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Consumer Advocacy Group, Inc.

**ENDORSED
FILED
ALAMEDA COUNTY**

APR - 5 2016

CLERK OF THE SUPERIOR COURT
By _____ Deputy

S. IYAMU

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

RG 16810210

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

Plaintiff,

v.

DOWIN ENTERPRISES (USA), INC., a
Illinois Corporation; DOWIN
ENTERPRISES, INC., a business entity from
unknown; DOWIN PLASTIC
PRODUCTION CO., LTD., a business entity
from unknown; SUPER 99 CENT
DISCOUNT, INC., a California Corporation;
and DOES 1-20;

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)

BY FAX

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
Defendant DOWIN ENTERPRISES (USA), INC., DOWIN ENTERPRISES, INC., DOWIN
PLASTIC PRODUCTION CO., LTD., SUPER 99 CENT DISCOUNT INC., and DOES 1-20 as
follows:

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THE PARTIES

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1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within 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).

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2. Defendant DOWIN ENTERPRISES (USA), INC. (“DOWIN USA”), is an Illinois Corporation, doing business in the State of California at all relevant times herein.

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3. Defendant DOWIN ENTERPRISES, INC. (“DOWIN”) is a business entity from unknown doing business in the State of California at all relevant times herein.

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4. Defendant DOWIN PLASTIC PRODUCTION CO., LTD. (“DOWIN PLASTIC”) is a business entity from unknown doing business in the State of California at all relevant times herein

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5. Defendant 99 CENT DISCOUNT INC. (“SUPER 99 CENT”) is a California Corporation, doing business in the State of California at all relevant times herein.

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

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7. At all times mentioned herein, the term “Defendant” includes DOWIN USA, DOWIN, DOWIN PLASTIC, SUPER 99 CENT, and DOES 1-20.

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

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- 1 9. Upon information and belief, at all times relevant to this action, each of the Defendants,
2 including DOES 1-20, was an agent, servant, or employee of each of the other
3 Defendants. In conducting the activities alleged in this Complaint, each of the
4 Defendants was acting within the course and scope of this agency, service, or
5 employment, and was acting with the consent, permission, and authorization of each of
6 the other Defendants. All actions of each of the Defendants alleged in this Complaint
7 were ratified and approved by every other Defendant or their officers or managing
8 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
9 the alleged wrongful conduct of each of the other Defendants.
- 10 10. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
11 Defendants was a person doing business within the meaning of Health and Safety Code
12 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
13 employees at all relevant times.

14 **JURISDICTION**

- 15 11. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
16 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
17 those given by statute to other trial courts. This Court has jurisdiction over this action
18 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
19 violations of Proposition 65 in any Court of competent jurisdiction.
- 20 12. This Court has jurisdiction over Defendants named herein because Defendants either
21 reside or are located in this State or are foreign corporations authorized to do business in
22 California, are registered with the California Secretary of State, or who do sufficient
23 business in California, have sufficient minimum contacts with California, or otherwise
24 intentionally avail themselves of the markets within California through their
25 manufacture, distribution, promotion, marketing, or sale of their products within
26 California to render the exercise of jurisdiction by the California courts permissible
27 under traditional notions of fair play and substantial justice.
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1 13. Venue is proper in the County of Alameda because one or more of the instances of
2 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
3 because Defendants conducted, and continue to conduct, business in the County of
4 Alameda with respect to the consumer product that is the subject of this action.

5 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

26 17. Proposition 65 provides that any person "violating or threatening to violate" the statute
27 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
28 25249.7. "Threaten to violate" means "to create a condition in which there is a

1 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
2 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
3 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

4 18. Plaintiff identified certain practices of manufacturers and distributors of products
5 bearing Di Isononyl Phthalate ("DINP"), also known as diisononyl phthalate, exposing,
6 knowingly and intentionally, persons in California to said Proposition 65-listed chemical
7 without first providing clear and reasonable warnings to the exposed persons prior to the
8 time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

9 19. On December 20, 2013, the Governor of California added DINP to the list of chemicals
10 known to the State to cause cancer. Pursuant to Health and Safety Code sections
11 25249.9 and 25249.10, twenty (20) months after addition of DINP to the list of
12 chemicals known to the State to cause cancer, DINP became fully subject to Proposition
13 65 warning requirements and discharge prohibitions.

14 **SATISFACTION OF PRIOR NOTICE**

15 20. On or about July 1, 2015, Plaintiff gave notice of alleged violations of Health and Safety
16 Code section 25249.6, concerning consumer products exposures, subject to a private
17 action to DOWIN USA, DOWIN, DOWIN PLASTIC, SUPER 99 CENT and to the
18 California Attorney General, County District Attorneys, and City Attorneys for each city
19 containing a population of at least 750,000 people in whose jurisdictions the violations
20 allegedly occurred, concerning Vinyl Waffle Placemats containing DINP.

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

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

1 attorney for Plaintiff who executed the Certificate of Merit believed there was a
2 reasonable and meritorious case for this private action. The attorney for Plaintiff
3 attached to the Certificate of Merit served on the Attorney General the confidential
4 factual information sufficient to establish the basis of the Certificate of 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
9 Plaintiff gave notices of the alleged violation to DOWIN USA, DOWIN, DOWIN
10 PLASTIC, SUPER 99 CENT, and the public prosecutors referenced in Paragraph 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 DOWIN USA, DOWIN,**
16 **DOWIN PLASTIC, SUPER 99 CENT and DOES 1-20 for Violations of Proposition 65, The**
17 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**
18 **25249.5, *et seq.*))**

19 **Vinyl Waffle Placemats**

20 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
21 reference paragraphs 1 through 25 of this complaint as though fully set forth herein.
22 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Vinyl Waffle Placemats, which includes but is not
24 limited to, "Do Do Win® 2PK Waffle Placemats; Orange; ITEM #2314; made in China;
25 Distributed by: Dowin Enterprise Inc., Chicago, IL 60609; UPC# 8 97288 02314 8"
26 ("PLACEMATS")

27 27. PLACEMATS contain DINP.

28 28. Defendants knew or should have known that DINP has been identified by the State of
California as a chemical known to cause cancer and therefore was subject to Proposition

1 65 warning requirements. Defendants were also informed of the presence of DINP in
2 PLACEMATS within Plaintiff's notice of alleged violations further discussed above at
3 Paragraph 20.

4 29. Plaintiff's allegations regarding PLACEMATS concerns "[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)*. PLACEMATS are consumer products, and, as mentioned herein, exposures
9 to DINP took place as a result of such normal and foreseeable use.

10 30. Plaintiff's allegations regarding PLACEMATS also concern Occupational Exposures,
11 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
12 *Code Regs. tit. 27, § 25602(f)*. Exposures of DINP to Defendants' employees occurred
13 through the course of their employment in their employers' workplaces.

14 31. Plaintiff is informed, believes, and thereon alleges that between July 1, 2012 and the
15 present, each of the Defendants knowingly and intentionally exposed their employees,
16 California consumers and users of PLACEMATS, which Defendants manufactured,
17 distributed, or sold as mentioned above, to DINP, without first providing any type of
18 clear and reasonable warning of such to the exposed persons before the time of
19 exposure. Defendants have distributed and sold PLACEMATS in California.
20 Defendants know and intend that California consumers will use PLACEMATS, thereby
21 exposing them to DINP. Defendants thereby violated Proposition 65.

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

1 And as to Defendants' employees, employees may be exposed to DINP in the course of
2 their employment by handling, distributing, and selling PLACEMATS.

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

10 34. 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 35. 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 PLACEMATS, pursuant to
15 Health and Safety Code section 25249.7(b).

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

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26 **PRAYER FOR RELIEF**

27 Plaintiff demands against each of the Defendants as follows:

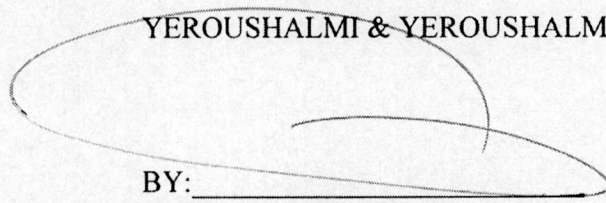
- 28 1. A permanent injunction mandating Proposition 65-compliant warnings;

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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: April 5, 2016

YERUSHALMI & YERUSHALMI

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