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FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

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CLERK OF THE COURT
BY: ELIAS BUTT
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6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 CONSUMER ADVOCACY GROUP, INC.,
11 in the public interest,

12 Plaintiff,

13 v.

14 NAYLON PRODUCTS AND
15 TRANSPORTATION, INC., a California
16 Corporation, LARSEN SUPPLY CO., a
17 California Corporation, and DO IT BEST
18 CORP., an Indiana Corporation and DOES 1-
19 20;

20 Defendants.

CASE NO. **CGC-12-519146**

COMPLAINT FOR PENALTY,
INJUNCTION, AND RESTITUTION

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)

BY FAX

21
22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
23 Defendants, and DOES 1-20, as follows:

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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 NAYLON PRODUCTS AND TRANSPORTATION, INC. ("NAYLON") is a
8 California corporation, qualified to do business and doing business in the State of
9 California at all relevant times herein.
- 10 3. Defendant LARSEN SUPPLY CO. ("LARSEN") is a California corporation, qualified to
11 do business and doing business in the State of California at all relevant times herein.
- 12 4. Defendant DO IT BEST CORP. ("DO IT") is an Indiana corporation, qualified to do
13 business and doing business in the State of California at all relevant times herein.
- 14 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
15 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
16 complaint to allege their true names and capacities when ascertained. Plaintiff is
17 informed, believes, and thereon alleges that each fictitiously named defendant is
18 responsible in some manner for the occurrences herein alleged and the damages caused
19 thereby.
- 20 6. At all times mentioned herein, the term "Defendants" includes NAYLON, LARSEN, DO
21 IT and DOES 1-20.
- 22 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
23 times mentioned herein have conducted business within the State of California.
- 24 8. At all times relevant to this action, each of the Defendants, including DOES 1-20, was an
25 agent, servant, or employee of each of the other Defendants. In conducting the activities
26 alleged in this Complaint, each of the Defendants was acting within the course and scope
27 of this agency, service, or employment, and was acting with the consent, permission, and
28 authorization of each of the other Defendants. All actions of each of the Defendants

1 alleged in this Complaint were ratified and approved by every other Defendant or their
2 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
3 and/or facilitated the alleged 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 San Francisco because one or more of the instances of
23 wrongful conduct occurred, and continues to occur, in the County of San Francisco
24 and/or because Defendants conducted, and continue to conduct, business in the County of
25 San Francisco with respect to the consumer product that is the subject of this action.

26
27 **BACKGROUND AND PRELIMINARY FACTS**

1 13. In 1986, California voters approved an initiative to address growing concerns about
2 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
3 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
4 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
5 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
6 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
7 from contamination, to allow consumers to make informed choices about the products
8 they buy, and to enable persons to protect themselves from toxic chemicals as they see
9 fit.

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

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

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

27 17. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl
28 Phthalate (“DEHP”)-bearing products of exposing, knowingly and intentionally, persons

1 in California to the Proposition 65-listed chemicals of such products without first
2 providing clear and reasonable warnings of such to the exposed persons prior to the time
3 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

11 **SATISFACTION OF PRIOR NOTICE**

12 19. On or about August 1, 2011 and October 6, 2011, Plaintiff gave notice of alleged
13 violations of Health and Safety Code section 25249.6, concerning consumer products
14 exposures, subject to a private action to Defendants and to the California Attorney
15 General, County District Attorneys, and City Attorneys for each city containing a
16 population of at least 750,000 people in whose jurisdictions the violations allegedly
17 occurred, concerning the product Pipe Hooks.

18 20. Before sending the notices of alleged violation, Plaintiff investigated the consumer
19 products involved, the likelihood that such products would cause users to suffer
20 significant exposures to DEHP, and the corporate structure of each of the Defendants.

21 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
22 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
23 Plaintiff who executed the certificate had consulted with at least one person with relevant
24 and appropriate expertise who reviewed data regarding the exposures to DEHP, which is
25 the subject of the Proposition 65-listed chemicals of this action. Based on that
26 information, the attorney for Plaintiff who executed the Certificate of Merit believed
27 there was a reasonable and meritorious case for this private action. The attorney for
28 Plaintiff attached to the Certificate of Merit served on the Attorney General the

1 confidential factual information sufficient to establish the basis of the Certificate of
2 Merit.

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

6 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
7 gave notices of the alleged violations to Defendants, and the public prosecutors
8 referenced in Paragraph 19.

9 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
10 any applicable district attorney or city attorney has commenced and is diligently
11 prosecuting an action against the Defendants.

12 **FIRST CAUSE OF ACTION**

13 **(By Consumer Advocacy Group, Inc. and against NAYLON PRODUCTS AND
14 TRANSPORTATION, INC., LARSEN SUPPLY CO., DO IT BEST CORP., and Does 1-20
15 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of
16 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

17 **Pipe Hooks**

18 25. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
19 paragraphs 1 through 24 of this complaint as though fully set forth herein.

20 26. Each of the Defendants are, and at all times mentioned herein were, a manufacturer,
21 distributor, promoter, or retailer of Pipe Hooks, an exemplar of which includes but is not
22 limited to Pipe Hooks, ¾" x 6", "Plastic Coated Steel", "4 each", 13-1649 (hereinafter
23 "Hooks").

24 27. Plaintiff is informed, believes, and thereon alleges that Hooks contain DEHP.

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

1 the presence of DEHP in Hooks within Plaintiff's notice of alleged violations further
2 discussed above at Paragraph 19.

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

9 30. Plaintiff is informed, believes, and thereon alleges that between August 1, 2008 and the
10 present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Hooks, which Defendants manufactured, distributed, or sold as
12 mentioned above, to DEHP, without first providing any type of clear and reasonable
13 warning of such to the exposed persons before the time of exposure. Defendants have
14 distributed and sold Hooks in California. Defendants know and intend that California
15 consumers will use and consume Hooks thereby exposing them to DEHP. Defendants
16 thereby violated Proposition 65.

17 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.
18 Persons sustain exposures, including but not limited to handling Hooks without wearing
19 gloves or any other personal protective equipment, or by touching bare skin or mucous
20 membranes with gloves after handling Hooks, as well as through hand to mouth contact,
21 hand to mucous membrane, or breathing in particulate matter dispersed from Hooks.

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

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33. 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.

34. 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 Hooks, pursuant to Health and Safety Code section 25249.7(b).

35. 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: March 13 , 2012

YEROUSHALMI & ASSOCIATES

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