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10 Consumer Advocacy Group, Inc.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

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

16 Plaintiff,

17 v.

18 VOLTEC INDUSTRIES, LLC, a California
19 Corporation; TASCO INTERNATIONAL,
20 INC., a California Corporation; TASCO
21 INDUSTRIES, INC., a California
22 Corporation; and DOES 1-50;

23 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)

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
25 Defendants as follows:

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ENDORSED
FILED
Superior Court of California
County of San Francisco
DEC 20 2011
CLERK OF THE COURT
BY: ROSSALY DELAVEGA
Deputy Clerk

CGC-11-516771

BY FAX

THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("PLAINTIFF" OR "CAG") is a 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 TASCO INDUSTRIES, INC. ("TASCO") is a company incorporated in the State of California.
3. Defendant TASCO INTERNATIONAL, INC. ("INTERNATIONAL") is a company incorporated in the State of California.
4. Defendant VOLTEC INDUSTRIES, LLC. ("VOLTEC") is a company incorporated in the State of California.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-50, 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 TASCO INDUSTRIES, INC., TASCO INTERNATIONAL, INC., VOLTEC INDUSTRIES, LLC, and DOES 1-50.
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 1-50, 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

1 alleged in this Complaint were ratified and approved by every other Defendant or their
2 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
3 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

8 **JURISDICTION**

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

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

- 22 12. Venue is proper in the County of San Francisco because one or more of the instances of
23 wrongful conduct occurred, and continues to occur, in the County of San Francisco
24 and/or because Defendants conducted, and continue to conduct, business in the County of
25 San Francisco with respect to the consumer product that is the subject of this action.

26 **BACKGROUND AND PRELIMINARY FACTS**

- 27 13. In 1986, California voters approved an initiative to address growing concerns about
28 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to

1 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
2 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
3 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
4 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
5 from contamination, to allow consumers to make informed choices about the products
6 they buy, and to enable persons to protect themselves from toxic chemicals as they see
7 fit.

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

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

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

25 17. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing
26 products of exposing, knowingly and intentionally, persons in California to the
27 Proposition 65-listed chemicals of such products without first providing clear and
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1 reasonable warnings of such to the exposed persons prior to the time of exposure.

2 Plaintiff later discerned that Defendants engaged in such practice.

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

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

16 **SATISFACTION OF PRIOR NOTICE**

17 20. On or about June 15, 2011, Plaintiff gave notice of alleged violations of Health and
18 Safety Code section 25249.6, concerning consumer products exposures, subject to a
19 private action to VOLTEC INDUSTRIES, LLC., identified in the notice as "VOLTEC
20 INDUSTRIES, LLC", TASCOS INTERNATIONAL, INC., identified in the notice as
21 "TASCOS INTERNATIONAL, INC.", TASCOS INDUSTRIES, INC., identified in the
22 notice as "TASCOS INDUSTRIES, INC." and to the California Attorney General, County
23 District Attorneys, and City Attorneys for each city containing a population of at least
24 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
25 Booster Cables.

26 21. Before sending the notice of alleged violation, Plaintiff investigated the consumer
27 product involved, the likelihood that such product would cause users to suffer significant
28 exposures to lead, and the corporate structure of each of the Defendants.

1 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
2 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
3 Plaintiff who executed the certificate had consulted with at least one person with relevant
4 and appropriate expertise who reviewed data regarding the exposures to lead,
5 respectively, which are the subject Proposition 65-listed chemicals of this action. Based
6 on that information, the attorney for Plaintiff who executed the Certificate of Merit
7 believed there was a reasonable and meritorious case for this private action. The attorney
8 for Plaintiff attached to the Certificate of Merit served on the Attorney General the
9 confidential factual information sufficient to establish the basis of the Certificate of
10 Merit.

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

14 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
15 gave notice of the alleged violations to VOLTEC, TASCOS, INTERNATIONAL and the
16 public prosecutors referenced in Paragraph 20.

17 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
18 any applicable district attorney or city attorney has commenced and is diligently
19 prosecuting an action against the Defendants.

20 **FIRST CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY, INC. and against VOLTEC INDUSTRIES, LLC, TASCOS**
22 **INDUSTRIES, INC., and TASCOS INTERNATIONAL, INC. for Violations of Proposition**
23 **65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**
24 **25249.5, *et seq.*))**

25 **"Booster Cables"**

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.
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- 1 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of “**Booster Cables**” (“Cables”), an exemplar of this
3 product is Booster Cables, 10-00217 a consumer product designed for use with cars.
- 4 28. Plaintiff is informed, believes, and thereon alleges that Cables 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 Cables within Plaintiff’s notice of alleged violations further
9 discussed above at Paragraph 20.
- 10 30. Plaintiff’s allegations regarding Cables concern “consumer products exposure[s],” which
11 “is an exposure that results from a person’s acquisition, purchase, storage, consumption,
12 or other reasonably foreseeable use of a consumer good, or any exposure that results from
13 receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*. Cables are a
14 consumer product, and, as mentioned in herein, exposures to Lead took place as a result
15 of such normal and foreseeable consumption and use.
- 16 31. Plaintiff is informed, believes, and thereon alleges that between June 15, 2008 and the
17 present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of Cables, which Defendants manufactured, distributed, or sold as
19 mentioned above, to Lead, without first providing any type of clear and reasonable
20 warning of such to the exposed persons before the time of exposure. Defendants have
21 distributed and sold Cables in California. Defendants know and intend that California
22 consumers will use and consume Cables thereby exposing them to Lead. Defendants
23 thereby violated Proposition 65.
- 24 32. The principal routes of exposure were through inhalation, oral ingestion, including hand
25 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling
26 the Cables without wearing gloves or by touching bare skin or mucous membranes with
27 gloves after handling the Cables, as well as hand to mouth contact, hand to mucous
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1 membrane, or breathing in particulate matter emanating from the Cables during
2 installation and use.

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

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

13 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to Lead from Cables, pursuant to Health and
15 Safety Code section 25249.7(b).

16 36. In the absence of equitable relief, the general public and Defendants' employees will
17 continue to be involuntarily exposed to Lead that is contained in the Cables, creating a
18 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
19 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
20 remedy at law.

21 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
22 filing this Complaint.
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1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

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

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9 Dated: 12/16, 2011

YEROUSHALMI & ASSOCIATES

10
11 BY. 

12 Reuben Yeroushalmi

13 Peter T. Sato

14 Attorneys for Plaintiff.

15 Consumer Advocacy Group, Inc.