

NOV 06 2013

John A. Clarke, Executive Officer/Clerk

By LA TRESE JOHNSON, Deputy

1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 **YEROUSHALMI & ASSOCIATES**
5 9100 Wilshire Boulevard, Suite 610E
6 Beverly Hills, California 90212
7 Telephone: 310.623.1926
8 Facsimile: 310.623.1930

9 Attorneys for Plaintiff,
10 Consumer Advocacy Group, Inc.

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

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

15 Plaintiff,

16 v.

17 PILOT AUTOMOTIVE, INC., a California
18 Corporation; VEHICLE PERFORMANCE
19 SYSTEMS, INC., Georgia Corporation;
20 WANG'S INTERNATIONAL, INC., a
21 California Corporation; PEP BOYS-
22 MANNY, MOE & JACK OF DELAWARE,
23 INC., a Delaware Corporation; PEP BOYS-
24 MANNY, MOE & JACK OF CA, INC., a
25 California Corporation; PEP BOYS, INC.-
26 MANNY, MOE & JACK., a Philadelphia
27 Corporation; and DOES 1-20;

28 Defendants.

CASE NO.

BC 526856

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)

COPY

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
2 defendants PILOT AUTOMOTIVE, INC., VEHICLE PERFORMANCE SYSTEMS, INC.,
3 WANG'S INTERNATIONAL, INC., PEP BOYS-MANNY, MOE & JACK OF DELAWARE,
4 INC., PEP BOYS-MANNY, MOE & JACK OF CA, INC., PEP BOYS, INC.-MANNY, MOE &
5 JACK, and DOES 1-20 as follows:

6
7 **THE PARTIES**

- 8 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
9 organization qualified to do business in the State of California. CAG is a person within
10 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
11 as a private attorney general, brings this action in the public interest as defined under
12 Health and Safety Code section 25249.7, subdivision (d).
- 13 2. Defendant PILOT AUTOMOTIVE, INC. ("PILOT AUTOMOTIVE") is a California
14 corporation, doing business in the State of California at all relevant times herein.
- 15 3. Defendant VEHICLE PERFORMANCE SYSTEMS, INC. ("VEHICLE
16 PERFORMANCE") is a Georgia corporation, doing business in the State of California at
17 all relevant times herein.
- 18 4. Defendant WANG'S INTERNATIONAL, INC. ("WANG'S") is a California
19 corporation, doing business in the State of California at all relevant times herein.
- 20 5. Defendant PEP BOYS-MANNY, MOE & JACK OF DELAWARE, INC. ("PEP BOYS-
21 DE") is a Delaware corporation, doing business in the State of California at all relevant
22 times herein.
- 23 6. Defendant PEP BOYS-MANNY, MOE & JACK OF CA, INC. ("PEP BOYS- CA") is a
24 California corporation, doing business in the State of California at all relevant times
25 herein.
- 26
27
28

- 1 7. Defendant PEP BOYS, INC.-MANNY, MOE & JACK, INC. ("PEP BOYS") is a
2 Philadelphia corporation, doing business in the State of California at all relevant times
3 herein.
- 4 8. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
5 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
6 complaint to allege their true names and capacities when ascertained. Plaintiff is
7 informed, believes, and thereon alleges that each fictitiously named defendant is
8 responsible in some manner for the occurrences herein alleged and the damages caused
9 thereby.
- 10 9. At all times mentioned herein, the term "Defendants" includes PILOT AUTOMOTIVE,
11 VEHICLE PERFORMANCE, WANG'S, PEP BOYS- DE, PEP BOYS- CA, PEP BOYS,
12 and DOES 1-20.
- 13 10. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
14 times mentioned herein have conducted business within the State of California.
- 15 11. Upon information and belief, at all times relevant to this action, each of the Defendants,
16 including DOES 1-20, was an agent, servant, or employee of each of the other
17 Defendants. In conducting the activities alleged in this Complaint, each of the
18 Defendants was acting within the course and scope of this agency, service, or
19 employment, and was acting with the consent, permission, and authorization of each of
20 the other Defendants. All actions of each of the Defendants alleged in this Complaint
21 were ratified and approved by every other Defendant or their officers or managing agents.
22 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
23 wrongful conduct of each of the other Defendants.
- 24 12. 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.
- 28

1
2 **JURISDICTION**

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

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

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

20
21 **BACKGROUND AND PRELIMINARY FACTS**

22 16. In 1986, California voters approved an initiative to address growing concerns about
23 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
24 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
25 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
26 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
27 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
28

1 from contamination, to allow consumers to make informed choices about the products
2 they buy, and to enable persons to protect themselves from toxic chemicals as they see
3 fit.

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

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

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

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

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

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

26 21. On February 27, 1987, the Governor of California added lead to the list of chemicals
27 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).
28

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

6 22. 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
13 **SATISFACTION OF PRIOR NOTICE**

14 23. On or about July 3, 2013, Plaintiff gave notice of alleged violations of Health and Safety
15 Code section 25249.6, concerning consumer products exposures, subject to a private
16 action to PILOT AUTOMOTIVE, VEHICLE PERFORMANCE, WANG'S , PEP
17 BOYS-DE, PEP BOYS-CA, PEP BOYS and DOES 1-20, and to the California Attorney
18 General, County District Attorneys, and City Attorneys for each city containing a
19 population of at least 750,000 people in whose jurisdictions the violations allegedly
20 occurred, concerning the product Steering Wheel Covers containing Lead.

21 24. Before sending the notices of alleged violation, Plaintiff investigated the consumer
22 products involved, the likelihood that such products would cause users to suffer
23 significant exposures to Lead, and the corporate structure of each of the Defendants.

24 25. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
25 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
26 Plaintiff who executed the certificate had consulted with at least one person with relevant
27 and appropriate expertise who reviewed data regarding the exposures to Lead, the subject
28

1 Proposition 65-listed chemical of this action. Based on that information, the attorney for
2 Plaintiff who executed the Certificate of Merit believed there was a reasonable and
3 meritorious case for this private action. The attorney for Plaintiff attached to the
4 Certificate of Merit served on the Attorney General the confidential factual information
5 sufficient to establish the basis of the Certificate of Merit.

6 26. Plaintiff's notice of alleged violations also included a Certificate of Service and a
7 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
8 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

9 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
10 gave notices of the alleged violations to PILOT AUTOMOTIVE, VEHICLE
11 PERFORMANCE, WANG'S, PEP BOYS-DE, PEP BOYS- CA, PEP BOYS and DOES
12 1-20, and the public prosecutors referenced in Paragraph 23.

13 28. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
14 any applicable district attorney or city attorney has commenced and is diligently
15 prosecuting an action against the Defendants.

16
17
18 **FIRST CAUSE OF ACTION**

19
20 **(By CONSUMER ADVOCACY GROUP, INC. and against PILOT AUTOMOTIVE,**
21 **VEHICLE PERFORMANCES, WANG'S , PEP BOYS-DE, PEP BOYS –CA, PEP BOYS**
22 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
23 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

24 **Steering Wheel Covers**

25 29. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
26 reference paragraphs 1 through 28 of this complaint as though fully set forth herein.

27 30. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of Steering Wheel Covers, which includes but is not

1 limited to “PILOT™ AUTOMOTIVE Steering Wheel Cover, Fits 14.5” to 15.5”
2 Diameter Steering Wheels, “Made in China”, “SW-217”, Barcode: 7 57558 96038 5,
3 www.pilotautomotive.com” (“COVERS”).

4 31. COVERS contain Lead.

5 32. Defendants knew or should have known that Lead has been identified by the State of
6 California as a chemical known to cause cancer and reproductive toxicity and therefore
7 was subject to Proposition 65 warning requirements. Defendants were also informed of
8 the presence of Lead in COVERS within Plaintiff's notice of alleged violations further
9 discussed above at Paragraph 23.

10 33. Plaintiff's allegations regarding COVERS concerns “[c]onsumer products exposure[s],”
11 which “is an exposure that results from a person's acquisition, purchase, storage,
12 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
13 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.
14 COVERS are consumer products, and, as mentioned herein, exposures to lead took place
15 as a result of such normal and foreseeable consumption and use.

16 34. Plaintiff's allegations regarding COVERS also concern occupational exposure[s], which
17 “means an exposure to any employee in her or her employer's workplace.” *Cal. Code*
18 *Regs. tit. 27, § 25602(f)*. Exposures of Lead to Defendants' employees occurred through
19 the course of their employment in their employer's workplaces.

20 35. Plaintiff is informed, believes, and thereon alleges that between July 3, 2010 and the
21 present, each of the Defendants knowingly and intentionally exposed their employees and
22 California consumers and users of COVERS, which Defendants manufactured,
23 distributed, or sold as mentioned above, to Lead, without first providing any type of clear
24 and reasonable warning of such to the exposed persons before the time of exposure.
25 Defendants have distributed and sold COVERS in California. Defendants know and
26 intend that California consumers will use and consume COVERS, thereby exposing them
27 to Lead. Defendants thereby violated Proposition 65.

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

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

15 38. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
16 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
17 violations alleged herein will continue to occur into the future.

18 39. Based on the allegations herein, Defendants are liable for civil penalties of up to
19 \$2,500.00 per day per individual exposure to Lead from COVERS, pursuant to Health
20 and Safety Code section 25249.7(b).

21 40. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
22 filing this Complaint.

23 **PRAYER FOR RELIEF**

24 Plaintiff demands against each of the Defendants as follows:

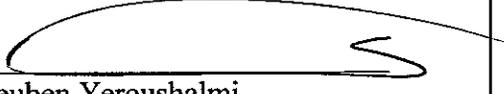
- 25 1. A permanent injunction mandating Proposition 65-compliant warnings;
26 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
27 3. Costs of suit;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 4. Reasonable attorney fees and costs; and
- 5. Any further relief that the court may deem just and equitable.

Dated: 11/5, 2013

YEROUSHALMI & ASSOCIATES

BY: 

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