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ORIGINAL FILED**
Superior Court of California
County of Los Angeles

AUG 14 2014

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

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

BC 554 828

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

15 Plaintiff,

16 v.

17 GRANT PRODUCTS, LLC, a Delaware
18 corporation; O'REILLY AUTOMOTIVE,
19 INC., a Missouri corporation; O'REILLY
20 AUTO PARTS, a Missouri corporation;
21 O'REILLY AUTOMOTIVE STORES, a
22 Missouri corporation; AUTOMOTIVE
23 AFTERMATH INDUSTRY
24 ASSOCIATION, an Illinois corporation;
25 PERFORMANCE WAREHOUSE
26 COMPANY, INC., an Oregon corporation;
27 PERFORMANCE WAREHOUSE, an
28 Oregon corporation; SPECIALTY
EQUIPMENT MARKET ASSOCIATION, 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 GRANT PRODUCTS, LLC, O'REILLY AUTOMOTIVE, INC., O'REILLY AUTO
PARTS, O'REILLY AUTOMOTIVE STORES, AUTOMOTIVE AFTERMATH INDUSTRY

1 ASSOCIATION, PERFORMANCE WAREHOUSE COMPANY, INC., PERFORMANCE
2 WAREHOUSE, SPECIALTY EQUIPMENT MARKET ASSOCIATION and DOES 1-20 as
3 follows:

4 **THE PARTIES**

- 5 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
6 organization qualified to do business in the State of California. CAG is a person within
7 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
8 as a private attorney general, brings this action in the public interest as defined under
9 Health and Safety Code section 25249.7, subdivision (d).
- 10 2. Defendant GRANT PRODUCTS, LLC ("GRANT") is a Delaware corporation, doing
11 business in the State of California at all relevant times herein.
- 12 3. Defendant O'REILLY AUTOMOTIVE, INC. ("O'REILLY") is a Missouri corporation,
13 doing business in the State of California at all relevant times herein.
- 14 4. Defendant O'REILLY AUTO PARTS ("O'REILLY AUTO") is a Missouri corporation,
15 doing business in the State of California at all relevant times herein.
- 16 5. Defendant O'REILLY AUTOMOTIVE STORES ("O'REILLY STORES") is a Missouri
17 corporation, doing business in the State of California at all relevant times herein.
- 18 6. Defendant AUTOMOTIVE AFTERMATH INDUSTRY ASSOCIATION ("AAIA") is
19 an Illinois corporation, doing business in the State of California at all relevant times
20 herein.
- 21 7. Defendant PERFORMANCE WAREHOUSE COMPANY, INC. ("PERFORMANCE
22 COMPANY") is an Oregon corporations, doing business in the State of California at all
23 relevant times herein.
- 24 8. Defendant PERFORMANCE WAREHOUSE ("PERFORMANCE") is an Oregon
25 corporations, doing business in the State of California at all relevant times herein.
- 26 9. Defendant SPECIALTY EQUIPMENT MARKET ASSOCIATION ("SEMA") is a
27 California corporation, doing business in the State of California at all relevant times
28 herein.

1 10. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
2 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
3 complaint to allege their true names and capacities when ascertained. Plaintiff is
4 informed, believes, and thereon alleges that each fictitiously named defendant is
5 responsible in some manner for the occurrences herein alleged and the damages caused
6 thereby.

7 11. At all times mentioned herein, the term "Defendants" includes GRANT, O'REILLY,
8 O'REILLY AUTO, O'REILLY STORES, AAIA, PERFORMANCE COMPANY,
9 PERFORMANCE, SEMA and DOES 1-20.

10 12. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
11 times mentioned herein have conducted business within the State of California.

12 13. Upon information and belief, at all times relevant to this action, each of the Defendants,
13 including DOES 1-20, was an agent, servant, or employee of each of the other
14 Defendants. In conducting the activities alleged in this Complaint, each of the
15 Defendants was acting within the course and scope of this agency, service, or
16 employment, and was acting with the consent, permission, and authorization of each of
17 the other Defendants. All actions of each of the Defendants alleged in this Complaint
18 were ratified and approved by every other Defendant or their officers or managing agents.
19 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
20 wrongful conduct of each of the other Defendants.

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

25 JURISDICTION

26 15. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
27 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
28 those given by statute to other trial courts. This Court has jurisdiction over this action

1 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
2 violations of Proposition 65 in any Court of competent jurisdiction.

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

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

15 **BACKGROUND AND PRELIMINARY FACTS**

16 18. In 1986, California voters approved an initiative to address growing concerns about
17 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
18 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
19 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
20 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
21 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
22 from contamination, to allow consumers to make informed choices about the products
23 they buy, and to enable persons to protect themselves from toxic chemicals as they see
24 fit.

25 19. Proposition 65 requires the Governor of California to publish a list of chemicals known to
26 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
27 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
28

1 chemicals and chemical families. Proposition 65 imposes warning requirements and
2 other controls that apply to Proposition 65-listed chemicals.

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

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

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

15 22. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate ("DEHP")
16 to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the
17 Governor added DEHP to the list of chemicals known to the State to cause developmental
18 male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and
19 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to
20 the State to cause reproductive toxicity, DEHP became fully subject to Proposition 65
21 warning requirements and discharge prohibitions.

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

1
2 SATISFACTION OF PRIOR NOTICE

- 3 24. On or about October 9, 2013, Plaintiff gave notice of alleged violations of Health and
4 Safety Code section 25249.6, concerning consumer products exposures, subject to a
5 private action to GRANT, O'REILLY, AAIA, PERFORMANCE, SEMA and to the
6 California Attorney General, County District Attorneys, and City Attorneys for each city
7 containing a population of at least 750,000 people in whose jurisdictions the violations
8 allegedly occurred, concerning the product Automobile Accessories containing DEHP.
- 9 25. Before sending the notice of alleged violations, Plaintiff investigated the consumer
10 products involved, the likelihood that such products would cause users to suffer
11 significant exposures to DEHP and the corporate structure of each of the Defendants.
- 12 26. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
13 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
14 Plaintiff who executed the certificate had consulted with at least one person with relevant
15 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
16 subject Proposition 65-listed chemical of this action. Based on that information, the
17 attorney for Plaintiff who executed the Certificate of Merit believed there was a
18 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
19 to the Certificate of Merit served on the Attorney General the confidential factual
20 information sufficient to establish the basis of the Certificate of Merit.
- 21 27. Plaintiff's notices of alleged violations also included a Certificate of Service and a
22 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
23 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
- 24 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
25 gave notices of the alleged violation to GRANT, O'REILLY, AAIA, PERFORMANCE,
26 SEMA and the public prosecutors referenced in Paragraph 24.
- 27
28

1 29. 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 **FIRST CAUSE OF ACTION**

6 (By CONSUMER ADVOCACY GROUP, INC. and GRANT, O'REILLY, O'REILLY
7 AUTO, O'REILLY STORES, AAIA, PERFORMANCE COMPANY, PERFORMANCE,
8 SEMA and DOES 1-20. for Violations of Proposition 65, The Safe Drinking Water and
9 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

10 **Automobile Accessories**

11 30. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
12 reference paragraphs 1 through 29 of this complaint as though fully set forth herein. Each
13 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
14 promoter, or retailer of Automobile Accessories, which includes but is not limited to,
15 **"Grant Driving Accessories Custom Steering Wheel "Classic Series" "11 ½" DIA. 3
16 ½" DISH" UPC #081126003342 "334" "08-20-10"**

17 31. Automobile Accessories contain DEHP.

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

23 33. Plaintiff's allegations regarding Automobile Accessories concerns "[c]onsumer products
24 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
26 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
27 25602(b). Automobile Accessories are consumer products, and, as mentioned herein,
28 exposures to DEHP took place as a result of such normal and foreseeable consumption
and use.

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

10 35. The principal routes of exposure are through dermal contact, ingestion and inhalation.
11 Persons sustain exposures by handling Automobile Accessories without wearing gloves
12 or any other personal protective equipment, or by touching bare skin or mucous
13 membranes with gloves after handling Automobile Accessories, as well as through direct
14 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
15 particulate matter dispersed from Automobile Accessories.

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

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

26 38. Based on the allegations herein, Defendants are liable for civil penalties of up to
27 \$2,500.00 per day per individual exposure to DEHP from Automobile Accessories,
28 pursuant to Health and Safety Code section 25249.7(b).

1 39. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3
4
5 **PRAYER FOR RELIEF**

6 Plaintiff demands against each of the Defendants as follows:

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

12
13
14 Dated: August 13, 2014

YEROUSHALMI & YEROUSHLAMI

15
16
17 BY: 

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