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6 Attorneys for Plaintiff,  
7 Consumer Advocacy Group, Inc.

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

AUG 28 2012

CLERK OF THE COURT  
BY: MEREDITH GRIER  
Deputy Clerk

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

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

13  
14 Plaintiff,

15 v.

16 THOMAS & BETTS CORPORATION, a  
Tennessee Corporation; THOMAS & BETTS  
17 INTERNATIONAL, INC., a Delaware  
18 Corporation; TRUE VALUE COMPANY, a  
Delaware Corporation; and DOES 1-20;

19  
20 Defendants.

CASE NO. CGC-12-523788

COMPLAINT FOR PENALTY,  
INJUNCTION

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)

21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants,  
22 THOMAS & BETTS COPRORATION, THOMAS & BETTS INTERNATIONAL, INC., TRUE  
23 VALUE COMPANY, AND DOES 1-20, as follows:

24 THE PARTIES

BY FAX

- 25 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG") is an organization  
26 qualified to do business in the State of California. CAG is a person within the meaning  
27 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private  
28

1 attorney general, brings this action in the public interest as defined under Health and  
2 Safety Code section 25249.7, subdivision (d).

3 2. Defendant Thomas & Betts Corporation (“Betts Corp”) is a Tennessee corporation,  
4 qualified to do business and doing business in the State of California at all relevant times  
5 herein.

6 3. Defendant Thomas & Betts International, Inc. (“Betts International”) is a Delaware  
7 corporation, qualified to do business and doing business in the State of California at all  
8 relevant times herein.

9 4. Defendant True Value Company (“Value”) is a Delaware corporation, qualified to do  
10 business and doing business in the State of California at all relevant times herein.

11 5. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,  
12 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
13 complaint to allege their true names and capacities when ascertained. Plaintiff is  
14 informed, believes, and thereon alleges that each fictitiously named defendant is  
15 responsible in some manner for the occurrences herein alleged and the damages caused  
16 thereby.

17 6. At all times mentioned herein, the term “Defendants” includes Betts Corp, Betts  
18 International, Value, and Does 1-20.

19 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
20 times mentioned herein have conducted business within the State of California.

21 8. At all times relevant to this action, each of the Defendants, including Does 1-20, was an  
22 agent, servant, or employee of each of the other Defendants. In conducting the activities  
23 alleged in this Complaint, each of the Defendants was acting within the course and scope  
24 of this agency, service, or employment, and was acting with the consent, permission, and  
25 authorization of each of the other Defendants. All actions of each of the Defendants  
26 alleged in this Complaint were ratified and approved by every other Defendant or their  
27 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
28 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

1 9. 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 10. 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 11. 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 12. Venue is proper in the County of San Francisco because one or more of the instances of  
20 wrongful conduct occurred, and continues to occur, in the County of San Francisco  
21 and/or because Defendants conducted, and continue to conduct, business in the County of  
22 San Francisco with respect to the consumer product that is the subject of this action.

### 23 BACKGROUND AND PRELIMINARY FACTS

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

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
2 from contamination, to allow consumers to make informed choices about the products  
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
4 fit.

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

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

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

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

27 18. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
28 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP

1 to the list of chemicals known to the State to cause developmental male reproductive  
2 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
3 months after addition of DEHP to the list of chemicals known to the State to cause  
4 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
5 requirements and discharge prohibitions.

6 **SATISFACTION OF PRIOR NOTICE**

7 19. On or about July 21, 2011, Plaintiff gave notice of alleged violations of Health and Safety  
8 Code section 25249.6, concerning consumer products exposures and occupational  
9 exposures, subject to a private action to Betts Corp, Betts International, Value and to the  
10 California Attorney General, County District Attorneys, and City Attorneys for each city  
11 containing a population of at least 750,000 people in whose jurisdictions the violations  
12 allegedly occurred, concerning the product Red Dot® Portable Outdoor Flood Light  
13 #B660GR.

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

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

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

1 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
2 gave notices of the alleged violations to Betts Corp, Betts International, Value, and the  
3 public prosecutors referenced in Paragraphs 19.

4 24. 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  
8 **FIRST CAUSE OF ACTION**

9 (By Consumer Advocacy Group, Inc. and against Thomas & Betts Corporation, Thomas &  
10 Betts International, Inc., True Value Company, and Does 1-20 for Violations of Proposition  
11 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§*  
12 *25249.5, et seq.*))

13 **Red Dot® Portable Outdoor Flood Light #B660GR**

14 25. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
15 paragraphs 1 through 24 of this complaint as though fully set forth herein.

16 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
17 distributor, promoter, or retailer of Red Dot® Portable Outdoor Flood Light #B660GR  
18 (hereinafter "Flood Light").

19 27. Plaintiff is informed, believes, and thereon alleges that Flood Light contain DEHP.

20 28. Defendants knew or should have known that DEHP has been identified by the State of  
21 California as chemicals known to cause cancer and reproductive toxicity and therefore  
22 was subject to Proposition 65 warning requirements. Defendants were also informed of  
23 the presence of DEHP in Flood Light within Plaintiff's notice of alleged violations further  
24 discussed above at Paragraph 19.

25 29. Plaintiff's allegations regarding Flood Light concerns "[c]onsumer products  
26 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
27 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
28 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
*25602(b)*. Flood Light is a consumer product designed to illuminate an outdoor area,

1 and, as mentioned herein, exposures to DEHP took place as a result of such normal and  
2 foreseeable consumption and use.

3 30. Plaintiff's allegations regarding Flood Light also concern Occupational Exposures, which  
4 "means an exposure to any employee in his or her employer's workplace." *Cal. Code*  
5 *Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Defendants' employees occurred through  
6 the course of their employment in their employers' workplaces.

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

15 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
16 Persons sustain exposures by handling Flood Light without wearing gloves or any other  
17 personal protective equipment, or by touching bare skin or mucous membranes with  
18 gloves after handling Flood Light, as well as through hand to mouth contact, hand to  
19 mucous membrane, or breathing in particulate matter dispersed from Flood Light.

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

1 34. 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 35. 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 Flood Light, pursuant to Health  
6 and Safety Code section 25249.7(b).

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

9 **PRAYER FOR RELIEF**

10 Plaintiff demands against each of the Defendants as follows:

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

16  
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18  
19 Dated: 8/28, 2012

YEROUSHALMI & ASSOCIATES  
7

20  
21 BY: \_\_\_\_\_

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