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**CONFIRMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

OCT 20 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Moses Soto, Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 v.

18 THUNDER GROUP, INC., a California  
19 Corporation; and DOES 1-20;

20 Defendants.

CASE NO. **BC 5 9 8 3 7 1**

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)

21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
22 Defendants THUNDER GROUP, INC., and DOES 1-20 as follows:

23 **THE PARTIES**

- 24
- 25 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
26 organization qualified to do business in the State of California. CAG is a person within  
27 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
28

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 THUNDER GROUP, INC. ("THUNDER GROUP") is a California  
4 corporation, 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 THUNDER GROUP 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 ///

1 **JURISDICTION**

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

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

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

19 **BACKGROUND AND PRELIMINARY FACTS**

20 11. In 1986, California voters approved an initiative to address growing concerns about  
21 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
22 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
23 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
24 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
25 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
26 from contamination, to allow consumers to make informed choices about the products  
27 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
28 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 Diethyl Hexyl  
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 THUNDER GROUP and to the California Attorney General, County  
7 District Attorneys, and City Attorneys for each city containing a population of at least  
8 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the  
9 product Scissor Tongs containing DEHP.

10 18. Before sending the notice of alleged violations, 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 notices 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 violation to THUNDER GROUP the public prosecutors  
27 referenced in Paragraph 17.

28

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  
5 **FIRST CAUSE OF ACTION**

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

9 **Scissor Tongs**

10 23. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
11 reference paragraphs 1 through 22 of this complaint as though fully set forth herein. Each  
12 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
13 promoter, or retailer of Scissor Tongs, which includes but is not limited to, "Scissor Tong  
14 10" Item 041605 Chrome plated with plastic coated handle" ("TONGS").

15 24. TONGS contain DEHP.

16 25. Defendants knew or should have known that DEHP has been identified by the State of  
17 California as a chemical known to cause cancer and reproductive toxicity and therefore  
18 was subject to Proposition 65 warning requirements. Defendants were also informed of  
19 the presence of DEHP in TONGS within Plaintiff's notice of alleged violations further  
20 discussed above at Paragraph 17.

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

27 27. Plaintiff's allegations regarding TONGS also concern occupational exposures, which  
28 "means an exposure to any employee in his or her employer's workplace." *Cal. Code*

1           *Regs. tit. 27, § 25602(f).* Exposures of DEHP to Defendant's employees occurred  
2           through the course of their employment in their employer's workplace.

3           28. Plaintiff is informed, believes, and thereon alleges that between October 29, 2010 and the  
4           present, each of the Defendants knowingly and intentionally exposed their employees and  
5           California consumers and users of TONGS, which Defendants manufactured, distributed,  
6           or sold as mentioned above, to DEHP, without first providing any type of clear and  
7           reasonable warning of such to the exposed persons before the time of exposure.

8           Defendants have distributed and sold TONGS in California. Defendants know and intend  
9           that California consumers will use and consume TONGS, thereby exposing them to  
10          DEHP. Defendants thereby violated Proposition 65.

11          29. The principal routes of exposure are through dermal contact, ingestion and inhalation.

12          Persons sustain exposures by handling TONGS without wearing gloves or any other  
13          personal protective equipment, or by touching bare skin or mucous membranes with  
14          gloves after handling TONGS, as well as through direct and indirect hand to mouth  
15          contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
16          TONGS. And as to Defendants' employees, employees may be exposed to DEHP in the  
17          course of their employment by handling, distributing, and selling TONGS.

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

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

28

1 32. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to DEHP from TONGS, pursuant to Health  
3 and Safety Code section 25249.7(b).

4 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.

6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

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

13  
14  
15 Dated: October 20, 2015

YEROUSHALMI & YEROUSHALMI



16  
17  
18 BY: \_\_\_\_\_  
19 Reuben Yeroushalmi  
20 Attorneys for Plaintiff,  
21 Consumer Advocacy Group, Inc.