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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

AUG 12 2014

Sherril R. Carter, Executive Officer/Clerk
By: Amber Hayes, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES**

13 **BC554364**

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

16 Plaintiff,

17 v.

18 PILOT AUTOMOTIVE, INC., a California
19 Corporation; VEHICLE PERFORMANCE
20 SYSTEMS, INC., Georgia Corporation;
21 WANG'S INTERNATIONAL, INC., a
22 California Corporation; PEP BOYS-
23 MANNY, MOE & JACK OF DELAWARE,
24 INC., a Delaware Corporation; PEP BOYS-
25 MANNY, MOE & JACK OF CA, INC., a
26 California Corporation; PEP BOYS, INC.-
27 MANNY, MOE & JACK., a Philadelphia
28 Corporation; AUTOZONE, INC., a Nevada
Corporation; AUTOZONE PARTS, INC., a
Nevada 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)

1
2 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
3 defendants PILOT AUTOMOTIVE, INC., VEHICLE PERFORMANCE SYSTEMS, INC.,
4 WANG'S INTERNATIONAL, INC., PEP BOYS-MANNY, MOE & JACK OF DELAWARE,
5 INC., PEP BOYS-MANNY, MOE & JACK OF CA, INC., PEP BOYS, INC.-MANNY, MOE &
6 JACK, AUTOZONE, INC., AUTOZONE PARTS, INC., and DOES 1-20 as follows:

7
8 **THE PARTIES**

- 9 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
10 organization qualified to do business in the State of California. CAG is a person within
11 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
12 as a private attorney general, brings this action in the public interest as defined under
13 Health and Safety Code section 25249.7, subdivision (d).
- 14 2. Defendant PILOT AUTOMOTIVE, INC. ("PILOT AUTOMOTIVE") is a California
15 corporation, doing business in the State of California at all relevant times herein.
- 16 3. Defendant VEHICLE PERFORMANCE SYSTEMS, INC. ("VEHICLE
17 PERFORMANCE") is a Georgia corporation, doing business in the State of California at
18 all relevant times herein.
- 19 4. Defendant WANG'S INTERNATIONAL, INC. ("WANG'S") is a California
20 corporation, doing business in the State of California at all relevant times herein.
- 21 5. Defendant PEP BOYS-MANNY, MOE & JACK OF DELAWARE, INC. ("PEP BOYS-
22 DE") is a Delaware corporation, doing business in the State of California at all relevant
23 times herein.
- 24 6. Defendant PEP BOYS-MANNY, MOE & JACK OF CA, INC. ("PEP BOYS- CA") is a
25 California corporation, doing business in the State of California at all relevant times
26 herein.
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- 1 7. Defendant PEP BOYS, INC.-MANNY, MOE & JACK, INC. ("PEP BOYS") is a
2 Philadelphia corporation, doing business in the State of California at all relevant times
3 herein.
- 4 8. Defendant AUTOZONE, INC. ("AUTOZONE") is a Nevada corporation, doing business
5 in the state of California at all relevant times herein.
- 6 9. Defendant AUTOZONE PARTS, INC. ("AUTOZONE PARTS") is a Nevada
7 corporation, doing business in the state of California at all relevant times herein.
- 8 10. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
9 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
10 complaint to allege their true names and capacities when ascertained. Plaintiff is
11 informed, believes, and thereon alleges that each fictitiously named defendant is
12 responsible in some manner for the occurrences herein alleged.
- 13 11. At all times mentioned herein, the term "Defendants" includes PILOT AUTOMOTIVE,
14 VEHICLE PERFORMANCE, WANG'S, PEP BOYS- DE, PEP BOYS- CA, PEP BOYS,
15 AUTOZONE, INC., AUTOZONE PARTS, INC., and DOES 1-20.
- 16 12. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
17 times mentioned herein have conducted business within the State of California.
- 18 13. Upon information and belief, at all times relevant to this action, each of the Defendants,
19 including DOES 1-20, was an agent, servant, or employee of each of the other
20 Defendants. In conducting the activities alleged in this Complaint, each of the
21 Defendants was acting within the course and scope of this agency, service, or
22 employment, and was acting with the consent, permission, and authorization of each of
23 the other Defendants. All actions of each of the Defendants alleged in this Complaint
24 were ratified and approved by every other Defendant or their officers or managing agents.
25 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
26 wrongful conduct of each of the other Defendants.
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1 14. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
2 Defendants was a person doing business within the meaning of Health and Safety Code
3 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
4 employees at all relevant times.

5 JURISDICTION

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

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

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

23 BACKGROUND AND PRELIMINARY FACTS

24 18. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
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1 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
2 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
3 from contamination, to allow consumers to make informed choices about the products
4 they buy, and to enable persons to protect themselves from toxic chemicals as they see
5 fit.

6 19. Proposition 65 requires the Governor of California to publish a list of chemicals known to
7 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
8 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
9 chemicals and chemical families. Proposition 65 imposes warning requirements and
10 other controls that apply to Proposition 65-listed chemicals.

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

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

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

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

1 23. On February 27, 1987, the Governor of California added lead to the list of chemicals
2 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).
3 Lead is known to the State to cause developmental, female, and male reproductive
4 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
5 months after addition of lead to the list of chemicals known to the State to cause
6 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements
7 and discharge prohibitions.

8 24. On October 1, 1992, the Governor of California added lead and lead compounds to the
9 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).
10 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
11 after addition of lead and lead compounds to the list of chemicals known to the State to
12 cause cancer, lead and lead compounds became fully subject to Proposition 65 warning
13 requirements and discharge prohibitions.

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

21 **SATISFACTION OF PRIOR NOTICE**

22 26. On or about February 9, 2014, Plaintiff gave notice of alleged violations of Health and
23 Safety Code section 25249.6, concerning consumer products exposures, subject to a
24 private action to PILOT AUTOMOTIVE, VEHICLE PERFORMANCE, WANG'S,
25 AUTOZONE, AUTOZONE PARTS, and DOES 1-20, and to the California Attorney
26 General, County District Attorneys, and City Attorneys for each city containing a
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1 population of at least 750,000 people in whose jurisdictions the violations allegedly
2 occurred, concerning the product Steering Wheel Covers containing DEHP.

3 27. On or about April 28, 2014, 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 PILOT AUTOMOTIVE, VEHICLE PERFORMANCE, WANG'S, PEP
6 BOYS-DE, PEP BOYS-CA, PEP BOYS and DOES 1-20, and to the California Attorney
7 General, County District Attorneys, and City Attorneys for each city containing a
8 population of at least 750,000 people in whose jurisdictions the violations allegedly
9 occurred, concerning the product Steering Wheel Covers containing DEHP and Lead.

10 28. 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 Lead, and the corporate structure of each of the
13 Defendants.

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

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

26 31. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
27 gave notices of the alleged violations to PILOT AUTOMOTIVE, VEHICLE
28

1 PERFORMANCE, WANG'S, PEP BOYS-DE, PEP BOYS- CA, PEP BOYS and DOES
2 1-20, and the public prosecutors referenced in Paragraph 26-27.

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

6 **FIRST CAUSE OF ACTION**

7 (By CONSUMER ADVOCACY GROUP, INC. and against PILOT AUTOMOTIVE,
8 VEHICLE PERFORMANCES, WANG'S , AUTOZONE, AUTOZONE PARTS and DOES
9 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act
of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

10 **Steering Wheel Covers**

11 33. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
12 reference paragraphs 1 through 32 of this complaint as though fully set forth herein.

13 34. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
14 distributor, promoter, or retailer of Steering Wheel Covers, which includes but is not
15 limited to 1) PILOTTM AUTOMOTIVE Steering Wheel "SW-800", "Made in China"
16 Barcode: 7 57558 86800 1 ("COVERS")

17 35. COVERS contain DEHP.

18 36. 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 COVERS within Plaintiff's notice of alleged violations further
22 discussed above at Paragraph 26.

23 37. Plaintiff's allegations regarding COVERS concerns "[c]onsumer products exposure[s],"
24 which "is an exposure that results from a person's acquisition, purchase, storage,
25 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
26 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b).*

1 COVERS are consumer products, and, as mentioned herein, exposures to lead took place
2 as a result of such normal and foreseeable consumption and use.

3 38. Plaintiff's allegations regarding COVERS also concern occupational exposure[s], which
4 "means an exposure to any employee in her or her employer's workplace." Cal. Code
5 Regs. tit. 27, § 25602(f). Exposures of DEHP to Defendants' employees occurred
6 through the course of their employment in their employer's workplaces.

7 39. Plaintiff is informed, believes, and thereon alleges that between February 9, 2011 and the
8 present, each of the Defendants knowingly and intentionally exposed their employees and
9 California consumers and users of COVERS, which Defendants manufactured,
10 distributed, or sold as mentioned above, to DEHP, without first providing any type of
11 clear and reasonable warning of such to the exposed persons before the time of exposure.
12 Defendants have distributed and sold COVERS in California. Defendants know and
13 intend that California consumers will use and consume COVERS, thereby exposing them
14 to DEHP. Defendants thereby violated Proposition 65.

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

22 41. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
23 Proposition 65 as to COVERS have been ongoing and continuous to the date of the
24 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 COVERS, so that a separate and distinct violation of
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1 Proposition 65 occurred each and every time a person was exposed to DEHP by
2 COVERS as mentioned herein.

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

6 43. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to DEHP from COVERS, pursuant to Health
8 and Safety Code section 25249.7(b).

9 **SECOND CAUSE OF ACTION**

10 (By CONSUMER ADVOCACY GROUP, INC. and against PILOT AUTOMOTIVE,
11 VEHICLE PERFORMANCES, WANG'S, PEP BOYS-DE, PEP BOYS -CA, PEP BOYS
12 and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic
Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

13 **Steering Wheel Covers**

14 44. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
15 reference paragraphs 1 through 44 of this complaint as though fully set forth herein.

16 45. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 distributor, promoter, or retailer of Steering Wheel Covers, which includes but is not
18 limited to 1) West Coast CUSTOMS STEERING WHEEL COVER, "FITS 14.5" - 15.5"
19 DIAMETER STEERING WHEELS", "WCC-1201E", "V1-062513-AV", "Caution: This
20 product may contain lead contents." Barcode: 7 57558 41629 5 and 2) PILOTTM
21 AUTOMOTIVE, Inc. STEERING WHEEL COVER "SW-68T TAN", "PATENTED
22 COMFORT GRIPS! #D507,771" "Made in China" Barcode: 7 57558 86708
23 ("COVERS").

24 46. COVERS contain Lead and DEHP.

25 47. Defendants knew or should have known that Lead and DEHP 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

1 informed of the presence of Lead and DEHP in COVERS within Plaintiff's notice of
2 alleged violations further discussed above at Paragraph 27.

3 48. Plaintiff's allegations regarding COVERS concerns "[c]onsumer products exposure[s],"
4 which "is an exposure that results from a person's acquisition, purchase, storage,
5 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
6 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).

7 COVERS are consumer products, and, as mentioned herein, exposures to Lead and
8 DEHP took place as a result of such normal and foreseeable consumption and use.

9 49. Plaintiff's allegations regarding COVERS also concern occupational exposure[s], which
10 "means an exposure to any employee in her or her employer's workplace." *Cal. Code*
11 *Regs.* tit. 27, § 25602(f). Exposures of Lead and DEHP to Defendants' employees
12 occurred through the course of their employment in their employer's workplaces.

13 50. Plaintiff is informed, believes, and thereon alleges that between February 9, 2011 and the
14 present, each of the Defendants knowingly and intentionally exposed their employees and
15 California consumers and users of COVERS, which Defendants manufactured,
16 distributed, or sold as mentioned above, to Lead and DEHP, without first providing any
17 type of clear and reasonable warning of such to the exposed persons before the time of
18 exposure. Defendants have distributed and sold COVERS in California. Defendants
19 know and intend that California consumers will use and consume COVERS, thereby
20 exposing them to Lead and DEHP. Defendants thereby violated Proposition 65.

21 51. The principal routes of exposure are through dermal contact, ingestion and inhalation.
22 Persons sustain exposures by handling COVERS without wearing gloves or any other
23 personal protective equipment, or by touching bare skin or mucous membranes with
24 gloves after handling COVERS, as well as through direct and indirect hand to mouth
25 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
26 COVERS. As to Defendants' employees, employees may be exposed to Lead and DEHP
27 in the course of their employment by handling, distributing, and selling COVERS.
28

1 52. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to COVERS 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 COVERS, so that a separate and distinct violation of
6 Proposition 65 occurred each and every time a person was exposed to Lead and DEHP by
7 COVERS as mentioned herein.

8 53. 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 54. Based on the allegations herein, Defendants are liable for civil penalties of up to
12 \$2,500.00 per day per individual exposure to Lead and DEHP from COVERS, pursuant
13 to Health and Safety Code section 25249.7(b).

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

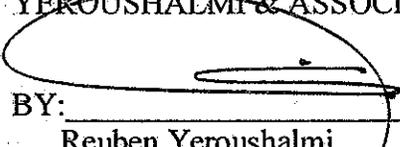
16 **PRAYER FOR RELIEF**

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: August 12, 2014

YEROUSHALMI & ASSOCIATES

25 BY: 

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