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FILED
 Superior Court of California
 County of Los Angeles

OCT 21 2014

Sherri R. Carter, Executive Officer/Clerk
 By *[Signature]*
 Nelson L. Alba, Deputy
M. Fresoso

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - CENTRAL DISTRICT

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

CASE NO. BC490595

Unlimited Jurisdiction

12
 13 Plaintiff,

[Assigned for all purposes to Hon.
~~Abraham Khan~~, Dept. 51]

14 v.

Mitchell Beckloff

[~~PROPOSED~~] FOURTH AMENDED
 COMPLAINT FOR:

17 DONG HE INTERNATIONAL TRADING,
 18 INC., a California Corporation; SMART
 19 COOK, INC., a California Corporation; BIG
 20 LOTS STORES, INC., an Ohio Corporation;
 21 COST SAVER MARKET, a business entity
 form unknown; RALEY'S, a California
 Corporation, UNITED POWER GROUP,
 22 INC., a business entity form unknown;
 23 WAREHOUSE CONCEPTS DBA FOOD
 24 SOURCE, a California Corporation;
 UNIFIED GROCERS, INC., a California
 Corporation, and DOES 1-20;

1. Violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, § 25249.5, *et seq.*) (Cookware)
2. Violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, § 25249.5, *et seq.*) (Inspection Tools)
3. Violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, § 25249.5, *et seq.*) (Tongs)
4. Equitable Indemnity
5. Implied Indemnity
6. Express Indemnity

25 Defendants.

1 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants,
2 DONG HE INTERNATIONAL TRADING, INC., COST SAVER MARKET, BIG LOTS
3 STORES, INC., RALEY'S, WAREHOUSE CONCEPTS DBA FOOD SOURCE, SMART
4 COOK, INC., UNITED POWER GROUP, INC., UNIFIED GROCERS, INC., and DOES 1-20,
5 as follows:

6 **THE PARTIES**

- 7 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG") is an organization
8 qualified to do business in the State of California. CAG is a person within the meaning
9 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private
10 attorney general, brings this action in the public interest as defined under Health and
11 Safety Code section 25249.7, subdivision (d).
- 12 2. Defendant Dong He International Trading, Inc. ("DONG HE") is a California
13 corporation, qualified to do business and doing business in the State of California at all
14 relevant times herein.
- 15 3. Defendant Cost Saver Market ("COST SAVER") is a business entity form unknown,
16 doing business in California at all relevant times herein.
- 17 4. Defendant Big Lots Stores, Inc., ("BIG LOTS STORES") is an Ohio corporation,
18 qualified to do business and doing business in the State of California at all relevant times
19 herein.
- 20 5. Defendant Raley's ("RALEY'S") is a California corporation, qualified to do business in
21 the State of California at all relevant times herein.
- 22 6. Defendant Warehouse Concepts dba Food Source ("WAREHOUSE CONCEPTS") is a
23 California corporation, qualified to do business in the State of California at all relevant
24 times herein.
- 25 7. Defendant United Power Group, Inc. ("UNITED POWER") is a dba of Dong He
26 International Trading, doing business in California at all relevant times herein.
- 27
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1 8. Defendant Smart Cook, Inc. ("SMART COOK") is a California corporation, qualified to
2 do business in the State of California at all relevant times herein

3 9. Defendant Unified Grocers, Inc. ("UNIFIED GROCERS") is a California corporation,
4 qualified to do business in the State of California at all relevant times herein.

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

11 11. At all times mentioned herein, the term "Defendants" includes DONG HE, BIG LOTS
12 STORES, RALEY'S, COST SAVER, WAREHOUSE CONCEPTS, UNITED POWER,
13 SMART COOK, UNIFIED GROCERS, and Does 1-20.

14 12. 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 13. 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 14. 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.
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JURISDICTION

1
2 15. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
3 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
4 those given by statute to other trial courts. This Court has jurisdiction over this action
5 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
6 violations of Proposition 65 in any Court of competent jurisdiction.

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

15 17. Venue is proper in the County of Los Angeles because one or more of the instances of
16 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
17 because Defendants conducted, and continue to conduct, business in the County of Los
18 Angeles with respect to the consumer product that is the subject of this action.

BACKGROUND AND PRELIMINARY FACTS

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20 18. In 1986, California voters approved an initiative to address growing concerns about
21 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
22 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
23 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
24 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
25 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
26 from contamination, to allow consumers to make informed choices about the products
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1 they buy, and to enable persons to protect themselves from toxic chemicals as they see
2 fit.

3 19. 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 20. 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 21. 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 22. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl
21 Phthalate ("DEHP")-bearing, and Di-n-Butyl Phthalate ("DBP")-bearing products of
22 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed
23 chemicals of such products without first providing clear and reasonable warnings of such
24 to the exposed persons prior to the time of exposure. Plaintiff later discerned that
25 Defendants engaged in such practice.

26 23. On December 2, 2005, the Governor of California added DBP to the list of chemicals
27 known to the state to cause developmental, female, and male reproductive toxicity.
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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 24. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
6 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
7 to the list of chemicals known to the State to cause developmental male reproductive
8 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
9 months after addition of DEHP to the list of chemicals known to the State to cause
10 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
11 requirements and discharge prohibitions.

12 **SATISFACTION OF PRIOR NOTICE**

13 25. On or about February 28, 2012, Plaintiff gave notice of alleged violations of Health and
14 Safety Code section 25249.6, concerning consumer products exposures and occupational
15 exposures, subject to a private action to DONG HE, SMART COOK, COST SAVER and
16 to the California Attorney General, County District Attorneys, and City Attorneys for
17 each city containing a population of at least 750,000 people in whose jurisdictions the
18 violations allegedly occurred, concerning the product Cookware.

19 26. On or about March 6, 2012, Plaintiff gave notice of alleged violations of Health and
20 Safety Code section 25249.6, concerning consumer products exposures and occupational
21 exposures, subject to a private action to DONG HE, SMART COOK, BIG LOTS
22 STORES, BIG LOTS and to the California Attorney General, County District Attorneys,
23 and City Attorneys for each city containing a population of at least 750,000 people in
24 whose jurisdictions the violations allegedly occurred, concerning the product Inspection
25 Tools.

26 27. On or about April 23, 2012, Plaintiff gave notice of alleged violations of Health and
27 Safety Code section 25249.6, concerning consumer products exposures and occupational
28

1 exposures, subject to a private action to RALEY'S, UNITED POWER, WAREHOUSE
2 CONCEPTS, and to the California Attorney General, County District Attorneys, and City
3 Attorneys for each city containing a population of at least 750,000 people in whose
4 jurisdictions the violations allegedly occurred, concerning the product Tongs.

5 28. On or about February 15, 2013, Plaintiff gave notice of alleged violations of Health and
6 Safety Code section 25249.6, concerning consumer products exposures and occupational
7 exposures, subject to a private action to UNIFIED GROCERS, and to the California
8 Attorney General, County District Attorneys, and City Attorneys for each city containing
9 a population of at least 750,000 people in whose jurisdictions the violations allegedly
10 occurred, concerning the product Tongs.

11 29. Before sending the notices of alleged violation, Plaintiff investigated the consumer
12 products involved, the likelihood that such products would cause users to suffer
13 significant exposures to DBP and/or DEHP, and the corporate structure of each of the
14 Defendants.

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

25 31. Plaintiff's notices of alleged violations also included a Certificate of Service and a
26 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
27 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
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1 32. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notices of the alleged violations to Dong, Smart, and the public prosecutors
3 referenced in Paragraphs 25-27.

4 33. 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 DONG HE INTERNATIONAL**
10 **TRADING, INC., COST SAVER MARKET, SMART COOK, INC., and Does 1-20 for**
11 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
12 **(Health & Safety Code, §§ 25249.5, et seq.)**

13 **Cookware**

14 34. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
15 paragraphs 1 through 32 of this complaint as though fully set forth herein.

16 35. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 distributor, promoter, or retailer of Cookware (hereinafter "Cookware"), including but
18 not limited to "Smart Cook®" "Serving Tongs", Item # 58001, "Made in China."

19 36. Plaintiff is informed, believes, and thereon alleges that Cookware contain DBP and
20 DEHP.

21 37. Defendants knew or should have known that DBP and DEHP has been identified by the
22 State of California as chemicals known to cause cancer and reproductive toxicity and
23 therefore was subject to Proposition 65 warning requirements. Defendants were also
24 informed of the presence of DBP and DEHP in Cookware within Plaintiff's notice of
25 alleged violations further discussed above at Paragraph 25.

26 38. Plaintiff's allegations regarding Cookware concern "[c]onsumer products exposure[s],"
27 which "is an exposure that results from a person's acquisition, purchase, storage,
28 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).*

1 Cookware is a consumer product used in close proximity to food, and, as mentioned
2 herein, exposures to DBP and DEHP took place as a result of such normal and
3 foreseeable consumption and use.

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

8 40. Plaintiff is informed, believes, and thereon alleges that between February 28, 2009 and
9 the present, each of the Defendants knowingly and intentionally exposed California
10 consumers and users of Cookware, which Defendants manufactured, distributed, or sold
11 as mentioned above, to DBP and DEHP, without first providing any type of clear and
12 reasonable warning of such to the exposed persons before the time of exposure.

13 Defendants have distributed and sold Cookware in California. Defendants know and
14 intend that California consumers will use and consume Cookware thereby exposing them
15 to DBP and DEHP. Defendants thereby violated Proposition 65.

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

21 42. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
22 Proposition 65 as to Cookware have been ongoing and continuous to the date of the
23 signing of this complaint, as Defendants engaged and continue to engage in conduct
24 which violates Health and Safety Code section 25249.6, including the manufacture,
25 distribution, promotion, and sale of Cookware, so that a separate and distinct violation of
26 Proposition 65 occurred each and every time a person was exposed to DBP and DEHP by
27 Cookware as mentioned herein.
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1 43. 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 44. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DBP and DEHP from Cookware, pursuant
6 to Health and Safety Code section 25249.7(b).

7 45. In the absence of equitable relief, the general public and Defendants' employees will
8 continue to be involuntarily exposed to DBP and DEHP that is contained in Cookware,
9 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged
10 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or
11 adequate remedy at law.

12 **SECOND CAUSE OF ACTION**

13 **(By Consumer Advocacy Group, Inc. and against BIG LOTS STORES, INC., and Does 1-**
14 **20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**
15 **of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

16 **Inspection Tools**

17 46. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
18 paragraphs 1 through 44 of this complaint as though fully set forth herein.

19 47. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Inspection Tools containing DEHP (hereinafter
21 "Tools"), including but not limited to "Shop Basics™" Telescoping Inspection Tool With
22 Mirror, V# 1008347, Item # HS230019489.

23 48. Plaintiff is informed, believes, and thereon alleges that Tools contain DEHP.

24 49. Defendants knew or should have known that DEHP 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 DEHP in Tools within Plaintiff's notice of alleged violations further
28 discussed above at Paragraph 26.

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

7 51. Plaintiff is informed, believes, and thereon alleges that between March 6, 2009 and the
8 present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Tools, which Defendants manufactured, distributed, or sold as
10 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 Tools in California. Defendants know and intend that California
13 consumers will use and consume Tools thereby exposing them to DEHP. Defendants
14 thereby violated Proposition 65.

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

20 53. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
21 Proposition 65 as to Tools have been ongoing and continuous to the date of the signing of
22 this complaint, as Defendants engaged and continue to engage in conduct which violates
23 Health and Safety Code section 25249.6, including the manufacture, distribution,
24 promotion, and sale of Tools, so that a separate and distinct violation of Proposition 65
25 occurred each and every time a person was exposed to DEHP by Tools as mentioned
26 herein.
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1 54. 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 55. 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 Tools, pursuant to Health and
6 Safety Code section 25249.7(b).

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

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10 **THIRD CAUSE OF ACTION**

11 **(By Consumer Advocacy Group, Inc. and against DONG HE INTERNATIONAL**
12 **TRADING, INC., COST SAVER, RALEY'S, WAREHOUSE CONCEPTS, SMART**
13 **COOK, INC., UNITED POWER GROUP, INC., UNIFIED GROCERS, INC., and Does 1-**
14 **20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**
15 **of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

16 **Tongs**

17 57. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
18 paragraphs 1 through 55 of this complaint as though fully set forth herein.

19 58. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Tongs (hereinafter "Tongs"), including but not
21 limited to Smart Cook® Serving Tongs, Classic Collection, "Quality That You Can
22 Trust", Item # 58001.

23 59. Plaintiff is informed, believes, and thereon alleges that Tongs contain DBP and DEHP.

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

61. Plaintiff's allegations regarding Tongs concern "[c]onsumer products exposure[s],"
which "is an exposure that results from a person's acquisition, purchase, storage,

1 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
2 that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b).

3 Tongs is a consumer product used in close proximity to food, and, as mentioned herein,
4 exposures to DBP and DEHP took place as a result of such normal and foreseeable
5 consumption and use.

6 62. Plaintiff’s allegations regarding Tongs also concern Occupational Exposures, which
7 “means an exposure to any employee in his or her employer’s workplace.” *Cal. Code*
8 *Regs.* tit. 27, § 25602(f). Exposures of DBP and DEHP to Defendants’ employees
9 occurred through the course of their employment in their employers’ workplaces.

10 63. Plaintiff is informed, believes, and thereon alleges that between April 23, 2009 and the
11 present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Tongs, which Defendants manufactured, distributed, or sold as
13 mentioned above, to DBP and DEHP, without first providing any type of clear and
14 reasonable warning of such to the exposed persons before the time of exposure.

15 Defendants have distributed and sold Tongs in California. Defendants know and intend
16 that California consumers will use and consume Tongs thereby exposing them to DBP
17 and DEHP. Defendants thereby violated Proposition 65.

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

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

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

6 67. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to DBP and DEHP from Tongs, pursuant to
8 Health and Safety Code section 25249.7(b).

9 68. In the absence of equitable relief, the general public and Defendants' employees will
10 continue to be involuntarily exposed to DBP and DEHP that is contained in Tongs,
11 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged
12 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or
13 adequate remedy at law.

14 **FOURTH CAUSE OF ACTION**

15 **(By Consumer Advocacy Group, Inc. and against DONG HE INTERNATIONAL**
16 **TRADING, INC., SMART COOK, INC., and Does 1-20 for Equitable Indemnity**

17 **Tongs**

18 69. Plaintiff repeats and incorporates by reference paragraphs 1 through 68 of this complaint
19 as though fully set forth herein.

20 70. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS purchased the Tongs
21 from Defendants DONG HE and SMART COOK, the manufacturers of the Tongs.

22 71. At the time of purchase, Defendants DONG HE and SMART COOK, who operate as one
23 business and as a single enterprise, held themselves out to be merchants within the
24 meaning of the Commercial Code, and were in the business of selling like goods and
25 consumer products by their occupation, and held themselves out as having specialized
26 knowledge and skill regarding like goods and consumer products.

27 72. The Tongs were not of the same quality of those accepted in the trade and were no
28 merchantable because they contained dangerously high amounts of the Listed Chemicals,

1 and could not be resold without the selling incurring liability and civil penalties under
2 Proposition 65.

3 73. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS allege that they are
4 in no way responsible for the events giving rise to Plaintiff's cause of action.

5 74. If in fact Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS are held
6 responsible under Proposition 65 for the violations as alleged herein with respect to the
7 Tongs, then Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS are
8 informed and believe, and based upon such information and believe, allege that
9 Defendants DONG HE and SMART COOK, are entirely responsible by selling and
10 distributing to Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS,
11 Tongs that contained dangerously high amounts of the Listed Chemicals, and could not
12 be resold without the selling incurring liability and civil penalties under Proposition 65.

13 75. By reason of the foregoing, Defendants WAREHOUSE CONCEPTS and UNIFIED
14 GROCERS allege that they are entitled to judgment against Defendants DONG HE and
15 SMART COOK and each of them, at least in the amount of \$161,381.47, incurred by
16 Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS as litigation costs
17 and expenses.

18 76. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS have assigned to
19 Plaintiff their right to bring against DONG HE and SMART COOK, any and all claims
20 and causes of action they have or had against Defendants DONG HE and SMART
21 COOK, arising out of said Defendants' sale of Tongs containing Listed Chemicals.

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FIFTH CAUSE OF ACTION

(By Consumer Advocacy Group, Inc. and against DONG HE INTERNATIONAL TRADING, INC., SMART COOK, INC., and Does 1-20 for Implied Indemnity

Tongs

77. Plaintiff repeats and incorporates by reference paragraphs 1 through 76 of this complaint as though fully set forth herein.

78. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS purchased the Tongs from Defendants DONG HE and SMART COOK, the manufacturers of the Tongs.

79. At the time of purchase, Defendants DONG HE and SMART COOK, who operate as one business and as a single enterprise, held themselves out to be merchants within the meaning of the Commercial Code, and were in the business of selling like goods and consumer products by their occupation, and held themselves out as having specialized knowledge and skill regarding like goods and consumer products.

80. The Tongs were not of the same quality of those accepted in the trade and were no merchantable because they contained dangerously high amounts of the Listed Chemicals, and could not be resold without the selling incurring liability and civil penalties under Proposition 65.

81. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS allege that they are in no way responsible for the events giving rise to Plaintiff's cause of action.

82. If in fact Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS are held responsible under Proposition 65 for the violations as alleged herein with respect to the Tongs, then Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS are informed and believe, and based upon such information and believe, allege that Defendants DONG HE and SMART COOK are entirely responsible by selling and distributing to Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS Tongs that contained dangerously high amounts of the Listed Chemicals, and could not be resold without the selling incurring liability and civil penalties under Proposition 65.

1 83. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS are informed and
2 believe that they are entitled to completely indemnification from Defendants DONG HE
3 and SMART COOK and each of them, for any sum or such sums for which they may be
4 adjudicated liable to Plaintiffs, with respect to costs of defense, costs of suit, and
5 reasonable attorney's fees incurred therefrom, at an amount no less than \$161,381.47.

6 84. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS have assigned to
7 Plaintiff their right to bring against Defendants DONG HE and SMART COOK any and
8 all claims and causes of action they have or had against Defendants DONG HE and
9 SMART COOK arising out of said Defendants' sale of Tongs containing Listed
10 Chemicals.

11 **FIFTH CAUSE OF ACTION**

12 **(By Consumer Advocacy Group, Inc. and against DONG HE INTERNATIONAL**
13 **TRADING, INC., SMART COOK, INC., and Does 1-20 for Express Indemnity**

14 **Tongs**

15 85. Plaintiff repeats and incorporates by reference paragraphs 1 through 76 of this complaint
16 as though fully set forth herein.

17 86. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS purchased the Tongs
18 from Defendants DONG HE and SMART COOK, the manufacturers of the Tongs.

19 87. At the time of purchase, Defendants DONG HE and SMART COOK, who operate as one
20 business and as a single enterprise, held themselves out to be merchants within the
21 meaning of the Commercial Code, and were in the business of selling like goods and
22 consumer products by their occupation, and held themselves out as having specialized
23 knowledge and skill regarding like goods and consumer products.

24 88. The Tongs were not of the same quality of those accepted in the trade and were no
25 merchantable because they contained dangerously high amounts of the Listed Chemicals,
26 and could not be resold without the selling incurring liability and civil penalties under
27 Proposition 65.
28

1 89. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS allege that they are
2 in no way responsible for the events giving rise to Plaintiff's cause of action.

3 90. Defendants DONG HE and SMART COOK have expressly agreed to indemnify for any
4 and all losses or damages incurred by Defendants WAREHOUSE CONCEPTS and
5 UNIFIED GROCERS by reason of the sale of the Tongs to said Defendants and by
6 reason of the claims made herein.

7 91. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS are informed and
8 believe that they are entitled to completely indemnification from Defendants DONG HE
9 and SMART COOK and each of them, for any sum or such sums for which they may be
10 adjudicated liable to Plaintiffs, with respect to costs of defense, costs of suit, and
11 reasonable attorney's fees incurred therefrom, at an amount no less than \$161,381.47.

12 92. Defendants WAREHOUSE CONCEPTS and UNIFIED GROCERS have assigned to
13 Plaintiff their right to bring against Defendants DONG HE and SMART COOK any and
14 all claims and causes of action they have or had against Defendants DONG HE and
15 SMART COOK arising out of said Defendants' sale of Tongs containing Listed
16 Chemicals.

17
18 **PRAYER FOR RELIEF**

19 As to the 1st, 2nd, and 3rd causes of action, Plaintiff demands against each of the
20 Defendants as follows:

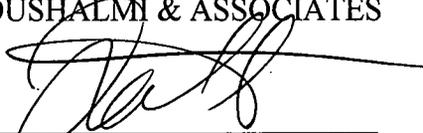
- 21 1. A permanent injunction mandating Proposition 65-compliant warnings;
22 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
23 3. Costs of suit;
24 4. Reasonable attorney fees and costs; and
25 5. Any further relief that the court may deem just and equitable.
26
27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

1 As to the 4th and 5th, and 6th causes of action, Plaintiff demands against Dong He
2 International Trade, Inc. and Smart Cook, Inc., as follows:

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

9
10 Dated: 10/21/14

YEROUSHALMI & ASSOCIATES

11
12 By: 
13 Reuben Yeroushalmi
14 Attorneys for Plaintiff,
15 Consumer Advocacy Group, Inc.

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SUPPORTING DECLARATION OF TARA HECKARD-BRYANT

I, Tara Heckard-Bryant, declare as follows based on personal knowledge, and if called upon to testify under oath to the assertions below, I would do so competently:

1. I am an associate attorney in the law offices of Yeroushalmi & Associates, attorneys for Plaintiff, Consumer Advocacy Group, Inc. ("CAG") in the above captioned case.
2. Trial in this matter is currently set for December 2, 2014 in Department 51 of the above entitled court.
3. A Final Status Conference is currently set for November 24, 2014 in this Department 51.
4. In October, 2014, the Parties stipulated to amend the complaint to add causes of action to the complaint for indemnity. Ultimately, on October 20, 2014, all parties signed the Stipulation. Attached hereto as **Exhibit A** is a true and correct copy of the Stipulation for Leave to Allow Plaintiff Consumer Advocacy Group, Inc. to File Fourth Amended Complaint and Continue Trial.
5. Attorneys for Plaintiff will file the Stipulation for Leave to Allow Plaintiff Consumer Advocacy Group, Inc. to File Fourth Amended Complaint and Continue Trial concurrently with this ex parte application to continue trial.
6. On Tuesday, October 14, 2014, I informed all Defendants' counsel of my intention to go ex parte for the motion to amend the complaint, and in the alternative a trial continuance. On October 14, 2014, Peter Chu, co-counsel for Smart Cook and Dong He, agreed to Stipulate to allow CAG to amend its complaint, provided a trial continuance was also requested. On October 17, 2014 counsel for Unified Grocers, Inc., and Warehouse Concepts, and Raleys, Renee Wasserman, and Thomas Evans, respectively, confirmed that he/she would not be opposing the ex parte and agreed to waive formal ex parte notice. Tony Wong, e-mailed his signature page on October 20, 2014. Renee Wasserman submitted her corrected signature page on October 20, 2014. A true and correct copy of the emails confirming same are attached hereto are attached as **Exhibit B**.
7. The Fourth Amended Complaint adds a fourth, fifth, and sixth cause of action for express, equitable, and implied indemnity. A true and correct copy is attached hereto as **Exhibit C**. The additions are necessary in order for CAG and Defendants Dong He and Smart Cook to resolve all

1
2 **PROOF OF SERVICE**

3 At the time of service, I was 18 years of age and **not a party to this action**. I am employed in the
4 County of Los Angeles, State of California. My business address is 9100 Wilshire Boulevard, Suite 240W,
5 Beverly Hills, CA 90212.

6 On October 20, 2012, I served the following document(s):

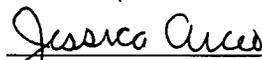
- 7 **1. EX PARTE APPLICATION TO FOR LEAVE TO FILE A SECOND AMENDED**
8 **COMPLAINT AND TO THE CONTINUE TRIAL AND ALL RELATED DATES;**
9 **MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING**
10 **DECLARATION OF WILLIAM J. SHARP;**
11 **2. STIPULATION AND [PROPOSED] ORDER RE PLAINTIFF'S EX PARTE**
12 **APPLICATION FOR LEAVE TO AMEND THE COMPLAINT AND CONTINUE**
13 **TRIAL;**

14 on the interested parties by placing () the original () a true and correct copy thereof in a
15 sealed envelope(s) addressed as follows:

16 BY MAIL: I enclosed the documents(s) in a sealed envelope addressed to the person(s) at the
17 address(es) listed above and placed the envelope for collection and mailing, following our ordinary
18 business practices. I am "readily familiar" with the firm's practice of collection and processing
19 correspondence for mailing. Under that practice, the envelope was deposited in the ordinary course of
20 business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware
21 that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter
22 date is more than one day after date of deposit for mailing in affidavit.

23 X BY FACSIMILE: by transmitting a true copy of the above described documents by facsimile to the
24 person(s) and facsimile number(s) listed above and/or on the attached service list, on this date before 5:00
25 p.m.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
27 and correct. Executed this 20th day of October 2014, at Beverly Hills, California.
28



Jessica Arceo

SERVICE LIST - CAG V. DONG HE BC490595
CAG V. UKA BIG SAVER, BC503799

<p>Walter Chen Renee D. Wasserman ROGERS JOSEPH O'DONNELL 311 California Street, 10th fl San Francisco, CA 94104 Tel.: 415.956.2828 Fax: 415.956.6457 rwasserman@rjo.com wchen@rjo.com <i>Attorneys for Defendant Unified Grocers, Inc.</i></p>	<p>Peter K. Chu Tony Wong Wong, Hung & Chu, LLP 388 E. Valley Blvd., Suite 221 Alhambra, CA 91801 Tel: 626.447.7788 Fax: 626.447.7783 peterc@whclawyers.com tony@wongandlaw.com <i>Attorneys for Defendant Dong He International Trading, Inc., dba United Power Group, (Inc.) and Smart Cook, Inc.</i></p>
<p>Malcolm C. Weiss, Esq. Suedy Torabi, Esq. Hunton & Williams LLP 550 South Hope St., Suite 2000 Los Angeles, CA 90071-2627 Tel: 213.532.2000 Fax: 213.532.2020 mweiss@hunton.com <i>Attorneys for Defendant Super-Max Corporation</i></p>	<p>HARISH SOLANKI PRESIDENT of Big Saver Foods 4260 Charter Street Vernon, CA 90058 F: 323-582-2331 T: 323-582-7222</p>
<p>Thomas A. Evans, Esq. Reed Smith 101 Second Street San Francisco, CA 94105 T: 415.543.8700 F: 415.391.8269 Email: tevans@reedsmith.com <i>Attorneys for Defendant Raley's and Warehouse Concepts dba Food Source</i></p>	