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

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ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

FEB 24 2012

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

BC 479564

12 CONSUMER ADVOCACY GROUP, INC.,  
13 in the public interest,

14 Plaintiff,

15 v.

16 TELEFLEX MEDICAL, INC., a California  
17 Corporation and DOES 1-20;

18 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)

20  
21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
22 defendants TELEFLEX MEDICAL, INC., and DOES 1-20, as follows:

23 ///

24 ///

25 ///

26 ///

**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 TELEFLEX MEDICAL, INC. (“TELEFLEX”) is a California corporation, qualified to do business and doing business in the State of California at all relevant times herein.
3. 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.
4. At all times mentioned herein, the term “Defendants” includes TELEFLEX and DOES 1-20.
5. 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.
6. 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 7. 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 8. 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 9. 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 10. 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 product that is the subject of this action.

23  
24 **BACKGROUND AND PRELIMINARY FACTS**

25 11. In 1986, California voters approved an initiative to address growing concerns about  
26 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
27 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
28 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking

1 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
2 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
3 from contamination, to allow consumers to make informed choices about the products  
4 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
5 fit.

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

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

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

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

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

8 **SATISFACTION OF PRIOR NOTICE**

9 17. On or about May 6, 2011 Plaintiff gave notice of alleged violations of Health and Safety  
10 Code section 25249.6, concerning consumer products exposures, subject to a private  
11 action to Defendants and to the California Attorney General, County District Attorneys,  
12 and City Attorneys for each city containing a population of at least 750,000 people in  
13 whose jurisdictions the violations allegedly occurred, concerning the product Vinyl  
14 Gloves in Urology Procedure Trays and Kits.

15 18. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
16 products involved, the likelihood that such products would cause users to suffer  
17 significant exposures to DEHP, and the corporate structure of each of the Defendants.

18 19. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
19 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
20 Plaintiff who executed the certificate had consulted with at least one person with relevant  
21 and appropriate expertise who reviewed data regarding the exposures to DEHP, which is  
22 the subject of the Proposition 65-listed chemicals of this action. Based on that  
23 information, the attorney for Plaintiff who executed the Certificate of Merit believed  
24 there was a reasonable and meritorious case for this private action. The attorney for  
25 Plaintiff attached to the Certificate of Merit served on the Attorney General the  
26 confidential factual information sufficient to establish the basis of the Certificate of  
27 Merit.

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

4 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
5 gave notices of the alleged violations to Defendants, and the public prosecutors  
6 referenced in Paragraph 17.

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

10 **FIRST CAUSE OF ACTION**

11 **(By Consumer Advocacy Group, Inc. and against TELEFLEX MEDICAL, INC. and Does**  
12 **1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**  
13 **of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

14 **Vinyl Gloves in Urology Procedure Trays and Kits.**

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

17 24. Each of the Defendants are, and at all times mentioned herein were, a manufacturer,  
18 distributor, promoter, or retailer of Vinyl Gloves in Urology Procedure Trays and Kits  
19 (hereinafter "Gloves"), including but not limited to "Rusch" Foley Insertion Tray (with  
20 30cc prefilled syringe) (REF 76700), a consumer product designed for urology  
21 procedures.

22 25. Plaintiff is informed, believes, and thereon alleges that Gloves contains DEHP.

23 26. Defendants knew or should have known that DEHP has been identified by the State of  
24 California as a chemical known to cause cancer and reproductive toxicity and therefore  
25 was subject to Proposition 65 warning requirements. Defendants were also informed of  
26 the presence of DEHP in Gloves within Plaintiff's notice of alleged violations further  
27 discussed above at Paragraph 17.

1 27. Plaintiff's allegations regarding Gloves 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 Gloves are a consumer product, and, as mentioned herein, exposures to DEHP took place  
6 as a result of such normal and foreseeable consumption and use.

7 28. Plaintiff is informed, believes, and thereon alleges that between May 6, 2008 and the  
8 present, each of the Defendants knowingly and intentionally exposed their employees and  
9 California consumers and users of Gloves, which Defendants manufactured, distributed,  
10 or sold as mentioned above, to DEHP, without first providing any type of clear and  
11 reasonable warning of such to the exposed persons before the time of exposure.

12 Defendants have distributed and sold Gloves in California. Defendants know and intend  
13 that California consumers will use and consume Gloves thereby exposing them to DEHP.  
14 Defendants thereby violated Proposition 65.

15 29. The principal routes of exposure are through dermal contact, ingestion and inhalation.

16 Persons sustain exposures, including but not limited to handling Gloves without wearing  
17 gloves or any other personal protective equipment, or by touching bare skin or mucous  
18 membranes with gloves after handling Gloves, as well as through direct and indirect hand  
19 to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
20 from Gloves.

21 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
22 Proposition 65 as to Gloves have been ongoing and continuous to the date of the signing  
23 of this complaint, as Defendants engaged and continue to engage in conduct which  
24 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
25 promotion, and sale of Gloves, so that a separate and distinct violation of Proposition 65  
26 occurred each and every time a person was exposed to DEHP by Gloves as mentioned  
27 herein.

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

4 32. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to DEHP from Cap, pursuant to Health and  
6 Safety Code section 25249.7(b).

7 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
8 filing this Complaint.

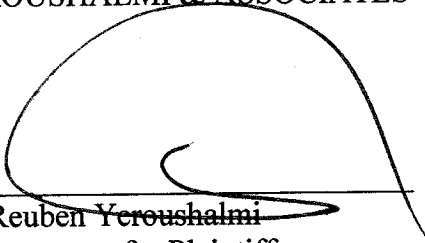
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10 **PRAYER FOR RELIEF**

11 Plaintiff demands against each of the Defendants as follows:

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

17  
18 Dated: Feb 23, 2012

YEROUSHALMI & ASSOCIATES

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