

DEC 03 2015

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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 **CATHAY L.A., INC.,** a California  
19 Corporation; and **DOES 1-20;**

20 Defendants.

21 CASE NO. **BC 6 03 016**

22 **COMPLAINT FOR PENALTY AND**  
23 **INJUNCTION**

24 Violation of Proposition 65, the Safe  
25 Drinking Water and Toxic Enforcement  
26 Act of 1986 (*Health & Safety Code*, §  
27 25249.5, *et seq.*)

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

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
2 Defendants CATHAY L.A., INC., and DOES 1-20 as follows:

3 **THE PARTIES**

- 4 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
5 organization qualified to do business in the State of California. CAG is a person within  
6 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
7 as a private attorney general, brings this action in the public interest as defined under  
8 Health and Safety Code section 25249.7, subdivision (d).

COPY

1 2. Defendant CATHAY L.A., INC. ("CATHAY LA") is a California corporation, doing  
2 business in the State of California at all relevant times herein.

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

9 4. At all times mentioned herein, the term "Defendants" includes CATHAY LA, and DOES  
10 1-20.

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

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

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

#### 26 JURISDICTION

27 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
28 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except

1 those given by statute to other trial courts. This Court has jurisdiction over this action  
2 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
3 violations of Proposition 65 in any Court of competent jurisdiction.

- 4 9. This Court has jurisdiction over Defendants named herein because Defendants either  
5 reside or are located in this State or are foreign corporations authorized to do business in  
6 California, are registered with the California Secretary of State, or who do sufficient  
7 business in California, have sufficient minimum contacts with California, or otherwise  
8 intentionally avail themselves of the markets within California through their manufacture,  
9 distribution, promotion, marketing, or sale of their products within California to render  
10 the exercise of jurisdiction by the California courts permissible under traditional notions  
11 of fair play and substantial justice.
- 12 10. Venue is proper in the County of Los Angeles because one or more of the instances of  
13 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
14 because Defendants conducted, and continue to conduct, business in the County of Los  
15 Angeles with respect to the consumer product that is the subject of this action.

#### 16 BACKGROUND AND PRELIMINARY FACTS

- 17 11. In 1986, California voters approved an initiative to address growing concerns about  
18 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
19 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
20 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
21 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
22 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
23 from contamination, to allow consumers to make informed choices about the products  
24 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
25 fit.
- 26 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
27 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
28 § 25249.8. The list, which the Governor updates at least once a year, contains over 700

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

3 13. 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 14. 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 15. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl  
16 Phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons  
17 in California to the Proposition 65-listed chemicals of such products without first  
18 providing clear and reasonable warnings of such to the exposed persons prior to the time  
19 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

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SATISFACTION OF PRIOR NOTICE

17. On or about October 31, 2013, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to CATHAY LA and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Fish Griller Tools containing DEHP.

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

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

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

21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave notices of the alleged violation to CATHAY LA the public prosecutors referenced in Paragraph 17.

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

1 FIRST CAUSE OF ACTION

2 (By CONSUMER ADVOCACY GROUP, INC. and against CATHAY L.A., INC., and  
3 DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic  
4 Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

5 **Fish Griller Tools**

6 23. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
7 reference paragraphs 1 through 22 of this complaint as though fully set forth herein. Each  
8 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
9 promoter, or retailer of Fish Griller Tools, which includes but is not limited to, "Fish  
10 Grilling Press with Red Vinyl Coated Handle, Item 046265" ("FISH GRILLER  
11 TOOLS").

12 24. FISH GRILLER TOOLS contain DEHP.

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

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

25 27. Plaintiff's allegations regarding FISH GRILLER TOOLS also concern occupational  
26 exposures, which "means an exposure to any employee in his or her employer's  
27 workplace." *Cal. Code Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendant's  
28 employees occurred through the course of their employment in their employer's  
workplace.

1 28. Plaintiff is informed, believes, and thereon alleges that between October 31, 2010 and the  
2 present, each of the Defendants knowingly and intentionally exposed their employees and  
3 California consumers and users of FISH GRILLER TOOLS, which Defendants  
4 manufactured, distributed, or sold as mentioned above, to DEHP, without first providing  
5 any type of clear and reasonable warning of such to the exposed persons before the time  
6 of exposure. Defendants have distributed and sold FISH GRILLER TOOLS in  
7 California. Defendants know and intend that California consumers will use and consume  
8 FISH GRILLER TOOLS, thereby exposing them to DEHP. Defendants thereby violated  
9 Proposition 65.

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

18 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
19 Proposition 65 as to FISH GRILLER TOOLS have been ongoing and continuous to the  
20 date of the signing of this complaint, as Defendants engaged and continue to engage in  
21 conduct which violates Health and Safety Code section 25249.6, including the  
22 manufacture, distribution, promotion, and sale of FISH GRILLER TOOLS, so that a  
23 separate and distinct violation of Proposition 65 occurred each and every time a person  
24 was exposed to DEHP by FISH GRILLER TOOLS as mentioned 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 FISH GRILLER TOOLS,  
3 pursuant to Health 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: December 3, 2015

YEROUSHALMI & YEROUSHALMI

16  
17  
18 BY: 

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