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FILED
 Superior Court of California
 County of Los Angeles

JUN 20 2016

Sherri R. Carter, Executive Officer/Clerk
 By Ricardo Perez Deputy
 Ricardo Perez

Dept. 58
 Hon. John P. Doyle

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

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES**

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

12 Plaintiff,

13 v.

14 H.K. PARTNERS L.L.C., a California
 15 Limited Liability Corporation; HK
 16 GALLERIA WHOLESALE LP, a California
 17 Limited Partnership; GALLERIA MARKET,
 18 a business entity form unknown; and DOES
 19 1-20;

20 Defendants.

CASE NO.

BC 6 2 4 2 1 0

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 H.K. PARTNERS L.L.C., HK GALLERIA WHOLESALE LP, AND GALLERIA
 23 MARKET, and DOES 1-20 as follows:

THE PARTIES

- 24 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
 25 organization qualified to do business in the State of California. CAG is a person within
 26 the meaning of Health and Safety Code section 25249.11, subdivision (a), CAG acting
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 28

COMPLAINT FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC
 ENFORCEMENT ACT OF 1986 (HEALTH AND SAFETY CODE § 25249.5, ET SEQ.)
 Opt-Out: Not Defined

RECEIVED
 PAYMENT: \$435.00
 DATE PAID: 06/20/16 10:39 AM
 RECEIPT #: CCH521665013
 CIT/DOSE: BC624210
 LEA/DEF#:

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 H.K. PARTNERS L.L.C. (“H.K. PARTNERS”) is a California Limited
4 Liability Corporation, doing business in the State of California at all relevant times
5 herein.

6 3. Defendant HK GALLERIA WHOLESALE LP (“HK GALLERIA”) is a California
7 Limited Partnership, doing business in the State of California at all relevant times
8 herein.

9 4. Defendant GALLERIA MARKET (“GALLERIA MARKET”) is a business entity form
10 unknown, doing business in the State of California at all relevant times herein.

11 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
12 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend
13 this 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 “Defendant” includes H.K. PARTNERS, HK
18 GALLERIA, AND GALLERIA MARKET, 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
28

1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
2 the alleged 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
18 manufacture, distribution, promotion, marketing, or sale of their products within
19 California to render the exercise of jurisdiction by the California courts permissible
20 under traditional notions 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
28 to 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
8 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
9 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains
10 over 700 chemicals and chemical families. Proposition 65 imposes warning
11 requirements and 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
13 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
14 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of
15 drinking 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* §
20 25249.7. "Threaten to violate" means "to create a condition in which there is a
21 substantial 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 products
25 bearing Di (2-ethylhexyl) phthalate ("DEHP"), exposing, knowingly and intentionally,
26 persons in California to said Proposition 65-listed chemical without first providing clear
27 and reasonable warnings to the exposed persons prior to the time of exposure. Plaintiff
28 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 January 6, 2016, Plaintiff gave notice of alleged violations of Health and
10 Safety Code section 25249.6, concerning consumer products exposures, subject to a
11 private action to H.K. PARTNERS, HK GALLERIA, GALLERIA MARKET, and to the
12 California Attorney General, County District Attorneys, and City Attorneys for each city
13 containing a population of at least 750,000 people in whose jurisdictions the violations
14 allegedly occurred, concerning Pruners containing DEHP.

15 20. Before sending the notice of alleged violations, 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 notice 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
20 for Plaintiff who executed the certificate had consulted with at least one person with
21 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP,
22 the subject Proposition 65-listed chemicals 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
25 attached to the Certificate of Merit served on the Attorney General the confidential
26 factual 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
5 Plaintiff gave notices of the alleged violation to H.K. PARTNERS, HK GALLERIA,
6 GALLERIA MARKET, and 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 H.K. PARTNERS, HK**
12 **GALLERIA, GALLERIA MARKET, and DOES 1-20 for Violations of Proposition 65, The**
13 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**
14 **25249.5, *et seq.*))**

15 **Gardening Pruners with Plastic Grips**

16 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 24 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 Gardening Pruners with Plastic Grips, which includes
20 but is not limited to, 'Hana' HS708 200mm, MADE IN KOREA. www.hana2024.co.kr
21 UPC: 8 803544 006208 ("PRUNERS").

22 26. PRUNERS 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 PRUNERS within Plaintiff's notice of alleged violations
27 further discussed above at Paragraph 19.
28

1 28. Plaintiff's allegations regarding PRUNERS concerns "[c]onsumer products
2 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
4 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
5 *25602(b)*. PRUNERS is a consumer product, and, as mentioned herein, exposures to
6 DEHP took place as a result of such normal and foreseeable use.

7 29. The principal routes of exposure are through dermal contact, ingestion, including direct
8 and indirect hand to mouth exposure, and, possibly, inhalation. Persons sustained
9 exposures by handling PRUNERS without wearing gloves or by touching bare skin or
10 mucus membranes with or without gloves after handling PRUNERS, or through direct
11 and indirect hand to mouth contact, hand to food to mouth, hand to mucous membrane,
12 as well as through environmental mediums that carry the DEHP once contained within
13 the PRUNERS.

14 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
15 Proposition 65 as to PRUNERS have been ongoing and continuous to the date of the
16 signing of this complaint, as Defendants engaged and continue to engage in conduct
17 which violates Health and Safety Code section 25249.6, including the manufacture,
18 distribution, promotion, and sale of PRUNERS, so that a separate and distinct violation
19 of Proposition 65 occurred each and every time a person was exposed to DEHP by
20 PRUNERS as mentioned herein.

21 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
22 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
23 violations alleged herein will continue to occur into the future.

24 32. Based on the allegations herein, Defendants are liable for civil penalties of up to
25 \$2,500.00 per day per individual exposure to DEHP from PRUNERS, pursuant to
26 Health and Safety Code section 25249.7(b).

27 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
28 filing this Complaint.

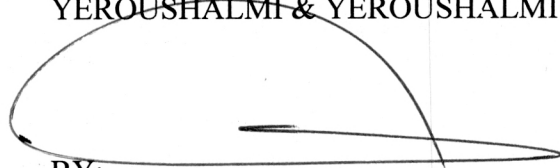
PRAYER FOR RELIEF

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: June 17, 2016

YEROUSHALMI & YEROUSHALMI



BY: _____

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