

1 Reuben Yeroushalmi (SBN 193981)
2 Ben Yeroushalmi (SBN 232540)
3 Peter T. Sato (SBN 238486)
4 **YEROUSHALMI & YEROUSHALMI**
5 An Association of Independent Law Corporations
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, California 90212
8 Telephone: 310.623.1926
9 Facsimile: 310.623.1930

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LOS ANGELES SUPERIOR COURT

AUG 09 2016

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

7 Attorneys for Plaintiff,
8 Consumer Advocacy Group, Inc.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 MY IMPORT USA, INC., a business entity
16 form unknown; SK MARKET, INC. dba
17 BEST BARGAIN, a California Corporation;
18 and DOES 1-20;

19 Defendants.

CASE NO.

BC 6 2 9 9 2 2

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 MY IMPORT USA, INC., SK MARKET, INC. dba BEST BARGAIN and DOES 1-
23 20 as follows:

24 **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

COPY

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 MY IMPORT USA, INC. (MY IMPORT), is a business entity form unknown
4 doing business in the State of California at all relevant times herein.

5 3. Defendant SK MARKET, INC. dba BEST BARGAIN (BEST BARGAIN) is a California
6 Corporation 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 MY IMPORT USA, INC.,
14 SK MARKET, INC. dba BEST BARGAIN, and 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.

4 JURISDICTION

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

22 BACKGROUND AND PRELIMINARY FACTS

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

1 from contamination, to allow consumers to make informed choices about the products
2 they buy, and to enable persons to protect themselves from toxic chemicals as they see
3 fit.

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

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

15 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
16 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
17 "Threaten to violate" means "to create a condition in which there is a substantial
18 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
19 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
20 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

1 17. 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 18. Plaintiff identified certain practices of manufacturers and distributors of lead and lead
8 compounds (“LEAD”) bearing products of exposing, knowingly and intentionally,
9 persons in California to the Proposition 65-listed chemicals of such products without first
10 providing clear and reasonable warnings of such to the exposed persons prior to the time
11 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

12 **SATISFACTION OF PRIOR NOTICE**

13 19. On or about October 8, 2015, Plaintiff gave notice of alleged violations of Health and
14 Safety Code section 25249.6, concerning consumer products exposures subject to a
15 private action to MY IMPORT USA, INC., SK MARKET, INC. dba BEST BARGAIN
16 and to the California Attorney General, County District Attorneys, and City Attorneys for
17 each city containing a population of at least 750,000 people in whose jurisdictions the
18 violations allegedly occurred, concerning the product ORANGE AND BLUE
19 MEASURING TAPES WITH RUBBER GRIP, containing LEAD.

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

23 21. 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 LEAD, the
27 subject Proposition 65-listed chemicals of this action. Based on that information, the
28 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 attached
2 to the Certificate of Merit served on the Attorney General the confidential factual
3 information sufficient to establish the basis of the Certificate of Merit.

4 22. 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 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
8 gave notices of the alleged violation MY IMPORT USA, INC., SK MARKET, INC. dba
9 BEST BARGAIN and the public prosecutors referenced in Paragraph 19.

10 24. 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 MY IMPORT USA, INC., SK
15 MARKET, INC. dba BEST BARGAIN and DOES 1-20 for Violations of Proposition 65,
16 The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§
17 25249.5, *et seq.*))

18 **Orange and Blue Measuring Tapes with Rubber Grip**

19 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
20 reference paragraphs 1 through 24 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 Orange and Blue Measuring Tapes with Rubber Grip, which
23 includes but is not limited to "10m/33fts, Standard, Power Tape Flexometro. Distributed
24 By 'My Products' M.I. Usa Inc., Edison N.J. 08817, Made In China. Item# 40022, Upc: 0
25 88168 40022 1" ("MEASURING TAPES")

26 26. ORANGE AND BLUE MEASURING TAPES WITH RUBBER GRIP contain LEAD.

27 27. Defendants knew or should have known that LEAD has been identified by the State of
28 California as a chemical known to cause cancer and reproductive toxicity and therefore
was subject to Proposition 65 warning requirements. Defendants were also informed of

1 the presence of LEAD in ORANGE AND BLUE MEASURING TAPES WITH
2 RUBBER GRIP within Plaintiff's notice of alleged violations further discussed above at
3 Paragraph 19.

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

12 29. Plaintiff's allegations regarding ORANGE AND BLUE MEASURING TAPES WITH
13 RUBBER GRIP also concern occupational exposure[s], which "means an exposure to
14 any employee in her or her employer's workplace." *Cal. Code Regs. tit. 27, § 25602(f)*.
15 Exposures to LEAD to Defendants' employees occurred through the course of their
16 employment in their employer's workplaces.

17 30. Plaintiff is informed, believes, and thereon alleges that between October 8, 2012 and the
18 present, each of the Defendants knowingly and intentionally exposed their employees,
19 California consumers of ORANGE AND BLUE MEASURING TAPES WITH RUBBER
20 GRIP, which Defendants manufactured, distributed, or sold as mentioned above, to
21 LEAD without first providing any type of clear and reasonable warning of such to the
22 exposed persons before the time of exposure. Defendants have distributed and sold
23 ORANGE AND BLUE MEASURING TAPES WITH RUBBER GRIP in California.
24 Defendants know and intend that California consumers will use and consume ORANGE
25 AND BLUE MEASURING TAPES WITH RUBBER GRIP, thereby exposing them to
26 LEAD. Defendants thereby violated Proposition 65.

27 31. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
28 ORANGE AND BLUE MEASURING TAPES WITH RUBBER GRIP is used for

1 measuring which requires persons to handle ORANGE AND BLUE MEASURING
2 TAPES WITH RUBBER GRIP for a significant period of time. Persons sustain exposure
3 to LEAD by handling ORANGE AND BLUE MEASURING TAPES WITH RUBBER
4 GRIP without wearing gloves or any other personal protective equipment, or by touching
5 bare skin or mucous membranes with gloves after handling ORANGE AND BLUE
6 MEASURING TAPES WITH RUBBER GRIP, as well as through direct and indirect
7 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter
8 dispersed from ORANGE AND BLUE MEASURING TAPES WITH RUBBER GRIP.

9 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
10 Proposition 65 as to ORANGE AND BLUE MEASURING TAPES WITH RUBBER
11 GRIP have been ongoing and continuous to the date of the signing of this complaint, as
12 Defendants engaged and continue to engage in conduct which violates Health and Safety
13 Code section 25249.6, including the manufacture, distribution, promotion, and sale of
14 ORANGE AND BLUE MEASURING TAPES WITH RUBBER GRIP, so that a separate
15 and distinct violation of Proposition 65 occurred each and every time a person was
16 exposed to LEAD by ORANGE AND BLUE MEASURING TAPES WITH RUBBER
17 GRIP as mentioned herein.

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

21 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
22 \$2,500.00 per day per individual exposure to lead from ORANGE AND BLUE
23 MEASURING TAPES WITH RUBBER GRIP, pursuant to Health and Safety Code
24 section 25249.7(b).

25 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
26 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: August 9, 2016

YEROUSHALMI & YEROUSHLAMI

BY: 

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