product, and, as mentioned in herein, exposures to Lead took place  
15 as a result of such normal and foreseeable consumption and use.
- 16 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
17 Persons sustain exposures by handling Lights without wearing gloves or by touching bare  
18 skin or mucous membranes with gloves after handling Lights as well as hand to mouth  
19 contact (*e.g.*, by inserting surfaces, such as hands, that have contacted Lights into their  
20 mouths), hand to mucous membrane, or breathing in particulate matter released or  
21 emanating from Lights during application and installation, as well as through  
22 environmental mediums that carry the Lead and Lead Compounds once contained within  
23 the Lights.
- 24 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
25 Proposition 65 as to Lights have been ongoing and continuous to the date of the signing  
26 of this complaint, as Defendants engaged and continue to engage in conduct which  
27 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
28 promotion, and sale of Lights, so that a separate and distinct violation of Proposition 65

1 occurred each and every time a person was exposed to Lead by Lights as mentioned  
2 herein.

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

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

9 35. In the absence of equitable relief, the general public will continue to be involuntarily  
10 exposed to Lead that is contained in Lights, creating a substantial risk of irreparable  
11 harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable  
12 harm for which there is no plain, speedy, or adequate remedy at law.

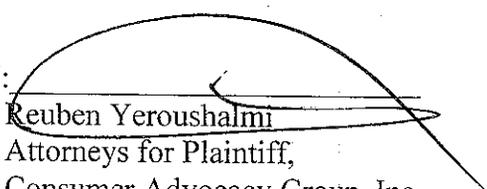
13 **PRAYER FOR RELIEF**

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 6.

21 Dated: 7/12, 2011

YEROUSHALMI & ASSOCIATES

22  
23  
24 BY:   
25 Reuben Yeroushalmi  
26 Attorneys for Plaintiff,  
27 Consumer Advocacy Group, Inc.  
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