ENDORSED
FILED
ALAMEDA COUNTY
JAN 10 2019
SUE PESKO

Reuben Yeroushalmi (SBN 193981)
Ben Yeroushalmi (SBN 232540)
Peter T. Sato (SBN 238486)
YEROUSHALMI & YEROUSHALMI
An Association of Independent Law Corporations
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, California 90212
Telephone: 310.623.1926
Facsimile:310.623.1930

Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CONSUMER ADVOCACY GROUP, INC., in the public interest, Plaintiff, v. THE PEP BOYS-MANNY, MOE & JACK OF CALIFORNIA, a California Corporation; and DOES 1-40; Defendants.	CASE NO. RG19002023 PLAINTIFF CONSUMER ADVOCACY GROUP INC'S 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.*) UNLIMITED CIVIL (Demand exceeds $25,000)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges four causes of action against Defendants THE PEP BOYS-MANNY, MOE & JACK OF CALIFORNIA, and DOES 1-40 as follows:

THE PARTIES

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

BY FAX

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

2. Defendant, THE PEP BOYS-MANNY, MOE & JACK OF CALIFORNIA ("PEP"), is a California Corporation, doing business in the State of California at all relative times herein.

3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-40, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.

4. At all times mentioned herein, the term "Defendants" includes PEP, and DOES 1-40.

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

6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-40, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

///

///

JURISDICTION

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

9. This Court has jurisdiction over Defendants named herein because Defendants either reside or are located in this State or are foreign corporations authorized to do business in 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.

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

BACKGROUND AND PRELIMINARY FACTS

11. 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.

12. 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.

13. 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).

14. 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).

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. Plaintiff identified certain practices of manufacturers and distributors of products bearing DEHP, exposing, knowingly, and intentionally, persons in California to said Proposition 65-listed chemical without first providing clear and reasonable warnings to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

SATISFACTION OF PRIOR NOTICE

17. On or about August 10, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concern consumer product exposures, subject to a private

action to PEP, and to the California Attorney General, County District Attorneys, and City Attorneys for each containing a population of at least 750,000 people in whose jurisdiction the violations allegedly occurred, concerning SPARK PLUG TESTER containing DEHP.

18. On or about August 17, 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 PEP 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 CUTTING TOOLS containing DEHP.

19. On or about August 17, 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 PEP, 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 CABLE LOCK containing DEHP.

20. On or about August 29, 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 PEP, 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 BICYCLE TUBE containing DEHP.

21. 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 the Defendant.

22. Plaintiff's notices of alleged violations 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.

23. 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).

24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave notices of the alleged violation to PEP, and the public prosecutors referenced in Paragraphs 17-20.

25. 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.

FIRST CAUSE OF ACTION

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

Spark Plug Wire Tester with Plastic Components

26. Plaintiff repeats and incorporates by reference paragraphs 1 through 25 of this complaint as though fully set forth herein. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Spark Plug Wire Tester with Plastic Components including but not limited to: "OEM ®Tools for Professionals;" "Spark Plug Wire Tester;" Limited Lifetime Warranty;" "25045;" "OEM ® Company, Mineola, NY 11501 www.oem-tools.com;" "Made in China;" "UPC 0 76812 25045 2" ("SPARK PLUG TESTERS")

27. Plaintiff is informed, believes, and thereon alleges that SPARK PLUG TESTERS contain DEHP.

28. Defendants knew or should have known that DEHP have been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the

presence of DEHP in SPARK PLUG TESTERS within Plaintiff's notice of alleged violations further discussed above at Paragraph 17.

29. Defendants knew or should have known that DEHP has been identified by the State of California as a chemical known to cause reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in SPARK PLUG TESTERS within Plaintiff's notice of alleged violations further discussed above at Paragraph 32.

30. Plaintiff's allegations regarding SPARK PLUG TESTERS concern "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, 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, § 25602(b). SPARK PLUG TESTERS are consumer products, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable consumption and use.

31. Plaintiff is informed, believes, and thereon alleges that between August 10, 2015 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of SPARK PLUG TESTERS, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold SPARK PLUG TESTERS in California. Defendants know and intend that California consumers will use SPARK PLUG TESTERS, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

32. The principal routes of exposure with regard to SPARK PLUG TESTERS are and were through dermal contact and ingestion. Persons sustained exposures primarily by using or handling the SPARK PLUG TESTERS without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with or without gloves after handling SPARK PLUG TESTERS as well as through direct and indirect hand to mouth contact, direct hand contact to food then to mouth, hand to mucous membrane, and trans-dermal absorption

from the SPARK PLUG TESTERS during handling and use, as well as through environmental mediums that carry DEHP once contained within the SPARK PLUG TESTERS.

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

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

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

36. In the absence of equitable relief, the general public will continue to be involuntarily exposed to DEHP that is contained in SPARK PLUG TESTERS, creating a substantial risk of irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable harm for which there is no plain, speedy, or adequate remedy at law.

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

SECOND CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against PEP and DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq*.)

Crimping and Cutting Tool With Plastic Grip

38. Plaintiff repeats and incorporates by reference paragraphs 1 through 37 of this complaint as though fully set forth herein. Each of the Defendants is, and at all times mentioned

herein was, a manufacturer, distributor, promoter, or retailer of Crimping and Cutting Tool With Plastic Grip including but not limited to: "OEM"; "Tools for Professionals;" "Crimping and Cutting Tool;" "For insulated and non-insulated connectors and terminals;" "Lifetime Limited Warranty;" "For insulated and non-insulated connectors and terminals;" "076812251961;" "OEM® Company, Mineola, NY 11501" ("CRIMPING TOOLS").

39. Plaintiff is informed, believes, and thereon alleges that CRIMPING TOOLS contain DEHP.

40. Defendants knew or should have known that DEHP have been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in CRIMPING TOOLS within Plaintiff's notice of alleged violations further discussed above at Paragraph 18.

41. Plaintiff's allegations regarding CRIMPING TOOLS concern "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, 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, § 25602(b). CRIMPING TOOLS are consumer products, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable consumption and use.

42. Plaintiff is informed, believes, and thereon alleges that between August 17, 2015 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of CRIMPING TOOLS, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold CRIMPING TOOLS in California. Defendants know and intend that California consumers will use CRIMPING TOOLS, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

43. The principal routes of exposure with regard to CRIMPING TOOLS dermal contact, ingestion, and inhalation. Persons sustain exposures by using and by installing or

handling the CRIMPING TOOLS without wearing gloves or by touching bare skin or mucous membranes with or without gloves after handling CRIMPING TOOLS as well as direct and indirect hand to mouth contact, hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter emanating from the CRIMPING TOOLS during use, as well as through environmental mediums that carry the DEHP once contained within the CRIMPING TOOLS.

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

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

46. Based on the allegations herein, Defendants are liable for civil penalties of up to $2,500.00 per day per individual exposure to DEHP from CRIMPING TOOLS, pursuant to Health and Safety Code section 25249.7(b).

47. In the absence of equitable relief, the general public will continue to be involuntarily exposed to DEHP that is contained in CRIMPING TOOLS, creating a substantial risk of irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable harm for which there is no plain, speedy, or adequate remedy at law.

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

///

///

///

///

THIRD CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against PEP and DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq*.))

Cable & Lock for Car Cover with Vinyl Components

49. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 of this complaint as though fully set forth herein. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Cable & Lock for Car Cover with Vinyl components including but not limited to: "SECURITY KIT;" "CABLE & LOCK FOR CAR COVER;" "PART NO. 20100;" "COVERITE INDUSTRIES, INC.;" "1 VINYL COATED STEEL CABLE;" "MANUFACTURED IN CHINA TO SPECIFICATIONS OF COVERITE INDUSTRIES, INC.;" "7 19626 20100 4" ("CABLE LOCKS").

50. Plaintiff is informed, believes, and thereon alleges that CABLE LOCKS contain DEHP.

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

52. Plaintiff's allegations regarding CABLE LOCKS concern "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, 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, § 25602(b). CABLE LOCKS are consumer products, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable consumption and use.

53. Plaintiff is informed, believes, and thereon alleges that between August 17, 2015 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of CABLE LOCKS, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP without first providing any type of clear and reasonable warning

of such to the exposed persons before the time of exposure. Defendants have distributed and sold CABLE LOCKS in California. Defendants know and intend that California consumers will use CABLE LOCKS, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

54. The principal routes of exposure with regard to CABLE LOCKS dermal contact, ingestion, and inhalation. Persons sustain exposures by using and by installing or handling the CABLE LOCKS without wearing gloves or by touching bare skin or mucous membranes with or without gloves after handling CABLE LOCKS, as well as direct and indirect hand to mouth contact, hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter emanating from the CABLE LOCKS during use, as well as through environmental mediums that carry the DEHP once contained within the CABLE LOCKS.

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

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

57. Based on the allegations herein, Defendants are liable for civil penalties of up to $2,500.00 per day per individual exposure to DEHP from CABLE LOCKS, pursuant to Health and Safety Code section 25249.7(b).

58. In the absence of equitable relief, the general public will continue to be involuntarily exposed to DEHP that is contained in CABLE LOCKS, creating a substantial risk of irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable harm for which there is no plain, speedy, or adequate remedy at law.

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

FOURTH CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against PEP, and DOES 31-40 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq*.))

Bicycle Top Tube with Polymer Ends

60. Plaintiff repeats and incorporates by reference paragraphs 1 through 59 of this complaint as though fully set forth herein. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Bicycle Top Tube with Polymer Ends components including but not limited to: "BICYCLE CARRYING ACCESSORIES" "MODEL900B" "ALLEN SPORTS" "TOP TUBE" "765271900007" "DESIGNED IN USA" "MADE IN CHINA" "CREATE A TOP TUBE FOR NON- CONVENTIAL BIKES" ("BICYCLE TUBE").

61. Plaintiff is informed, believes, and thereon alleges that BICYCLE TUBES contain DEHP.

62. Defendants knew or should have known that DEHP have been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in BICYCLE TUBES within Plaintiff's notice of alleged violations further discussed above at Paragraph 20.

63. Plaintiff's allegations regarding BICYCLE TUBES concern "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, 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, § 25602(b). BICYCLE TUBES are consumer products, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable consumption and use.

64. Plaintiff is informed, believes, and thereon alleges that between August 29, 2015 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of BICYCLE TUBES, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold BICYCLE TUBES in California. Defendants know and intend that California consumers will use BICYCLE TUBES, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

65. The principal routes of exposure with regard to BICYCLE TUBES dermal contact, ingestion, and inhalation. Persons sustain exposures by using and by installing or handling the BICYCLE TUBES without wearing gloves or by touching bare skin or mucous membranes with or without gloves after handling BICYCLE TUBES, as well as direct and indirect hand to mouth contact, hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter emanating from the BICYCLE TUBES during use, as well as through environmental mediums that carry the DEHP once contained within the BICYCLE TUBES.

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

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

68. Based on the allegations herein, Defendants are liable for civil penalties of up to $2,500.00 per day per individual exposure to DEHP from BICYCLE TUBES, pursuant to Health and Safety Code section 25249.7(b).

69. In the absence of equitable relief, the general public will continue to be involuntarily exposed to DEHP that is contained in BICYCLE TUBES, creating a substantial risk of irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable harm for which there is no plain, speedy, or adequate remedy at law.

70. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to 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: January 7, 2019

YEROUSHALMI & YEROUSHALMI

BY: _____
Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.