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Consumer Advocacy Group, Inc.

ENDORSED
FILED
Superior Court of California
County of San Francisco
JAN 02 2014
CLERK OF THE COURT
BY: MEREDITH GRIER
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 CGC-14-536552

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

13 Plaintiff,

14 v.

15 NORPRO, INC., a Washington Corporation;
16 NORDIC PRODUCTS INCORPORATED,
17 a Washington Corporation; and DOES 1-20;

18 Defendants.

CASE NO.

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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21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
22 defendants NORPRO, INC.; NORDIC PRODUCTS INCORPORATED; and DOES 1-20 as
23 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 NORPRO, INC. ("NORPRO") is a Washington Corporation, doing business in the State of California at all relevant times herein.
3. Defendant NORDIC PRODUCTS INCORPORATED ("NORDIC PRODUCTS") is a Washington Corporation, doing business in the State of California at all relevant times herein.
4. 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.
5. At all times mentioned herein, the term "Defendants" includes NORPRO, NORDIC PRODUCTS, and DOES 1-20.
6. 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.
7. 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

1 were ratified and approved by every other Defendant or their officers or managing agents.
2 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
3 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 San Francisco because one or more of the instances of
23 wrongful conduct occurred, and continues to occur, in the County of San Francisco
24 and/or because Defendants conducted, and continue to conduct, business in the County of
25 San Francisco with respect to the consumer product that is the subject of this action.

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1 16. Plaintiff identified certain practices of manufacturers and distributors of Di (2-ethylhexy)
2 phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons
3 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 17. 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 **SATISFACTION OF PRIOR NOTICE**

14 18. On or about September 27, 2013, Plaintiff gave notice of alleged violations of Health and
15 Safety Code section 25249.6, concerning consumer products and occupational exposures,
16 subject to a private action to NORPRO, NORDIC PRODUCTS INCORPORATED, the
17 California Attorney General, County District Attorneys, and City Attorneys for each city
18 containing a population of at least 750,000 people in whose jurisdictions the violations
19 allegedly occurred, concerning the products Kitchen Accessories containing DEHP.

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

23 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
24 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
25 Plaintiff who executed the certificate had consulted with at least one person with relevant
26 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
27 subject Proposition 65-listed chemical of this action. Based on that information, the
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1 attorney for Plaintiff who executed the Certificate of Merit believed there was a
2 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
3 to the Certificate of Merit served on the Attorney General the confidential factual
4 information sufficient to establish the basis of the Certificate of Merit.

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

8 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
9 gave notices of the alleged violations to NORPRO, NORDIC PRODUCTS
10 INCORPORATED, and the public prosecutors referenced in Paragraph 18.

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

14 **FIRST CAUSE OF ACTION**

15 (By CONSUMER ADVOCACY GROUP, INC. and against NORPRO, NORDIC
16 PRODUCTS INCORPORATED, and DOES 1-20 for Violations of Proposition 65,
17 The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety*
18 *Code, §§ 25249.5, et seq.*))

19 **Kitchen Accessories**

20 24. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
21 reference paragraphs 1 through 23 of this complaint as though fully set forth herein.

22 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Jar Wrenches, which includes but is not limited to
24 "Jar Wrench, "QUALITY NORPRO® FOR THE COOK", Item #598 UPC# 0
25 28901 00598 6" ("JAR WRENCHES").

26 26. JAR WRENCHES contain DEHP.

27 27. Defendants knew or should have known that DEHP has been identified by the State of
28 California as a chemical known to cause cancer and reproductive toxicity and therefore

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of DEHP in JAR WRENCHES within Plaintiff's notice of alleged violations
3 further discussed above at Paragraph 18.

4 28. Plaintiff's allegations regarding JAR WRENCHES concerns "[c]onsumer products
5 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
6 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
7 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
8 *25602(b)*. JAR WRENCHES are consumer products, and, as mentioned herein,
9 exposures to DEHP took place as a result of such normal and foreseeable consumption
10 and use.

11 29. Plaintiff's allegations regarding JAR WRENCHES also concern Occupational Exposures,
12 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
13 *Code Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Defendants' employees occurred
14 through the course of their employment in their employers' workplaces.

15 30. Plaintiff is informed, believes, and thereon alleges that between September 27, 2010 and
16 the present, each of the Defendants knowingly and intentionally exposed their employees
17 and California consumers and users of JAR WRENCHES, 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 JAR WRENCHES in California.
21 Defendants know and intend that California consumers will use and consume JAR
22 WRENCHES, thereby exposing them to DEHP. Defendants thereby violated Proposition
23 65.

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

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

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

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

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

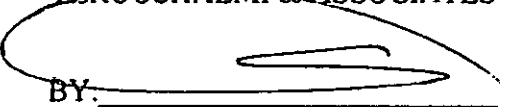
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19 **PRAYER FOR RELIEF**

20 Plaintiff demands against each of the Defendants as follows:

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

1 Dated: Jan 2, 2014

YEROUSHALMI & ASSOCIATES

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3 BY: 

4 Reuben Yeroushalmi
5 Attorneys for Plaintiff,
6 Consumer Advocacy Group, Inc.
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