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SAN FRANCISCO COUNTY
SUPERIOR COURT

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CLERK OF THE COURT

BY: _____
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

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

13 Plaintiff,

14 v.

15 LYNCO DISTRIBUTION, INC., dba
16 LYNCO PRODUCTS, an Illinois
17 Corporation; and DOES 1-20;

18 Defendants.

CASE NO. CGC - 13 - 535397

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)

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22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
23 defendants LYNCO DISTRIBUTION, INC., dba LYNCO PRODUCTS, and DOES 1-20 as
24 follows:

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28

BY FAX

1 //

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 LYNCO DISTRIBUTION, INC., dba LYNCO PRODUCTS ("LYNCO DISTRIBUTION") is an Illinois Corporation, 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 LYNCO DISTRIBUTION, 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. Upon information and belief, 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.

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

- 3 7. 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 8. 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 9. 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 10. Venue is proper in the County of San Francisco because one or more of the instances of
22 wrongful conduct occurred, and continues to occur, in the County of San Francisco
23 and/or because Defendants conducted, and continue to conduct, business in the County of
24 San Francisco with respect to the consumer product that is the subject of this action.

1 BACKGROUND AND PRELIMINARY FACTS

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

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

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

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

20 18. On October 1, 1992, the Governor of California added lead and lead compounds to the
21 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).
22 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
23 after addition of lead and lead compounds to the list of chemicals known to the State to
24 cause cancer, lead and lead compounds became fully subject to Proposition 65 warning
25 requirements and discharge prohibitions.

1 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
2 any applicable district attorney or city attorney has commenced and is diligently
3 prosecuting an action against the Defendants.
4

5
6 **FIRST CAUSE OF ACTION**

7 **(By CONSUMER ADVOCACY GROUP, INC. and against LYNCO**
8 **DISTRIBUTION, INC., dba LYNCO PRODUCTS, an Illinois Corporation; 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 **Steering Wheel Covers**

12 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
13 reference paragraphs 1 through 24 of this complaint as though fully set forth herein.

14 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Steering Wheel Covers, which includes but is not
16 limited to "Performance™ Driven Steering Wheel Cover, "For Trucks", "Fits 18"
17 Diameter Steering Wheel", "Non-Slip Design", "Lynco Products™", "SEC 18" Massage
18 Grip-Wood", "073-18401", "8 56224 18401 5" ("COVERS").

19 27. COVERS contain DEHP and Lead.

20 28. Defendants knew or should have known that DEHP and Lead have been identified by the
21 State of California as a chemical known to cause reproductive toxicity and therefore was
22 subject to Proposition 65 warning requirements. Defendants were also informed of the
23 presence of DEHP and Lead in COVERS within Plaintiff's notice of alleged violations
24 further discussed above at Paragraph 19.

25 29. Plaintiff's allegations regarding COVERS concern "[c]onsumer products exposure[s],"
26 which "is an exposure that results from a person's acquisition, purchase, storage,
27 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
28 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b).*

1 COVERS are consumer products, and, as mentioned herein, exposures to DEHP and
2 Lead took place as a result of such normal and foreseeable consumption and use.

3 30. Plaintiff is informed, believes, and thereon alleges that between April 17, 2010 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of COVERS, which Defendants manufactured, distributed, or sold
6 as mentioned above, to DEHP and Lead without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.

8 Defendants have distributed and sold COVERS in California. Defendants know and
9 intend that California consumers will use and consume COVERS, thereby exposing them
10 to DEHP and Lead. Defendants thereby violated Proposition 65.

11 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.

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

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

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

1 34. 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 and Lead from COVERS, pursuant
3 to Health and Safety Code section 25249.7(b).

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

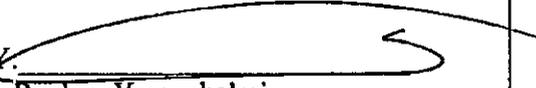
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7 **PRAYER FOR RELIEF**

8 Plaintiff demands against each of the Defendants as follows:

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

14
15 Dated: 11/8, 2013

YEROUSHALMI & ASSOCIATES

16
17 BY: 

18 Reuben Yeroushalmi
19 Attorneys for Plaintiff,
20 Consumer Advocacy Group, Inc.