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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 21 2012

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

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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

15 Plaintiff,

16 v.

17 MARUKAI CORPORATION, a Hawai'i
18 Corporation and DOES 1-20;

19 Defendants.

CASE NO. BC BC 49 2 5 0 0

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)

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21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants
22 MARUKAI CORPORATION and DOES 1-20, as follows:

23 **THE PARTIES**

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

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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 MARUKAI CORPORATION ("MARUKAI") is a Hawai'i corporation,
4 qualified to do business and doing business in the State of California at all relevant times
5 herein.

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

12 4. At all times mentioned herein, the term "Defendants" includes MARUKAI and Does 1-
13 20.

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

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

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

1 they buy, and to enable persons to protect themselves from toxic chemicals as they see
2 fit.

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

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

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

20 15. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing
21 products of exposing, knowingly and intentionally, persons in California to the
22 Proposition 65-listed chemicals of such products without first providing clear and
23 reasonable warnings of such to the exposed persons prior to the time of exposure.
24 Plaintiff later discerned that Defendants engaged in such practice.

25 16. On October 1, 1992, the Governor of California added lead and lead compounds to the
26 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).
27 Pursuant to *Health and Safety Code* sections 25249.9 and 25249.10, twenty (20) months
28

1 after addition of lead and lead compounds to the list of chemicals known to the State to
2 cause cancer, lead and lead compounds became fully subject to Proposition 65 warning
3 requirements and discharge prohibitions.

- 4 17. On February 27, 1987, the Governor of California added lead to the list of chemicals
5 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).
6 lead is known to the State to cause developmental, female, and male reproductive
7 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
8 months after addition of lead to the list of chemicals known to the State to cause
9 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements
10 and discharge prohibitions.

11 **SATISFACTION OF PRIOR NOTICE**

- 12 18. On December 5, 2011, Plaintiff gave notice of alleged violations of Health and Safety
13 Code section 25249.6, concerning consumer products exposures, subject to a private
14 action to Defendants and to the California Attorney General, County District Attorneys,
15 and City Attorneys for each city containing a population of at least 750,000 people in
16 whose jurisdictions the violations allegedly occurred, concerning the product Coated
17 Clips "20mm" "6P" "Clip".
- 18 19. Before sending the notices of alleged violation, Plaintiff investigated the consumer
19 products involved, the likelihood that such products would cause users to suffer
20 significant exposures to lead and lead Compounds and the corporate structure of each of
21 the Defendants.
- 22 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
23 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
24 Plaintiff who executed the certificate had consulted with at least one person with relevant
25 and appropriate expertise who reviewed data regarding the exposures to lead and lead
26 compounds, which is the subject of the Proposition 65-listed chemicals of this action.
27 Based on that information, the attorney for Plaintiff who executed the Certificate of Merit

1 believed there was a reasonable and meritorious case for this private action. The attorney
2 for Plaintiff attached to the Certificate of Merit served on the Attorney General the
3 confidential factual information sufficient to establish the basis of the Certificate of
4 Merit.

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

8 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
9 gave notices of the alleged violations to Defendants, and the public prosecutors
10 referenced in Paragraph 18.

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

14 **FIRST CAUSE OF ACTION**

15 **(By Consumer Advocacy Group, Inc. and against MARUKAI CORPORATION and Does**
16 **1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**
17 **of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

18 **Coated Clips**

19 24. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
20 paragraphs 1 through 23 of this complaint as though fully set forth herein.
21 Defendants Marukai at all times mentioned herein were, a manufacturer, distributor,
22 promoter, or retailer of Coated Clips "20mm" "6P" "Clip" (hereinafter "Coated Clips").

23 25. Plaintiff is informed, believes, and thereon alleges that Coated Clips contain lead.

24 26. Defendants knew or should have known that lead has been identified by the State of
25 California as a chemical known to cause cancer and reproductive toxicity, and therefore
26 was subject to Proposition 65 warning requirements. Defendants were also informed of
27 the presence of lead in Coated Clips within Plaintiff's notice of alleged violations further
28 discussed above at Paragraph 18.

1 27. Plaintiff's allegations regarding Coated Clips concern "[c]onsumer products
2 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
4 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
5 *25602(b)*. Coated Clips is a consumer product, and, as mentioned herein, exposures to
6 lead took place as a result of such normal and foreseeable consumption and use.

7 28. Plaintiff is informed, believes, and thereon alleges that between December 5, 2009 and
8 the present, Defendant Marukai knowingly and intentionally exposed California
9 consumers and users of Coated Clips, which Defendants manufactured, distributed, or
10 sold as mentioned above, to lead, without first providing any type of clear and reasonable
11 warning of such to the exposed persons before the time of exposure. Defendant Marukai
12 have distributed and sold Coated Clips in California. Defendant Marukai know and
13 intend that California consumers will use Coated Clips thereby exposing them to lead.
14 Defendant Marukai thereby violated Proposition 65.

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

20 30. Plaintiff is informed, believes, and thereon alleges that Defendant Marukai violations of
21 Proposition 65 as to Coated Clips 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 Coated Clips, so that a separate and distinct violation
25 of Proposition 65 occurred each and every time a person was exposed to lead by Coated
26 Clips as mentioned 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 lead from Coated Clips, pursuant to Health
6 and 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.

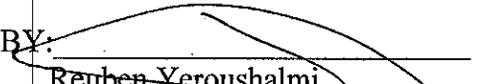
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10 **PRAYER FOR RELIEF**

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.

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20 Dated: September 20, 2012

YEROUSHALMI & ASSOCIATES

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22
23 BY: 

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