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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

MAY 12 2014

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9
10 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15
16 CATHAY L.A., INC., a California
Corporation; THUNDER GROUP, INC., a
17 California Corporation; UPDATE
INTERNATIONAL, INC., a California
18 Corporation; and DOES 1-20;

19 Defendants.

CASE NO.

BC 545398

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)

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22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
23 Defendants CATHAY L.A., INC., THUNDER GROUP, INC., UPDATE INTERNATIONAL,
24 INC., and DOES 1-20 as follows:

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COPY

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 attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant CATHAY L.A., INC. ("CATHAY LA") is a California corporation, doing business in the State of California at all relevant times herein.
3. Defendant THUNDER GROUP, INC. ("THUNDER GROUP") is a California corporation, doing business in the State of California at all relevant times herein.
4. Defendant UPDATE INTERNATIONAL, INC. ("UPDATE INTERNATIONAL") is a California corporation, doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, 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.
6. At all times mentioned herein, the term "Defendants" includes CATHAY LA, THUNDER GROUP, UPDATE INTERNATIONAL, and DOES 1-20.
7. 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.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, 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

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

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

9 **JURISDICTION**

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

15 11. This Court has jurisdiction over Defendants named herein because Defendants either
16 reside or are located in this State or are foreign corporations authorized to do business in
17 California, are registered with the California Secretary of State, or who do sufficient
18 business in California, have sufficient minimum contacts with California, or otherwise
19 intentionally avail themselves of the markets within California through their manufacture,
20 distribution, promotion, marketing, or sale of their products within California to render
21 the exercise of jurisdiction by the California courts permissible under traditional notions
22 of fair play and substantial justice.

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

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1 BACKGROUND AND PRELIMINARY FACTS

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

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

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

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

1 17. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl
2 Phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons
3 in California to the Proposition 65-listed chemicals of such products without first
4 providing clear and reasonable warnings of such to the exposed persons prior to the time
5 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

13 **SATISFACTION OF PRIOR NOTICE**

14 19. On or about October 29, 2013, Plaintiff gave notice of alleged violations of Health and
15 Safety Code section 25249.6, concerning consumer products exposures, subject to a
16 private action to THUNDER GROUP and to the California Attorney General, County
17 District Attorneys, and City Attorneys for each city containing a population of at least
18 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
19 product Scissor Tongs containing DEHP.

20 20. On or about October 31, 2013, Plaintiff gave notice of alleged violations of Health and
21 Safety Code section 25249.6, concerning consumer products exposures, subject to a
22 private action to CATHAY LA and to the California Attorney General, County District
23 Attorneys, and City Attorneys for each city containing a population of at least 750,000
24 people in whose jurisdictions the violations allegedly occurred, concerning the product
25 Fish Griller Tools containing DEHP.

26 21. On or about October 31, 2013, Plaintiff gave notice of alleged violations of Health and
27 Safety Code section 25249.6, concerning consumer products exposures, subject to a
28 private action to UPDATE INTERNATIONAL and to the California Attorney General,

1 County District Attorneys, and City Attorneys for each city containing a population of at
2 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
3 the product Fry Baskets containing DEHP.

4 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer
5 products involved, the likelihood that such products would cause users to suffer
6 significant exposures to DEHP, and the corporate structure of each of the Defendants.

7 23. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
8 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
9 Plaintiff who executed the certificate had consulted with at least one person with relevant
10 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
11 subject Proposition 65-listed chemicals of this action. Based on that information, the
12 attorney for Plaintiff who executed the Certificate of Merit believed there was a
13 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
14 to the Certificate of Merit served on the Attorney General the confidential factual
15 information sufficient to establish the basis of the Certificate of Merit.

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

19 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
20 gave notices of the alleged violation to CATHAY LA, THUNDER GROUP, and
21 UPDATE INTERNATIONAL the public prosecutors referenced in Paragraph 19-21.

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

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1 FIRST CAUSE OF ACTION

2 (By CONSUMER ADVOCACY GROUP, INC. and against THUNDER GROUP, INC.,
3 and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic
4 Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

5 **Scissor Tongs**

6 27. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 26 of this complaint as though fully set forth herein. Each
8 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
9 promoter, or retailer of Scissor Tongs, which includes but is not limited to, "Scissor Tong
10 10" Item 041605 Chrome plated with plastic coated handle" ("TONGS").

11 28. TONGS contain DEHP.

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

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

23 31. Plaintiff's allegations regarding TONGS also concern occupational exposures, which
24 "means an exposure to any employee in his or her employer's workplace." *Cal. Code*
25 *Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendant's employees occurred
26 through the course of their employment in their employer's workplace.

27 32. Plaintiff is informed, believes, and thereon alleges that between October 29, 2010 and the
28 present, each of the Defendants knowingly and intentionally exposed their employees and
California consumers and users of TONGS, which Defendants manufactured, distributed,

1 or sold as mentioned above, to DEHP, without first providing any type of clear and
2 reasonable warning of such to the exposed persons before the time of exposure.

3 Defendants have distributed and sold TONGS in California. Defendants know and intend
4 that California consumers will use and consume TONGS, thereby exposing them to
5 DEHP. Defendants thereby violated Proposition 65.

6 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.

7 Persons sustain exposures by handling TONGS without wearing gloves or any other
8 personal protective equipment, or by touching bare skin or mucous membranes with
9 gloves after handling TONGS, as well as through direct and indirect hand to mouth
10 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
11 TONGS. And as to Defendants' employees, employees may be exposed to DEHP in the
12 course of their employment by handling, distributing, and selling TONGS.

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

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

23 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to DEHP from TONGS, pursuant to Health
25 and Safety Code section 25249.7(b).

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

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1 SECOND CAUSE OF ACTION

2 (By CONSUMER ADVOCACY GROUP, INC. and against CATHAY L.A., INC., and
3 DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic
4 Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

5 **Fish Griller Tools**

6 38. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 37 of this complaint as though fully set forth herein. Each
8 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
9 promoter, or retailer of Fish Griller Tools, which includes but is not limited to, "Fish
10 Grilling Press with Red Vinyl Coated Handle, Item 046265" ("FISH GRILLER
11 TOOLS").

12 39. FISH GRILLER TOOLS contain DEHP.

13 40. Defendants knew or should have known that DEHP has been identified by the State of
14 California as a chemical known to cause cancer and reproductive toxicity and therefore
15 was subject to Proposition 65 warning requirements. Defendants were also informed of
16 the presence of DEHP in FISH GRILLER TOOLS within Plaintiff's notice of alleged
17 violations further discussed above at Paragraph 20.

18 41. Plaintiff's allegations regarding FISH GRILLER TOOLS concerns "[c]onsumer products
19 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
20 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
21 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
22 25602(b). FISH GRILLER TOOLS are consumer products, and, as mentioned herein,
23 exposures to DEHP took place as a result of such normal and foreseeable consumption
24 and use.

25 42. Plaintiff's allegations regarding FISH GRILLER TOOLS also concern occupational
26 exposures, which "means an exposure to any employee in his or her employer's
27 workplace." *Cal. Code Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendant's
28 employees occurred through the course of their employment in their employer's
workplace.

1 43. Plaintiff is informed, believes, and thereon alleges that between October 31, 2010 and the
2 present, each of the Defendants knowingly and intentionally exposed their employees and
3 California consumers and users of FISH GRILLER TOOLS, which Defendants
4 manufactured, distributed, or sold as mentioned above, to DEHP, without first providing
5 any type of clear and reasonable warning of such to the exposed persons before the time
6 of exposure. Defendants have distributed and sold FISH GRILLER TOOLS in
7 California. Defendants know and intend that California consumers will use and consume
8 FISH GRILLER TOOLS, thereby exposing them to DEHP. Defendants thereby violated
9 Proposition 65.

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

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

25 46. 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.
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1 47. 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 FISH GRILLER TOOLS,
3 pursuant to Health and Safety Code section 25249.7(b).

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

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7 **THIRD CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against UPDATE INTERNATIONAL,**
9 **INC., and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
10 **Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

11 **Fry Baskets**

12 49. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
13 reference paragraphs 1 through 48 of this complaint as though fully set forth herein. Each
14 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
15 promoter, or retailer of Fry Baskets, which includes but is not limited to, "Rectangle Fry
16 Basket Press with Green Coated Plastic Handle, Item 170015" ("FRY BASKETS").

17 50. FRY BASKETS contain DEHP.

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

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

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

7 54. Plaintiff's allegations regarding FRY BASKETS also concern occupational exposures,
8 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
9 *Code Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendant's employees occurred
10 through the course of their employment in their employer's workplace.

11 55. Plaintiff is informed, believes, and thereon alleges that between October 31, 2010 and the
12 present, each of the Defendants knowingly and intentionally exposed their employees and
13 California consumers and users of FRY BASKETS, which Defendants manufactured,
14 distributed, or sold as mentioned above, to DEHP, without first providing any type of
15 clear and reasonable warning of such to the exposed persons before the time of exposure.
16 Defendants have distributed and sold FRY BASKETS in California. Defendants know
17 and intend that California consumers will use and consume FRY BASKETS, thereby
18 exposing them to DEHP. Defendants thereby violated Proposition 65.

19 56. The principal routes of exposure are through dermal contact, ingestion and inhalation.
20 Persons sustain exposures by handling FRY BASKETS without wearing gloves or any
21 other personal protective equipment, or by touching bare skin or mucous membranes with
22 gloves after handling FRY BASKETS, as well as through direct and indirect hand to
23 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
24 from FRY BASKETS. And as to Defendants' employees, employees may be exposed to
25 DEHP in the course of their employment by handling, distributing, and selling FRY
26 BASKETS.

27 57. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
28 Proposition 65 as to FRY BASKETS 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 FRY BASKETS, so that a separate and distinct
4 violation of Proposition 65 occurred each and every time a person was exposed to DEHP
5 by FRY BASKETS as mentioned herein.

6 58. 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 59. 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 FRY BASKETS, pursuant to
11 Health and Safety Code section 25249.7(b).

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

14 **PRAYER FOR RELIEF**

15 Plaintiff demands against each of the Defendants as follows:

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

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23 Dated: May 8, 2014

YEROUSHALMI & ASSOCIATES

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26 BY: _____

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