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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

MAR 09 2012

John A. Clarke, Executive Director/Clerk  
BY [Signature] Deputy  
Regina Juliano

1 Ruben 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 SHOE CITY, INC., a California Corporation,  
18 SHOE CITY G.P., INC., a California  
19 Corporation, SHOE CITY – 1997, INC., a  
20 California Corporation, SHOE CITY #6,  
21 INCORPORATED, a California Corporation,  
22 SHOE CITY #8, a California Corporation,  
23 SHOE CITY – 2000, INC., a California  
24 Corporation, SHOE CITY – WHITTIER,  
25 INC., and DOES 1-20;

26 Defendants.

27 CASE NO. **BC480513**

28 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)

29 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
30 Defendants as follows:

31 ///

32 ///

33 ///

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 SHOE CITY, INC. ("SHOE CITY") is a California corporation, qualified to do business and doing business in the State of California at all relevant times herein.
3. Defendant SHOE CITY G.P., INC. ("G.P.") is a California corporation, qualified to do business and doing business in the State of California at all relevant times herein.
4. Defendant SHOE CITY - 1997, INC. ("1997") is a California corporation, qualified to do business and doing business in the State of California at all relevant times herein.
5. Defendant SHOE CITY # 6, INCORPORATED, ("#6") is a California corporation, qualified to do business and doing business in the State of California at all relevant times herein.
6. Defendant SHOE CITY # 8, ("#8") is a California corporation, qualified to do business and doing business in the State of California at all relevant times herein.
7. Defendant SHOE CITY - 2000, INC., ("2000") is a California corporation, qualified to do business and doing business in the State of California at all relevant times herein.
8. Defendant SHOE CITY - WHITTIER, INC., ("WHITTIER") is a California corporation, qualified to do business and doing business in the State of California at all relevant times herein.
9. 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.

- 1 10. At all times mentioned herein, the term "Defendants" includes SHOE CITY, G.P., 1997,  
2 #6, #8, 2000, WHITTIER, and DOES 1-20.
- 3 11. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
4 times mentioned herein have conducted business within the State of California.
- 5 12. At all times relevant to this action, each of the Defendants, including DOES 1-20, was an  
6 agent, servant, or employee of each of the other Defendants. In conducting the activities  
7 alleged in this Complaint, each of the Defendants was acting within the course and scope  
8 of this agency, service, or employment, and was acting with the consent, permission, and  
9 authorization of each of the other Defendants. All actions of each of the Defendants  
10 alleged in this Complaint were ratified and approved by every other Defendant or their  
11 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
12 and/or facilitated the alleged wrongful conduct of each of the other Defendants.
- 13 13. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
14 Defendants was a person doing business within the meaning of Health and Safety Code  
15 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
16 employees at all relevant times.

17 **JURISDICTION**

- 18 14. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
19 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
20 those given by statute to other trial courts. This Court has jurisdiction over this action  
21 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
22 violations of Proposition 65 in any Court of competent jurisdiction.
- 23 15. This Court has jurisdiction over Defendants named herein because Defendants either  
24 reside or are located in this State or are foreign corporations authorized to do business in  
25 California, are registered with the California Secretary of State, or who do sufficient  
26 business in California, have sufficient minimum contacts with California, or otherwise  
27 intentionally avail themselves of the markets within California through their manufacture,  
28 distribution, promotion, marketing, or sale of their products within California to render

1 the exercise of jurisdiction by the California courts permissible under traditional notions  
2 of fair play and substantial justice.

3 16. Venue is proper in the County of Los Angeles because one or more of the instances of  
4 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
5 because Defendants conducted, and continue to conduct, business in the County of Los  
6 Angeles with respect to the consumer product that is the subject of this action.

7 **BACKGROUND AND PRELIMINARY FACTS**

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

17 18. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
18 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
19 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
20 chemicals and chemical families. Proposition 65 imposes warning requirements and  
21 other controls that apply to Proposition 65-listed chemicals.

22 19. All businesses with ten (10) or more employees that operate or sell products in California  
23 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
24 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
25 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
26 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
27 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).  
28

- 1 20. Proposition 65 provides that any person "violating or threatening to violate" the statute  
2 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
3 "Threaten to violate" means "to create a condition in which there is a substantial  
4 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
5 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
6 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 7 21. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl  
8 Phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons  
9 in California to the Proposition 65-listed chemicals of such products without first  
10 providing clear and reasonable warnings of such to the exposed persons prior to the time  
11 of exposure. Plaintiff later discerned that Defendants engaged in such practice.
- 12 22. 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 23. On or about May 26, 2011 Plaintiff gave notice of alleged violations of Health and Safety  
21 Code section 25249.6, concerning consumer products exposures, subject to a private  
22 action to Defendants and to the California Attorney General, County District Attorneys,  
23 and City Attorneys for each city containing a population of at least 750,000 people in  
24 whose jurisdictions the violations allegedly occurred, concerning the product Children's  
25 Boots.
- 26 24. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
27 products involved, the likelihood that such products would cause users to suffer  
28 significant exposures to DEHP, and the corporate structure of each of the Defendants.

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

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

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

17 28. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
18 any applicable district attorney or city attorney has commenced and is diligently  
19 prosecuting an action against the Defendants.

### 20 FIRST CAUSE OF ACTION

21 **(By Consumer Advocacy Group, Inc. and against Shoe City, G.P., 1997, #6, #8, 2000,  
22 Whittier, and Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and  
23 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

#### 24 **Children's Boots**

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

27 30. Each of the Defendants are, and at all times mentioned herein were, a manufacturer,  
28 distributor, promoter, or retailer of Children's Boots, an exemplar of which includes but

1 is not limited to Gray and Black Plaid Design Polymeric Children's Boots, "QQ girl" (w/  
2 hearts in the letters 'Q'), size 6, a consumer product designed for children to wear as an  
3 article of clothing.

4 31. Plaintiff is informed, believes, and thereon alleges that Children's Boots contains DEHP.

5 32. Defendants knew or should have known that DEHP has been identified by the State of  
6 California as a chemical known to cause cancer and reproductive toxicity and therefore  
7 was subject to Proposition 65 warning requirements. Defendants were also informed of  
8 the presence of DEHP in Children's Boots within Plaintiff's notice of alleged violations  
9 further discussed above at Paragraph 23.

10 33. Plaintiff's allegations regarding Children's Boots concern "[c]onsumer products  
11 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
12 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
13 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
14 *25602(b)*. Children's Boots are a consumer product, and, as mentioned herein, exposures  
15 to DEHP took place as a result of such normal and foreseeable consumption and use.

16 34. Plaintiff's allegations regarding Children's Boots also concern Occupational Exposures,  
17 which "means an exposure to any employee in his or her employer's workplace." *Cal.*  
18 *Code Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Defendants' employees occurred  
19 through the course of their employment in their employers' workplaces.

20 35. Plaintiff's allegations regarding Children's Boots also concern Environmental Exposures.  
21 An "[e]nvironmental exposure" is an exposure which may foreseeably occur as the result  
22 of contact with an environmental medium, including, but not limited to, ambient air,  
23 indoor air, drinking water, standing water, running water, soil, vegetation, or manmade or  
24 natural substances, either through inhalation, ingestion, skin contact or otherwise.  
25 Environmental exposures include all exposures which are not consumer products  
26 exposures, or occupational exposure." *Cal. Code Regs. tit. 27, § 25602(c)*. Defendants  
27 failed to provide clear and reasonable Proposition 65-compliant warnings to exposed  
28

1 persons prior to the knowing and intentional exposures to DEHP as described herein, and  
2 thereby violated Proposition 65.

3 36. Plaintiff is informed, believes, and thereon alleges that between May 26, 2008 and the  
4 present, each of the Defendants knowingly and intentionally exposed their employees and  
5 California consumers and users of Children's Boots, which Defendants manufactured,  
6 distributed, or sold as mentioned above, to DEHP, without first providing any type of  
7 clear and reasonable warning of such to the exposed persons before the time of exposure.  
8 Defendants have distributed and sold Children's Boots in California. Defendants know  
9 and intend that California consumers will use and consume Children's Boots thereby  
10 exposing them to DEHP. Defendants thereby violated Proposition 65.

11 37. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
12 Persons sustain exposures, including but not limited to handling Children's Boots without  
13 wearing gloves or any other personal protective equipment, or by touching bare skin or  
14 mucous membranes with gloves after handling Children's Boots, as well as through  
15 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in  
16 particulate matter dispersed from Children's Boots.

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

24 39. 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 40. 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 Children's Boots, pursuant to  
3 Health and Safety Code section 25249.7(b).

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

6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

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

13  
14  
15  
16 Dated: 3/8, 2012

YEROUSHALMI & ASSOCIATES

17  
18  
19 BY: \_\_\_\_\_

Reuben Yeroushalmi  
Attorneys for Plaintiff  
Consumer Advocacy Group, Inc.