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ORIGINAL FILED
Superior Court of California
County of Los Angeles

AUG 04 2015

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, 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 ATE PRO. USA, business entity form
19 unknown; LA TOOLS WAREHOUSE, a
20 business entity form unknown; and DOES 1-
21 20;

22 Defendants.

CASE NO.

BC 590001

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 ATE PRO. USA, LA TOOLS WAREHOUSE 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
as a private attorney general, brings this action in the public interest as defined under
Health and Safety Code section 25249.7, subdivision (d).

COPY

- 1
- 2 2. Defendant ATE PRO. USA ("ATE") is a business entity form unknown doing business in
- 3 the State of California at all relevant times herein.
- 4
- 5 3. Defendant LA TOOLS WAREHOUSE ("LA TOOLS") is a business entity form
- 6 unknown 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 ATE, LA TOOLS and
- 14 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 ("DEHP") and lead and lead compounds ("LEAD")--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 October 1, 1992, the Governor of California added Lead and Lead compounds to the
27 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).
28 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months

1 after addition of Lead and lead compounds to the list of chemicals known to the State to
2 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
3 requirements and discharge prohibitions.

4 18. On February 27, 1987, the Governor of California added Lead to the list of chemicals
5 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).
6 Lead is known to the State to cause developmental, female, and male reproductive
7 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
8 months after addition of Lead to the list of chemicals known to the State to cause
9 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements
10 and discharge prohibitions.

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

18 **SATISFACTION OF PRIOR NOTICE**

19 20. On or about October 13, 2014, Plaintiff gave notice of alleged violations of Health and
20 Safety Code section 25249.6, concerning consumer products exposures, subject to a
21 private action to ATE, LA TOOLS and to the California Attorney General, County
22 District Attorneys, and City Attorneys for each city containing a population of at least
23 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
24 product Automobile Accessories containing LEAD.

25 21. On or about March 9, 2015, Plaintiff gave notice of alleged violations of Health and
26 Safety Code section 25249.6, concerning consumer products exposures, subject to a
27 private action to ATE, LA TOOLS and to the California Attorney General, County
28 District Attorneys, and City Attorneys for each city containing a population of at least

1 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
2 product Steering Wheel Covers containing DEHP and LEAD.

3 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer
4 products involved, the likelihood that such products would cause users to suffer
5 significant exposures to DEHP and LEAD, and the corporate structure of each of the
6 Defendants.

7 23. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
8 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
9 Plaintiff who executed the certificate had consulted with at least one person with relevant
10 and appropriate expertise who reviewed data regarding the exposures to Lead, the subject
11 Proposition 65-listed chemicals of this action. Based on that information, the attorney for
12 Plaintiff who executed the Certificate of Merit believed there was a reasonable and
13 meritorious case for this private action. The attorney for Plaintiff attached to the
14 Certificate of Merit served on the Attorney General the confidential factual information
15 sufficient to establish the basis of the Certificate of Merit.

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

19 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
20 gave notices of the alleged violation to ATE, LA TOOLS and the public prosecutors
21 referenced in Paragraph 20-21.

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

1 FIRST CAUSE OF ACTION

2 (By CONSUMER ADVOCACY GROUP, INC. and against ATE PRO. USA, LA TOOLS
3 WAREHOUSE and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water
and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

4 **Steering Wheel Covers**

5 27. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
6 reference paragraphs 1 through 26 of this complaint as though fully set forth herein. Each
7 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
8 promoter, or retailer of Steering Wheel Covers, which includes but is not limited to, 1.
9 "ATE PRO. USA Professional" "Steering Wheel Cover Grey", "#87032", "UPC: 6
10 89958 87032 5"" and 2. "ATE PRO. USA Professional" "Steering Wheel Cover Black",
11 "#87032", "UPC: 6 89958 87030 1"" ("STEERING WHEEL COVERS").

12 28. STEERING WHEEL COVERS contain LEAD and DEHP.

13 29. Defendants knew or should have known that LEAD and DEHP has been identified by the
14 State of California as a chemical known to cause cancer and reproductive toxicity and
15 therefore was subject to Proposition 65 warning requirements. Defendants were also
16 informed of the presence of LEAD and DEHP in STEERING WHEEL COVERS within
17 Plaintiff's notice of alleged violations further discussed above at Paragraph 20-21.

18 30. Plaintiff's allegations regarding STEERING WHEEL COVERS concerns "[c]onsumer
19 products exposure[s]," which "is an exposure that results from a person's acquisition,
20 purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,
21 or any exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27,
22 § 25602(b). STEERING WHEEL COVERS are consumer products, and, as mentioned
23 herein, exposures to LEAD and DEHP took place as a result of such normal and
24 foreseeable use.

25 31. Plaintiff is informed, believes, and thereon alleges that between October 13, 2011 and the
26 present, each of the Defendants knowingly and intentionally exposed their California
27 consumers and users of STEERING WHEEL COVERS, which Defendants
28

1 manufactured, distributed, or sold as mentioned above, to LEAD and DEHP, without first
2 providing any type of clear and reasonable warning of such to the exposed persons before
3 the time of exposure. Defendants have distributed and sold STEERING WHEEL
4 COVERS in California. Defendants know and intend that California consumers will use
5 STEERING WHEEL COVERS, thereby exposing them to LEAD and DEHP.

6 Defendants thereby violated Proposition 65.

7 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.

8 Persons sustain exposures by handling STEERING WHEEL COVERS without wearing
9 gloves or any other personal protective equipment, or by touching bare skin or mucous
10 membranes with gloves after handling STEERING WHEEL COVERS, as well as
11 through direct and indirect hand to mouth contact, hand to mucous membrane, or
12 breathing in particulate matter dispersed from STEERING WHEEL COVERS.

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

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

24 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
25 \$2,500.00 per day per individual exposure to LEAD and DEHP from STEERING
26 WHEEL COVERS, pursuant to Health and Safety Code section 25249.7(b).

27 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
28 filing this Complaint.

PRAYER FOR RELIEF

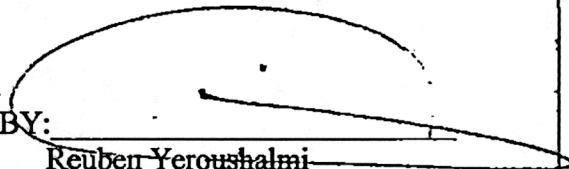
Plaintiff demands against each of the Defendants as follows:

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

Dated: August 4, 2015

YEROUSHALMI & YEROUSHLAMI

BY:


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