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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 16 2011

John A. Clarke, Executive Officer/Clerk
BY Raul Sanchez, Deputy
Raul Sanchez

1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 **YEROUSHALMI & ASSOCIATES**
5 9100 Wilshire Boulevard, Suite 610E
6 Beverly Hills, California 90212
7 Telephone: 310.623.1926
8 Facsimile: 310.623.1930

9 Attorneys for Plaintiff,
10 Consumer Advocacy Group, Inc.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

13 CONSUMER ADVOCACY GROUP, INC.,
14 in the public interest,

15 Plaintiff,

16 v.

17 DOLLAR EMPIRE, LLC, a Delaware
18 Limited Liability Company, and DOES 1-20;

19 Defendants.

CASE NO. BC461765

FIRST AMENDED 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)

21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendant,
22 DOLLAR EMPIRE, LLC as follows:

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2 **THE PARTIES**

- 3 1. Plaintiff Consumer Advocacy Group, Inc. (“Plaintiff” or “CAG”) is an organization
4 qualified to do business in the State of California. CAG is a person within the meaning
5 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private
6 attorney general, brings this action in the public interest as defined under Health and
7 Safety Code section 25249.7, subdivision (d).
- 8 2. Defendant DOLLAR EMPIRE, LLC. (“DOLLAR EMPIRE”) is a Delaware limited
9 liability company, qualified to do business and doing business in the State of California at
10 all relevant times herein.
- 11 3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,
12 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
13 complaint to allege their true names and capacities when ascertained. Plaintiff is
14 informed, believes, and thereon alleges that each fictitiously named defendant is
15 responsible in some manner for the occurrences herein alleged and the damages caused
16 thereby.
- 17 4. At all times mentioned herein, the term “Defendants” includes DOLLAR EMPIRE and
18 Does 1-20.
- 19 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
20 times mentioned herein have conducted business within the State of California.
- 21 6. At all times relevant to this action, each of the Defendants, including Does 1-20, was an
22 agent, servant, or employee of each of the other Defendants. In conducting the activities
23 alleged in this Complaint, each of the Defendants was acting within the course and scope
24 of this agency, service, or employment, and was acting with the consent, permission, and
25 authorization of each of the other Defendants. All actions of each of the Defendants
26 alleged in this Complaint were ratified and approved by every other Defendant or their
27 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
28 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

5 **JURISDICTION**

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

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

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

23 **BACKGROUND AND PRELIMINARY FACTS**

24 11. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
2 from contamination, to allow consumers to make informed choices about the products
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see
4 fit.

5 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to
6 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
7 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
8 chemicals and chemical families. Proposition 65 imposes warning requirements and
9 other controls that apply to Proposition 65-listed chemicals.

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

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

22 15. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing
23 products of exposing, knowingly and intentionally, persons in California to the
24 Proposition 65-listed chemicals of such products without first providing clear and
25 reasonable warnings of such to the exposed persons prior to the time of exposure.
26 Plaintiff later discerned that Defendants engaged in such practice.

27 16. On October 1, 1992, the Governor of California added Lead and Lead compounds to the
28 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).

1 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
2 after addition of Lead and lead compounds to the list of chemicals known to the State to
3 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
4 requirements and discharge prohibitions.

5 17. On February 27, 1987, the Governor of California added Lead to the list of chemicals
6 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).
7 Lead is known to the State to cause developmental, female, and male reproductive
8 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
9 months after addition of Lead to the list of chemicals known to the State to cause
10 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements
11 and discharge prohibitions.

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

19 **SATISFACTION OF PRIOR NOTICE**

20 19. On or about October 18, 2010, Plaintiff gave notice of alleged violations of Health and
21 Safety Code section 25249.6, concerning consumer products exposures and occupational
22 exposures, subject to a private action to Dollar Empire, LLC and to the California
23 Attorney General, County District Attorneys, and City Attorneys for each city containing
24 a population of at least 750,000 people in whose jurisdictions the violations allegedly
25 occurred, concerning the product FamilyMaid™ Durable Product, "1PCS Rubber Sink
26 Mat" (Item No. 13010).

27 20. On or about November 2, 2010, and again on or about May 26, 2011, Plaintiff gave
28 notice of alleged violations of Health and Safety Code section 25249.6, concerning

1 consumer products exposures and occupational exposures, subject to a private action to
2 Dollar Empire, LLC and to the California Attorney General, County District Attorneys,
3 and City Attorneys for each city containing a population of at least 750,000 people in
4 whose jurisdictions the violations allegedly occurred, concerning the product 4 PCS
5 Tapes contained within "Quality Empire Superior Kofree® Electric Tester W/ 4 PCS
6 Tapes."

7 21. On or about December 23, 2010, Plaintiff gave notice of alleged violations of Health and
8 Safety Code section 25249.6, concerning consumer products exposures and occupational
9 exposures, subject to a private action to Dollar Empire, LLC and to the California
10 Attorney General, County District Attorneys, and City Attorneys for each city containing
11 a population of at least 750,000 people in whose jurisdictions the violations allegedly
12 occurred, concerning the product Kofree "Sport" Sandals (Black with a sports ball across
13 the top and the word "sport" on the ball)(Item No. 44039).

14 22. On or about May 26, 2011, 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 Dollar Empire, LLC 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 FamilyMaid™ 5 PCS Tools Set, Item Number 16685.

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

24 24. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
25 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
26 Plaintiff who executed the certificate had consulted with at least one person with relevant
27 and appropriate expertise who reviewed data regarding the exposures to Lead and DEHP,
28 respectively, which are the subject Proposition 65-listed chemicals of this action. Based

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

6 25. Plaintiff's notices of alleged violations 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 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
10 gave notices of the alleged violations to DOLLAR EMPIRE, and the public prosecutors
11 referenced in Paragraphs 18, 19, and 20.

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

20 **FamilyMaid™ Durable Product, "1PCS Rubber Sink Mat" (Item No. 13010)**

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

23 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of "FamilyMaid™ Durable Product, '1PCS Rubber Sink
25 Mat' (Item No. 13010)" (hereinafter "Sink Mat"), a consumer product designed for use
26 including and in conjunction with kitchen sinks in close proximity with food and drink
27 meant for human consumption.

28 30. Plaintiff is informed, believes, and thereon alleges that Sink Mat contains Lead.

1 31. Defendants knew or should have known that Lead has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of Lead in Sink Mat within Plaintiff's notice of alleged violations further
5 discussed above at Paragraph 18.

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

12 33. Plaintiff's allegations regarding Sink Mat also concern "[o]ccupational exposure[s],"
13 which are exposures "to any employees in his or her employer's workplace." *Cal. Code*
14 *Reg. tit. 27, § 25602(f)*. As mentioned herein, employees were exposed to Lead in their
15 employer's workplace as a result of handling Sink Mat, in conjunction with packaging,
16 shipping, distributing and/or selling Sink Mat, among other activities, without having first
17 been given clear and reasonable warnings that such handling would cause exposures to
18 Lead.

19 34. Plaintiff is informed, believes, and thereon alleges that between October 1, 2007 and the
20 present, each of the Defendants knowingly and intentionally exposed their employees and
21 California consumers and users of Sink Mat, which Defendants manufactured,
22 distributed, or sold as mentioned above, to Lead, without first providing any type of clear
23 and reasonable warning of such to the exposed persons before the time of exposure.
24 Defendants have distributed and sold Sink Mat in California. Defendants know and
25 intend that California consumers will use and consume Sink Mat thereby exposing them
26 to Lead. Defendants thereby violated Proposition 65.

27 35. The principal routes of exposure are through dermal contact, ingestion and inhalation.
28 Persons sustain exposures by handling Sink Mat without wearing gloves or any other

1 personal protective equipment, or by touching bare skin or mucous membranes with
2 gloves after handling Sink Mat, as well as through hand to mouth contact, hand to
3 mucous membrane, or breathing in particulate matter dispersed from Sink Mat. Persons
4 may also be exposed to lead through food and utensil contact with the Sink Mat and
5 subsequent ingestion of the contaminated food. And as to Defendants' employees,
6 employees may be exposed to lead in the course of their employment by handling,
7 distributing, and selling Sink Mat.

8 36. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
9 Proposition 65 as to Sink Mat have been ongoing and continuous to the date of the
10 signing of this complaint, as Defendants engaged and continue to engage in conduct
11 which violates Health and Safety Code section 25249.6, including the manufacture,
12 distribution, promotion, and sale of Sink Mat, so that a separate and distinct violation of
13 Proposition 65 occurred each and every time a person was exposed to Lead by Sink Mat
14 as mentioned herein.

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

18 38. Based on the allegations herein, Defendants are liable for civil penalties of up to
19 \$2,500.00 per day per individual exposure to Lead from Sink Mat, pursuant to Health and
20 Safety Code section 25249.7(b).

21 39. In the absence of equitable relief, the general public and Defendants' employees will
22 continue to be involuntarily exposed to Lead that is contained in Sink Mat, creating a
23 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
24 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
25 remedy at law.

26 40. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
27 filing this Complaint.
28

1 **SECOND CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against DOLLAR EMPIRE, and Does 1-20 for**
3 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
4 **(Health & Safety Code, §§ 25249.5, et seq.))**

5 **4 PCS Tapes contained within “Quality Empire Superior Kofree® Electric Tester W/ 4**
6 **PCS Tapes.”**

7 41. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
8 paragraphs 1 through 38 of this complaint as though fully set forth herein.

9 42. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of “4 PCS Tapes contained within ‘Quality Empire
11 Superior Kofree® Electric Tester W/ 4 PCS Tapes.’” (hereinafter “Electric Tape”), a
12 consumer product designed for insulating electric wires and other materials that conduct
13 electricity.

14 43. Plaintiff is informed, believes, and thereon alleges that Electric Tape contains Lead.

15 44. Defendants knew or should have known that Lead has been identified by the State of
16 California as a chemical known to cause cancer and reproductive toxicity and therefore
17 was subject to Proposition 65 warning requirements. Defendants were also informed of
18 the presence of Lead in Electric Tape within Plaintiff’s notice of alleged violations further
19 discussed above at Paragraph 19.

20 45. Plaintiff’s allegations regarding Electric Tape concern “[c]onsumer products
21 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
22 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
23 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
24 *25602(b)*. Electric Tape is a consumer product, and, as mentioned herein, exposures to
25 Lead took place as a result of such normal and foreseeable consumption and use.

26 46. Plaintiff’s allegations regarding Electric Tape also concern “[o]ccupational exposure[s],”
27 which are exposures “to any employees in his or her employer’s workplace.” *Cal. Code*
28 *Reg. tit. 27, § 25602(f)*. As mentioned herein, employees were exposed to Lead in their
employer’s workplace as a result of handling Electric Tape, in conjunction with

1 packaging, shipping, distributing and/or selling Electric Tape, among other activities,
2 without having first been given clear and reasonable warnings that such handling would
3 cause exposures to Lead.

4 47. Plaintiff is informed, believes, and thereon alleges that between June 2, 2007 and the
5 present, each of the Defendants knowingly and intentionally exposed their employees and
6 California consumers and users of Electric Tape, which Defendants manufactured,
7 distributed, or sold as mentioned above, to Lead, without first providing any type of clear
8 and reasonable warning of such to the exposed persons before the time of exposure.

9 Defendants have distributed and sold Electric Tape in California. Defendants know and
10 intend that California consumers will use and consume Electric Tape thereby exposing
11 them to Lead. Defendants thereby violated Proposition 65.

12 48. The principal routes of exposure are through dermal contact, ingestion and inhalation.

13 Persons sustain exposures by handling Electric Tape without wearing gloves or any other
14 personal protective equipment, or by touching bare skin or mucous membranes with
15 gloves after handling Electric Tape, as well as through hand to mouth contact, hand to
16 mucous membrane, or breathing in particulate matter dispersed from Electric Tape.

17 Electric Tape is also particularly susceptible to be mistaken as toys and touched by young
18 children because they come in various colors. And as to Defendants' employees,
19 employees may be exposed to lead in the course of their employment by handling,
20 distributing, and selling Electric Tape.

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

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

4 51. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Lead from Electric Tape, pursuant to Health
6 and Safety Code section 25249.7(b).

7 52. In the absence of equitable relief, the general public and Defendants' employees will
8 continue to be involuntarily exposed to Lead that is contained in Electric Tape, creating a
9 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
10 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
11 remedy at law.

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

14 **THIRD CAUSE OF ACTION**

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

18 **Kofree "Sport" Sandals (Black with a sports ball across the top and the word "sport" on**
19 **the ball)(Item No. 44039)**

20 54. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
21 paragraphs 1 through 51 of this complaint as though fully set forth herein.

22 55. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of "Kofree 'Sport' Sandals (Black with a sports ball
24 across the top and the word 'sport' on the ball)(Item No. 44039)." (hereinafter
25 "Sandals"), a consumer product designed for personal use to be worn on the foot.

26 56. Plaintiff is informed, believes, and thereon alleges that Sandals contains Lead.

27 57. Defendants knew or should have known that Lead has been identified by the State of
28 California as a chemical known to cause cancer and reproductive toxicity and therefore

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of Lead in Sandals within Plaintiff's notice of alleged violations further
3 discussed above at Paragraph 20.

4 58. Plaintiff's allegations regarding Sandals concern "[c]onsumer products exposure[s],"
5 which "is an exposure that results from a person's acquisition, purchase, storage,
6 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
7 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

8 Sandals is a consumer product, and, as mentioned herein, exposures to Lead took place as
9 a result of such normal and foreseeable consumption and use.

10 59. Plaintiff's allegations regarding Sandals also concern "[o]ccupational exposure[s],"
11 which are exposures "to any employees in his or her employer's workplace." *Cal. Code*
12 *Reg. tit. 27, § 25602(f)*. As mentioned herein, employees were exposed to Lead in their
13 employer's workplace as a result of handling Sandals, in conjunction with packaging,
14 shipping, distributing and/or selling Sandals, among other activities, without having first
15 been given clear and reasonable warnings that such handling would cause exposures to
16 Lead.

17 60. Plaintiff is informed, believes, and thereon alleges that between October 1, 2007 and the
18 present, each of the Defendants knowingly and intentionally exposed their employees and
19 California consumers and users of Sandals, which Defendants manufactured, distributed,
20 or sold as mentioned above, to Lead, without first providing any type of clear and
21 reasonable warning of such to the exposed persons before the time of exposure.

22 Defendants have distributed and sold Sandals in California. Defendants know and intend
23 that California consumers will use and consume Sandals thereby exposing them to Lead.
24 Defendants thereby violated Proposition 65.

25 61. The principal routes of exposure are through dermal contact, ingestion and inhalation.
26 Persons sustain exposures by handling Sandals without wearing gloves or any other
27 personal protective equipment, or by touching bare skin or mucous membranes with
28 gloves after handling Sandals, as well as through hand to mouth contact, hand to mucous

1 membrane, or breathing in particulate matter dispersed from Sandals. Persons may also
2 be exposed to lead through food and utensil contact with the Sandals and subsequent
3 ingestion of the contaminated food. And as to Defendants' employees, employees may be
4 exposed to lead in the course of their employment by handling, distributing, and selling
5 Sandals.

6 62. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
7 Proposition 65 as to Sandals have been ongoing and continuous to the date of the signing
8 of this complaint, as Defendants engaged and continue to engage in conduct which
9 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
10 promotion, and sale of Sandals, so that a separate and distinct violation of Proposition 65
11 occurred each and every time a person was exposed to Lead by Sandals as mentioned
12 herein.

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

16 64. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to Lead from Sandals, pursuant to Health and
18 Safety Code section 25249.7(b).

19 65. In the absence of equitable relief, the general public and Defendants' employees will
20 continue to be involuntarily exposed to Lead that is contained in Sandals, creating a
21 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
22 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
23 remedy at law.

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

1 **FOURTH CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against DOLLAR EMPIRE, and Does 1-20 for**
3 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
4 **(Health & Safety Code, §§ 25249.5, et seq.))**

5 **FamilyMaid™ 5 PCS Tools Set, Item Number 16685**

- 6 1. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
7 paragraphs 1 through 64 of this complaint as though fully set forth herein.
- 8 2. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of FamilyMaid™ 5 PCS Tools Set, Item Number 16685
10 (hereinafter "Tools Set"), a consumer product designed for home, commercial, and
11 industrial applications.
- 12 3. Plaintiff is informed, believes, and thereon alleges that Tools Set contains DEHP.
- 13 4. 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 Tools Set within Plaintiff's notice of alleged violations further
17 discussed above at Paragraph 20.
- 18 5. Plaintiff's allegations regarding Tools Set concern "[c]onsumer products exposure[s],"
19 which "is an exposure that results from a person's acquisition, purchase, storage,
20 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
21 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.
22 Tools Set is a consumer product, and, as mentioned herein, exposures to DEHP took
23 place as a result of such normal and foreseeable consumption and use.
- 24 6. Plaintiff is informed, believes, and thereon alleges that between October 1, 2007 and the
25 present, each of the Defendants knowingly and intentionally exposed California
26 consumers and users of Tools Sets, which Defendants manufactured, distributed, or sold
27 as mentioned above, to DEHP, without first providing any type of clear and reasonable
28 warning of such to the exposed persons before the time of exposure. Defendants have
distributed and sold DEHP in California. Defendants know and intend that California

1 consumers will use and consume Tools Set thereby exposing them to DEHP. Defendants
2 thereby violated Proposition 65.

3 7. The principal routes of exposure are through dermal contact, ingestion and inhalation.

4 Persons sustain exposures by handling Tools Set without wearing gloves or any other
5 personal protective equipment, or by touching bare skin or mucous membranes with
6 gloves after handling Tools Set, as well as through hand to mouth contact, hand to
7 mucous membrane, or breathing in particulate matter dispersed from Tools Set. Persons
8 may also be exposed to DEHP through food and utensil contact with the Tools Set and
9 subsequent ingestion of the contaminated food.

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

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

20 10. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to DEHP from Tools Set, pursuant to Health
22 and Safety Code section 25249.7(b).

23 11. In the absence of equitable relief, the general public and Defendants' employees will
24 continue to be involuntarily exposed to DEHP that is contained in Tools Set, creating a
25 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
26 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
27 remedy at law.

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

3
4 **PRAYER FOR RELIEF**

5 Plaintiff demands against each of the Defendants as follows:

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

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12 Dated: 12/15, 2011

YEROUSHALMI & ASSOCIATES

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15 BY: 

16 ~~Reuben Yeroushalmi~~
17 Attorneys for Plaintiff,
18 Consumer Advocacy Group, Inc.
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