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ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 29 2015

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

BC 580146

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

16 Plaintiff,

17 v.

18 APEX TOOL GROUP, LLC, a Delaware
19 Limited Liability Company; and DOES 1-20;

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)

21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
22 Defendants APEX TOOL GROUP, LLC and DOES 1-20 as follows:

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 as a private attorney general, brings this action in the public interest as defined under
28 Health and Safety Code section 25249.7, subdivision (d).

- 1 2. Defendant APEX TOOL GROUP, LLC ("APEX") is a Delaware Limited Liability
2 Company doing business in the State of California at all relevant times herein.
- 3 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
4 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
5 complaint to allege their true names and capacities when ascertained. Plaintiff is
6 informed, believes, and thereon alleges that each fictitiously named defendant is
7 responsible in some manner for the occurrences herein alleged and the damages caused
8 thereby.
- 9 4. At all times mentioned herein, the term "Defendants" includes APEX and DOES 1-20.
- 10 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
11 times mentioned herein have conducted business within the State of California.
- 12 6. Upon information and belief, at all times relevant to this action, each of the Defendants,
13 including DOES 1-20, was an agent, servant, or employee of each of the other
14 Defendants. In conducting the activities alleged in this Complaint, each of the
15 Defendants was acting within the course and scope of this agency, service, or
16 employment, and was acting with the consent, permission, and authorization of each of
17 the other Defendants. All actions of each of the Defendants alleged in this Complaint
18 were ratified and approved by every other Defendant or their officers or managing agents.
19 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
20 wrongful conduct of each of the other Defendants.
- 21 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
22 Defendants was a person doing business within the meaning of Health and Safety Code
23 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
24 employees at all relevant times.

25 JURISDICTION

- 26 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
27 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
28 those given by statute to other trial courts. This Court has jurisdiction over this action

1 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
2 violations of Proposition 65 in any Court of competent jurisdiction.

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

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

15 BACKGROUND AND PRELIMINARY FACTS

16 11. In 1986, California voters approved an initiative to address growing concerns about
17 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
18 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
19 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
20 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
21 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
22 from contamination, to allow consumers to make informed choices about the products
23 they buy, and to enable persons to protect themselves from toxic chemicals as they see
24 fit.

25 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to
26 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
27 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
28

- 1 13. chemicals and chemical families. Proposition 65 imposes warning requirements and
2 other controls that apply to Proposition 65-listed chemicals.
- 3 14. All businesses with ten (10) or more employees that operate or sell products in California
4 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
5 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
6 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
7 reasonable" warnings before exposing a person, knowingly and intentionally, to a
8 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 9 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
10 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
11 "Threaten to violate" means "to create a condition in which there is a substantial
12 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
13 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
14 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 15 16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
16 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
17 to the list of chemicals known to the State to cause developmental male reproductive
18 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
19 months after addition of DEHP to the list of chemicals known to the State to cause
20 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
21 requirements and discharge prohibitions.
- 22 17. On December 2, 2005, the Governor of California added DBP to the list of chemicals
23 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).
24 DBP 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
26 (20) months after addition DBP to the list of chemicals known to the State to cause
27 reproductive toxicity, DBP became fully subject to Proposition 65 warning requirements
28 and discharge prohibitions.

SATISFACTION OF PRIOR NOTICE

1
2 18. On or about September 29, 2014, Plaintiff gave notice of alleged violations of Health and
3 Safety Code section 25249.6, concerning consumer products exposures, subject to a
4 private action to APEX and to the California Attorney General, County District
5 Attorneys, and City Attorneys for each city containing a population of at least 750,000
6 people in whose jurisdictions the violations allegedly occurred, concerning the product
7 Hand Tools containing DEHP and DBP.

8 19. On or about January 9, 2015, Plaintiff gave notice of alleged violations of Health and
9 Safety Code section 25249.6, concerning consumer products exposures, subject to a
10 private action to APEX and to the California Attorney General, County District
11 Attorneys, and City Attorneys for each city containing a population of at least 750,000
12 people in whose jurisdictions the violations allegedly occurred, concerning the product
13 Hand Tools containing DEHP and DBP.

14 20. On or about February 9, 2015, Plaintiff gave notice of alleged violations of Health and
15 Safety Code section 25249.6, concerning consumer products exposures, subject to a
16 private action to APEX and to the California Attorney General, at least 750,000 people in
17 whose jurisdictions the violations allegedly occurred, concerning the product Hand Tools
18 containing DBP.

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

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

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

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

8 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
9 gave notices of the alleged violation to APEX the public prosecutors referenced in
10 Paragraph 18-20.

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

14 **FIRST CAUSE OF ACTION**

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

18 **Battery Wrenches**

19 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
20 reference paragraphs 1 through 25 of this complaint as though fully set forth herein. Each
21 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
22 promoter, or retailer of Battery Wrenches which includes but is not limited to, "KD®
23 Tools Terminal Wrench", 3367, Use On Most GM Side Terminal Batteries or Any 5/16"
24 Battery Terminal, KD3367 WR BTRY SIDE TERM GM, KD005, "Manufactured in
25 Taiwan to KD Tools Specifications", 082171033674." ("BATTERY WRENCHES").

26 27. BATTERY WRENCHES contain DEHP and DBP.

27 28. Defendants knew or should have known that DEHP and/or DBP has been identified by
28 the State of California as a chemical known to cause cancer and reproductive toxicity and

1 therefore was subject to Proposition 65 warning requirements. Defendants were also
2 informed of the presence of DEHP and/or DBP in BATTERY WRENCHES within
3 Plaintiff's notice of alleged violations further discussed above at Paragraph 18.

4 29. Plaintiff's allegations regarding BATTERY WRENCHES concern "[c]onsumer products
5 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
6 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
7 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
8 *25602(b)*. BATTERY WRENCHES are consumer products, and, as mentioned herein,
9 exposures to DEHP and/or DBP took place as a result of such normal and foreseeable
10 use.

11 30. Plaintiff is informed, believes, and thereon alleges that between September 29, 2011 and
12 the present, each of the Defendants knowingly and intentionally exposed their California
13 consumers and users of BATTERY WRENCHES, which Defendants manufactured,
14 distributed, or sold as mentioned above, to DEHP and/or DBP, without first providing
15 any type of clear and reasonable warning of such to the exposed persons before the time
16 of exposure. Defendants have distributed and sold BATTERY WRENCHES in
17 California. Defendants know and intend that California consumers will use BATTERY
18 WRENCHES, thereby exposing them to DEHP and/or DBP. Defendants thereby
19 violated Proposition 65.

20 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.
21 Persons sustain exposures by handling BATTERY WRENCHES without wearing gloves
22 or any other personal protective equipment, or by touching bare skin or mucous
23 membranes with gloves after handling BATTERY WRENCHES, as well as through
24 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in
25 particulate matter dispersed from BATTERY WRENCHES.

26 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to BATTERY WRENCHES have been ongoing and continuous to the
28 date of the signing of this complaint, as Defendants engaged and continue to engage in

1 conduct which violates Health and Safety Code section 25249.6, including the
2 manufacture, distribution, promotion, and sale of BATTERY WRENCHES, so that a
3 separate and distinct violation of Proposition 65 occurred each and every time a person
4 was exposed to DEHP and/or DBP by BATTERY WRENCHES as mentioned herein.

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

8 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
9 \$2,500.00 per day per individual exposure to DEHP and/or DBP from BATTERY
10 WRENCHES, pursuant to Health and Safety Code section 25249.7(b).

11 **SECOND CAUSE OF ACTION**

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

15 **Cutting Nippers**

16 35. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 34 of this complaint as though fully set forth herein. Each
18 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
19 promoter, or retailer of Cutting Nippers which includes but is not limited to, Crescent
20 Brand® Quality and Innovation since 1907' End Cutting Nipper, (7" 178mm) 727CVN,
21 Cooper Hand Tools, 1000 Lufkin Road, Apex, NC 27539 (www. Cooperhandtools.com)
22 "Made in Taiwan to Cooper Hand Tools Specifications" UPC 0 37103 21315 0"
23 ("CUTTING NIPPERS").

24 36. CUTTING NIPPERS contain DEHP and DBP.

25 37. Defendants knew or should have known that DEHP and/or DBP has been identified by
26 the 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 DEHP and/or DBP in CUTTING NIPPERS within Plaintiff's
2 notice of alleged violations further discussed above at Paragraph 19.

3 38. Plaintiff's allegations regarding CUTTING NIPPERS concern "[c]onsumer products
4 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
5 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
6 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
7 *25602(b)*. CUTTING NIPPERS are consumer products, and, as mentioned herein,
8 exposures to DEHP and/or DBP took place as a result of such normal and foreseeable
9 use.

10 39. Plaintiff is informed, believes, and thereon alleges that between January 9, 2012 and the
11 present, each of the Defendants knowingly and intentionally exposed their California
12 consumers and users of CUTTING NIPPERS, which Defendants manufactured,
13 distributed, or sold as mentioned above, to DEHP and/or DBP, without first providing
14 any type of clear and reasonable warning of such to the exposed persons before the time
15 of exposure. Defendants have distributed and sold CUTTING NIPPERS in California.
16 Defendants know and intend that California consumers will use CUTTING NIPPERS,
17 thereby exposing them to DEHP and/or DBP. Defendants thereby violated Proposition
18 65.

19 40. The principal routes of exposure are through dermal contact, ingestion and inhalation.
20 Persons sustain exposures by handling CUTTING NIPPERS without wearing gloves or
21 any other personal protective equipment, or by touching bare skin or mucous membranes
22 with gloves after handling CUTTING NIPPERS, as well as through direct and indirect
23 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter
24 dispersed from CUTTING NIPPERS.

25 41. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
26 Proposition 65 as to CUTTING NIPPERS have been ongoing and continuous to the date
27 of the signing of this complaint, as Defendants engaged and continue to engage in
28 conduct which violates Health and Safety Code section 25249.6, including the

1 manufacture, distribution, promotion, and sale of CUTTING NIPPERS, so that a separate
2 and distinct violation of Proposition 65 occurred each and every time a person was
3 exposed to DEHP and/or DBP by CUTTING NIPPERS as mentioned herein.

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

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

10 **THIRD CAUSE OF ACTION**

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

14 **Pliers**

15 44. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
16 reference paragraphs 1 through 43 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 Pliers which includes but is not limited to, "Crescent® BRAND
19 Quality and Innovation since 1907 Long Chain Nose Pliers; 6" 150mm; 6546CVSMLN;
20 COOPER Hand Tools; 1000 Lufkin Road, Apex, NC 27539 (www.
21 Cooperhandtools.com); "Made in Taiwan to Cooper Hand Tools Specifications"; UPC: 0
22 37103 21283 2" ("PLIERS").

23 45. PLIERS contain DBP.

24 46. Defendants knew or should have known that DBP 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 DBP in PLIERS within Plaintiff's notice of alleged violations further
28 discussed above at Paragraph 20.

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

5 PLIERS are consumer products, and, as mentioned herein, exposures to DBP took place
6 as a result of such normal and foreseeable use.

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

11 49. Plaintiff is informed, believes, and thereon alleges that between February 9, 2012 and the
12 present, each of the Defendants knowingly and intentionally exposed their employees,
13 California consumers and users of PLIERS, which Defendants manufactured, distributed,
14 or sold as mentioned above, to DBP, without first providing any type of clear and
15 reasonable warning of such to the exposed persons before the time of exposure.
16 Defendants have distributed and sold PLIERS in California. Defendants know and intend
17 that California consumers will use PLIERS, thereby exposing them to DBP. Defendants
18 thereby violated Proposition 65.

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

26 51. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to PLIERS have been ongoing and continuous to the date of the signing
28 of this complaint, as Defendants engaged and continue to engage in conduct which

1 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
2 promotion, and sale of PLIERS, so that a separate and distinct violation of Proposition 65
3 occurred each and every time a person was exposed to DBP by PLIERS as mentioned
4 herein.

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

8 53. Based on the allegations herein, Defendants are liable for civil penalties of up to
9 \$2,500.00 per day per individual exposure to DBP from PLIERS, pursuant to Health and
10 Safety Code section 25249.7(b).

11 54. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
12 filing this Complaint.

13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

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

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22 Dated: April 29, 2015

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YEROUSHALMI & YEROUSHLAMI

BY: _____

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