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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

DEC 15 2017

Sherri R. Carter, Executive Officer/Clerk

By: Marlon Gomez, 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 GROCERY OUTLET, INC., a California
19 Corporation; DOES 1-20;

20 Defendants.

CASE NO.

BC687232

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 GROCERY OUTLET and DOES 1-20 as follows:

23 **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
27 as a private attorney general, brings this action in the public interest as defined under
28 Health and Safety Code section 25249.7, subdivision (d).

- 1 2. Defendant GROCERY OUTLET, INC. ("GROCERY OUTLET), is a California
- 2 Corporation, doing business in the State of California at all relevant times herein.
- 3 3. At all times mentioned herein, the term "Defendants" includes GROCERY OUTLET,
- 4 and DOES 1-20.
- 5 4. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
- 6 times mentioned herein have conducted business within the State of California.
- 7 5. Upon information and belief, at all times relevant to this action, each of the Defendants,
- 8 including DOES 1-20, was an agent, servant, or employee of each of the other
- 9 Defendants. In conducting the activities alleged in this Complaint, each of the
- 10 Defendants was acting within the course and scope of this agency, service, or
- 11 employment, and was acting with the consent, permission, and authorization of each of
- 12 the other Defendants. All actions of each of the Defendants alleged in this Complaint
- 13 were ratified and approved by every other Defendant or their officers or managing
- 14 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
- 15 the alleged wrongful conduct of each of the other Defendants.
- 16 6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
- 17 Defendants was a person doing business within the meaning of Health and Safety Code
- 18 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
- 19 employees at all relevant times.

20 JURISDICTION

- 21 7. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
- 22 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
- 23 those given by statute to other trial courts. This Court has jurisdiction over this action
- 24 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
- 25 violations of Proposition 65 in any Court of competent jurisdiction.
- 26 8. This Court has jurisdiction over Defendants named herein because Defendants either
- 27 reside or are located in this State or are foreign corporations authorized to do business in
- 28 California, are registered with the California Secretary of State, or who do sufficient

business in California, have sufficient minimum contacts with California, or otherwise intentionally avail themselves of the markets within California through their manufacture, distribution, promotion, marketing, or sale of their products within California to render the exercise of jurisdiction by the California courts permissible under traditional notions of fair play and substantial justice.

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

BACKGROUND AND PRELIMINARY FACTS

10. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals and declared their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp., Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources from contamination, to allow consumers to make informed choices about the products they buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
11. Proposition 65 requires the Governor of California to publish a list of chemicals known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code* § 25249.8. The list, which the Governor updates at least once a year, contains over 700 chemicals and chemical families. Proposition 65 imposes warning requirements and other controls that apply to Proposition 65-listed chemicals.
12. All businesses with ten (10) or more employees that operate or sell products in California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and

reasonable" warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

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

14. Plaintiff identified certain practices of manufacturers and distributors of products bearing Di (2-ethylhexyl)-phthalate, also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate ("DEHP") and Di-n-Butyl Phthalate, also known as Dibutyl Phthalate ("DBP") of exposing, knowingly and intentionally, persons in California to the Proposition 65-listed chemicals of such products without first providing clear and reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

16. On December 2, 2005, the Governor of California added DBP to the list of chemicals known to the State to cause developmental, female, and male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DBP to the list of chemicals known to the State to cause reproductive toxicity, DBP became fully subject to Proposition 65 warning requirements and discharge prohibitions.

SATISFACTION OF PRIOR NOTICE

17. On or about December 2, 2016, Plaintiff served notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to GROCERY OUTLET and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Suction Cups containing DEHP and DBP.
18. Before sending the notice of alleged violations, Plaintiff investigated the consumer products involved, the likelihood that such products would cause users to suffer significant exposures to DEHP and DBP and the corporate structure of each of the Defendants.
19. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for Plaintiff who executed the certificate had consulted with at least one person with relevant and appropriate expertise who reviewed data regarding the exposures to DEHP and DBP the subject Proposition 65-listed chemicals of this action. Based on that information, the attorney for Plaintiff who executed the Certificate of Merit believed there was a reasonable and meritorious case for this private action. The attorney for Plaintiff attached to the Certificate of Merit served on the Attorney General the confidential factual information sufficient to establish the basis of the Certificate of Merit.
20. Plaintiff's notices of alleged violations also included a Certificate of Service and a document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave notices of the alleged violation to GROCERY OUTLET and the public prosecutors referenced in Paragraph 17.

1 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
2 any applicable district attorney or city attorney has commenced and is diligently
3 prosecuting an action against the Defendants.
4

5 **FIRST CAUSE OF ACTION**

6 **(By CONSUMER ADVOCACY GROUP, INC. and against GROCERY OUTLET and**
7 **DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
8 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

9 **Suction Cups**

10 23. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
11 reference paragraphs 1 through 22 of this complaint as though fully set forth herein.
12 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
13 distributor, promoter, or retailer of Car Mounts with Plastic Suction Cups, which
14 includes but is not limited to, "Universal Car Mount Kit; for iPhone®, iPod®,
15 Smartphone, Portable GPS and Satellite Radio; "Case Logic®"; Bytech NY Inc 2585
16 West 13th Street Brooklyn NY 11223; Made in China; CL-CM-BLK; 805112330430"
17 ("Suction Cups").

18 24. SUCTION CUPS contain DEHP and DBP.

19 25. Defendants knew or should have known that DEHP and DBP has been identified by the
20 State of California as a chemical known to cause cancer and reproductive toxicity and
21 therefore was subject to Proposition 65 warning requirements. Defendants were also
22 informed of the presence of DEHP and DBP in SUCTION CUPS within Plaintiff's
23 notice of alleged violations further discussed above at Paragraphs 17.

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

1 27. Plaintiff is informed, believes, and thereon alleges that between December 2, 2013 and
2 the present, each of the Defendants knowingly and intentionally exposed their
3 employees, California consumers and users of SUCTION CUPS, which Defendants
4 manufactured, distributed, or sold as mentioned above, to DEHP and DBP, without first
5 providing any type of clear and reasonable warning of such to the exposed persons
6 before the time of exposure. Defendants have distributed and sold SUCTION CUPS in
7 California. Defendants know and intend that California consumers will use SUCTION
8 CUPS thereby exposing them to DEHP and DBP. Defendants thereby violated
9 Proposition 65.

10 28. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
11 Persons sustain exposures by wearing and handling SUCTION CUPS without wearing
12 gloves or any other personal protective equipment, or by touching bare skin or mucous
13 membranes with gloves after handling SUCTION CUPS, as well as through direct and
14 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
15 matter dispersed from SUCTION CUPS. And as to Defendants' employees, employees
16 may be exposed to DEHP and DBP in the course of their employment by handling,
17 distributing, and selling SUCTION CUPS.

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

25 30. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
26 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
27 violations alleged herein will continue to occur into the future.
28

1 31. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to DEHP and DBP from SUCTION CUPS,
3 pursuant to Health and Safety Code section 25249.7(b).

4 32. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
5 filing this Complaint.

6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

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

13
14
15 Dated: December 15, 2017

YEROUSHALMI & YEROUSHALMI

16
17 BY: 

18 Reuben Yeroushalmi
19 Attorneys for Plaintiff,
20 Consumer Advocacy Group, Inc.
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