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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

NOV 08 2012

John A. Clarke, Executive Officer/Clerk  
BY Cristina Ornela Deputy  
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7 Consumer Advocacy Group, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES - CENTRAL DISTRICT  
10

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

13  
14 Plaintiff,

15 v.

16 WISE BUYS LIQUIDATORS, INC., a  
Delaware Corporation; MEADWESTVACO  
17 CORP., a Delaware corporation;  
18 AMERICAN FAVORITE TOOLS, INC., a  
California Corporation; A.D. SUTTON &  
19 SONS, a New York Corporation, and DOES  
20 1-50;

21 Defendants.

CASE NO. BC 495382

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)

22  
23 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against Defendants as  
24 follows:

25 ///

26 ///

27 ///

COPY

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 Wise Buys Liquidators, Inc., ("Wise Buys") is a company incorporated in the State of Delaware qualified to do business in California.
3. Defendant MeadWestVaco Corp. ("Mead") is a company incorporated in the State of Delaware and qualified to do business in California.
4. Defendant American Favorite Tools, Inc. ("American") is a company incorporated in the State of California and qualified to do business in California.
5. Defendant A.D. Sutton & Sons ("Sutton") is a company incorporated in the State of New York.
6. 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.
7. At all times mentioned herein, the term "Defendants" includes Wise Buys, Mead, American, Sutton, and Does 1-50.
8. 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.
9. 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

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

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

9 **JURISDICTION**

- 10 11. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
12 those given by statute to other trial courts. This Court has jurisdiction over this action  
13 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 12. This Court has jurisdiction over Defendants named herein because Defendants either  
16 reside or are located in this State or are foreign corporations authorized to do business in  
17 California, are registered with the California Secretary of State, or who do sufficient  
18 business in California, have sufficient minimum contacts with California, or otherwise  
19 intentionally avail themselves of the markets within California through their manufacture,  
20 distribution, promotion, marketing, or sale of their products within California to render  
21 the exercise of jurisdiction by the California courts permissible under traditional notions  
22 of fair play and substantial justice.
- 23 13. Venue is proper in the County of Los Angeles because one or more of the instances of  
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
25 because Defendants conducted, and continue to conduct, business in the County of Los  
26 Angeles with respect to the consumer product that is the subject of this action.

1 BACKGROUND AND PRELIMINARY FACTS

- 2 14. In 1986, California voters approved an initiative to address growing concerns about  
3 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
4 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
7 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
8 from contamination, to allow consumers to make informed choices about the products  
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
10 fit.
- 11 15. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
12 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
13 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
14 chemicals and chemical families. Proposition 65 imposes warning requirements and  
15 other controls that apply to Proposition 65-listed chemicals.
- 16 16. All businesses with ten (10) or more employees that operate or sell products in California  
17 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
18 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
19 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
20 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
21 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 22 17. Proposition 65 provides that any person "violating or threatening to violate" the statute  
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
24 "Threaten to violate" means "to create a condition in which there is a substantial  
25 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 28

- 1 18. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing,  
2 Diethyl Hexyl Phthalate ("DEHP")-bearing, and Di-n-Butyl Phthalate ("DBP")-bearing  
3 products of exposing, knowingly and intentionally, persons in California to the  
4 Proposition 65-listed chemicals of such products without first providing clear and  
5 reasonable warnings of such to the exposed persons prior to the time of exposure.  
6 Plaintiff later discerned that Defendants engaged in such practice.
- 7 19. On October 1, 1992, the Governor of California added Lead and Lead Compounds to the  
8 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).  
9 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
10 after addition of Lead and lead compounds to the list of chemicals known to the State to  
11 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning  
12 requirements and discharge prohibitions.
- 13 20. On February 27, 1987, the Governor of California added lead to the list of chemicals  
14 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).  
15 lead is known to the State to cause developmental, female, and male reproductive  
16 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
17 months after addition of lead to the list of chemicals known to the State to cause  
18 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements  
19 and discharge prohibitions.
- 20 21. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
21 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
22 to the list of chemicals known to the State to cause developmental male reproductive  
23 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
24 months after addition of DEHP to the list of chemicals known to the State to cause  
25 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
26 requirements and discharge prohibitions.
- 27 22. On December 2, 2005, the Governor of California added DBP to the list of chemicals  
28 known to the State to cause developmental, female, and male reproductive toxicity.

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

5 **SATISFACTION OF PRIOR NOTICE**

- 6 23. On or about February 24, 2012, Plaintiff gave notice of alleged violations of Health and  
7 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
8 private action to Wise Buys Liquidators, Inc., American Favorite Tools, Inc., and to the  
9 California Attorney General, County District Attorneys, and City Attorneys for each city  
10 containing a population of at least 750,000 people in whose jurisdictions the violations  
11 allegedly occurred, concerning Air Compressors containing lead.
- 12 24. On or about February 27, 2012, Plaintiff gave notice of alleged violations of Health and  
13 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
14 private action to Wise Buys Liquidators, Inc., and to the California Attorney General,  
15 County District Attorneys, and City Attorneys for each city containing a population of at  
16 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
17 Binoculars containing lead.
- 18 25. On or about March 9, 2012, Plaintiff gave notice of alleged violations of Health and  
19 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
20 private action to Wise Buys Liquidators, Inc., and to the California Attorney General,  
21 County District Attorneys, and City Attorneys for each city containing a population of at  
22 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
23 Electrical Tape containing lead.
- 24 26. On or about March 15, 2012, Plaintiff gave notice of alleged violations of Health and  
25 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
26 private action to Wise Buys Liquidators, Inc., MeadWestvaco Corp., and to the California  
27 Attorney General, County District Attorneys, and City Attorneys for each city containing  
28

1 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
2 occurred, concerning Daily Organizers containing DEHP.

3 27. On or about March 20, 2012, Plaintiff gave notice of alleged violations of Health and  
4 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
5 private action to Wise Buys Liquidators, Inc., and to the California Attorney General,  
6 County District Attorneys, and City Attorneys for each city containing a population of at  
7 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
8 Suction Cup Hooks containing DEHP.

9 28. On or about March 20, 2012, Plaintiff gave notice of alleged violations of Health and  
10 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
11 private action to Wise Buys Liquidators, Inc., and to the California Attorney General,  
12 County District Attorneys, and City Attorneys for each city containing a population of at  
13 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
14 Can Openers containing DEHP.

15 29. On or about March 20, 2012, Plaintiff gave notice of alleged violations of Health and  
16 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
17 private action to Wise Buys Liquidators, Inc., and to the California Attorney General,  
18 County District Attorneys, and City Attorneys for each city containing a population of at  
19 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
20 Mobile Phone Travel Chargers containing lead.

21 30. On or about April 20, 2012, 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 Wise Buys Liquidators, Inc., A.D. Sutton & Sons, and to the California  
24 Attorney General, County District Attorneys, and City Attorneys for each city containing  
25 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
26 occurred, concerning Mesh Duffle Bags containing DEHP.

27 31. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
28 products involved, the likelihood that such products would cause users to suffer

1 significant exposures to lead and DEHP, and the corporate structure of each of the  
2 Defendants.

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

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

16 34. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
17 gave notice of the alleged violations to Defendants and the public prosecutors referenced  
18 in Paragraph 28-38.

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

22  
23 **FIRST CAUSE OF ACTION**

24 **(By Consumer Advocacy Group, Inc. and against Wise Buys Liquidators, Inc., American  
25 Favorite Tools, Inc., and Does 1-50 for Violations of Proposition 65, The Safe Drinking  
26 Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

27 **Air Compressors**

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



- 1 37. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
2 distributor, promoter, or retailer of "American Favorite Tools™" 250 PSI Mini Air  
3 Compressor No. MAC 250.
- 4 38. Plaintiff is informed, believes, and thereon alleges that Air Compressors contain lead.
- 5 39. Defendants knew or should have known that lead has been identified by the State of  
6 California as chemicals 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 Air Compressors within Plaintiff's notice of alleged violations  
9 further discussed above at Paragraph 23.
- 10 40. Plaintiff's allegations regarding lead concerning "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)*. Air Compressors are  
14 a 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 41. Plaintiff is informed, believes, and thereon alleges that between February 24, 2009 and  
17 the present, each of the Defendants knowingly and intentionally exposed California  
18 employees and consumers and users of Air Compressors, which Defendants  
19 manufactured, distributed, or sold as mentioned above, to lead, without first providing  
20 any type of clear and reasonable warning of such to the exposed persons before the time  
21 of exposure. Defendants have distributed and sold Air Compressors in California.  
22 Defendants know and intend that California consumers will use and consume Air  
23 Compressors, thereby exposing them to lead. Defendants thereby violated Proposition  
24 65.
- 25 42. The principal routes of exposure were through inhalation, oral ingestion, including hand  
26 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling  
27 the Air Compressors without wearing gloves or by touching bare skin or mucous  
28 membranes with gloves after handling the Air Compressors, as well as direct and indirect

1 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter  
2 emanating from the Air Compressors during installation and use.

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

10 44. 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 45. 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 Air Compressors, pursuant to  
15 Health and Safety Code section 25249.7(b).

16 46. 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 Air Compressors,  
18 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
19 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
20 adequate remedy at law.

## 21 SECOND CAUSE OF ACTION

22 (By Consumer Advocacy Group, Inc. and against Wise Buys Liquidators and Does 1-50 for  
23 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
24 (*Health & Safety Code, §§ 25249.5, et seq.*))

### 25 Binoculars

26 47. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
27 paragraphs 1 through 46 of this complaint as though fully set forth herein.  
28

- 1 48. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
2 distributor, promoter, or retailer of Binoculars ("Binoculars"), including but not limited to  
3 "Marco Polo Star" Breaker Cobra Binoculars 20x50 "We Bring the Whole World to  
4 Your Eyes".
- 5 49. Plaintiff is informed, believes, and thereon alleges that Binoculars contain lead.
- 6 50. Defendants knew or should have known that lead has been identified by the State of  
7 California as a chemical known to cause cancer and reproductive toxicity and therefore  
8 was subject to Proposition 65 warning requirements. Defendants were also informed of  
9 the presence of lead in the Binoculars within Plaintiff's notice of alleged violations  
10 further discussed above at Paragraph 24.
- 11 51. Plaintiff's allegations regarding Binoculars concern "consumer products exposure[s],"  
12 which "is an exposure that results from a person's acquisition, purchase, storage,  
13 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
14 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.  
15 Liners are a consumer product, and, as mentioned in herein, exposures to lead took place  
16 as a result of such normal and foreseeable consumption and use.
- 17 52. Plaintiff is informed, believes, and thereon alleges that between February 27, 2009 and  
18 the present, each of the Defendants knowingly and intentionally exposed California  
19 employees and consumers and users of Binoculars, which Defendants manufactured,  
20 distributed, or sold as mentioned above, to lead, without first providing any type of clear  
21 and reasonable warning of such to the exposed persons before the time of exposure.  
22 Defendants have distributed and sold Binoculars in California. Defendants know and  
23 intend that California consumers will use and consume Binoculars, thereby exposing  
24 them to lead. Defendants thereby violated Proposition 65.
- 25 53. The principal routes of exposure were through inhalation, oral ingestion, including hand  
26 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling  
27 the Binoculars without wearing gloves or by touching bare skin or mucous membranes  
28 with gloves after handling the Binoculars, as well as direct and indirect hand to mouth

1 contact, hand to mucous membrane, or breathing in particulate matter emanating from the  
2 Liners during installation and use.

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

10 55. 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 56. 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 Binoculars, pursuant to Health  
15 and Safety Code section 25249.7(b).

16 57. 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 Binoculars, 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 **THIRD CAUSE OF ACTION**

22 **(By Consumer Advocacy Group, Inc. and against Wise Buys Liquidators, and Does 1-50**  
23 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of**  
24 **1986 (Health & Safety Code, §§ 25249.5, et seq.))**

25 **Electrical Tape**

26 58. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
27 paragraphs 1 through 57 of this complaint as though fully set forth herein.

- 1 59. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
2 distributor, promoter, or retailer of Electrical Tape ("Tape"), including but not limited to  
3 bR Tools® Electrical Tape 6 Pcs "Size: ¾" x 9", ETO6C..
- 4 60. Plaintiff is informed, believes, and thereon alleges that Tape contain lead.
- 5 61. 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 Tape within Plaintiff's notice of alleged violations further  
9 discussed above at Paragraph 24.
- 10 62. Plaintiff's allegations regarding Tape 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)*. Tape is a consumer  
14 product, and, as mentioned in herein, exposures to lead took place as a result of such  
15 normal and foreseeable consumption and use.
- 16 63. Plaintiff is informed, believes, and thereon alleges that between March 9, 2009 and the  
17 present, each of the Defendants knowingly and intentionally exposed California  
18 employees and consumers and users of Tape, which Defendants manufactured,  
19 distributed, or sold as mentioned above, to lead, without first providing any type of clear  
20 and reasonable warning of such to the exposed persons before the time of exposure.  
21 Defendants have distributed and sold Tape in California. Defendants know and intend  
22 that California consumers will use and consume Tape, thereby exposing them to lead.  
23 Defendants thereby violated Proposition 65.
- 24 64. 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 Tape without wearing gloves or by touching bare skin or mucous membranes with  
27 gloves after handling the Tape, as well as direct and indirect hand to mouth contact, hand  
28

1 to mucous membrane, or breathing in particulate matter emanating from the Tape during  
2 installation and use.

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

21 **(By Consumer Advocacy Group, Inc. and against Wise Buys Liquidators, Inc.,**  
22 **MeadWestvaco Corp. and Does 1-50 for Violations of Proposition 65, The Safe Drinking**  
23 **Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

24 **Daily Organizers**

25 69. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
26 paragraphs 1 through 68 of this complaint as though fully set forth herein.

- 1 70. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
2 distributor, promoter, or retailer of Daily Organizers ("Organizers"), including but not  
3 limited to Mead® Organizer Agenda 5 1/2 x 8 1/2 in. #47888.
- 4 71. Plaintiff is informed, believes, and thereon alleges that Organizers contain DEHP.
- 5 72. Defendants knew or should have known that DEHP 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 DEHP in the Organizers within Plaintiff's notice of alleged violations  
9 further discussed above at Paragraph 25.
- 10 73. Plaintiff's allegations regarding Organizers concern "consumer products exposure[s],"  
11 which "is an exposure that results from a person's acquisition, purchase, storage,  
12 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
13 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.  
14 Organizers is a consumer product, and, as mentioned in herein, exposures to DEHP took  
15 place as a result of such normal and foreseeable consumption and use.
- 16 74. Plaintiff's allegations regarding Organizers also concern Occupational Exposures, which  
17 "means an exposure to any employee in his or her employer's workplace." *Cal. Code*  
18 *Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Defendants' employees occurred through  
19 the course of their employment in their employers' workplaces.
- 20 75. Plaintiff is informed, believes, and thereon alleges that between March 15, 2009 and the  
21 present, each of the Defendants knowingly and intentionally exposed California  
22 employees and consumers and users of Organizers, which Defendants manufactured,  
23 distributed, or sold as mentioned above, to DEHP, without first providing any type of  
24 clear and reasonable warning of such to the exposed persons before the time of exposure.  
25 Defendants have distributed and sold Organizers in California. Defendants know and  
26 intend that California consumers will use and consume Organizers, thereby exposing  
27 them to DEHP. Defendants thereby violated Proposition 65.
- 28

- 1 76. The principal routes of exposure were through inhalation, oral ingestion, including hand  
2 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling  
3 the Organizers without wearing gloves or by touching bare skin or mucous membranes  
4 with gloves after handling the Organizers, as well as direct and indirect hand to mouth  
5 contact, hand to mucous membrane, or breathing in particulate matter emanating from the  
6 Organizers during installation and use.
- 7 77. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
8 Proposition 65 as to Organizers have been ongoing and continuous to the date of the  
9 signing of this complaint, as Defendants engaged and continue to engage in conduct  
10 which violates Health and Safety Code section 25249.6, including the manufacture,  
11 distribution, promotion, and sale of Organizers, so that a separate and distinct violation of  
12 Proposition 65 occurred each and every time a person was exposed to DEHP by  
13 Organizers as mentioned herein.
- 14 78. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
15 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
16 violations alleged herein will continue to occur into the future.
- 17 79. Based on the allegations herein, Defendants are liable for civil penalties of up to  
18 \$2,500.00 per day per individual exposure to DEHP from Organizers, pursuant to Health  
19 and Safety Code section 25249.7(b).
- 20 80. In the absence of equitable relief, the general public and Defendants' employees will  
21 continue to be involuntarily exposed to DEHP that is contained in Organizers, creating a  
22 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
23 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
24 remedy at law.

#### FIFTH CAUSE OF ACTION

25  
26 **(By Consumer Advocacy Group, Inc. and against Wise Buys Liquidators, Inc. and Does 1-**  
27 **50 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**  
28 **of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**



## Suction Cup Hooks

- 1
- 2 81. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
- 3 paragraphs 1 through 80 of this complaint as though fully set forth herein.
- 4 82. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
- 5 distributor, promoter, or retailer of Suction Cup Hooks ("Hooks") 50 Suction Cup Hooks
- 6 "Ideals for Ornaments, Stained Glass, Soft Sculptures etc." Item #7993, a consumer
- 7 product designed for fastening ornaments to glass.
- 8 83. Plaintiff is informed, believes, and thereon alleges that Hooks contain DEHP.
- 9 84. Defendants knew or should have known that DEHP has been identified by the State of
- 10 California as a chemical known to cause cancer and reproductive toxicity and therefore
- 11 was subject to Proposition 65 warning requirements. Defendants were also informed of
- 12 the presence of DEHP in the Hooks within Plaintiff's notice of alleged violations further
- 13 discussed above at Paragraph 26.
- 14 85. Plaintiff's allegations regarding Hooks concern "consumer products exposure[s]," which
- 15 "is an exposure that results from a person's acquisition, purchase, storage, consumption,
- 16 or other reasonably foreseeable use of a consumer good, or any exposure that results from
- 17 receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. Hooks are a
- 18 consumer product, and, as mentioned in herein, exposures to DEHP took place as a result
- 19 of such normal and foreseeable consumption and use.
- 20 86. Plaintiff is informed, believes, and thereon alleges that between March 20, 2009 and the
- 21 present, each of the Defendants knowingly and intentionally exposed California
- 22 employees and consumers and users of Hooks, which Defendants manufactured,
- 23 distributed, or sold as mentioned above, to DEHP, without first providing any type of
- 24 clear and reasonable warning of such to the exposed persons before the time of exposure.
- 25 Defendants have distributed and sold Hooks in California. Defendants know and intend
- 26 that California consumers will use and consume Hooks, thereby exposing them to DEHP.
- 27 Defendants thereby violated Proposition 65.
- 28

- 1 87. The principal routes of exposure were through inhalation, oral ingestion, including hand  
2 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling  
3 the Hooks without wearing gloves or by touching bare skin or mucous membranes with  
4 gloves after handling the Hooks, as well as direct and indirect hand to mouth contact,  
5 hand to mucous membrane, or breathing in particulate matter emanating from the Hooks  
6 during installation and use.
- 7 88. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
8 Proposition 65 as to Hooks have been ongoing and continuous to the date of the signing  
9 of this complaint, as Defendants engaged and continue to engage in conduct which  
10 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
11 promotion, and sale of Hooks, so that a separate and distinct violation of Proposition 65  
12 occurred each and every time a person was exposed to DEHP by Hooks as mentioned  
13 herein.
- 14 89. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
15 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
16 violations alleged herein will continue to occur into the future.
- 17 90. Based on the allegations herein, Defendants are liable for civil penalties of up to  
18 \$2,500.00 per day per individual exposure to DEHP from Hooks, pursuant to Health and  
19 Safety Code section 25249.7(b).
- 20 91. In the absence of equitable relief, the general public and Defendants' employees will  
21 continue to be involuntarily exposed to DEHP that is contained in Hooks, creating a  
22 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
23 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
24 remedy at law.

25  
26 **SIXTH CAUSE OF ACTION**

27 **(By Consumer Advocacy Group, Inc. and against Wise Buys Liquidators, Inc., and Does 1-**  
28 **50 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**  
**of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

## Can Openers

- 1
- 2 92. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
- 3 paragraphs 1 through 91 of this complaint as though fully set forth herein.
- 4 93. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
- 5 distributor, promoter, or retailer of Can Openers ("Can Openers") an exemplar of which
- 6 is Mainstays™ Can opener "Comfort Grip" "Easily opens cans, bottles, and jars", 00889,
- 7 a consumer product used in close proximity to food products.
- 8 94. Plaintiff is informed, believes, and thereon alleges that Can Openers contain DEHP.
- 9 95. Defendants knew or should have known that DEHP has been identified by the State of
- 10 California as a chemical known to cause cancer and reproductive toxicity and therefore
- 11 was subject to Proposition 65 warning requirements. Defendants were also informed of
- 12 the presence of DEHP in the Can Openers within Plaintiff's notice of alleged violations
- 13 further discussed above at Paragraph 27.
- 14 96. Plaintiff's allegations regarding Can Openers concern "consumer products exposure[s],"
- 15 which "is an exposure that results from a person's acquisition, purchase, storage,
- 16 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
- 17 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. Can
- 18 Openers are a consumer product, and, as mentioned in herein, exposures to DEHP took
- 19 place as a result of such normal and foreseeable consumption and use.
- 20 97. Plaintiff's allegations regarding Can Openers also concern Occupational Exposures,
- 21 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
- 22 *Code Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Defendants' employees occurred
- 23 through the course of their employment in their employers' workplaces.
- 24 98. Plaintiff is informed, believes, and thereon alleges that between March 20, 2009 and the
- 25 present, each of the Defendants knowingly and intentionally exposed California
- 26 employees and consumers and users of Can Openers, which Defendants manufactured,
- 27 distributed, or sold as mentioned above, to DEHP, without first providing any type of
- 28 clear and reasonable warning of such to the exposed persons before the time of exposure.

1 Defendants have distributed and sold Can Openers in California. Defendants know and  
2 intend that California consumers will use and consume Can Openers, thereby exposing  
3 them to DEHP. Defendants thereby violated Proposition 65.

4 99. The principal routes of exposure were through inhalation, oral ingestion, including hand  
5 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling  
6 the Hooks without wearing gloves or by touching bare skin or mucous membranes with  
7 gloves after handling the Can Openers, as well as direct and indirect hand to mouth  
8 contact, hand to mucous membrane, or breathing in particulate matter emanating from the  
9 Hooks during installation and use.

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

17 101. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
18 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
19 violations alleged herein will continue to occur into the future.

20 102. Based on the allegations herein, Defendants are liable for civil penalties of up to  
21 \$2,500.00 per day per individual exposure to DEHP from Can Openers, pursuant to  
22 Health and Safety Code section 25249.7(b).

23 103. In the absence of equitable relief, the general public and Defendants' employees will  
24 continue to be involuntarily exposed to DEHP that is contained in Can Openers, creating  
25 a substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
26 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
27 remedy at law.

1 SEVENTH CAUSE OF ACTION

2 (By Consumer Advocacy Group, Inc. and against Wise Buys Liquidators, Inc., and Does 1-  
3 50 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act  
4 of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

5 **Mobile Phone Travel Chargers**

6 104. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 103 of this complaint as though fully set forth herein.

8 105. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of Mobile Phone Travel Chargers ("Chargers") an  
10 exemplar is Global Brands Travel Charger "Best Quality" "Made In China".

11 106. Plaintiff is informed, believes, and thereon alleges that Chargers contain lead.

12 107. Defendants knew or should have known that lead has been identified by the State of  
13 California as a chemical known to cause cancer and reproductive toxicity and therefore  
14 was subject to Proposition 65 warning requirements. Defendants were also informed of  
15 the presence of lead in the Chargers within Plaintiff's notice of alleged violations further  
16 discussed above at Paragraph 28.

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

23 109. Plaintiff is informed, believes, and thereon alleges that between March 20, 2009 and the  
24 present, each of the Defendants knowingly and intentionally exposed California  
25 employees and consumers and users of Chargers, which Defendants manufactured,  
26 distributed, or sold as mentioned above, to lead, without first providing any type of clear  
27 and reasonable warning of such to the exposed persons before the time of exposure.  
28 Defendants have distributed and sold Chargers in California. Defendants know and

1 intend that California consumers will use and consume Chargers, thereby exposing them  
2 to lead. Defendants thereby violated Proposition 65.

3 110. The principal routes of exposure were through inhalation, oral ingestion, including hand  
4 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling  
5 the Chargers without wearing gloves or by touching bare skin or mucous membranes  
6 with gloves after handling the Chargers, as well as direct and indirect hand to mouth  
7 contact, hand to mucous membrane, or breathing in particulate matter emanating from the  
8 Chargers during installation and use.

9 111. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
10 Proposition 65 as to Chargers have been ongoing and continuous to the date of the  
11 signing of this complaint, as Defendants engaged and continue to engage in conduct  
12 which violates Health and Safety Code section 25249.6, including the manufacture,  
13 distribution, promotion, and sale of Chargers, so that a separate and distinct violation of  
14 Proposition 65 occurred each and every time a person was exposed to lead by Chargers as  
15 mentioned herein.

16 112. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
17 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
18 violations alleged herein will continue to occur into the future.

19 113. Based on the allegations herein, Defendants are liable for civil penalties of up to  
20 \$2,500.00 per day per individual exposure to lead from Chargers, pursuant to Health and  
21 Safety Code section 25249.7(b).

22 114. In the absence of equitable relief, the general public and Defendants' employees will  
23 continue to be involuntarily exposed to lead that is contained in Chargers, creating a  
24 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
25 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
26 remedy at law.

EIGHTH CAUSE OF ACTION

(By Consumer Advocacy Group, Inc. and against Wise Buys Liquidators, Inc., A.D. Sutton & Sons, and Does 1-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

**Mesh Duffle Bags**

115. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference paragraphs 1 through 114 of this complaint as though fully set forth herein.

116. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Mesh Duffle Bags ("Bags") including but not limited to Black Mesh Duffel Bag, "Distributed by A.D. Sutton & Sons, New York, NY 10001, "Made In China", 20" x 10" x 10".

117. Plaintiff is informed, believes, and thereon alleges that Bags contain DEHP.

118. Defendants knew or should have known that DEHP has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in the Bags within Plaintiff's notice of alleged violations further discussed above at Paragraph 30.

119. Plaintiff's allegations regarding Bags concern "consumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. Bags are a consumer product, and, as mentioned in herein, exposures to DEHP took place as a result of such normal and foreseeable consumption and use.

120. Plaintiff is informed, believes, and thereon alleges that between April 20, 2009 and the present, each of the Defendants knowingly and intentionally exposed California employees and consumers and users of Bags, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Bags in California. Defendants know and intend

1 that California consumers will use and consume Bags, thereby exposing them to DEHP.  
2 Defendants thereby violated Proposition 65.

3 121. The principal routes of exposure were through inhalation, oral ingestion, including hand  
4 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling  
5 the Bags without wearing gloves or by touching bare skin or mucous membranes with  
6 gloves after handling the Bags, as well as direct and indirect hand to mouth contact, hand  
7 to mucous membrane, or breathing in particulate matter emanating from the Bags during  
8 installation and use.

9 122. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
10 Proposition 65 as to Bags have been ongoing and continuous to the date of the signing of  
11 this complaint, as Defendants engaged and continue to engage in conduct which violates  
12 Health and Safety Code section 25249.6, including the manufacture, distribution,  
13 promotion, and sale of Bags, so that a separate and distinct violation of Proposition 65  
14 occurred each and every time a person was exposed to lead by Bags as mentioned herein.

15 123. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
16 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
17 violations alleged herein will continue to occur into the future.

18 124. Based on the allegations herein, Defendants are liable for civil penalties of up to  
19 \$2,500.00 per day per individual exposure to DEHP from Bags, pursuant to Health and  
20 Safety Code section 25249.7(b).

21 125. In the absence of equitable relief, the general public and Defendants' employees will  
22 continue to be involuntarily exposed to DEHP that is contained in Bags, creating a  
23 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
24 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
25 remedy at law.



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

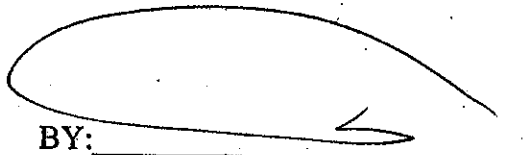
**PRAYER FOR RELIEF**

Plaintiff demands against each of the Defendants as follows:

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

Dated: 11-7-, 2012

YEROUSHALMI & ASSOCIATES



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