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SAN FRANCISCO COUNTY
SUPERIOR COURT

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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

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

13
14 Plaintiff,

15 v.

16 NAKAJIMA USA, INC., a California
17 Corporation and DOES 1-20;

18 Defendants.

CASE NO. **CGC-12-523309**

COMPLAINT FOR PENALTY,
INJUNCTION, AND RESTITUTION

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

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

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21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendant
22 NAKAJIMA USA, INC., and Does 1-20 as follows:

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BY FAX

THE PARTIES

1. Plaintiff Consumer Advocacy Group, Inc. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant NAKAJIMA USA, INC. (“NAKAJIMA”) is a California corporation qualified to do business in the State of California and has been doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20, 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.
4. At all times mentioned herein, the term “Defendants” includes NAKAJIMA and Does 1-20.
5. 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.
6. At all times relevant to this action, each of the Defendants, including Does 1-20, 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 authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

5 **JURISDICTION**

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

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

19 10. Venue is proper in the County of San Francisco because one or more of the instances of
20 wrongful conduct occurred, and continues to occur, in the County of San Francisco
21 and/or because Defendants conducted, and continue to conduct, business in the County of
22 San Francisco with respect to the consumer product that is the subject of this action.

23 **BACKGROUND AND PRELIMINARY FACTS**

24 11. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
2 from contamination, to allow consumers to make informed choices about the products
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see
4 fit.

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

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

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

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

27 16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
28 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP

1 to the list of chemicals known to the State to cause developmental male reproductive
2 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
3 months after addition of DEHP to the list of chemicals known to the State to cause
4 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
5 requirements and discharge prohibitions.
6

7 **SATISFACTION OF PRIOR NOTICE**

8 17. On or about April 10, 2012, Plaintiff gave notice of alleged violations of Health and
9 Safety Code section 25249.6, concerning consumer products exposures and occupational
10 exposures, subject to a private action to Nakajima USA, Inc., and to the California
11 Attorney General, County District Attorneys, and City Attorneys for each city containing
12 a population of at least 750,000 people in whose jurisdictions the violations allegedly
13 occurred, concerning the product Steering Wheel Covers.

14 18. Before sending the notices of alleged violation, Plaintiff investigated the consumer
15 product involved, the likelihood that such product would cause users to suffer significant
16 exposures to DEHP, and the corporate structure of each of the Defendants.

17 19. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
18 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
19 Plaintiff who executed the certificate had consulted with at least one person with relevant
20 and appropriate expertise who reviewed data regarding the exposures to DEHP,
21 respectively, which are the subject Proposition 65-listed chemicals of this action. Based
22 on that information, the attorney for Plaintiff who executed the Certificate of Merit
23 believed there was a reasonable and meritorious case for this private action. The attorney
24 for Plaintiff attached to the Certificate of Merit served on the Attorney General the
25 confidential factual information sufficient to establish the basis of the Certificate of
26 Merit.
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1 20. Plaintiff's notices of alleged violations also included a Certificate of Service and a
2 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
3 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

4 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notices of the alleged violations to NAKAJIMA, and the public prosecutors
6 referenced in Paragraph 17.

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

10 **FIRST CAUSE OF ACTION**

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

14 **Steering Wheel Covers**

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

17 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of **Steering Wheel Covers**, including but not limited to
19 Chococat Steering Wheel Cover, #3500 29453-5 , a consumer product designed for use
20 as a cover for steering wheels.

21 25. Plaintiff is informed, believes, and thereon alleges that the Steering Wheel Covers
22 contain DEHP.

23 26. Defendants knew or should have known that DEHP has been identified by the State of
24 California as chemicals known to cause cancer and reproductive toxicity and therefore
25 was subject to Proposition 65 warning requirements. Defendants were also informed of
26 the presence of DEHP in the Steering Wheel Covers within Plaintiff's notice of alleged
27 violations further discussed above at Paragraph 17.

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

8 28. Plaintiff's allegations regarding the Steering Wheel Covers also concern "[o]ccupational
9 exposure[s]," which are exposures "to any employees in his or her employer's
10 workplace." *Cal. Code Reg.* tit. 27, § 25602(f). As mentioned herein, employees were
11 exposed to DEHP in their employer's workplace as a result of handling the Steering
12 Wheel Covers, in conjunction with packaging, shipping, distributing and/or selling the
13 Steering Wheel Covers, among other activities, without having first been given clear and
14 reasonable warnings that such handling would cause exposures to DEHP.

15 29. Plaintiff is informed, believes, and thereon alleges that between April 10, 2009 and the
16 present, each of the Defendants knowingly and intentionally exposed their employees and
17 California consumers and users of Steering Wheel Covers, which Defendants
18 manufactured, distributed, or sold as mentioned above, to DEHP, without first providing
19 any type of clear and reasonable warning of such to the exposed persons before the time
20 of exposure. Defendants have distributed and sold Steering Wheel Covers in California.
21 Defendants know and intend that California consumers will use and consume Steering
22 Wheel Covers, thereby exposing them to DEHP. Defendants thereby violated
23 Proposition 65.

24 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.
25 Persons sustain exposures by handling Steering Wheel Covers without wearing gloves or
26 any other personal protective equipment, or by touching bare skin or mucous membranes
27 with gloves after handling Steering Wheel Covers, as well as through direct and indirect
28 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter

1 dispersed from Steering Wheel Covers. And as to Defendants' employees, employees
2 may be exposed to DEHP in the course of their employment by handling, distributing,
3 and selling Steering Wheel Covers.

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

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

14 33. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to DEHP from Steering Wheel Covers,
16 pursuant to Health and Safety Code section 25249.7(b).

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

22
23 **PRAYER FOR RELIEF**

24 Plaintiff demands against each of the Defendants as follows:

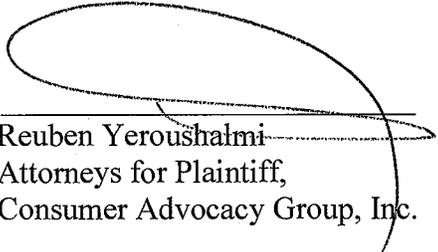
- 25 1. A permanent injunction mandating Proposition 65-compliant warnings;
26 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
27 3. Costs of suit;
28 4. Reasonable attorney fees and costs; and

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5. Any further relief that the court may deem just and equitable.

Dated: August 13, 2012

YEROUSHALMI & ASSOCIATES

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