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ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 25 2014

Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden, 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 CHARLOTTE RUSSE HOLDING, INC.
19 a Delaware Corporation; CHARLOTTE
20 RUSSE, INC., a California Corporation; and
21 DOES 1-20;

22 Defendants.

CASE NO.

BC 5 6 4 8 3 8

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)

23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
24 Defendants CHARLOTTE RUSSE HOLDING, INC., CHARLOTTE RUSSE, INC., and DOES
25 1-20 as follows:

26 **THE PARTIES**

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

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

- 1 13. 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 14. 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 15. 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 16. Plaintiff identified certain practices of manufacturers and distributors of Di (2-ethylhexy)
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 17. 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 18. On or about May 20, 2013 Plaintiff gave notice of alleged violations of Health and Safety
5 Code section 25249.6, concerning consumer products exposures, and occupational
6 exposures subject to a private action to CHARLOTTE RUSSE, INC. and to the
7 California Attorney General, County District Attorneys, and City Attorneys for each city
8 containing a population of at least 750,000 people in whose jurisdictions the violations
9 allegedly occurred, concerning the product Sunglasses, containing DEHP.

10 19. On or about March 27, 2014 Plaintiff gave notice of alleged violations of Health and
11 Safety Code section 25249.6, concerning consumer products exposures, and occupational
12 exposures subject to a private action to CHARLOTTE RUSSE HOLDING, INC.,
13 CHARLOTTE RUSSE, INC. and to the California Attorney General, County District
14 Attorneys, and City Attorneys for each city containing a population of at least 750,000
15 people in whose jurisdictions the violations allegedly occurred, concerning the product
16 Eyewear, containing DEHP.

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

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

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

4 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notices of the alleged violation CHARLOTTE RUSSE HOLDING, INC.,
6 CHARLOTTE RUSSE, INC. and the public prosecutors referenced in Paragraph 18-19.

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

10 **FIRST CAUSE OF ACTION**

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

14 **Sunglasses**

15 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
16 reference paragraphs 1 through 24 of this complaint as though fully set forth herein. Each
17 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
18 promoter, or retailer of Sunglasses, which includes but is not limited to: (1) Charlotte
19 Russe Sunglasses, WR-85327MULTI, D/CL 51 5116 CODE ACCHOLIDAY,
20 301388855 and (2) "Heart Frame Sunglasses with Brown Lenses and Gold Metal Frame,
21 "100% Eye protection UV 400 Against UVA & UVB", "STYLE AP-SUN1107GLD",
22 "D/CL 51 5116", "CODE ACCHOLIDAY" Barcode: 301543704 ("SUNGLASSES").

23 26. SUNGLASSES contain DEHP.

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

1 28. Plaintiff's allegations regarding SUNGLASSES concerns "[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)*. SUNGLASSES are consumer products, and, as mentioned herein, exposures
6 to DEHP took place as a result of such normal and foreseeable consumption and use.

7 29. Plaintiff's allegations regarding SUNGLASSES also concern "[o]ccupational
8 exposure[s]," which are exposures "to any employees in his or her employer's
9 workplace." *Cal. Code Reg. tit. 27, § 25602(f)*. As mentioned herein, employees were
10 exposed to DEHP in their employer's workplace as a result of handling SUNGLASSES,
11 in conjunction with packaging, shipping, distributing and/or selling SUNGLASSES,
12 among other activities, without having first been given clear and reasonable warnings that
13 such handling would cause exposures to DEHP.

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

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

1 DEHP in the course of their employment by ~~handling, distributing~~ and selling
2 SUNGLASSES.

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

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

13 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to DEHP from SUNGLASSES, pursuant to
15 Health and Safety Code section 25249.7(b).

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

18 **PRAYER FOR RELIEF**

19 Plaintiff demands against each of the Defendants as follows:

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

25 Dated: November 25, 2014

YEROUSHALMI & YEROUSHLAMI

26 BY: _____

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