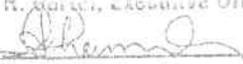


1 Reuben Yeroushalmi (SBN 193981)
2 Ben Yeroushalmi (SBN 232540)
3 Peter T. Sato (SBN 238486)
4 **YEROUSHALMI & YEROUSHALMI**
5 An Association of Independent Law Corporations
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, California 90212
8 Telephone: 310.623.1926
9 Facsimile: 310.623.1930

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

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 20 2016

Sherril K. ... Executive Officer/Clerk
By:  Deputy
Ishayla Chambers

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 H MART COMPANIES, INC., a New York
19 Corporation; H MART, INC., a Delaware
20 Corporation and DOES 1-20;

21 Defendants.

CASE NO.

BC 6 2 7 6 4 9

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)

22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
23 Defendants H MART COMPANIES, INC., H MART, INC., and DOES 1-20 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 as a private attorney general, brings this action in the public interest as defined under
Health and Safety Code section 25249.7, subdivision (d).

- 1 2. Defendant H MART COMPANIES, INC. ("H MART COMPANIES") is a New York
2 Corporation. doing business in the State of California at all relevant times herein.
- 3 3. Defendant H MART., INC. ("H MART") is a Delaware Corporation. doing business in
4 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" includes H MART COMPANIES,
12 H MART, 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.

28 ///

- 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 (2-ethylhexyl) phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate
20 and Bis (2-ethylhexyl) phthalate, exposing, knowingly and intentionally, persons in
21 California to said Proposition 65-listed chemical without first providing clear and
22 reasonable warnings to the exposed persons prior to the time of exposure. Plaintiff later
23 discerned that Defendants engaged in such practice.
- 24 17. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
25 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
26 to the list of chemicals known to the State to cause developmental male reproductive
27 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty
28 (20) months after addition of DEHP to the list of chemicals known to the State to cause

1 cancer and reproductive toxicity. DEHP became fully subject to Proposition 65 warning
2 requirements and discharge prohibitions.

3 **SATISFACTION OF PRIOR NOTICE**

4 18. On or about October 27, 2015, Plaintiff gave notice of alleged violations of Health and
5 Safety Code section 25249.6, concerning consumer products exposures, subject to a
6 private action to H MART COMPANIES, H MART, and to the California Attorney
7 General, County District Attorneys, and City Attorneys for each city containing a
8 population of at least 750,000 people in whose jurisdictions the violations allegedly
9 occurred, concerning Tongs with Vinyl Grips containing DEHP.

10 19. On or about November 10, 2015, Plaintiff gave notice of alleged violations of Health
11 and Safety Code section 25249.6, concerning consumer products exposures, subject to a
12 private action to H MART COMPANIES, H MART, and to the California Attorney
13 General, County District Attorneys, and City Attorneys for each city containing a
14 population of at least 750,000 people in whose jurisdictions the violations allegedly
15 occurred, concerning Tongs with Vinyl Grips containing DEHP.

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

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

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 H MART COMPANIES,**
12 **H MART and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and**
13 **Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

14 **Tongs with Vinyl Grips**

15 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
16 reference paragraphs 1 through 24 of this complaint as though fully set forth herein.
17 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of tongs with vinyl grips, which includes but is not
19 limited to, Home Art® 9" Coating Tong; "Beast Quality House Goods"; Made in China;
20 "Sweet home Beautiful life Hare Art"; Item No.: AK 1364; Stainless Steel; Barcode #:
21 "8 808596 120353 ("TONGS").

22 26. TONGS contain DEHP.

23 27. 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 reproductive toxicity and therefore
25 was subject to Proposition 65 warning requirements. Defendants were also informed of
26 the presence of DEHP in TONGS within Plaintiff's notice of alleged violations further
27 discussed above at Paragraph 18.

28 28. Plaintiff's allegations regarding TONGS concerns "[c]onsumer products exposure[s],"
which "is an exposure that results from a person's acquisition, purchase, storage,

1 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
2 that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b).
3 TONGS are consumer products, and, as mentioned herein, exposures to DEHP took
4 place as a result of such normal and foreseeable use.

5 29. Plaintiff’s allegations regarding TONGS also concern Occupational Exposures, which
6 “means an exposure to any employee in his or her employer’s workplace.” *Cal. Code*
7 *Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendants’ employees occurred through
8 the course of their employment in their employers’ workplaces.

9 30. Plaintiff is informed, believes, and thereon alleges that between October 27, 2012 and
10 the present, each of the Defendants knowingly and intentionally exposed their
11 employees, California consumers and users of TONGS, which Defendants
12 manufactured, distributed, or sold as mentioned above, to DEHP, without first providing
13 any type of clear and reasonable warning of such to the exposed persons before the time
14 of exposure. Defendants have distributed and sold TONGS in California. Defendants
15 know and intend that California consumers will use TONGS, thereby exposing them to
16 DEHP. Defendants thereby violated Proposition 65.

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

24 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of
25 Proposition 65 as to TONGS have been ongoing and continuous to the date of the
26 signing of this complaint, as Defendants engaged and continue to engage in conduct
27 which violates Health and Safety Code section 25249.6, including the manufacture,
28 distribution, promotion, and sale of TONGS, so that a separate and distinct violation of

1 Proposition 65 occurred each and every time a person was exposed to DEHP by TONGS
2 as mentioned herein.

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

6 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to DEHP from TONGS, pursuant to Health
8 and Safety Code section 25249.7(b).

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

11 **SECOND CAUSE OF ACTION**

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

15
16 35. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 34 of this complaint as though fully set forth herein.
18 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of tongs with vinyl grips, which includes but is not
20 limited to, Home Art® 12" Coating Tong; "Beast Quality House Goods"; Made in
21 China; "Sweet home Beautiful life Hare Art"; Item No.: AK 1365; Stainless Steel;
22 Barcode #: "8 808596 120360 ("TONGS").

23 36. TONGS contain DEHP.

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

1 38. Plaintiff's allegations regarding TONGS concerns "[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 TONGS are consumer products, and, as mentioned herein, exposures to DEHP took
6 place as a result of such normal and foreseeable use.

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

11 40. Plaintiff is informed, believes, and thereon alleges that between November 10, 2012 and
12 the present, each of the Defendants knowingly and intentionally exposed their
13 employees, California consumers and users of TONGS, which Defendants
14 manufactured, distributed, or sold as mentioned above, to DEHP, without first providing
15 any type of clear and reasonable warning of such to the exposed persons before the time
16 of exposure. Defendants have distributed and sold TONGS in California. Defendants
17 know and intend that California consumers will use TONGS, thereby exposing them to
18 DEHP. Defendants thereby violated Proposition 65.

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

26 42. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to TONGS have been ongoing and continuous to the date of the
28 signing of this complaint, as Defendants engaged and continue to engage in conduct

1 which violates Health and Safety Code section 25249.6, including the manufacture,
2 distribution, promotion, and sale of TONGS, so that a separate and distinct violation of
3 Proposition 65 occurred each and every time a person was exposed to DEHP by TONGS
4 as mentioned herein.

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

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

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

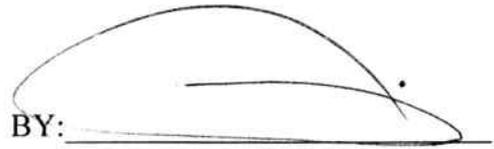
13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

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

20
21 Dated: July 19, 2016

YEROUSHALMI & YEROUSHALMI

22
23
24 BY: 

25 Reuben Yeroushalmi
26 Attorneys for Plaintiff,
27 Consumer Advocacy Group, Inc.
28