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**CONFORMED COPY**  
**OF ORIGINAL FILED**  
Los Angeles Superior Court

JAN 25 2017

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

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 CARQUEST AUTO PARTS, a business  
19 entity form unknown; CARQUEST OF VAN  
20 NUYS, a business entity form unknown;  
21 CARQUEST CORPORATION, a Delaware  
22 Corporation; CARQUEST AUTO PARTS,  
23 INC. CALIFORNIA, a business entity form  
24 unknown; GENERAL PARTS  
25 INTERNATIONAL, INC. DBA  
26 CARQUEST AUTO PARTS, a North  
27 Carolina Corporation; and DOES 1-20;

28 Defendants.

CASE NO.

**BC 6 4 8 1 8 3**

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
Defendants CARQUEST AUTO PARTS, CARQUEST OF VAN NUYS, CARQUEST  
CORPORATION, CARQUEST AUTO PARTS, INC. CALIFORNIA, GENERAL PARTS  
INTERNATIONAL, INC. DBA CARQUEST AUTO PARTS, and DOES 1-20 as follows:

**THE PARTIES**

- 1  
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an  
3 organization qualified to do business in the State of California. CAG is a person within  
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
5 as a private attorney general, brings this action in the public interest as defined under  
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant CARQUEST AUTO PARTS (“CARQUEST AUTO”) is a business entity  
8 form unknown, doing business in the State of California at all relevant times herein.
- 9 3. Defendant CARQUEST OF VAN NUYS (“CARQUEST VAN NUYS”) is a business  
10 entity form unknown, doing business in the State of California at all relevant times  
11 herein.
- 12 4. Defendant CARQUEST CORPORATION (“CARQUEST CORP”) is a Delaware  
13 Corporation, doing business in the State of California at all relevant times herein.
- 14 5. Defendant CARQUEST AUTO PARTS, INC. CALIFORNIA (“CARQUEST CA”) is a  
15 business entity form unknown, doing business in the State of California at all relevant  
16 times herein.
- 17 6. Defendant GENERAL PARTS INTERNATIONAL, INC. DBA CARQUEST AUTO  
18 PARTS (“GENERAL PARTS”) is a North Carolina Corporation, doing business in the  
19 State of California at all relevant times herein.
- 20 7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-  
21 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend  
22 this complaint to allege their true names and capacities when ascertained. Plaintiff is  
23 informed, believes, and thereon alleges that each fictitiously named defendant is  
24 responsible in some manner for the occurrences herein alleged and the damages caused  
25 thereby.
- 26 8. At all times mentioned herein, the term “Defendants” includes CARQUEST AUTO,  
27 CARQUEST VAN NUYS, CARQUEST CORP, CARQUEST CA, GENERAL PARTS,  
28 and DOES 1-20.

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

3 10. Upon information and belief, at all times relevant to this action, each of the Defendants,  
4 including DOES 1-20, was an agent, servant, or employee of each of the other  
5 Defendants. In conducting the activities alleged in this Complaint, each of the  
6 Defendants was acting within the course and scope of this agency, service, or  
7 employment, and was acting with the consent, permission, and authorization of each of  
8 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
9 were ratified and approved by every other Defendant or their officers or managing  
10 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated  
11 the alleged wrongful conduct of each of the other Defendants.

12 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
13 Defendants was a person doing business within the meaning of Health and Safety Code  
14 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
15 employees at all relevant times.

### 16 JURISDICTION

17 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
18 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
19 those given by statute to other trial courts. This Court has jurisdiction over this action  
20 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
21 violations of Proposition 65 in any Court of competent jurisdiction.

22 13. This Court has jurisdiction over Defendants named herein because Defendants either  
23 reside or are located in this State or are foreign corporations authorized to do business in  
24 California, are registered with the California Secretary of State, or who do sufficient  
25 business in California, have sufficient minimum contacts with California, or otherwise  
26 intentionally avail themselves of the markets within California through their  
27 manufacture, distribution, promotion, marketing, or sale of their products within  
28

1 California to render the exercise of jurisdiction by the California courts permissible  
2 under traditional notions of fair play and substantial justice.

3 14. Venue is proper in the County of Los Angeles because one or more of the instances of  
4 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
5 because Defendants conducted, and continue to conduct, business in the County of Los  
6 Angeles with respect to the consumer product that is the subject of this action.

7 **BACKGROUND AND PRELIMINARY FACTS**

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

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

22 17. All businesses with ten (10) or more employees that operate or sell products in  
23 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)  
24 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of  
25 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
26 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
27 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).  
28

1 18. Proposition 65 provides that any person "violating or threatening to violate" the statute  
2 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
3 25249.7. "Threaten to violate" means "to create a condition in which there is a  
4 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
5 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
6 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

7 19. Plaintiff identified certain practices of manufacturers and distributors of products  
8 bearing Bis (2-ethylhexyl) phthalate ("DEHP"), also known as Di (2-ethylhexyl)  
9 phthalate, of exposing, knowingly and intentionally, persons in California to the  
10 Proposition 65-listed chemicals of such products without first providing clear and  
11 reasonable warnings of such to the exposed persons prior to the time of exposure.  
12 Plaintiff later discerned that Defendants engaged in such practice.

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

20 **SATISFACTION OF PRIOR NOTICE**

21 21. On or about May 25, 2016, Plaintiff served notice of alleged violations of Health and  
22 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
23 private action to CARQUEST AUTO, CARQUEST VAN NUYS, CARQUEST CORP,  
24 CARQUEST CA, GENERAL PARTS, and to the California Attorney General, County  
25 District Attorneys, and City Attorneys for each city containing a population of at least  
26 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the  
27 product Dent Pullers with Polymer Grips containing DEHP.  
28

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

4 23. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
5 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney  
6 for Plaintiff who executed the certificate had consulted with at least one person with  
7 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP,  
8 the subject Proposition 65-listed chemicals of this action. Based on that information, the  
9 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
10 reasonable and meritorious case for this private action. The attorney for Plaintiff  
11 attached to the Certificate of Merit served on the Attorney General the confidential  
12 factual information sufficient to establish the basis of the Certificate of Merit.

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

16 25. Plaintiff is commencing this action more than sixty (60) days from the dates that  
17 Plaintiff gave notices of the alleged violation to CARQUEST AUTO, CARQUEST  
18 VAN NUYS, CARQUEST CORP, CARQUEST CA, GENERAL PARTS, and the  
19 public prosecutors referenced in Paragraph 24.

20 26. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
21 any applicable district attorney or city attorney has commenced and is diligently  
22 prosecuting an action against the Defendants.

23 **FIRST CAUSE OF ACTION**

24 **(By CONSUMER ADVOCACY GROUP, INC. and against CARQUEST AUTO,**  
25 **CARQUEST VAN NUYS, CARQUEST CORP, CARQUEST CA, GENERAL PARTS, and**  
26 **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.*))**

27 **Dent Pullers with Polymer Grips**

1 27. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
2 reference paragraphs 1 through 26 of this complaint as though fully set forth herein.  
3 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
4 distributor, promoter, or retailer of Dent Pullers with Polymer Grips, which includes but  
5 is not limited to, ““AutoCraft™ DENT PULLER”; “DESABOLLADOR”; “Part #  
6 AC687”; “Instructions: Drill or punch hole in the center of the dent. Screw the dent  
7 puller directly into the hold. Grasp the dent puller tightly with one hand, slam the other  
8 hand against the handle with all your weight. Pull dent out to the acceptable contour.”,  
9 (Instructions listed in both English and Spanish); Districuted By / Distribuio Por:  
10 Autocraft 5008 Airport Road, Roanoke, VA 24012; “Made in China”; UPC: 7 621640  
11 247056” (“DENT PULLER”).

12 28. DENT PULLER contains DEHP.

13 29. Defendants knew or should have known that DEHP has been identified by the State of  
14 California as a chemical known to cause cancer and reproductive toxicity and therefore  
15 was subject to Proposition 65 warning requirements. Defendants were also informed of  
16 the presence of DEHP in DENT PULLER within Plaintiff's notice of alleged violations  
17 further discussed above at Paragraph 21.

18 30. Plaintiff's allegations regarding DENT PULLER concerns “[c]onsumer products  
19 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,  
20 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
21 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
22 *25602(b)*. DENT PULLER are consumer products, and, as mentioned herein, exposures  
23 to DEHP took place as a result of such normal and foreseeable use.

24 31. Plaintiff is informed, believes, and thereon alleges that between May 25, 2013 and the  
25 present, each of the Defendants knowingly and intentionally exposed California  
26 consumers and users of DENT PULLER, which Defendants manufactured, distributed,  
27 or sold as mentioned above, to DEHP, without first providing any type of clear and  
28 reasonable warning of such to the exposed persons before the time of exposure.

1 Defendants have distributed and sold DENT PULLER in California. Defendants know  
2 and intend that California consumers will use DENT PULLER, thereby exposing them  
3 to DEHP. Defendants thereby violated Proposition 65.

4 32. The principal routes of exposure were through dermal contact, ingestion, including hand  
5 to mouth pathways, and inhalation. Persons sustained exposures by handling DENT  
6 PULLER without wearing gloves or by touching bare skin or mucus membranes with  
7 gloves after handling DENT PULLER, or through direct and indirect hand to mouth  
8 contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous  
9 membrane, or breathing in particulate matter emanating from DENT PULLER, as well  
10 as through environmental mediums that carry the DEHP once contained within the  
11 DENT PULLER.

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

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

22 35. Based on the allegations herein, Defendants are liable for civil penalties of up to  
23 \$2,500.00 per day per individual exposure to DEHP from DENT PULLER, pursuant to  
24 Health and Safety Code section 25249.7(b).

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

27 **PRAYER FOR RELIEF**

28 Plaintiff demands against each of the Defendants as follows:



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

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7  
8 Dated: January 25, 2017

YEROUSHALMI & YEROUSHALMI

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10   
11 BY: \_\_\_\_\_

12 Reuben Yeroushalmi  
13 Attorneys for Plaintiff,  
14 Consumer Advocacy Group, Inc.  
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