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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

12 Plaintiff,

13 v.

14 BRADSHAW INTERNATIONAL, INC., a
15 California Corporation and DOES 1-20;

16 Defendants.
17

CASE NO. CGC-12-519961

COMPLAINT FOR PENALTY,
INJUNCTION, AND RESTITUTION

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

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

BY FAX

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19
20 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as
21 follows:

22 THE PARTIES

- 23 1. Plaintiff, CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" OR "CAG") is an
24 organization qualified to do business in the State of California. CAG is a person within
25 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
26 as a private attorney general, brings this action in the public interest as defined under
27 Health and Safety Code section 25249.7, subdivision (d).
28

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2012 APR 12 AM 1:10

CLERK OF THE COURT
BY: ELIAS BLITT
DEPUTY CLERK

- 1 2. Defendant, BRADSHAW INTERNATIONAL, INC. is a corporation duly organized and
2 existing under the laws of the state of California.
- 3 3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,
4 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
5 Complaint to allege their true names and capacities when ascertained. Plaintiff is
6 informed, believes, and thereon alleges that each fictitiously named defendant is
7 responsible in some manner for the occurrences herein alleged and the damages caused
8 thereby.
- 9 4. As to all causes of action, the term "Defendants" includes BRADSHAW
10 INTERNATIONAL, INC. and DOES 1-20.
- 11 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
12 times mentioned herein has conducted business within the State of California.
- 13 6. At all times relevant to this action, each of the Defendants, including Does 1-20, was an
14 agent, servant, or employee of each of the other Defendants. In conducting the activities
15 alleged in this Complaint, each of the Defendants was acting within the course and scope
16 of this agency, service, or employment, and was acting with the consent, permission, and
17 authorization of each of the other Defendants. All actions of each of the Defendants
18 alleged in this Complaint were ratified and approved by every other Defendant or their
19 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
20 and/or facilitated the alleged wrongful conduct of each of the other Defendants.
- 21 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
22 Defendants was a person doing business within the meaning of Health and Safety Code
23 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
24 employees at all relevant times.

25
26 **JURISDICTION**

- 27 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
28 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except

1 those given by statute to other trial courts. This Court has jurisdiction over this action
2 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
3 violations of Proposition 65 in any Court of competent jurisdiction.

- 4 9. This Court has jurisdiction over Defendants named herein because Defendants either
5 reside or are located in this State or are foreign corporations authorized to do business in
6 California, are registered with the California Secretary of State, or who do sufficient
7 business in California, have sufficient minimum contacts with California, or otherwise
8 intentionally avail themselves of the markets within California through their manufacture,
9 distribution, promotion, marketing, or sale of their products within California to render
10 the exercise of jurisdiction by the California courts permissible under traditional notions
11 of fair play and substantial justice.
- 12 10. Venue is proper in the County of San Francisco because one or more of the instances of
13 wrongful conduct occurred, and continues to occur, in the County of San Francisco
14 and/or because Defendants conducted, and continue to conduct, business in the County of
15 San Francisco with respect to the consumer product that is the subject of this action.

16
17 **BACKGROUND AND PRELIMINARY FACTS**

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

1 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
2 chemicals and chemical families. Proposition 65 imposes warning requirements and
3 other controls that apply to Proposition 65-listed chemicals.

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

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

16 15. Through research and investigation, Plaintiff identified certain practices of Defendants of
17 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed
18 chemicals of the consumer products discussed below without first providing clear and
19 reasonable warnings of such to the exposed persons prior to the time of exposure.

20 **SATISFACTION OF PRIOR NOTICE**

21 16. On or about June 7, 2011, Plaintiff gave notice of alleged violations of Health and Safety
22 Code section 25249.6, concerning consumer products exposures, subject to a private
23 action to Bradshaw International, Inc. and to the California Attorney General, County
24 District Attorneys, and City Attorneys for each city containing a population of at least
25 750,000 people in whose jurisdictions the violations allegedly occurred concerning the
26 consumer product Coffee Filter Separators.

27 17. On or about September 6, 2011, Plaintiff gave notice of alleged violations of Health and
28 Safety Code Section 25249.6, concerning consumer products exposures, subject to a

1 private action to Bradshaw International, Inc., and to the California Attorney General,
2 County District Attorneys, and City Attorneys for each city containing a population of at
3 least 750,000 people in whose jurisdictions the violations allegedly occurred concerning
4 the consumer product Corn Cutters.

5 18. On or about November 9, 2011, Plaintiff gave notice of alleged violations of Health and
6 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
7 private action to Bradshaw International, Inc., and to the California Attorney General,
8 County District Attorneys, and City Attorneys for each city containing a population of at
9 least 750,000 people in whose jurisdictions the violations allegedly occurred concerning
10 the consumer product Tongs.

11 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer
12 product involved, and the likelihood that such product would cause users to suffer
13 significant exposures to the relevant Proposition 65-listed chemical at issue.

14 20. Plaintiff's notice of alleged violations included a Certificate of Merit executed by the
15 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
16 Plaintiff who executed the certificate had consulted with at least one person with relevant
17 and appropriate expertise who reviewed data regarding the exposures to lead, lead
18 compounds, and Diethyl Hexyl Phthalate ("DEHP"), which are the subject Proposition
19 65-listed chemicals of this action. Based on that information, the attorney for Plaintiff
20 who executed the Certificate of Merit believed there was a reasonable and meritorious
21 case for this private action. The attorney for Plaintiff attached to the Certificate of Merit
22 served on the Attorney General the confidential factual information sufficient to establish
23 the bases of the Certificate of Merit.

24 21. Plaintiff's notice of alleged violation also included a Certificate of Service and a
25 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
26 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

1 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notice of the alleged violations to Bradshaw International, Inc. and the public
3 prosecutors referenced in Paragraphs 16-18.

4 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
5 any applicable district attorney or city attorney has commenced and is diligently
6 prosecuting an action against the Defendants.

7 **FIRST CAUSE OF ACTION**

8 **(Against Bradshaw International, Inc. and Does 1-20 for Violations of Proposition 65, The**
9 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**
10 **25249.5, *et seq.*))**

11 **Coffee Filter Separators**

12 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
13 distributor, promoter, or retailer of Coffee Filter Separators (“Separators”), including but
14 not limited to Coffee Filter Separator, “Imported by Bradshaw International, Inc., Rancho
15 Cucamonga, CA 91730” (UPC 076753330886), a consumer product designed for use as a
16 household product.

17 25. Plaintiff is informed, believes, and thereon alleges that the Separators contain lead and
18 lead compounds.

19 26. On February 27, 1987, the Governor of California added lead and lead compounds to the
20 list of chemicals known to the State to cause reproductive toxicity (*Cal. Code Regs. tit.*
21 *27, § 27001(c)*).

22 27. On October 1, 1992 the Governor added lead and lead components to the list of
23 chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).

24 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
25 after addition of lead to the list of chemicals known to the State to cause cancer, lead and
26 lead compounds became fully subject to Proposition 65 warning requirements and
27 discharge prohibitions.

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1 28. Defendants knew or should have known that lead and lead compounds have been
2 identified by the State of California as a chemical known to cause cancer and therefore
3 were subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of lead and lead compounds in the Separators within Plaintiff's notice of
5 alleged violation further discussed above at Paragraph 16.

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

13 30. Plaintiff is informed, believes, and thereon alleges that between June 7, 2008 and the
14 present, each of the Defendants knowingly and intentionally exposed California
15 consumers and users of Separators, which Defendants manufactured, distributed, or sold
16 as mentioned above, to lead and lead compounds, without first providing any type of
17 clear and reasonable warning of such to the exposed persons before the time of exposure.
18 Defendants have distributed and sold Separators in California. Defendants know and
19 intend that California consumers will use and consume Separators thereby exposing them
20 to lead and lead compounds. Defendants thereby violated Proposition 65.

21 31. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
22 Persons sustain exposures by handling the Separators without wearing gloves or by
23 touching bare skin or mucous membranes with gloves after handling Separators, as well
24 as hand to mouth contact, hand to mucous membrane, or breathing in particulate matter
25 emanating from the Separators during application and installation, as well as through
26 environmental mediums that carry the lead and lead compounds once contained within
27 the Separators.

1 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to Separators have been ongoing and continuous to the date of the
3 signing of this Complaint, as Defendants engaged and continue to engage in conduct
4 which violates Health and Safety Code section 25249.6, including the manufacture,
5 distribution, promotion, and sale of Separators, so that a separate and distinct violation of
6 Proposition 65 occurred each and every time a person was exposed to lead by Separators
7 as mentioned herein.

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

11 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
12 \$2,500.00 per day per individual exposure to lead and lead compounds from Separators,
13 pursuant to Health and Safety Code section 25249.7(b).

14 35. In the absence of equitable relief, California consumers, the general public, and others
15 will continue to be involuntarily exposed to lead and lead compounds that are contained
16 in Separators, creating a substantial risk of irreparable harm. Thus, by committing the
17 acts alleged herein, Defendants have caused irreparable harm for which there is no plain,
18 speedy, or adequate remedy at law.

19 36. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
20 filing this Complaint.

21 **SECOND CAUSE OF ACTION**

22 **(Against Bradshaw International, Inc., and Does 1-20 for Violations of Proposition 65, The**
23 **Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**
24 **25249.5, et seq.))**

25 **Corn Cutters**

26 37. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
27 distributor, promoter, or retailer of Corn Cutters, including but not limited to
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1 Profreshionals® Corn Cutter #05826 (hereinafter “Cutter”), a consumer product designed
2 for use as utensil to be used with food.

3 38. Plaintiff is informed, believes, and thereon alleges that the Cutter contains DEHP.

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

11 40. Defendants knew or should have known that DEHP has been identified by the State of
12 California as a chemical known to cause cancer and reproductive toxicity and therefore
13 were subject to Proposition 65 warning requirements. Defendants were also informed of
14 the presence of DEHP in the Cutter within Plaintiff's notice of alleged violation further
15 discussed above at Paragraph 17.

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

22 42. Plaintiff's allegations regarding Cutter also concern Occupational Exposures, which
23 “means an exposure to any employee in his or her employer's workplace.” *Cal. Code*
24 *Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendants' employees occurred through
25 the course of their employment in their employers' workplaces.

26 43. Plaintiff is informed, believes, and thereon alleges that between September 6, 2008 and
27 the present, each of the Defendants knowingly and intentionally exposed California
28 consumers and users of Cutter, which Defendants manufactured, distributed, or sold as

1 mentioned above, to DEHP, without first providing any type of clear and reasonable
2 warning of such to the exposed persons before the time of exposure. Defendants have
3 distributed and sold Cutter in California. Defendants know and intend that California
4 consumers will use and consume Cutter thereby exposing them to DEHP. Defendants
5 thereby violated Proposition 65.

6 44. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
7 Persons sustain exposures by handling the Cutter without wearing gloves, by touching
8 bare skin or mucous membranes with gloves after handling Cutter, or by touching bare
9 skin to the Cutter, as well as hand to mouth contact, hand to mucous membrane, or
10 breathing in particulate matter emanating from the Cutter during application and
11 installation, as well as through environmental mediums that carry the DEHP once
12 contained within the Cutter.

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

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

23 47. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to DEHP from Cutter, pursuant to Health and
25 Safety Code section 25249.7(b).

26 48. In the absence of equitable relief, California consumers, the general public, and others
27 will continue to be involuntarily exposed to DEHP that are contained in Cutter, creating a
28 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,

1 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
2 remedy at law.

3 49. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
4 filing this Complaint.

5 THIRD CAUSE OF ACTION

6 (Against Bradshaw International, Inc., and Does 1-20 for Violations of Proposition 65, The
7 Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§*
8 *25249.5, et seq.*))

9 Tongs

10 50. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
11 distributor, promoter, or retailer of Tongs, including but not limited to Good Cook®
12 Tongs #25871 (“hereinafter Tongs”), a consumer product designed to be used in the
13 handling and preparation of food.

14 51. Plaintiff is informed, believes, and thereon alleges that the Tongs contain DEHP.

15 52. On January 1, 1988 the Governor added DEHP to the list of chemicals known to the State
16 to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of
17 chemicals known to the state to produce developmental male reproductive toxicity
18 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
19 after addition of DEHP to the list of chemicals known to the State to cause cancer and
20 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
21 requirements and discharge prohibitions.

22 53. Defendants knew or should have known that DEHP has been identified by the State of
23 California as a chemical known to cause cancer and reproductive toxicity and therefore
24 were subject to Proposition 65 warning requirements. Defendants were also informed of
25 the presence of DEHP in the Tongs within Plaintiff’s notice of alleged violation further
26 discussed above at Paragraph 18.

27 54. Plaintiff’s allegations regarding Tongs concern “[c]onsumer products exposure[s],”
28 which “is an exposure that results from a person’s acquisition, purchase, storage,

1 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
2 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b).*

3 Tongs are a consumer product, and, as mentioned in herein, exposures to DEHP took
4 place as a result of such normal and foreseeable consumption and use.

5 55. Plaintiff’s allegations regarding Tongs also concern Occupational Exposures, which
6 “means an exposure to any employee in his or her employer’s workplace.” *Cal. Code*
7 *Regs. tit. 27, § 25602(f).* Exposures of DEHP to Defendants’ employees occurred through
8 the course of their employment in their employers’ workplaces.

9 56. Plaintiff is informed, believes, and thereon alleges that between November 9, 2008 and
10 the present, each of the Defendants knowingly and intentionally exposed their employees
11 and California consumers and users of Tongs, which Defendants manufactured,
12 distributed, or sold as mentioned above, to DEHP, without first providing any type of
13 clear and reasonable warning of such to the exposed persons before the time of exposure.
14 Defendants have distributed and sold Tongs in California. Defendants know and intend
15 that California consumers will use and consume Tongs thereby exposing them to DEHP.
16 Defendants thereby violated Proposition 65.

17 57. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
18 Persons sustain exposures by handling the Tongs without wearing gloves, by touching
19 bare skin or mucous membranes with gloves after handling Tongs, or by touching bare
20 skin to the Tongs, as well as hand to mouth contact, hand to mucous membrane, or
21 breathing in particulate matter emanating from the Tongs during application and
22 installation, as well as through environmental mediums that carry the DEHP once
23 contained within the Tongs.

24 58. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of
25 Proposition 65 as to Tongs 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 Tongs, so that a separate and distinct violation of Proposition 65

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

3 59. 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 60. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to DEHP from Tongs, pursuant to Health and
8 Safety Code section 25249.7(b).

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

14 62. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
15 filing this Complaint.

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17 **PRAYER FOR RELIEF**

18 Plaintiff demands against each of the Defendants, including Bradshaw International, Inc.,
19 and Does 1-20, as follows:

- 20 1. A permanent injunction mandating Proposition 65-compliant warnings as to the product
21 at issue;
- 22 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 23 3. Costs of suit;
- 24 4. Reasonable attorney fees and costs; and
- 25 5. Any further relief that the court may deem just and equitable.
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Dated: April 11, 12

YEROUSHALMI & ASSOCIATES

BY: 
Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.