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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

MAR 03 2014

Sherri R. Carter, Executive Officer/Clerk
By: Amber Hayes, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BC538139

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

Plaintiff,

v.

KAM KUO TRADING CORP., a New York
Corporation; KAM KUO TRADING INC.,
a New York Corporation; HONG KONG
SUPERMARKET, INC., a California
Corporation; HONG KONG
SUPERMARKET OF MONTEREY PARK,
LTD., a California Corporation; and DOES
1-20;

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
defendants KAM KUO TRADING CORP., KAM KUO TRADING INC., HONG KONG
SUPERMARKET, INC., HONG KONG SUPERMARKET OF MONTEREY PARK, LTD., and
DOES 1-20 as follows:

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 KAM KUO TRADING CORP. ("KAM KUO CORP.") is a New York corporation, doing business in the State of California at all relevant times herein.
3. Defendant KAM KUO TRADING INC. ("KAM KUO INC.") is a New York corporation, doing business in the State of California at all relevant times herein.
4. Defendant HONG KONG SUPERMARKET, INC. ("HONG KONG") is a California corporation, doing business in the State of California at all relevant times herein.
5. Defendant HONG KONG SUPERMARKET OF MONTEREY PARK, LTD. ("HONG KONG MONTEREY") is a California corporation, doing business in the State of California at all relevant times herein.
6. 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.
7. At all times mentioned herein, the term "Defendants" includes KAM KUO CORP., KAM KUO INC., HONG KONG, HONG KONG MONTEREY, and DOES 1-20.
8. 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.
9. 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

1 Defendants. In conducting the activities alleged in this Complaint, each of the
2 Defendants was acting within the course and scope of this agency, service, or
3 employment, and was acting with the consent, permission, and authorization of each of
4 the other Defendants. All actions of each of the Defendants alleged in this Complaint
5 were ratified and approved by every other Defendant or their officers or managing agents.
6 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
7 wrongful conduct of each of the other Defendants.

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

12 JURISDICTION

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

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

26 13. Venue is proper in the County of Los Angeles because one or more of the instances of
27 wrongful conduct occurred, and continues to occur, in County of Los Angeles and/or
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1 because Defendants conducted, and continue to conduct, business in County of Los
2 Angeles with respect to the consumer product that is the subject of this action.

3
4 **BACKGROUND AND PRELIMINARY FACTS**

5 14. In 1986, California voters approved an initiative to address growing concerns about
6 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
7 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
8 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
9 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
10 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
11 from contamination, to allow consumers to make informed choices about the products
12 they buy, and to enable persons to protect themselves from toxic chemicals as they see
13 fit.

14 15. Proposition 65 requires the Governor of California to publish a list of chemicals known to
15 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
16 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
17 chemicals and chemical families. Proposition 65 imposes warning requirements and
18 other controls that apply to Proposition 65-listed chemicals.

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

25 17. Proposition 65 provides that any person "violating or threatening to violate" the statute
26 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
27 "Threaten to violate" means "to create a condition in which there is a substantial
28

1 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

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

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

16
17 **SATISFACTION OF PRIOR NOTICE**

18 20. On or about October 9, 2013, Plaintiff gave notice of alleged violations of Health and
19 Safety Code section 25249.6, concerning consumer products exposures and occupational
20 exposures, subject to a private action to KAM KUO CORP., KAM KUO INC., HONG
21 KONG, HONG KONG MONTEREY and to the California Attorney General, County
22 District Attorneys, and City Attorneys for each city containing a population of at least
23 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
24 products Steel Strainers, containing DEHP.

25 21. Before sending the notices of alleged violation, Plaintiff investigated the consumer
26 products involved, the likelihood that such products would cause users to suffer
27 significant exposures to DEHP, and the corporate structure of each of the Defendants.
28

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

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

13 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
14 gave notices of the alleged violations to KAM KUO CORP., KAM KUO INC., HONG
15 KONG, HONG KONG MONTEREY, and the public prosecutors referenced in
16 Paragraph 20.

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

20 **FIRST CAUSE OF ACTION**

21 (By CONSUMER ADVOCACY GROUP, INC. and against KAM KUO CORP., KAM
22 KUO INC., HONG KONG, HONG KONG MONTEREY, and DOES 1-20 for Violations of
23 Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &*
Safety Code, §§ 25249.5, et seq.))

24 **Steel Strainers**

25 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
26 reference paragraphs 1 through 25 of this complaint as though fully set forth herein.
27
28

- 1 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of Steel Strainers, which includes but is not limited to
3 (1) "Myland® STAINLESS STEEL, 'High quality stainless steel kitchen tools', Steel
4 Strainer with Black Rubber Handle, UPC: 7 15470 43295 3", (2) "Myland®
5 STAINLESS STEEL, "High quality stainless steel kitchen tools", "ITEM NO.:
6 KSMS0065", "6.5CM DELUX HOTPOT STRAINER", Steel Strainer with Black
7 Rubber Handle, UPC: 7 15470 43296 0" ("STRAINERS").
- 8 28. STRAINERS contain DEHP.
- 9 29. Defendants knew or should have known that DEHP has been identified by the State of
10 California as a chemical known to cause reproductive toxicity and therefore was subject
11 to Proposition 65 warning requirements. Defendants were also informed of the presence
12 of DEHP in STRAINERS within Plaintiff's notice of alleged violations further discussed
13 above at Paragraph 20.
- 14 30. Plaintiff's allegations regarding STRAINERS concerns "[c]onsumer products
15 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
16 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
17 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
18 *25602(b)*. STRAINERS is a consumer product, and, as mentioned herein, exposures to
19 DEHP took place as a result of such normal and foreseeable consumption and use.
- 20 31. Plaintiff's allegations regarding STRAINERS also concern Occupational Exposures,
21 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
22 *Code Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Defendants' employees occurred
23 through the course of their employment in their employers' workplaces.
- 24 32. Plaintiff is informed, believes, and thereon alleges that between October 9, 2010 and the
25 present, each of the Defendants knowingly and intentionally exposed their employees and
26 California consumers and users of STRAINERS, which Defendants manufactured,
27 distributed, or sold as mentioned above, to DEHP, without first providing any type of
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1 clear and reasonable warning of such to the exposed persons before the time of exposure.
2 Defendants have distributed and sold STRAINERS in California. Defendants know and
3 intend that California consumers will use and consume STRAINERS, thereby exposing
4 them to DEHP. Defendants thereby violated Proposition 65.

5 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.

6 Persons sustain exposures by handling STRAINERS without wearing gloves or any other
7 personal protective equipment, or by touching bare skin or mucous membranes with
8 gloves after handling STRAINERS, as well as through direct and indirect hand to mouth
9 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
10 STRAINERS. And as to Defendants' employees, employees may be exposed to DEHP in
11 the course of their employment by handling, distributing, and selling STRAINERS.

12 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
13 Proposition 65 as to STRAINERS have been ongoing and continuous to the date of the
14 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 STRAINERS, so that a separate and distinct violation
17 of Proposition 65 occurred each and every time a person was exposed to DEHP by
18 STRAINERS as mentioned herein.

19 35. 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 36. 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 STRAINERS, pursuant to
24 Health and Safety Code section 25249.7(b).

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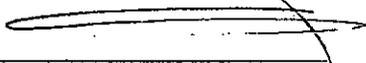
PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

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

Dated: March 31, 2014

YEROUSHALMI & ASSOCIATES

BY: 

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