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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

DEC 27 2013

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Plaintiff,

v.

WINCO INDUSTRIES COMPANY, a
California Corporation; DWL
INTERNATIONAL TRADING INC., a
New Jersey Corporation; and DOES 1-20;

Defendants.

CASE NO. **BC531751**

COMPLAINT FOR PENALTY AND
INJUNCTION

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
Defendants WINCO INDUSTRIES COMPANY, DWL INTERNATIONAL TRADING INC.,
and DOES 1-20 as follows:

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1 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
2 wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

25 **BACKGROUND AND PRELIMINARY FACTS**

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

8 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to
9 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
10 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
11 chemicals and chemical families. Proposition 65 imposes warning requirements and
12 other controls that apply to Proposition 65-listed chemicals.

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

19 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
20 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
21 "Threaten to violate" means "to create a condition in which there is a substantial
22 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

25 16. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl
26 Phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons
27 in California to the Proposition 65-listed chemicals of such products without first
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1 providing clear and reasonable warnings of such to the exposed persons prior to the time
2 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

3 17. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
4 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
5 to the list of chemicals known to the State to cause developmental male reproductive
6 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
7 months after addition of DEHP to the list of chemicals known to the State to cause
8 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
9 requirements and discharge prohibitions.

10 **SATISFACTION OF PRIOR NOTICE**

11 18. On or about April 17, 2013, Plaintiff gave notice of alleged violations of Health and
12 Safety Code section 25249.6, concerning consumer products exposures, subject to a
13 private action to WINCO, and to the California Attorney General, County District
14 Attorneys, and City Attorneys for each city containing a population of at least 750,000
15 people in whose jurisdictions the violations allegedly occurred, concerning the product
16 Serving Tongs containing DEHP.

17 19. On or about May 6, 2013, Plaintiff gave notice of alleged violations of Health and Safety
18 Code section 25249.6, concerning consumer products exposures and occupational
19 exposures, subject to a private action to WINCO and to the California Attorney General,
20 County District Attorneys, and City Attorneys for each city containing a population of at
21 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
22 the product Cooking Baskets containing DEHP.

23 20. On or about October 9, 2013, Plaintiff gave notice of alleged violations of Health and
24 Safety Code section 25249.6, concerning consumer products exposures, subject to a
25 private action to DWL, WINCO and to the California Attorney General, County District
26 Attorneys, and City Attorneys for each city containing a population of at least 750,000
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1 people in whose jurisdictions the violations allegedly occurred, concerning the product
2 Steel Ladles containing DEHP.

3 21. Before sending the notices of alleged violations, Plaintiff investigated the consumer
4 products involved, the likelihood that such products would cause users to suffer
5 significant exposures to DEHP, and the corporate structure of each of the Defendants.

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

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

18 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
19 gave notices of the alleged violation to WINCO and DWL and the public prosecutors
20 referenced in Paragraphs 18-20.

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

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FIRST CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against WINCO and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))

Serving Tongs

26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 25 of this complaint as though fully set forth herein.

27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Serving Tongs, which includes but is not limited to, 1) "Winco UT-12HP-K Vinyl Coated Utility Tong 12" Black 812944008840" and 2) "Winco UT-9HP-G Vinyl Coated Utility Tong 9" Green 812944009021" ("SERVING TONGS").

28. SERVING TONGS contain DEHP.

29. 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 SERVING TONGS within Plaintiff's notice of alleged violations further discussed above at Paragraph 18.

30. Plaintiff's allegations regarding SERVING TONGS concerns "[c]onsumer 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)*. SERVING TONGS are consumer products, and, as mentioned herein, exposures to lead took place as a result of such normal and foreseeable consumption and use.

31. Plaintiff is informed, believes, and thereon alleges that between April 17, 2010 and the present, each of the Defendants knowingly and intentionally exposed their California consumers and users of SERVING TONGS, which Defendants manufactured,

1 distributed, or sold as mentioned above, to DEHP, without first providing any type of
2 clear and reasonable warning of such to the exposed persons before the time of exposure.
3 Defendants have distributed and sold SERVING TONGS in California. Defendants
4 know and intend that California consumers will use and consume SERVING TONGS,
5 thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

6 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.
7 Persons sustain exposures by handling SERVING TONGS without wearing gloves or any
8 other personal protective equipment, or by touching bare skin or mucous membranes with
9 gloves after handling SERVING TONGS, as well as through direct and indirect hand to
10 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
11 from SERVING TONGS.

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

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

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

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

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1 43. Plaintiff is informed, believes, and thereon alleges that between May 6, 2010 and the
2 present, each of the Defendants knowingly and intentionally exposed their employees and
3 California consumers and users of COOKING BASKETS, which Defendants
4 manufactured, distributed, or sold as mentioned above, to DEHP, without first providing
5 any type of clear and reasonable warning of such to the exposed persons before the time
6 of exposure. Defendants have distributed and sold COOKING BASKETS in California.
7 Defendants know and intend that California consumers will use and consume COOKING
8 BASKETS, thereby exposing them to DEHP. Defendants thereby violated Proposition
9 65.

10 44. The principal routes of exposure are through dermal contact, ingestion and inhalation.
11 Persons sustain exposures by handling COOKING BASKETS without wearing gloves or
12 any other personal protective equipment, or by touching bare skin or mucous membranes
13 with gloves after handling COOKING BASKETS, as well as through direct and indirect
14 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter
15 dispersed from COOKING BASKETS. And as to Defendants' employees, employees
16 may be exposed to DEHP in the course of their employment by handling, distributing,
17 and selling COOKING BASKETS.

18 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
19 Proposition 65 as to COOKING BASKETS have been ongoing and continuous to the
20 date of the signing of this complaint, as Defendants engaged and continue to engage in
21 conduct which violates Health and Safety Code section 25249.6, including the
22 manufacture, distribution, promotion, and sale of COOKING BASKETS, so that a
23 separate and distinct violation of Proposition 65 occurred each and every time a person
24 was exposed to DEHP by COOKING BASKETS as mentioned herein.

25 46. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
26 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
27 violations alleged herein will continue to occur into the future.
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1 47. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to DEHP from COOKING BASKETS,
3 pursuant to Health and Safety Code section 25249.7(b).

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

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7 **THIRD CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against DWL, WINCO and**
9 **DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
10 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

11 **Steel Ladles**

12 49. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
13 reference paragraphs 1 through 48 of this complaint as though fully set forth herein.

14 50. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Steel Ladles, which includes but is not limited to, 1)
16 "WINCO 'LDC-6', 'Pvc One Pce Ladle', '6 Oz - Black' 6 oz 177 ml Stainless Steel
17 Ladle with Black Handle, UPC: 811642008879"; 2) "WINCO 'LDC-05', 'Pvc One Pce
18 Ladle', '1/2 Oz - Teal' 1/2 oz 15 ml Stainless Steel Ladle with Teal Handle, UPC:
19 811642008824"; and 3) "WINCO 'LDC-2', 'Pvc One Pce Ladle', '2 Oz - Red' 2 oz 59
20 ml Stainless Steel Ladle with Red Handle, UPC: 811642008848" ("STEEL LADLES").

21 51. STEEL LADLES contain DEHP.

22 52. Defendants knew or should have known that DEHP has been identified by the State of
23 California as a chemical known to cause cancer and reproductive toxicity and therefore
24 was subject to Proposition 65 warning requirements. Defendants were also informed of
25 the presence of DEHP in STEEL LADLES within Plaintiff's notice of alleged violations
26 further discussed above at Paragraph 20.

27 53. Plaintiff's allegations regarding STEEL LADLES concerns "[c]onsumer products
28 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,

1 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
2 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
3 *25602(b)*. STEEL LADLES are consumer products, and, as mentioned herein, exposures
4 to lead took place as a result of such normal and foreseeable consumption and use.

5 54. Plaintiff is informed, believes, and thereon alleges that between October 9, 2010 and the
6 present, each of the Defendants knowingly and intentionally exposed their California
7 consumers and users of STEEL LADLES, which Defendants manufactured, distributed,
8 or sold as mentioned above, to DEHP, without first providing any type of clear and
9 reasonable warning of such to the exposed persons before the time of exposure.

10 Defendants have distributed and sold STEEL LADLES in California. Defendants know
11 and intend that California consumers will use and consume STEEL LADLES, thereby
12 exposing them to DEHP. Defendants thereby violated Proposition 65.

13 55. The principal routes of exposure are through dermal contact, ingestion and inhalation.

14 Persons sustain exposures by handling STEEL LADLES without wearing gloves or any
15 other personal protective equipment, or by touching bare skin or mucous membranes with
16 gloves after handling STEEL LADLES, as well as through direct and indirect hand to
17 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
18 from STEEL LADLES.

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

1 57. 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 58. 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 STEEL LADLES, pursuant to
6 Health and Safety Code section 25249.7(b).

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

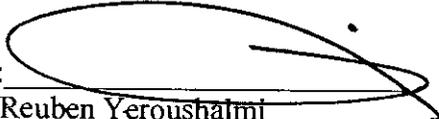
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10 **PRAYER FOR RELIEF**

11 Plaintiff demands against each of the Defendants as follows:

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

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19 Dated: December 26, 2013

YEROUSHALMI & ASSOCIATES

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22 BY: 

23 Reuben Yeroushalmi
24 Attorneys for Plaintiff,
25 Consumer Advocacy Group, Inc.
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