

1 Reuben Yeroushalmi (SBN 193981)  
2 Daniel D. Cho (SBN 105409)  
3 Ben Yeroushalmi (SBN 232540)  
4 **YEROUSHALMI & ASSOCIATES**  
5 9100 Wilshire Boulevard, Suite 240W  
6 Beverly Hills, California 90212  
7 Telephone: 310.623.1926  
8 Facsimile: 310.623.1930

CONFORMED COPY  
ORIGINAL FILED  
Superior Court Of California  
County Of Los Angeles

JUN 18 2014

Sherri R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

6 Attorneys for Plaintiff,  
7 Consumer Advocacy Group, Inc.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES**

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

CASE NO.

BC 549089

13 Plaintiff,

COMPLAINT FOR PENALTY AND  
INJUNCTION

v.

14 SAN GABRIEL SUPERSTORE, business  
15 entity form unknown; and DOES 1-20;

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

16 Defendants.

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

17  
18  
19  
20  
21  
22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
23 defendants SAN GABRIEL SUPERSTORE; and DOES 1-20 as follows:

24 **THE PARTIES**

25  
26 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
27 organization qualified to do business in the State of California. CAG is a person within  
28 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting

COPY

1 as a private attorney general, brings this action in the public interest as defined under  
2 Health and Safety Code section 25249.7, subdivision (d).

- 3 2. Defendant SAN GABRIEL SUPERSTORE (“SUPERSTORE”), an unknown business  
4 entity form, is doing business in the State of California at all relevant times herein.
- 5 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
6 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
7 complaint to allege their true names and capacities when ascertained. Plaintiff is  
8 informed, believes, and thereon alleges that each fictitiously named defendant is  
9 responsible in some manner for the occurrences herein alleged and the damages caused  
10 thereby.
- 11 4. At all times mentioned herein, the term “Defendants” includes SUPERSTORE, and  
12 DOES 1-20.
- 13 5. ~~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 6. 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 7. 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 **JURISDICTION**

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

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

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

18 **BACKGROUND AND PRELIMINARY FACTS**

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

1 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
2 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
3 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
4 chemicals and chemical families. Proposition 65 imposes warning requirements and  
5 other controls that apply to Proposition 65-listed chemicals.

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

12 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
13 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
14 "Threaten to violate" means "to create a condition in which there is a substantial  
15 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
16 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
17 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

23 16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
24 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
25 to the list of chemicals known to the State to cause developmental male reproductive  
26 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
27 months after addition of DEHP to the list of chemicals known to the State to cause  
28

1 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
2 requirements and discharge prohibitions.

3 **SATISFACTION OF PRIOR NOTICE**

4 17. On or about October 29, 2013, Plaintiff gave notice of alleged violations of Health and  
5 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
6 private action to SUPERSTORE, and to the California Attorney General, County District  
7 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
8 people in whose jurisdictions the violations allegedly occurred, concerning the product  
9 KITCHEN TOOLS containing DEHP.

10 18. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
11 products involved, the likelihood that such products would cause users to suffer  
12 significant exposures to DEHP, and the corporate structure of each of the Defendants.

13 19. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
14 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
15 Plaintiff who executed the certificate had consulted with at least one person with relevant  
16 and appropriate expertise who reviewed data regarding the exposures to DEHP, the  
17 subject Proposition 65-listed chemicals of this action. Based on that information, the  
18 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
19 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
20 to the Certificate of Merit served on the Attorney General the confidential factual  
21 information sufficient to establish the basis of the Certificate of Merit.

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

25 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
26 gave notices of the alleged violations to SUPERSTORE, and the public prosecutors  
27 referenced in Paragraph 17.

1 22. 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 **FIRST CAUSE OF ACTION**

5 (By CONSUMER ADVOCACY GROUP, INC. and against SUPERSTORE, and DOES 1-  
6 20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act  
7 of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

8 **Kitchen Tools**

9 23. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
10 reference paragraphs 1 through 22 of this complaint as though fully set forth herein.

11 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
12 distributor, promoter, or retailer of KITCHEN TOOLS, which includes but is not limited  
13 to: (1) "LEADERWARE® TONGS , "T-3206", "Item No. T-3206", UPC Code: 6 56356  
14 93206 1" and (2) LEADERWARE® PEELER , "P-3053", "Item No. P-3035", UPC  
15 Code: 6 56356 73053 7 (collectively, "KITCHEN TOOLS").

16 25. KITCHEN TOOLS contain DEHP.

17 26. Defendants knew or should have known that DEHP have been identified by the State of  
18 California as chemicals known to cause cancer and reproductive toxicity and therefore  
19 are subject to Proposition 65 warning requirements. Defendants were also informed of  
20 the presence of DEHP in KITCHEN TOOLS within Plaintiff's notice of alleged  
21 violations further discussed above at Paragraph 17.

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

1 28. Plaintiff's allegations regarding KITCHEN TOOLS also concern occupational exposures,  
2 which "means an exposure to any employee in his or her employer's workplace." *Cal.*  
3 *Code Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendant SUPERSTORE'S  
4 employees occurred through the course of their employment in their employers'  
5 workplaces.

6 29. Plaintiff is informed, believes, and thereon alleges that between October 29, 2010 and the  
7 present, each of the Defendants knowingly and intentionally exposed their employees and  
8 California consumers and users of KITCHEN TOOLS, which Defendants manufactured,  
9 distributed, or sold as mentioned above, to DEHP, without first providing any type of  
10 clear and reasonable warning of such to the exposed persons before the time of exposure.  
11 Defendants have distributed and sold DEHP in California. Defendants know and intend  
12 that California consumers will use and consume KITCHEN TOOLS, thereby exposing  
13 them to DEHP. Defendants thereby violated Proposition 65.

14 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
15 Persons sustain exposures by handling KITCHEN TOOLS without wearing gloves or any  
16 other personal protective equipment, or by touching bare skin or mucous membranes with  
17 gloves after handling KITCHEN TOOLS, as well as through direct and indirect hand to  
18 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
19 from KITCHEN TOOLS. And as to Defendant SUPERSTORE'S employees, employees  
20 may be exposed to DEHP in the course of their employment by handling, distributing,  
21 and selling KITCHEN TOOLS.

22 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
23 Proposition 65 as to KITCHEN TOOLS have been ongoing and continuous to the date of  
24 the signing of this complaint, as Defendants engaged and continue to engage in conduct  
25 which violates Health and Safety Code section 25249.6, including the manufacture,  
26 distribution, promotion, and sale of KITCHEN TOOLS, so that a separate and distinct  
27 violation of Proposition 65 occurred each and every time a person was exposed to DEHP  
28 by KITCHEN TOOLS as mentioned herein.

1 32. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
3 violations alleged herein will continue to occur into the future.

4 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to DEHP from KITCHEN TOOLS, pursuant  
6 to Health and Safety Code section 25249.7(b).

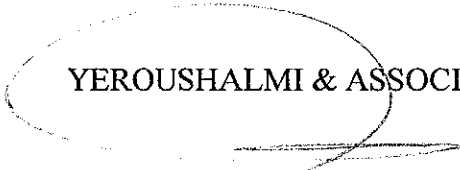
7 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
8 filing this Complaint.

9 **PRAYER FOR RELIEF**

10 Plaintiff demands against each of the Defendants as follows:

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

16  
17 Dated: 6-18, 2014

18   
19 YEROUSHALMI & ASSOCIATES

20 BY: \_\_\_\_\_  
21 Reuben Yeroushalmi  
22 Attorneys for Plaintiff,  
23 Consumer Advocacy Group, Inc.  
24  
25  
26  
27  
28