

ENDORSED
FILED
ALAMEDA COUNTY
DEC 20 2017

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CLERK OF THE SUPERIOR COURT,
By Lanette Buffin, Deputy

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

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF ALAMEDA**

14 CONSUMER ADVOCACY GROUP, INC.,
15 in the public interest,

16 Plaintiff,

17 v.

18 ANNIE INTERNATIONAL INC., a
19 Pennsylvania Corporation; 1630 HIGH,
20 LLC., A Pennsylvania Limited Liability
21 Company., ANNIE INTERNATIONAL CA,
22 INC., a California Corporation; and DOES 1-
23 20;

24 Defendants.

25 CASE NO. *RG 1788* **BY FAX**

26 COMPLAINT FOR PENALTY AND
27 INJUNCTION

28 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)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
2 Defendants ANNIE INTERNATIONAL INC., a Pennsylvania Corporation; 1630 HIGH, LLC.,
3 A Pennsylvania Limited Liability Company., ANNIE INTERNATIONAL CA, INC., a
4 California Corporation; and DOES 1-20 as follows:

5 **THE PARTIES**

- 6 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
7 organization qualified to do business in the State of California. CAG is a person within

1 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
2 as a private attorney general, brings this action in the public interest as defined under
3 Health and Safety Code section 25249.7, subdivision (d).

4 2. Defendant ANNIE INTERNATIONAL INC. (“ANNIE INTERNATIONAL”) is a
5 Pennsylvania Corporation doing business in the State of California at all relevant times
6 herein.

7 3. Defendant 1630 HIGH, LLC (“1630 HIGH LLC”), is a Pennsylvania Limited Liability
8 Company, doing business in the State of California at all relative times herein.

9 4. Defendant ANNIE INTERNATIONAL CA, INC., (“ANNIE INTERNATIONAL CA
10 INC”) is a California Corporation, doing business in the State of California at all relative
11 times herein.

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

18 6. At all times mentioned herein, the term “Defendants” includes ANNIE
19 INTERNATIONAL; 1630 HIGH LLC, ANNIE INTERNATIONAL CA, INC; and
20 DOES 1-20.

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

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

1 were ratified and approved by every other Defendant or their officers or managing agents.
2 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
3 wrongful conduct of each of the other Defendants.

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

8 JURISDICTION

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

26 BACKGROUND AND PRELIMINARY FACTS

- 27 13. In 1986, California voters approved an initiative to address growing concerns about
28 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to

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

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

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

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

25 17. On January 1, 1988, the Governor of California added DEHP to the list of chemicals known
26 to the State to cause cancer, and on October 24, 2003, the Governor added DEHP 17 to the
27 list of chemicals known to the State to cause developmental male reproductive 18 toxicity.
28 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after

1 addition of DEHP to the list of chemicals known to the State to cause reproductive toxicity.
2 DEHP became fully subject to Proposition 65 warning requirements and discharge
3 prohibitions.

4 18. Plaintiff identified certain practices of manufacturers and distributors of products bearing Di
5 (2-ethylhexyl) phthalate ("DEHP") exposing, knowingly and intentionally, persons in
6 California to said Proposition 65-listed chemical without first providing clear and reasonable
7 warnings to the exposed persons prior to the time of exposure. Plaintiff later discerned that
8 Defendants engaged in such practice.

9 **SATISFACTION OF PRIOR NOTICE**

10 19. On or about December 2, 2016 Plaintiff gave notice of alleged violations of Health and
11 Safety Code section 25249.6, concerning consumer products exposures subject to a
12 private action to ANNIE INTERNATIONAL; ANNIE INTERNATIONAL CA INC and
13 1630 HIGH LLC and to the California Attorney General, County District Attorneys, and
14 City Attorneys for each city containing a population of at least 750,000 people in whose
15 jurisdictions the violations allegedly occurred, concerning the product Comb-out Cape
16 (Vinyl wear), containing DEHP.

17 20. On or about May 8, 2017 Plaintiff gave notice of alleged violations of Health and Safety
18 Code section 25249.6, concerning consumer products exposures subject to a private
19 action to ANNIE INTERNATIONAL and 1630 HIGH LLC and to the California
20 Attorney General, County District Attorneys, and City Attorneys for each city containing
21 a population of at least 750,000 people in whose jurisdictions the violations allegedly
22 occurred, concerning the product Shampoo and Cutting Cape (Vinyl Cape), containing
23 DEHP.

24 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer
25 products involved, the likelihood that such products would cause users to suffer
26 significant exposures to DEHP and the corporate structure of each of the Defendants.

27 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
28 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for

1 Plaintiff who executed the certificate had consulted with at least one person with relevant
2 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
3 subject Proposition 65-listed chemicals of this action. Based on that information, the
4 attorney for Plaintiff who executed the Certificate of Merit believed there was a
5 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
6 to the Certificate of Merit served on the Attorney General the confidential factual
7 information sufficient to establish the basis of the Certificate of Merit.

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

11 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
12 gave notices of the alleged violation to ANNIE INTERNATIONAL; ANNIE
13 INTERNATIONAL CA INC; 1630 HIGH LLC, and the public prosecutors referenced in
14 Paragraph 19 and 20.

15 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
16 any applicable district attorney or city attorney has commenced and is diligently
17 prosecuting an action against the Defendants.

18 FIRST CAUSE OF ACTION

19 (By CONSUMER ADVOCACY GROUP, INC. and against ANNIE INTERNATIONAL;
20 1630 HIGH LLC and DOES 1-20 for Violations of Proposition 65, The Safe Drinking
21 Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, et seq.))

22 VINYL CAPE

23 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
24 reference paragraphs 1 through 25 of this complaint as though fully set forth herein. Each
25 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
26 promoter, or retailer of Shampoo and Cutting Cape, which includes but is not limited to
27 "Annie"; "Shampoo & Cutting Cape"; "Velcro Closure"; "Water Proof"; "Soft
28 Vinyl with Nylon Neckline"; "All Purpose Cape"; "Made in China"; "Annie
International, Inc."; "Pennsylvania, USA"; #3910; 705372039107 ("VINYL CAPE").

1 27. VINYL CAPE contains DEHP.

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

7 29. Plaintiff's allegations regarding VINYL CAPE concern "[c]onsumer products
8 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
9 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
10 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
11 *25602(b)*. VINYL CAPE is a consumer product, and, as mentioned herein, exposures to
12 DEHP took place as a result of such normal and foreseeable consumption and use.

13 30. Plaintiff is informed, believes, and thereon alleges that between May 8, 2014, and the
14 present, each of the Defendants knowingly and intentionally exposed their employees,
15 California consumers of VINYL CAPE, which Defendants manufactured, distributed, or
16 sold as mentioned above, to DEHP without first providing any type of clear and
17 reasonable warning of such to the exposed persons before the time of exposure.
18 Defendants have distributed and sold VINYL CAPE in California. Defendants know and
19 intend that California consumers will use and consume VINYL CAPE, thereby exposing
20 them to DEHP. Defendants thereby violated Proposition 65.

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

27 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
28 Proposition 65 as to VINYL CAPE have been ongoing and continuous to the date of the

1 signing of this complaint, as Defendants engaged and continue to engage in conduct
2 which violates Health and Safety Code section 25249.6, including the manufacture,
3 distribution, promotion, and sale of VINYL CAPE, so that a separate and distinct
4 violation of Proposition 65 occurred each and every time a person was exposed to DEHP
5 by VINYL CAPE as mentioned herein.

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

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

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

14 SECOND CAUSE OF ACTION

15 (By CONSUMER ADVOCACY GROUP, INC. and against ANNIE INTERNATIONAL;
16 ANNIE INTERNATIONAL CA INC; 1630 HIGH LLC and DOES 1-20 for Violations of
17 Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &*
Safety Code, §§ 25249.5, et seq.))

18 VINYL WEAR

19 36. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
20 reference paragraphs 1 through 35 of this complaint as though fully set forth herein. Each
21 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
22 promoter, or retailer of VINYL WEAR, which includes but is not limited to **Annie®;**
23 **#3917; COMB-OUT CAPE; Tie-String Closure; Soft Vinyl; ·Soft Vinyl;**
24 **·Waterproof, Stain Resistant; ·Tie-String Closure; ·Fits All Neck Sizes; ·27”(W) X**
25 **27”(L); Annie International, Inc.; Made in China; 705372039176 (“VINYL WEAR”).**

26 37. VINYL WEAR contains DEHP.

27 38. Defendants knew or should have known that DEHP has been identified by the State of
28 California as a chemical known to cause cancer and reproductive toxicity and therefore

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of DEHP in VINYL WEAR within Plaintiff's notice of alleged violations
3 further discussed above at Paragraph 20.

4 39. Plaintiff's allegations regarding VINYL WEAR concern "[c]onsumer products
5 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
6 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
7 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
8 *25602(b)*. VINYL WEAR is a consumer product, and, as mentioned herein, exposures to
9 DEHP took place as a result of such normal and foreseeable consumption and use.

10 40. Plaintiff is informed, believes, and thereon alleges that between December 2, 2013, and
11 the present, each of the Defendants knowingly and intentionally exposed their employees,
12 California consumers of VINYL WEAR, which Defendants manufactured, distributed, or
13 sold as mentioned above, to DEHP without first providing any type of clear and
14 reasonable warning of such to the exposed persons before the time of exposure.
15 Defendants have distributed and sold VINYL WEAR in California. Defendants know
16 and intend that California consumers will use and consume VINYL WEAR, thereby
17 exposing them to DEHP. Defendants thereby violated Proposition 65.

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

24 42. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to VINYL WEAR 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 VINYL WEAR, so that a separate and distinct

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

3 43. 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 44. 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 VINYL WEAR, pursuant to
8 Health and Safety Code section 25249.7(b).

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

11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each of the Defendants as follows:

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

18
19 Dated: December 19, 2017 YERUSHALMI & YERUSHALMI

20
21 BY: 

22 Reuben Yerushalmi
23 Attorney for Plaintiff,
24 Consumer Advocacy Group, Inc.