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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

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

12 Plaintiff,

13 v.

14 HAWAII SUPER MARKET, INC.,
15 California Corporation; and DOES 1-20;

16 Defendants.

CASE NO. **BC548899**

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)

17 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
18 defendants HAWAII SUPER MARKET, INC. and DOES 1-20 as follows:

19 **THE PARTIES**

20 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
21 organization qualified to do business in the State of California. CAG is a person within
22 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
23 as a private attorney general, brings this action in the public interest as defined under
24 Health and Safety Code section 25249.7, subdivision (d).
25

26 2. Defendant HAWAII SUPER MARKET, INC. ("HAWAII") is a California corporation,
27 doing business in the State of California at all relevant times herein.
28

COPY

- 1 3. 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 4. At all times mentioned herein, the term "Defendants" includes HAWAII and DOES 1-20.
- 8 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
9 times mentioned herein have conducted business within the State of California.
- 10 6. Upon information and belief, at all times relevant to this action, each of the Defendants,
11 including DOES 1-20, was an agent, servant, or employee of each of the other
12 Defendants. In conducting the activities alleged in this Complaint, each of the
13 Defendants was acting within the course and scope of this agency, service, or
14 employment, and was acting with the consent, permission, and authorization of each of
15 the other Defendants. All actions of each of the Defendants alleged in this Complaint
16 were ratified and approved by every other Defendant or their officers or managing agents.
17 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
18 wrongful conduct of each of the other Defendants.
- 19 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
20 Defendants was a person doing business within the meaning of Health and Safety Code
21 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
22 employees at all relevant times.

23 **JURISDICTION**

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

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

13
14 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

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

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

26 17. On December 2, 2005, the Governor of California added DBP to the list of chemicals
27 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).
28 DBP is known to the State to cause developmental, female, and male reproductive

1 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty
2 (20) months after addition DBP to the list of chemicals known to the State to cause
3 reproductive toxicity, DBP became fully subject to Proposition 65 warning requirements
4 and discharge prohibitions.

5 **SATISFACTION OF PRIOR NOTICE**

6 18. On or about November 20, 2013, Plaintiff gave notice of alleged violations of Health and
7 Safety Code section 25249.6, concerning consumer products exposures and occupational
8 exposures, subject to a private action to HAWAII, and to the California Attorney
9 General, County District Attorneys, and City Attorneys for each city containing a
10 population of at least 750,000 people in whose jurisdictions the violations allegedly
11 occurred, concerning the product Vinyl Bath Mats containing DEHP and DBP.

12 19. Before sending the notices of alleged violation, Plaintiff investigated the consumer
13 products involved, the likelihood that such products would cause users to suffer
14 significant exposures to DEHP and DBP, and the corporate structure of each of the
15 Defendants.

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

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

28

1 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notices of the alleged violations to HAWAII and the public prosecutors referenced
3 in Paragraph 18.

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

7
8 **FIRST CAUSE OF ACTION**

9 **(By CONSUMER ADVOCACY GROUP, INC. and against HAWAII and DOES 1-
10 20 for Violations of Proposition 65, The Safe Drinking Water and Toxic
11 Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

12 **VINYL BATH MATS**

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

15 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of VINYL BATH MATS, which includes but is not
17 limited to: (1) "Clear Vinyl Oval Shaped Bath Mat with circle grid design with orange
18 dots, LUXURY HOME, Protection Bath Mat, Item No. 80018, Bar Code number
19 088401800184, "DESIGN IN USA"", and (2) "Clear Vinyl Oval Shaped Bath Mat with
20 circle grid design with yellow dots, DOLPHIN, Protection Bath Mat, SPA *Bring Foot a
21 New Feeling*, MADE IN CHINA, 100% PVC, Bathroom Entrance, Changing Room of
22 Bathroom, Can be placed in the bathtub, \$4.99, Item No. 96062, Bar Code number
23 795229960623" ("BATH MATS").

24 26. BATH MATS contain DEHP and DBP.

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

1 28. Plaintiff's allegations regarding BATH MATS concern "[c]onsumer products
2 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
4 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
5 *25602(b)*. BATH MATS are consumer products, and, as mentioned herein, exposures to
6 DEHP and DBP took place as a result of such normal and foreseeable consumption and
7 use.

8 29. Plaintiff's allegations regarding BATH MATS also concern occupational exposures,
9 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
10 *Code Regs. tit. 27, § 25602(f)*. Exposures of DEHP and DBP to Defendants' employees
11 occurred through the course of their employment in their employers' workplaces.

12 30. Plaintiff is informed, believes, and thereon alleges that between November 20, 2010 and
13 the present, each of the Defendants knowingly and intentionally exposed their employees
14 and California consumers and users of BATH MATS, which Defendants manufactured,
15 distributed, or sold as mentioned above, to DEHP and DBP, without first providing any
16 type of clear and reasonable warning of such to the exposed persons before the time of
17 exposure. Defendants have distributed and sold BATH MATS in California. Defendants
18 know and intend that California consumers will use and consume BATH MATS, thereby
19 exposing them to DEHP and DBP. Defendants thereby violated Proposition 65.

20 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.
21 Persons sustain exposures by handling BATH MATS without wearing gloves or any
22 other personal protective equipment, or by touching bare skin or mucous membranes with
23 gloves after handling BATH MATS, as well as through direct and indirect hand to mouth
24 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
25 BATH MATS. And as to Defendants' employees, employees may be exposed to DEHP
26 and DBP in the course of their employment by handling, distributing, and selling BATH
27 MATS.

1 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to BATH MATS have been ongoing and continuous to the date of the
3 signing of this complaint, as Defendants engaged and continue to engage in conduct
4 which violates Health and Safety Code section 25249.6, including the manufacture,
5 distribution, promotion, and sale of BATH MATS, so that a separate and distinct
6 violation of Proposition 65 occurred each and every time a person was exposed to DEHP
7 and DBP by BATH MATS as mentioned herein.

8 33. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
9 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
10 violations alleged herein will continue to occur into the future.

11 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
12 \$2,500.00 per day per individual exposure to DEHP and DBP from BATH MATS,
13 pursuant to Health and Safety Code section 25249.7(b).

14 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
15 filing this Complaint.

16 **PRAYER FOR RELIEF**

17 Plaintiff demands against each of the Defendants as follows:

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

23
24 Dated: 6-17-14

YEROUSHALMI & YEROUSHALMI

25
26 BY: [Signature]

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