

APR 2 2012

Erica Baker

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9 Attorneys for Plaintiff,
10 Consumer Advocacy Group, Inc.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

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

15 Plaintiff,

16 v.

17 WINNER INTERNATIONAL, INC., a
18 Florida Corporation and DOES 1-20;

19 Defendants.

20 CASE NO. *10* 12623691

21 COMPLAINT FOR PENALTY,
22 INJUNCTION, AND RESTITUTION

23 Violation of Proposition 65, the Safe
24 Drinking Water and Toxic Enforcement
25 Act of 1986 (*Cal. Health & Safety Code, §*
26 *25249.5, et seq.*)

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

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

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).

- 1 2. Defendant, WINNER INTERNATIONAL, INC. is a corporation duly organized and
2 existing under the laws of the state of Florida.
- 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 WINNER INTERNATIONAL,
10 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 were and are persons doing business within the meaning of Health and Safety
23 Code section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or
24 more 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 Alameda because one or more of the instances of
13 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
14 because Defendants conducted, and continue to conduct, business in the County of
15 Alameda with respect to the consumer product that is the subject of this action.

16 BACKGROUND AND PRELIMINARY FACTS

17
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 October 26, 2011, Plaintiff gave notice of alleged violations of Health and
22 Safety Code section 25249.6, concerning consumer products exposures, subject to a
23 private action to Winner International, Inc. and to the California Attorney General,
24 County District Attorneys, and City Attorneys for each city containing a population of at
25 least 750,000 people in whose jurisdictions the violations allegedly occurred concerning
26 the consumer product Steering Wheel Locks.

27 17. On or about November 9, 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 Winner 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 Bike Locks.

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

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

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

21 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
22 gave notice of the alleged violations to Winner International, Inc. and the public
23 prosecutors referenced in Paragraphs 16-17.

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

1 **FIRST CAUSE OF ACTION**

2 **(Against Winner International, Inc. and Does 1-20 for Violations of Proposition 65, The**
3 **Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**
4 **25249.5, et seq.))**

5 **Steering Wheel Locks**

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

8 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Steering Wheel Locks ("Wheel Locks"), including but
10 not limited to De-Vice™ Steering Wheel Lock, 034-0714-2, a consumer product
11 designed for use as an anti-theft device for automobiles.

12 25. Plaintiff is informed, believes, and thereon alleges that the Wheel Locks contain DEHP.

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

20 27. Defendants knew or should have known that DEHP has been identified by the State of
21 California as a chemical known to cause cancer and reproductive toxicity and therefore
22 were subject to Proposition 65 warning requirements. Defendants were also informed of
23 the presence of DEHP in the Wheel Locks within Plaintiff's notice of alleged violation
24 further discussed above at Paragraph 16.

25 28. Plaintiff's allegations regarding Wheel Locks concern "[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, §*

1 25602(b). Wheel Locks are a consumer product, and, as mentioned in herein, exposures
2 to DEHP took place as a result of such normal and foreseeable consumption and use.

3 29. Plaintiff is informed, believes, and thereon alleges that between October 26, 2008 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Wheel Locks, which Defendants manufactured, distributed, or
6 sold as mentioned above, to DEHP, without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.

8 Defendants have distributed and sold Wheel Locks in California. Defendants know and
9 intend that California consumers will use and consume Wheel Locks thereby exposing
10 them to DEHP. Defendants thereby violated Proposition 65.

11 30. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
12 Persons sustain exposures by handling the Wheel Locks without wearing gloves, by
13 touching bare skin or mucous membranes with gloves after handling Wheel Locks, or by
14 touching bare skin to the Wheel Locks, as well as hand to mouth contact, hand to mucous
15 membrane, or breathing in particulate matter emanating from the Wheel Locks during
16 application and installation, as well as through environmental mediums that carry the
17 DEHP once contained within the Wheel Locks.

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

25 32. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
26 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
27 violations alleged herein will continue to occur into the future.
28

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

4 34. In the absence of equitable relief, California consumers, the general public, and others
5 will continue to be involuntarily exposed to DEHP that are contained in Wheel Locks,
6 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged
7 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or
8 adequate remedy at law.

9 **SECOND CAUSE OF ACTION**

10 **(Against Winner International, Inc., and Does 1-20 for Violations of Proposition 65, The**
11 **Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**
12 **25249.5, et seq.))**

13 **Bike Clubs**

14 35. Plaintiff, Consumer Advocacy Group, Inc., repeats and incorporates by reference
15 paragraphs 1 through 34 of this complaint as though fully set forth herein.

16 36. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 distributor, promoter, or retailer of Bike Clubs, including but not limited to The Bike
18 Club™ “The Anti-Theft Device for Bicycles!” “BC-00303, (“Bike Club”) a consumer
19 product designed to be used as an anti-theft device for bicycles.

20 37. Plaintiff is informed, believes, and thereon alleges that the Bike Clubs contain DEHP.

21 38. On January 1, 1988 the Governor added DEHP to the list of chemicals known to the State
22 to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of
23 chemicals known to the state to produce developmental male reproductive toxicity
24 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
25 after addition of DEHP to the list of chemicals known to the State to cause cancer and
26 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
27 requirements and discharge prohibitions.
28

1 signing of this Complaint, as Defendants engaged and continue to engage in conduct
2 which violates Health and Safety Code section 25249.6, including the manufacture,
3 distribution, promotion, and sale of Bike Clubs, so that a separate and distinct violation of
4 Proposition 65 occurred each and every time a person was exposed to DEHP by Bike
5 Clubs as mentioned herein.

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

9 45. Based on the allegations herein, Defendants are liable for civil penalties of up to
10 \$2,500.00 per day per individual exposure to DEHP from Bike Clubs, pursuant to Health
11 and Safety Code section 25249.7(b).

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

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

19
20 **PRAYER FOR RELIEF**

21 Plaintiff demands against each of the Defendants, including Winner International, Inc.,
22 and Does 1-20, as follows:

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

1 39. Defendants knew or should have known that DEHP has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 were subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of DEHP in the Bike Clubs within Plaintiff's notice of alleged violation
5 further discussed above at Paragraph 17.

6 40. Plaintiff's allegations regarding Bike Clubs 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 Bike Clubs are a consumer product, and, as mentioned in herein, exposures to DEHP
11 took place as a result of such normal and foreseeable consumption and use.

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

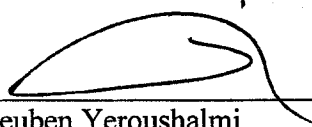
20 42. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
21 Persons sustain exposures by handling the Bike Clubs without wearing gloves, by
22 touching bare skin or mucous membranes with gloves after handling Bike Clubs, or by
23 touching bare skin to the Bike Clubs,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

27 43. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
28 Proposition 65 as to Bike Clubs have been ongoing and continuous to the date of the

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Dated: March 29/12

YEROUSHALMI & ASSOCIATES

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