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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUL 07 2015

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES**

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

17 Plaintiff,

18 v.

19 GOAL ZERO, LLC, a Delaware Limited
20 Liability Company; SPORT CHALET, INC.,
21 a Delaware Corporation; and DOES 1-20;

22 Defendants.

CASE NO. **BC 5 8 7 2 6 7**

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 GOAL ZERO, LLC, SPORT CHALET, INC. and DOES 1-20 as follows:

25 **THE PARTIES**

- 26 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
27 organization qualified to do business in the State of California. CAG is a person within
28 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting

COPY

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 GOAL ZERO, LLC ("GOAL") is a Delaware Limited Liability Company
4 doing business in the State of California at all relevant times herein.

5 3. Defendant SPORT CHALET, INC. ("SPORT CHALET") is a Delaware Corporation
6 doing business in the State of California at all relevant times herein.

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

13 5. At all times mentioned herein, the term "Defendants" includes GOAL, SPORT CHALET
14 and DOES 1-20.

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

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

26 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
27 Defendants was a person doing business within the meaning of Health and Safety Code
28

1 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
2 employees at all relevant times.

3 **JURISDICTION**

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

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

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

21 **BACKGROUND AND PRELIMINARY FACTS**

22 12. In 1986, California voters approved an initiative to address growing concerns about
23 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
24 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
25 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
26 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
27 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
28 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 13. 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 14. 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 15. 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 16. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl
21 Phthalate, also known as Bis (2-ethylhexyl) phthalate ("DEHP") -bearing products of
22 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed
23 chemicals of such products without first providing clear and reasonable warnings of such
24 to the exposed persons prior to the time of exposure. Plaintiff later discerned that
25 Defendants engaged in such practice.

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

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 **SATISFACTION OF PRIOR NOTICE**

- 6 18. On or about September 5, 2014, Plaintiff gave notice of alleged violations of Health and
7 Safety Code section 25249.6, concerning consumer products exposures, subject to a
8 private action to GOAL, SPORT CHALET and to the California Attorney General,
9 County District Attorneys, and City Attorneys for each city containing a population of at
10 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
11 the product LANTERNS containing DEHP.
- 12 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer
13 products involved, the likelihood that such products would cause users to suffer
14 significant exposures to DEHP and the corporate structure of each of the Defendants.
- 15 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
16 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
17 Plaintiff who executed the certificate had consulted with at least one person with relevant
18 and appropriate expertise who reviewed data regarding the exposures to DEHP the
19 subject Proposition 65-listed chemicals of this action. Based on that information, the
20 attorney for Plaintiff who executed the Certificate of Merit believed there was a
21 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
22 to the Certificate of Merit served on the Attorney General the confidential factual
23 information sufficient to establish the basis of the Certificate of Merit.
- 24 21. Plaintiff's notices of alleged violations also included a Certificate of Service and a
25 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
26 (Proposition 65) A Summary." *Health & Safety-Code* § 25249.7(d).
- 27
28

1 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notices of the alleged violation to GOAL and the public prosecutors referenced in
3 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 GOAL, SPORT CHALET and**
10 **DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
11 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

12 **Lanterns**

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. Each
15 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
16 promoter, or retailer of Lanterns, which includes but is not limited to, "GOAL ZERO@
17 USB RECHARGEABLE LANTERN; LIGHTHOUSE250 LANTERN & USB POWER
18 HUB; 48 HOUR RUN TIME; 250 LUMENS; CHARGES PHONES; Barcode: 8 47974
19 00218 6" ("LANTERNS").

20 25. LANTERNS contain DEHP.

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

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

1 25602(b). LANTERNS are consumer products, and, as mentioned herein, exposures to
2 DEHP took place as a result of such normal and foreseeable use.

3 28. Plaintiff is informed, believes, and thereon alleges that between September 5, 2011 and
4 the present, each of the Defendants knowingly and intentionally exposed their California
5 consumers and users of LANTERNS, which Defendants manufactured, distributed, or
6 sold as mentioned above, to DEHP, without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.

8 Defendants have distributed and sold LANTERNS in California. Defendants know and
9 intend that California consumers will use LANTERNS, thereby exposing them to DEHP.
10 Defendants thereby violated Proposition 65.

11 29. The principal routes of exposure are through dermal contact, ingestion and inhalation.
12 Persons sustain exposures by handling LANTERNS without wearing gloves or any other
13 personal protective equipment, or by touching bare skin or mucous membranes with
14 gloves after handling LANTERNS, as well as through direct and indirect hand to mouth
15 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
16 LANTERNS.

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

24 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
25 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
26 violations alleged herein will continue to occur into the future.
27

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 LANTERNS, pursuant to
3 Health and Safety Code section 25249.7(b).

4 //

5 **PRAYER FOR RELIEF**

6 Plaintiff demands against each of the Defendants as follows:

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

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14 Dated: June 7, 2015

YERUSHALMI & YERUSHLAMI

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17 BY: 

18 Reuben Yerushalmi
19 Attorneys for Plaintiff,
20 Consumer Advocacy Group, Inc.
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