

COPY

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

JUL 10 2014

Sherri R. Carter, Executive Officer/Clerk  
By Shaunya Bolden, Deputy

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

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

**BC 551 175**

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

13 Plaintiff,

14 v.

15 LOVE CULTURE, INC., a California  
16 Corporation; and DOES 1-20;

17 Defendants.

CASE NO.

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

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)

19  
20 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
21 defendant LOVE CULTURE, INC., and DOES 1-20 as follows:

22  
23 **THE PARTIES**

- 24 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
25 organization qualified to do business in the State of California. CAG is a person within  
26 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
27  
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 LOVE CULTURE, INC. ("LOVE CULTURE"), is a California corporation,  
4 qualified to do business and doing business in the State of California at all relevant times  
5 herein.

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

12 4. At all times mentioned herein, the term "Defendant" is LOVE CULTURE, and DOES 1-  
13 20.

14 5. Plaintiff is informed and believes, and thereon alleges that the Defendant at all times  
15 mentioned herein has conducted business within the State of California.

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

24 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, the  
25 Defendant 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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

**JURISDICTION**

8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. This Court has jurisdiction over this action pursuant to Health and Safety Code section 25249.7, which allows enforcement of violations of Proposition 65 in any Court of competent jurisdiction.
9. This Court has jurisdiction over Defendants named herein because Defendants either reside or are located in this State or are foreign corporations authorized to do business in California, are registered with the California Secretary of State, or who do sufficient business in California, have sufficient minimum contacts with California, or otherwise intentionally avail themselves of the markets within California through their manufacture, distribution, promotion, marketing, or sale of their products within California to render the exercise of jurisdiction by the California courts permissible under traditional notions of fair play and substantial justice.
10. Venue is proper in the County of Los Angeles because one or more of the instances of wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or because Defendants conducted, and continue to conduct, business in the County of Los Angeles with respect to the consumer product that is the subject of this action.

21  
22  
23  
24  
25  
26  
27  
28

**BACKGROUND AND PRELIMINARY FACTS**

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

1 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
2 fit.

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

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

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

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

25 16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
26 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
27 to the list of chemicals known to the State to cause developmental male reproductive  
28

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

5  
6 **SATISFACTION OF PRIOR NOTICE**

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

13 18. On or about March 26, 2014, Plaintiff gave notice of alleged violations of Health and  
14 Safety Code section 25249.6, concerning consumer products exposures and occupational  
15 exposures, subject to a private action to LOVE CULTURE, and to the California  
16 Attorney General, County District Attorneys, and City Attorneys for each city containing  
17 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
18 occurred, concerning the product Sunglasses containing DEHP.

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

22 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
23 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
24 Plaintiff who executed the certificate had consulted with at least one person with relevant  
25 and appropriate expertise who reviewed data regarding the exposures to DEHP, the  
26 subject Proposition 65-listed chemical of this action. Based on that information, the  
27 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
28

1 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
2 to the Certificate of Merit served on the Attorney General the confidential factual  
3 information sufficient to establish the basis of the Certificate of Merit.

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

7 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
8 gave notices of the alleged violations to LOVE CULTURE and the public prosecutors  
9 referenced in Paragraph 17-18.

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

13 **FIRST CAUSE OF ACTION**

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

17 **SUNGLASSES**

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

20 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
21 distributor, promoter, or retailer of Sunglasses, including but not limited to: 1) "LOVE  
22 CULTURE Clear Sunglasses with Black Frame and Silver Metal Trim, P9133/CLR,  
23 "HAND POLISHED China", "100% UV PROTECTION", "P9133 No Color - NoSz",  
24 Barcode: 400000485577," 2) "Love Culture AVIATOR SUNGLASSES with Yellow  
25 Frame and Black Lenses, ACC-SUNGLASSES, "MADE IN CHINA", "UV 400  
26 PROTECTION", "9090 No Color NoSz", "1000009858", Barcode: 400000478890," and  
27 3)"LOVE CULTURE AVIATOR SUNGLASSES with Silver Metal Frame and  
28 Fluorescent Lenses, 5509RV, "MADE IN CHINA", "MAXIMUM PROTECTION

1 UV400", "5509RV No Colo-NoSz", "\$5.95", Barcode: 400001009550"  
2 ("SUNGLASSES").

3 26. Plaintiff is informed, believes, and thereon alleges that SUNGLASSES contains DEHP.

4 27. Defendants knew or should have known that DEHP have been identified by the State of  
5 California as chemicals known to cause cancer and reproductive toxicity and therefore  
6 was subject to Proposition 65 warning requirements. Defendants were also informed of  
7 the presence of DEHP in SUNGLASSES within Plaintiff's notice of alleged violations  
8 further discussed above at Paragraph 17-18.

9 28. Plaintiff's allegations regarding SUNGLASSES concern "[c]onsumer products  
10 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
11 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
12 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §  
13 25602(b). SUNGLASSES is a consumer product, and, as mentioned herein, exposures to  
14 DEHP took place as a result of such normal and foreseeable consumption and use.

15 29. Plaintiff's allegations regarding SUNGLASSES also concern occupational exposures,  
16 which "means an exposure to any employee in his or her employer's workplace." *Cal.*  
17 *Code Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendants' employees occurred  
18 through the course of their employment in their employers' workplaces.

19 30. Plaintiff is informed, believes, and thereon alleges that between December 20, 2010 and  
20 the present, each of the Defendants knowingly and intentionally exposed their employees  
21 and California consumers and users of SUNGLASSES, which Defendants manufactured,  
22 distributed, or sold as mentioned above, to DEHP, without first providing any type of  
23 clear and reasonable warning of such to the exposed persons before the time of exposure.  
24 Defendants have distributed and sold SUNGLASSES in California. Defendants know  
25 and intend that California consumers will use and consume SUNGLASSES, thereby  
26 exposing them to DEHP. Defendants thereby violated Proposition 65.

1 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
2 Persons sustain exposures by handling SUNGLASSES without wearing gloves or any  
3 other personal protective equipment, or by touching bare skin or mucous membranes with  
4 gloves after handling SUNGLASSES, as well as through direct and indirect hand to  
5 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
6 from SUNGLASSES. And as to Defendants' employees, employees may be exposed to  
7 DEHP in the course of their employment by handling, distributing, and selling  
8 SUNGLASSES.

9 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
10 Proposition 65 as to SUNGLASSES have been ongoing and continuous to the date of the  
11 signing of this complaint, as Defendants engaged and continue to engage in conduct  
12 which violates Health and Safety Code section 25249.6, including the manufacture,  
13 distribution, promotion, and sale of SUNGLASSES, so that a separate and distinct  
14 violation of Proposition 65 occurred each and every time a person was exposed to DEHP  
15 by SUNGLASSES as mentioned herein.

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

19 34. Based on the allegations herein, Defendants are liable for civil penalties of up to  
20 \$2,500.00 per day per individual exposure to DEHP from SUNGLASSES, pursuant to  
21 Health and Safety Code section 25249.7(b).

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

24  
25 **PRAYER FOR RELIEF**

26 Plaintiff demands against each of the Defendants as follows:

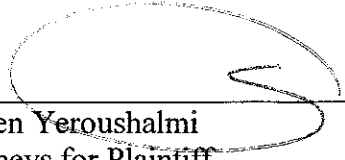
- 27 1. A permanent injunction mandating Proposition 65-compliant warnings;  
28 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);



- 1 3. Costs of suit;
- 2 4. Reasonable attorney fees and costs; and
- 3 5. Any further relief that the court may deem just and equitable.

4  
5 Dated: July 10, 2014

YEROUSHALMI & ASSOCIATES

6  
7  
8 BY:   
9 Reuben Yeroushalmi  
10 Attorneys for Plaintiff,  
11 Consumer Advocacy Group, Inc.  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28