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Los Angeles Superior Court**

**NOV 09 2010**

John A. Clarke, Executive Officer/Clerk  
By *Dawn Alexander*, Deputy  
**DAWN ALEXANDER**

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6 Attorneys for Plaintiffs,  
7 Consumer Advocacy Group, Inc.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

**BC 449018**

10  
11 Consumer Advocacy Group, Inc., in the  
public interest,

12 **Plaintiff,**

13 v.

14  
15 Arcraft Limited, a Canadian Corporation,  
and DOES 1-50;

16 **Defendants.**

CASE NO.

**COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION**

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Cal. Health & Safety Code*, §  
25249.5, *et seq.*)

**ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)**

17  
18  
19  
20 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as  
21 follows:

22 **THE PARTIES**

- 23  
24 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit  
25 corporation qualified to do business in the State of California. CAG is a person within  
26 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
27  
28

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

3 2. Artcraft Limited is a Corporation duly organized and existing under the laws of Canada.

4 3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,  
5 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
6 Complaint to allege their true names and capacities when ascertained. Plaintiff is  
7 informed, believes, and thereon alleges that each fictitiously named defendant is  
8 responsible in some manner for the occurrences herein alleged and the damages caused  
9 thereby.  
10

11 4. At all times mentioned herein, the term "Defendants" includes Artcraft Company, Inc.,  
12 and Does 1-50.  
13

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

16 6. At all times relevant to this action, each of the Defendants, including Does 1-50, was an  
17 agent, servant, or employee of each of the other Defendants. In conducting the activities  
18 alleged in this Complaint, each of the Defendants was acting within the course and scope  
19 of this agency, service, or employment, and was acting with the consent, permission, and  
20 authorization of each of the other Defendants. All actions of each of the Defendants  
21 alleged in this Complaint were ratified and approved by every other Defendant or their  
22 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
23 and/or facilitated the alleged wrongful conduct of each of the other Defendants.  
24

25 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
26 Defendants was a person doing business within the meaning of Health and Safety Code  
27  
28

1 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
2 employees at all relevant times.

3 **JURISDICTION**

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

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

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

## BACKGROUND AND PRELIMINARY FACTS

1  
2 11. 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

12  
13 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
14 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
15 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
16 chemicals and chemical families. Proposition 65 imposes warning requirements and  
17 other controls that apply to Proposition 65-listed chemicals.  
18

19 13. All businesses with ten (10) or more employees that operate or sell products in California  
20 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
21 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
22 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
23 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
24 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).  
25

26 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
27 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
28

1 "Threaten to violate" means "to create a condition in which there is a substantial  
2 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

- 5  
6 15. Through research and investigation, Plaintiff identified certain practices of Defendants of  
7 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed  
8 chemicals of the consumer products discussed below without first providing clear and  
9 reasonable warnings of such to the exposed persons prior to the time of exposure.

10 **SATISFACTION OF PRIOR NOTICE**

- 11  
12 16. On or about July 13, 2010, Plaintiff gave notice of alleged violations of Health and Safety  
13 Code section 25249.6, concerning consumer products exposures, subject to a private  
14 action to Artercraft Limited, to the California Attorney General, County District Attorneys,  
15 and City Attorneys for each city containing a population of at least 750,000 people in  
16 whose jurisdictions the violations allegedly occurred, concerning the consumer product  
17 Just Basic™ Black and White Print Flip-Flops, Product No. 00-11347.

- 18  
19 17. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
20 product involved, and the likelihood that such product would cause users to suffer  
21 significant exposures to the relevant Proposition 65-listed chemical at issue.

- 22  
23 18. Plaintiff's notice of alleged violations included a Certificate of Merit executed by the  
24 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
25 Plaintiff who executed the certificate had consulted with at least one person with relevant  
26 and appropriate expertise who reviewed data regarding the exposures to lead, which is the  
27 subject Proposition 65-listed chemical of this action. Based on that information, the  
28

1 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
2 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
3 to the Certificate of Merit served on the Attorney General the confidential factual  
4 information sufficient to establish the bases of the Certificate of Merit.  
5

6 19. Plaintiff's notice of alleged violation also included a Certificate of Service and a  
7 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
8 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d)*.

9 20. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
10 gave notice of the alleged violations to Arcraft Limited and the public prosecutors  
11 referenced in Paragraph 16.

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

#### 16 FIRST CAUSE OF ACTION

17  
18 **(By Consumer Advocacy Group, Inc. and against Arcraft Limited, and Does 1-50 for**  
19 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
20 **(Health & Safety Code, §§ 25249.5, et seq.)**

21 **Just Basic™ Black and White Print Flip-Flops (Product No. 00-11347)**

22 22. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
23 paragraphs 1 through 21 of this Complaint as though fully set forth herein.

24 23. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
25 distributor, promoter, or retailer of Just Basic™ Black and White Print Flip-Flops,  
26 Product No. 00-11347, (hereinafter "Flip-Flops"), a consumer product designed for to be  
27 worn on the feet.  
28

1 24. Plaintiff is informed, believes, and thereon alleges that Flip-Flops contain lead.

2 25. On February 27, 1987, the Governor of California added lead to the list of chemicals

3 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).

4 On October 1, 1992 the Governor added lead and lead components to the list of

5 chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).

6 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months

7 after addition of lead to the list of chemicals known to the State to cause cancer, lead

8 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

9 26. Defendants knew or should have known that lead has been identified by the State of

10 California as a chemical known to cause cancer and therefore were subject to Proposition

11 65 warning requirements. Defendants were also informed of the presence of lead in the

12 Flip-Flops within Plaintiff's notice of alleged violation further discussed above at

13 Paragraph 18.

14 27. Plaintiff's allegations regarding Flip-Flops concern "[c]onsumer products exposure[s],"

15 which "is an exposure that results from a person's acquisition, purchase, storage,

16 consumption, or other reasonably foreseeable use of a consumer good, or any exposure

17 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).

18 Flip-Flops are a consumer product, and, as mentioned in herein, exposures to lead took

19 place as a result of such normal and foreseeable consumption and use.

20 28. Plaintiff is informed, believes, and thereon alleges that between April 27, 2007 and the

21 present, each of the Defendants knowingly and intentionally exposed California

22 consumers and users of Flip-Flops, which Defendants manufactured, distributed, or sold

23 as mentioned above, to lead, without first providing any type of clear and reasonable

1 warning of such to the exposed persons before the time of exposure. Defendants have  
2 distributed and sold Flip-Flops in California. Defendants know and intend that California  
3 consumers will use and consume Flip-Flops thereby exposing them to lead. Defendants  
4 thereby violated Proposition 65.  
5

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

7 Persons sustain exposures by handling the Flip-Flops without wearing gloves or by  
8 touching bare skin or mucous membranes with gloves after handling Flip-Flops, as well  
9 as hand to mouth contact, hand to mucous membrane, or breathing in particulate matter  
10 emanating from the Flip-Flops during use, as well as through environmental mediums  
11 that carry the lead and lead compounds once contained within the Flip-Flops. Persons  
12 were also exposed by exposing the bare skin of their feet to the Flip-Flops. The  
13 foregoing routes of exposure assume use of the product in accordance with its  
14 instructions.  
15

16 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of

17 Proposition 65 as to Flip-Flops have been ongoing and continuous to the date of the  
18 signing of this Complaint, as Defendants engaged and continue to engage in conduct  
19 which violates Health and Safety Code section 25249.6, including the manufacture,  
20 distribution, promotion, and sale of Flip-Flops, so that a separate and distinct violation of  
21 Proposition 65 occurred each and every time a person was exposed to lead by Flip-Flops  
22 as mentioned herein.  
23

24 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65

25 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
26 violations alleged herein will continue to occur into the future.  
27  
28

1 32. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to lead from Flip-Flops, pursuant to Health  
3 and Safety Code section 25249.7(b).

4  
5 33. In the absence of equitable relief, California consumers, the general public, and others  
6 will continue to be involuntarily exposed to lead that is contained in Flip-Flops, creating  
7 a substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
8 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
9 remedy at law.

10  
11 34. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to  
12 filing this Complaint.

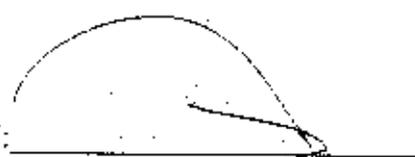
13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

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

21  
22 Dated: November 8/10

YEROUSHALMI & ASSOCIATES

23  
24  
25 BY:   
26 Reuben Yeroushalmi  
27 Attorneys for Plaintiff,  
28 Consumer Advocacy Group, Inc.