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

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

15 Plaintiff,

16 v.

17 RISING SUN ENTERPRISES, INC. DBA
18 COST SAVER MARKET, a California
19 Corporation, NATIONAL SALES CORP., a
20 California Corporation and DOES 1-20;

21 Defendants.

22 CASE NO. **BC 498656**

23 COMPLAINT FOR PENALTY,
24 INJUNCTION, AND RESTITUTION

25 Violation of Proposition 65, the Safe
26 Drinking Water and Toxic Enforcement
27 Act of 1986 (*Health & Safety Code, §*
28 *25249.5; et seq.*)

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

29 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
30 defendants RISING SUN ENTERPRISES, INC. DBA COST SAVER MARKET, NATIONAL
31 SALES CORP., and DOES 1-20 as follows:

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38 **CONFORMED COPY**
39 **ORIGINAL FILED**
40 **SUPERIOR COURT OF CALIFORNIA**
41 **COUNTY OF LOS ANGELES**

42 **OCT 10 2012**

43 **John A. Clarke, Executive Officer/Clerk**
44 **BY *Cristina Orta* Deputy**
45 Cristina Orta

46 **COPY**

THE PARTIES

- 1
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
3 organization qualified to do business in the State of California. CAG is a person within
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
5 as a private attorney general, brings this action in the public interest as defined under
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant RISING SUN ENTERPRISES, INC. DBA COST SAVER MARKET
8 ("RISING SUN") is a California corporation, qualified to do business and doing business
9 in the State of California at all relevant times herein.
- 10 3. Defendant NATIONAL SALES CORP. ("NATIONAL SALES") is a California
11 corporation, qualified to do business and doing business in the State of California at all
12 relevant times herein.
- 13 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
14 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
15 complaint to allege their true names and capacities when ascertained. Plaintiff is
16 informed, believes, and thereon alleges that each fictitiously named defendant is
17 responsible in some manner for the occurrences herein alleged and the damages caused
18 thereby.
- 19 5. At all times mentioned herein, the term "Defendants" includes RISING SUN,
20 NATIONAL SALES, and DOES 1-20.
- 21 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
22 times mentioned herein have conducted business within the State of California.
- 23 7. At all times relevant to this action, each of the Defendants, including DOES 1-20, was an
24 agent, servant, or employee of each of the other Defendants. In conducting the activities
25 alleged in this Complaint, each of the Defendants was acting within the course and scope
26 of this agency, service, or employment, and was acting with the consent, permission, and
27 authorization of each of the other Defendants. All actions of each of the Defendants
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1 alleged in this Complaint were ratified and approved by every other Defendant or their
2 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
3 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

8 **JURISDICTION**

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

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

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

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

15. Proposition 65 provides that any person "violating or threatening to violate" the statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

"Threaten to violate" means "to create a condition in which there is a substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 16. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing
2 products of exposing, knowingly and intentionally, persons in California to the
3 Proposition 65-listed chemicals of such products without first providing clear and
4 reasonable warnings of such to the exposed persons prior to the time of exposure.
5 Plaintiff later discerned that Defendants engaged in such practice.

6 17. On October 1, 1992, the Governor of California added Lead and Lead compounds to the
7 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).
8 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
9 after addition of Lead and lead compounds to the list of chemicals known to the State to
10 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
11 requirements and discharge prohibitions.

12 18. On February 27, 1987, the Governor of California added Lead to the list of chemicals
13 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).
14 Lead is known to the State to cause developmental, female, and male reproductive
15 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
16 months after addition of Lead to the list of chemicals known to the State to cause
17 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements
18 and discharge prohibitions.

19 **SATISFACTION OF PRIOR NOTICE**

20 19. On or about February 28, 2012, Plaintiff gave notice of alleged violations of Health and
21 Safety Code section 25249.6, concerning consumer products exposures and occupational
22 exposures, subject to a private action to RISING SUN, NATIONAL SALES, and to the
23 California Attorney General, County District Attorneys, and City Attorneys for each city
24 containing a population of at least 750,000 people in whose jurisdictions the violations
25 allegedly occurred, concerning the product Cookware.

1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against RISING SUN
3 ENTERPRISES, INC. DBA COST SAVER MARKET, NATIONAL SALES
4 CORP., and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water
5 and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

6 **Cookware**

- 7 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
8 reference paragraphs 1 through 24 of this complaint as though fully set forth herein.
- 9 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Cookware ("Cookware"), including "Campeón"
11 "Hecho en Mexico" Spatula SKU#010795921732, a consumer product specifically
12 designed for use with food.
- 13 27. Plaintiff is informed, believes, and thereon alleges that Cookware contains lead.
- 14 28. Defendants knew or should have known that lead has been identified by the State of
15 California as a chemical known to cause cancer and reproductive toxicity and therefore
16 was subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of lead in Cookware within Plaintiff's notice of alleged violations further
18 discussed above at Paragraph 19.
- 19 29. Plaintiff's allegations regarding Cookware concerns "[c]onsumer products exposure[s],"
20 which "is an exposure that results from a person's acquisition, purchase, storage,
21 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
22 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).
23 Cookware is a consumer product, and, as mentioned herein, exposures to lead took place
24 as a result of such normal and foreseeable consumption and use.
- 25 30. Plaintiff is informed, believes, and thereon alleges that between February 28, 2009 and
26 the present, each of the Defendants knowingly and intentionally exposed their employees
27 and California consumers and users of Cookware, which Defendants manufactured,
28 distributed, or sold as mentioned above, to lead, without first providing any type of clear
and reasonable warning of such to the exposed persons before the time of exposure.

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

4 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.
5 Persons sustain exposures by handling Cookware without wearing gloves or any other
6 personal protective equipment, or by touching bare skin or mucous membranes with
7 gloves after handling Cookware, as well as through direct and indirect hand to mouth
8 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
9 Cookware. And as to Defendants' employees, employees may be exposed to lead in the
10 course of their employment by handling, distributing, and selling Cookware.

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

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

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

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

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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: 10/9/12, 2012

YEROUSHALMI & ASSOCIATES

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