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10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

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 GREAT STAR INDUSTRIAL CO., LTD., a
19 business entity form unknown; LOWE'S
20 HOME CENTERS, LLC, a North Carolina
21 Limited Liability Company; SUPERSTAR
22 TECHNOLOGY CO., LTD, a business entity
23 form unknown; and DOES 1-20;

24 Defendants.

CASE NO.

BC 6 37 4 3 8

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)

25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
26 defendants GREAT STAR INDUSTRIAL CO., LTD.; LOWE'S HOME CENTERS, LLC;
27 SUPERSTAR TECHNOLOGY CO., LTD; and DOES 1-20 as follows:

28 **THE PARTIES**

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

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 GREAT STAR INDUSTRIAL CO., LTD. ("GREAT STAR") is a business
4 entity form unknown, doing business in the State of California at all relevant times
5 herein.

6 3. Defendant LOWE'S HOME CENTERS, LLC ("LOWE'S") is a North Carolina limited
7 liability company, doing business in the State of California at all relevant times herein.

8 4. Defendant SUPERSTAR TECHNOLOGY CO., LTD. ("SUPERSTAR") is a business
9 entity form unknown, doing business in the State of California at all relevant times
10 herein.

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

17 6. At all times mentioned herein, the term "Defendants" includes, GREAT STAR,
18 LOWE'S, SUPERSTAR, and DOES 1-20.

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

21 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
22 including DOES 1-20, was an agent, servant, or employee of each of the other
23 Defendants. In conducting the activities alleged in this Complaint, each of the
24 Defendants was acting within the course and scope of this agency, service, or
25 employment, and was acting with the consent, permission, and authorization of each of
26 the other Defendants. All actions of each of the Defendants alleged in this Complaint
27 were ratified and approved by every other Defendant or their officers or managing agents.
28

1 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
2 wrongful conduct of each of the other Defendants.

- 3 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
4 Defendants was a person doing business within the meaning of Health and Safety Code
5 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
6 employees at all relevant times.

7 **JURISDICTION**

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

25 **BACKGROUND AND PRELIMINARY FACTS**

- 26 13. In 1986, California voters approved an initiative to address growing concerns about
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
28 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
3 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
4 from contamination, to allow consumers to make informed choices about the products
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see
6 fit.

7 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to
8 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
9 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
10 chemicals and chemical families. Proposition 65 imposes warning requirements and
11 other controls that apply to Proposition 65-listed chemicals.

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

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

24 17. Plaintiff identified certain practices of manufacturers and distributors of Di (2-ethylhexyl)
25 phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons
26 in California to the Proposition 65-listed chemicals of such products without first
27 providing clear and reasonable warnings of such to the exposed persons prior to the time
28 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

1 18. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
2 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
3 to the list of chemicals known to the State to cause developmental male reproductive
4 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
5 months after addition of DEHP to the list of chemicals known to the State to cause
6 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
7 requirements and discharge prohibitions.

8 **SATISFACTION OF PRIOR NOTICE**

9 19. On or about October 8, 2015, Plaintiff gave notice of alleged violations of Health and
10 Safety Code section 25249.6, concerning consumer products, subject to a private action
11 to GREAT STAR, LOWE'S, SUPERSTAR, and to the California Attorney General,
12 County District Attorneys, and City Attorneys for each city containing a population of at
13 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
14 the product Tin Snips with Polymer Grips containing DEHP.

15 20. Before sending the notices of alleged violation, Plaintiff investigated the consumer
16 products involved, the likelihood that such products would cause users to suffer
17 significant exposures to DEHP, and the corporate structure of each of the Defendants.

18 21. Plaintiff's notices of alleged violation included a Certificate of Merit executed by the
19 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
20 Plaintiff who executed the certificate had consulted with at least one person with relevant
21 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
22 subject Proposition 65-listed chemical of this action. Based on that information, the
23 attorney for Plaintiff who executed the Certificate of Merit believed there was a
24 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
25 to the Certificate of Merit served on the Attorney General the confidential factual
26 information sufficient to establish the basis of the Certificate of Merit.
27
28

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

4 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notices of the alleged violations to GREAT STAR, LOWE'S, SUPERSTAR, and
6 the public prosecutors referenced in Paragraph 19.

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

10 FIRST CAUSE OF ACTION

11 (By CONSUMER ADVOCACY GROUP, INC. and against GREAT STAR, LOWE'S,
12 SUPERSTAR, 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.*))

13 Tin Snips with Polymer Grips

14 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
15 reference paragraphs 1 through 24 of this complaint as though fully set forth herein.

16 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 distributor, promoter, or retailer of Tin Snips with Polymer Grips, which includes but is
18 not limited to "TASK FORCE® #0196602, 7in./17,8cm Tin Snips 'Lifetime Warranty',
19 'Task Force® is a registered trademark of LF, LLC'. '0211' Distributed by LG Sourcing,
20 Inc., PO Box 1535 N. Wilkesboro, NC 28659, www.lgsourcing.com. Made in China.
21 Model #54694, UPC: 8 20909 54694 8" ("TIN SNIPS").

22 27. TIN SNIPS contains DEHP.

23 28. Defendants knew or should have known that DEHP has been identified by the State of
24 California as a chemical known to cause cancer and therefore was subject to Proposition
25 65 warning requirements. Defendants were also informed of the presence of DEHP in
26 TIN SNIPS within Plaintiff's notice of alleged violations further discussed above at
27 Paragraph 19.

1 29. Plaintiff's allegations regarding TIN SNIPS 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 TIN SNIPS are consumer products, and, as mentioned herein, exposures to DEHP took
6 place as a result of such normal and foreseeable consumption and use.

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

11 31. Plaintiff is informed, believes, and thereon alleges that between October 8, 2012, and the
12 present, each of the Defendants knowingly and intentionally exposed their employees,
13 California consumers of TIN SNIPS, which Defendants manufactured, distributed, or
14 sold as mentioned above, to DEHP 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 TIN SNIPS in California. Defendants know and
17 intend that California consumers will use and consume TIN SNIPS, thereby exposing
18 them to DEHP. Defendants thereby violated Proposition 65.

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

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

1 distribution, promotion, and sale of TIN SNIPS, so that a separate and distinct violation
2 of Proposition 65 occurred each and every time a person was exposed to DEHP by TIN
3 SNIPS as mentioned herein.

4 34. 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 35. 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 from TIN SNIPS, pursuant to Health
9 and Safety Code section 25249.7(b).

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

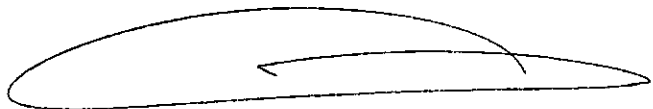
12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

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

19
20 Dated: October 18, 2016

YEROUSHALMI & YEROUSHALMI

21
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23 BY: _____

24 Reuben Yeroushalmi
25 Attorneys for Plaintiff,
26 Consumer Advocacy Group, Inc.
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