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**ENDORSED
FILED**
Superior Court of California
County of San Francisco

MAR 07 2016

CLERK OF THE COURT

BY: ARLENE RAMOS
Deputy Clerk

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

13 **COUNTY OF SAN FRANCISCO**

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

16 Plaintiff,

17 v.

18 WAL-MART STORES, INC., a Delaware
19 corporation; JO-ANN STORES, LLC, a
20 Delaware limited liability company; and
21 DOES 1-20

22 Defendants.

CASE NO.

CGC-16-550822

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 Defendant WAL-MART STORES, INC., JO-ANN STORES, LLC, 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).

EX-100

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

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1 **JURISDICTION**

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

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

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

19 **BACKGROUND AND PRELIMINARY FACTS**

20 12. In 1986, California voters approved an initiative to address growing concerns about
21 exposure to toxic chemicals and declared their right “[t]o be informed about exposures
22 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
23 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
24 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
25 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
26 from contamination, to allow consumers to make informed choices about the products
27 they buy, and to enable persons to protect themselves from toxic chemicals as they see
28 fit.

- 1 13. Proposition 65 requires the Governor of California to publish a list of chemicals known
2 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
3 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains
4 over 700 chemicals and chemical families. Proposition 65 imposes warning
5 requirements and 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
7 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
8 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of
9 drinking 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* §
14 25249.7. "Threaten to violate" means "to create a condition in which there is a
15 substantial 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 products
19 bearing Di Isononyl Phthalate (“DINP”), also known as diisononyl phthalate, exposing,
20 knowingly and intentionally, persons in California to said Proposition 65-listed chemical
21 without first providing clear and reasonable warnings to the exposed persons prior to the
22 time of exposure. Plaintiff later discerned that Defendants engaged in such practice.
- 23 17. On December 20, 2013, the Governor of California added DINP to the list of chemicals
24 known to the State to cause cancer. Pursuant to Health and Safety Code sections
25 25249.9 and 25249.10, twenty (20) months after addition of DINP to the list of
26 chemicals known to the State to cause cancer, DINP became fully subject to Proposition
27 65 warning requirements and discharge prohibitions.

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SATISFACTION OF PRIOR NOTICE

18. On or about May 7, 2015, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to WAL-MART and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning pliers kits containing DINP.

19. On or about September 18, 2015, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to JO-ANN, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning heavy duty pliers kits with blue plastic handles containing DINP.

20. On or about October 8, 2015, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to JO-ANN and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning grommet plier kits containing DINP.

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

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

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

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

7 24. Plaintiff is commencing this action more than sixty (60) days from the dates that
8 Plaintiff gave notices of the alleged violation to WAL-MART, JO-ANN, and the public
9 prosecutors referenced in Paragraphs 18 through 20.

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

13 **FIRST CAUSE OF ACTION**

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

17 **Pliers Kits**

18 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
19 reference paragraphs 1 through 25 of this complaint as though fully set forth herein.
20 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
21 distributor, promoter, or retailer of pliers kits, which includes but is not limited to, "Dritz
22 Pliers Kit", 'Estuche de Pinzas', '11082', 'Pliers Kit Contains: Pliers, 1 yellow adapter,
23 2 rubber rings, 4 snaps', 'Pearl Snaps=Size 16', 'Instructions for Snaps and Pearl
24 Snaps', Diagram for Snaps/Pearl Snaps, SMALL PARTS. NOT FOR CHILDREN
25 UNDER 3 YEARS, 'Made in USA, Taiwan, China, & Mexico', 'Manufactured for
26 ©2012 Prym Consumer USA Inc., 950 Brisack Rd., Spartanburg, SC 29303',
27 www.dritz.com, UPC: 0 72879 25269 9" ("PLIERS KITS")

28 27. PLIERS KITS contain DINP.

1 28. Defendants knew or should have known that DINP has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of DINP in PLIERS KITS within Plaintiff's notice of alleged violations
5 further discussed above at Paragraphs 18.

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

12 30. Plaintiff is informed, believes, and thereon alleges that between May 7, 2012 and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of PLIERS KITS, which Defendants manufactured, distributed, or
15 sold as mentioned above, to DINP, without first providing any type of clear and
16 reasonable warning of such to the exposed persons before the time of exposure.
17 Defendants have distributed and sold PLIERS KITS in California. Defendants know
18 and intend that California consumers will use PLIERS KITS, thereby exposing them to
19 DINP. Defendants thereby violated Proposition 65.

20 31. The principal routes of exposure were through dermal contact, ingestion, and inhalation.
21 Persons sustain exposures by handling PLIERS KITS without wearing gloves or by
22 touching bare skin or mucus membranes with gloves after handling PLIERS KITS, as
23 well as through direct and indirect hand to mouth contact, hand to food to mouth, direct
24 contact to food then to mouth, hand to mucous membrane, or breathing in particulate
25 matter emanating from PLIERS KITS during installation and use, as well as through
26 environmental mediums that carry the DINP once contained within the PLIERS KITS.

27 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
28 Proposition 65 as to PLIERS KITS have been ongoing and continuous to the date of the

1 signing of this complaint, as Defendants engaged and continue to engage in conduct
2 which violates Health and Safety Code section 25249.6, including the manufacture,
3 distribution, promotion, and sale of PLIERS KITS, so that a separate and distinct
4 violation of Proposition 65 occurred each and every time a person was exposed to DINP
5 by PLIERS KITS as mentioned herein.

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

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

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

14 **SECOND CAUSE OF ACTION**

15 **(By CONSUMER ADVOCACY GROUP, INC. and against JO-ANN 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 **Heavy Duty Pliers Kits**

19 36. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
20 reference paragraphs 1 through 35 of this complaint as though fully set forth herein.
21 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of heavy duty plier kits with blue plastic handles, which
23 includes but is not limited to, “Dritz® Heavy Plier Kit”, ‘Estuche de Pinzas’, ‘24P’,
24 ‘Applies Heavy Duty Snaps--#5 & #105’, Kit Includes: 4 Heavy Duty Snaps—5/8 in
25 (1.59cm). Made in USA & China, Manufactured for Prym Consumer USA Inc., 950
26 Brisack Rd., Spartanburg, SC 29303’, www.dritz.com, UPC: 0 72879 10045 7
27 (“HEAVY DUTY PLIERS KITS”)

28 37. HEAVY DUTY PLIERS KITS contain DINP.

1 38. Defendants knew or should have known that DINP has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of DINP in HEAVY DUTY PLIERS KITS within Plaintiff's notice of
5 alleged violations further discussed above at Paragraphs 19.

6 39. Plaintiff's allegations regarding HEAVY DUTY PLIERS KITS concerns "[c]onsumer
7 products exposure[s]," which "is an exposure that results from a person's acquisition,
8 purchase, storage, consumption, or other reasonably foreseeable use of a consumer
9 good, or any exposure that results from receiving a consumer service." *Cal. Code Regs.*
10 tit. 27, § 25602(b). HEAVY DUTY PLIERS KITS are consumer products, and, as
11 mentioned herein, exposures to DINP took place as a result of such normal and
12 foreseeable use.

13 40. Plaintiff is informed, believes, and thereon alleges that between September 18, 2012 and
14 the present, each of the Defendants knowingly and intentionally exposed California
15 consumers and users of HEAVY DUTY PLIERS KITS, which Defendants
16 manufactured, distributed, or sold as mentioned above, to DINP, without first providing
17 any type of clear and reasonable warning of such to the exposed persons before the time
18 of exposure. Defendants have distributed and sold HEAVY DUTY PLIERS KITS in
19 California. Defendants know and intend that California consumers will use HEAVY
20 DUTY PLIERS KITS, thereby exposing them to DINP. Defendants thereby violated
21 Proposition 65.

22 41. The principal routes of exposure were through dermal contact, ingestion, and inhalation.
23 Persons sustain exposures by handling HEAVY DUTY PLIERS KITS without wearing
24 gloves or by touching bare skin or mucus membranes with gloves after handling
25 HEAVY DUTY PLIERS KITS, as well as through direct and indirect hand to mouth
26 contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous
27 membrane, or breathing in particulate matter emanating from HEAVY DUTY PLIERS
28

1 KITS during installation and use, as well as through environmental mediums that carry
2 the DINP once contained within the HEAVY DUTY PLIERS KITS.

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

10 43. 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 44. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to DINP from HEAVY DUTY PLIERS
15 KITS, pursuant to Health and Safety Code section 25249.7(b).

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

18 **THIRD CAUSE OF ACTION**

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

22 **Grommet Plier Kits**

23 46. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
24 reference paragraphs 1 through 44 of this complaint as though fully set forth herein.
25 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
26 distributor, promoter, or retailer of grommet pliers kits, which includes but is not limited
27 to, "Dritz® Grommet Plier Kit", 'Applies 3/8 in (.95cm) Brass Grommets Made in USA
28

1 & China. Manufactured for Prym Consumer USA Inc., 950 Brisack Rd., Spartanburg,
2 SC 29303. www.dritz.com: UPC: 0 72879 10001 3” (“GROMMET PLIERS KITS”)

3 47. GROMMET PLIERS KITS contain DINP.

4 48. Defendants knew or should have known that DINP has been identified by the State of
5 California as a chemical known to cause cancer and reproductive toxicity and therefore
6 was subject to Proposition 65 warning requirements. Defendants were also informed of
7 the presence of DINP in GROMMET PLIERS KITS within Plaintiff's notice of alleged
8 violations further discussed above at Paragraphs 20.

9 49. Plaintiff's allegations regarding GROMMET PLIERS KITS concerns “[c]onsumer
10 products exposure[s],” which “is an exposure that results from a person's acquisition,
11 purchase, storage, consumption, or other reasonably foreseeable use of a consumer
12 good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.*
13 tit. 27, § 25602(b). GROMMET PLIERS KITS are consumer products, and, as
14 mentioned herein, exposures to DINP took place as a result of such normal and
15 foreseeable use.

16 50. Plaintiff is informed, believes, and thereon alleges that between October 8, 2012 and the
17 present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of GROMMET PLIERS KITS, which Defendants manufactured,
19 distributed, or sold as mentioned above, to DINP, without first providing any type of
20 clear and reasonable warning of such to the exposed persons before the time of
21 exposure. Defendants have distributed and sold GROMMET PLIERS KITS in
22 California. Defendants know and intend that California consumers will use GROMMET
23 PLIERS KITS, thereby exposing them to DINP. Defendants thereby violated
24 Proposition 65.

25 51. The principal routes of exposure were through dermal contact, ingestion, and inhalation.
26 Persons sustain exposures by handling GROMMET PLIERS KITS without wearing
27 gloves or by touching bare skin or mucus membranes with gloves after handling
28 GROMMET PLIERS KITS, as well as through direct and indirect hand to mouth

1 contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous
2 membrane, or breathing in particulate matter emanating from GROMMET PLIERS
3 KITS during installation and use, as well as through environmental mediums that carry
4 the DINP once contained within the GROMMET PLIERS KITS.

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

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

15 54. Based on the allegations herein, Defendants are liable for civil penalties of up to
16 \$2,500.00 per day per individual exposure to DINP from GROMMET PLIERS KITS,
17 pursuant to Health and Safety Code section 25249.7(b).

18 55. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
19 filing this Complaint.

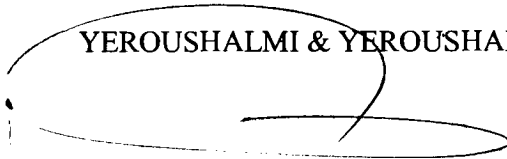
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PRAYER FOR RELIEF

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: March 4, 2016


YEROUSHALMI & YEROUSHALMI

BY: _____
Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.