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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 25 2015

Sherri R. Carter, Executive Officer/Clerk
By Dawn Alexander, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

14 Plaintiff,

15 v.

16 ROBERT BOSCH TOOL CORP., a
17 Delaware Corporation; ROBERT BOSCH
18 LLC, a Delaware Limited Liability
19 Company, IRON BRIDGE TOOLS, INC., a
20 Florida Corporation and DOES 1-20;

21 Defendants.

CASE NO.

BC 5 85 268

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)

22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
23 Defendants ROBERT BOSCH TOOL CORP., ROBERT BOSCH LLC, IRON BRIDGE
24 TOOLS, INC. and DOES 1-20 as follows:

THE PARTIES

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

5 3. Defendant ROBERT BOSCH LLC ("BOSCH LLC") is a Delaware Limited Liability
6 Company doing business in the State of California at all relevant times herein.

7 4. Defendant IRON BRIDGE TOOLS, INC. ("IRON BRIDGE") is a Florida Corporation
8 doing business in the State of California at all relevant times herein.

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

15 6. At all times mentioned herein, the term "Defendants" includes ROBERT BOSCH,
16 BOSCH LLC, IRON BRIDGE and DOES 1-20.

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

19 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
20 including DOES 1-20, was an agent, servant, or employee of each of the other
21 Defendants. In conducting the activities alleged in this Complaint, each of the
22 Defendants was acting within the course and scope of this agency, service, or
23 employment, and was acting with the consent, permission, and authorization of each of
24 the other Defendants. All actions of each of the Defendants alleged in this Complaint
25 were ratified and approved by every other Defendant or their officers or managing agents.
26 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
27 wrongful conduct of each of the other Defendants.
28

1 9. 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 10. 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 11. 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 12. 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
22 Angeles with respect to the consumer product that is the subject of this action.

23 BACKGROUND AND PRELIMINARY FACTS

24 13. 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
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
2 from contamination, to allow consumers to make informed choices about the products
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see
4 fit.

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

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

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

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

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

1 18. On October 1, 1992, the Governor of California added lead and lead compounds to the
2 list of chemicals known to the State to cause cancer (Cal. Code Regs. tit. 27, § 27001(b)).
3 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
4 after addition of lead and lead compounds to the list of chemicals known to the State to
5 cause cancer, lead and lead compounds became fully subject to Proposition 65 warning
6 requirements and discharge prohibitions.

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

14 20. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl
15 Phthalate ("DEHP") and lead and lead compounds ("LEAD")-bearing products of
16 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed
17 chemicals of such products without first providing clear and reasonable warnings of such
18 to the exposed persons prior to the time of exposure. Plaintiff later discerned that
19 Defendants engaged in such practice.

20 SATISFACTION OF PRIOR NOTICE

21 21. On or about January 11, 2013, Plaintiff gave notice of alleged violations of Health and
22 Safety Code section 25249.6, concerning consumer products exposures, subject to a
23 private action to BOSCH TOOL, BOSCH LLC and to the California Attorney General,
24 County District Attorneys, and City Attorneys for each city containing a population of at
25 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
26 the product Emergency Road Kits containing LEAD.

27 22. On or about June 20, 2013, Plaintiff gave notice of alleged violations of Health and
28 Safety Code section 25249.6, concerning consumer products exposures, subject to a

1 private action to IRON BRIDGE and to the California Attorney General, County District
2 Attorneys, and City Attorneys for each city containing a population of at least 750,000
3 people in whose jurisdictions the violations allegedly occurred, concerning the product
4 Emergency Road Kits containing LEAD.

5 23. On or about January 9, 2015, Plaintiff gave notice of alleged violations of Health and
6 Safety Code section 25249.6, concerning consumer products exposures, subject to a
7 private action to BOSCH TOOL, BOSCH LLC, IRON BRIDGE and to the California
8 Attorney General, County District Attorneys, and City Attorneys for each city containing
9 a population of at least 750,000 people in whose jurisdictions the violations allegedly
10 occurred, concerning the product Wire Strippers containing DEHP.

11 24. Before sending the notice of alleged violations, Plaintiff investigated the consumer
12 products involved, the likelihood that such products would cause users to suffer
13 significant exposures to LEAD and DEHP, and the corporate structure of each of the
14 Defendants.

15 25. 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 LEAD and
19 DEHP, the subject Proposition 65-listed chemicals of this action. Based on that
20 information, the attorney for Plaintiff who executed the Certificate of Merit believed
21 there was a reasonable and meritorious case for this private action. The attorney for
22 Plaintiff attached to the Certificate of Merit served on the Attorney General the
23 confidential factual information sufficient to establish the basis of the Certificate of
24 Merit.

25 26. 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 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notices of the alleged violation to BOSCH TOOL, BOSCH LLC, IRON BRIDGE
3 and the public prosecutors referenced in Paragraph 21-23.

4 28. 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 **FIRST CAUSE OF ACTION**

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

11 **Emergency Roadside Kits**

12 29. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
13 reference paragraphs 1 through 28 of this complaint as though fully set forth herein. Each
14 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
15 promoter, or retailer of Emergency Roadside Kits, which includes but is not limited to,
16 "Skil® Emergency Roadside Kit; 13 pc., 011-105-SKL, UPC #811187017060"
17 ("KITS").

18 30. KITS contain LEAD.

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

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

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

3 33. Plaintiff is informed, believes, and thereon alleges that between January 11, 2010 and the
4 present, each of the Defendants knowingly and intentionally exposed their California
5 consumers and users of KITS, which Defendants manufactured, distributed, or sold as
6 mentioned above, to LEAD, without first providing any type of clear and reasonable
7 warning of such to the exposed persons before the time of exposure. Defendants have
8 distributed and sold KITS in California. Defendants know and intend that California
9 consumers will use KITS, thereby exposing them to LEAD. Defendants thereby violated
10 Proposition 65.

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

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

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

26 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
27 \$2,500.00 per day per individual exposure to LEAD from KITS, pursuant to Health and
28 Safety Code section 25249.7(b).

1 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3 **SECOND CAUSE OF ACTION**

4 **(By CONSUMER ADVOCACY GROUP, INC. and against BOSCH TOOL,
5 BOSCH LLC, IRON BRIDGE and DOES 1-20 for Violations of Proposition 65,
6 The Safe Drinking Water and Toxic Enforcement Act of 1986
7 (Health & Safety Code, §§ 25249.5, et seq.))**

8 **Wire Strippers**

9 39. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
10 reference paragraphs 1 through 38 of this complaint as though fully set forth herein. Each
11 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
12 promoter, or retailer of Wire Strippers/ Cutters with Polymer Grips, which includes but is
13 not limited to, "SKIL® 8IN INSULATED WIRE STRIPPER/CUTTER; STRIPS/CUTS
14 MULTIPLE GAUGES OF WIRE; 10-22 Gauge cutting/stripping sizes; Coax crimping
15 tool; Shock proof double insulated handles; Distributed By: Iron Bridge Tools, Inc.; 009-
16 012-SKL; UPC: 8 11187 01216 4" ("WIRE STRIPPERS")

17 40. WIRE STRIPPERS contain DEHP.

18 41. 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 WIRE STRIPPERS within Plaintiff's notice of alleged
22 violations further discussed above at Paragraph 23.

23 42. Plaintiff's allegations regarding WIRE STRIPPERS concerns "[c]onsumer products
24 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
26 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
27 *25602(b)*. WIRE STRIPPERS are consumer products, and, as mentioned herein,
28 exposures to DEHP took place as a result of such normal and foreseeable use.

1 43. Plaintiff is informed, believes, and thereon alleges that between January 9, 2012 and the
2 present, each of the Defendants knowingly and intentionally exposed their California
3 consumers and users of WIRE STRIPPERS, which Defendants manufactured,
4 distributed, or sold as mentioned above, to DEHP, without first providing any type of
5 clear and reasonable warning of such to the exposed persons before the time of exposure.
6 Defendants have distributed and sold WIRE STRIPPERS in California. Defendants
7 know and intend that California consumers will use WIRE STRIPPERS, thereby
8 exposing them to DEHP. Defendants thereby violated Proposition 65.

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

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

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

25 47. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to DEHP from WIRE STRIPPERS, pursuant
27 to Health and Safety Code section 25249.7(b).

1 48. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3 PRAYER FOR RELIEF

4 Plaintiff demands against each of the Defendants as follows:

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

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12 Dated: June 25, 2015

YEROUSHALMI & YEROUSHLAMI

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14
15 BY: 

16 Reuben Yeroushalmi
17 Attorneys for Plaintiff,
18 Consumer Advocacy Group, Inc.
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