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ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 21 2018

Sherri R. Carter, Executive Officer/Clerk of Court
By: Judi Lara, 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 OLIVET INTERNATIONAL, INC., a
19 California Corporation;
20 and DOES 1-10;

21 Defendants.

CASE NO.

BC 7 227 04

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, OLIVET INTERNATIONAL, INC. and DOES 1-10 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 OLIVET INTERNATIONAL, INC. ("OLIVET"), is a California Corporation,
2 doing business in the State of California at all relative times herein.

3 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,
4 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
5 complaint to allege their true names and capacities when ascertained. Plaintiff is
6 informed, believes, and thereon alleges that each fictitiously named defendant is
7 responsible in some manner for the occurrences herein alleged and the damages caused
8 thereby.

9 4. At all times mentioned herein, the term "Defendants" includes OLIVET and DOES 1-10.

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

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

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

25 JURISDICTION

26 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
27 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
28 those given by statute to other trial courts. This Court has jurisdiction over this action

1 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
2 violations of Proposition 65 in any Court of competent jurisdiction.

3 9. This Court has jurisdiction over Defendants named herein because Defendants either
4 reside or are located in this State or are foreign corporations authorized to do business in
5 California, are registered with the California Secretary of State, or who do sufficient
6 business in California, have sufficient minimum contacts with California, or otherwise
7 intentionally avail themselves of the markets within California through their manufacture,
8 distribution, promotion, marketing, or sale of their products within California to render
9 the exercise of jurisdiction by the California courts permissible under traditional notions
10 of fair play and substantial justice.

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

15 BACKGROUND AND PRELIMINARY FACTS

16 11. In 1986, California voters approved an initiative to address growing concerns about
17 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
18 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
19 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
20 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
21 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
22 from contamination, to allow consumers to make informed choices about the products
23 they buy, and to enable persons to protect themselves from toxic chemicals as they see
24 fit.

25 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to
26 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
27 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
28

1 chemicals and chemical families. Proposition 65 imposes warning requirements and
2 other controls that apply to Proposition 65-listed chemicals.

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

9 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
10 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
11 "Threaten to violate" means "to create a condition in which there is a substantial
12 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

13 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
14 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

21 16. Plaintiff identified certain practices of manufacturers and distributors of products bearing Di
22 (2-ethylhexyl) phthalate ("DEHP")-exposing, knowingly and intentionally, persons in
23 California to said Proposition 65-listed chemical without first providing clear and reasonable
24 warnings to the exposed persons prior to the time of exposure. Plaintiff later discerned that
25 Defendants engaged in such practice.

SATISFACTION OF PRIOR NOTICE

17. On or about May 10, 2018 Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures subject to a private action to OLIVET 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 Plastic Placemats ("Placemats") containing DEHP.
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 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, 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 OLIVET and the public prosecutors referenced in Paragraph 17.
22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor any applicable district attorney or city attorney has commenced and is diligently prosecuting an action against the Defendants.

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3 **FIRST CAUSE OF ACTION**

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

7 **PLACEMATS**

8 23. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
9 reference paragraphs 1 through 22 of this complaint as though fully set forth herein. Each
10 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
11 promoter, or retailer of PLASTIC PLACEMATS, which includes but is not limited to

- 12 ▪ Blue place mat; "Style Number WP1025-30-2S"; UPC 618842297924;
13 "Manufactured or imported by OLIVET INTERNATIONAL Mira Loma, CA
14 91752"; "www.olivetintl.com"; "800.856.9119"; "MADE IN CHINA";
15 "DESIGNED IN U.S.A."
- 16 ▪ Grey place mat; "Style Number WP1025-20-2S"; UPC 618842297931;
17 "Manufactured or imported by OLIVET INTERNATIONAL Mira Loma, CA
18 91752"; "www.olivetintl.com"; "800.856.9119"; "MADE IN CHINA";
19 "DESIGNED IN U.S.A." ("PLACEMATS").

20 24. PLACEMATS contain DEHP.

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

26 26. Plaintiff's allegations regarding PLACEMATS concern "[c]onsumer products
27 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
28 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
exposure that results from receiving a consumer service." Cal. Code Regs. tit. 27, §

1 25602(b). PLACEMATS is a consumer product, and, as mentioned herein, exposures to
2 DEHP took place as a result of such normal and foreseeable consumption and use.

3 27. Plaintiff is informed, believes, and thereon alleges that between May 10, 2015, and the
4 present, each of the Defendants knowingly and intentionally exposed, California
5 consumers of PLACEMATS, which Defendants manufactured, distributed, or sold as
6 mentioned above, to DEHP without first providing any type of clear and reasonable
7 warning of such to the exposed persons before the time of exposure. Defendants have
8 distributed and sold PLACEMATS in California. Defendants know and intend that
9 California consumers will use and consume PLACEMATS, thereby exposing them to
10 DEHP. Defendants thereby violated Proposition 65.

11 28. The principal routes of exposure were through dermal contact and ingestion. Persons
12 sustain exposures by using and/or handling the PLACEMATS without wearing gloves or
13 by touching bare skin or mucous membranes with or without gloves after handling
14 PLACEMATS, as well as direct and indirect hand to mouth contact, hand to mucous
15 membrane, trans-dermal absorption, or breathing in particulate matter emanating from the
16 PLACEMATS during use, as well as through environmental mediums that carry the
17 DEHP once contained within the PLACEMATS.

18 29. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
19 Proposition 65 as to PLACEMATS have been ongoing and continuous to the date of the
20 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 PLACEMATS, so that a separate and distinct
23 violation of Proposition 65 occurred each and every time a person was exposed to DEHP
24 by PLACEMATS 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 from PLACEMATS, pursuant to
3 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.

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14 Dated: September 18, 2018

YEROUSHALMI & YEROUSHLAMI

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16 BY: 

17 Reuben Yeroushalmi
18 Attorney for Plaintiff,
19 Consumer Advocacy Group, Inc.
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