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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

APR 12 2012

John A. Clarke, Executive Officer/Clerk
BY Mary Flores, Deputy

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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 BC 482740

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

16 Plaintiff,

17 v.

18 TRIPLE T TRADING LTD., a Washington
19 Corporation, TRIPLE T FOOTWEAR, an
20 Oregon Corporation, THE KROGER CO., an
21 Ohio Corporation, RALPH'S GROCERY
22 COMPANY, an Ohio Corporation, FOOD 4
23 LESS HOLDINGS, INC., a Delaware
24 Corporation and DOES 1-20;

25 Defendants.

CASE NO.

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)

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

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COPY

THE PARTIES

- 1
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
3 organization qualified to do business in the State of California. CAG is a person within
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
5 as a private attorney general, brings this action in the public interest as defined under
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant TRIPLE T TRADING LTD. ("TRIPLE T") is a Washington corporation,
8 qualified to do business and doing business in the State of California at all relevant times
9 herein.
- 10 3. Defendant TRIPLE T FOOTWEAR ("FOOTWEAR") is an Oregon corporation,
11 qualified to do business and doing business in the State of California at all relevant times
12 herein.
- 13 4. Defendant THE KROGER CO. ("KROGER") is an Ohio corporation, qualified to do
14 business and doing business in the State of California at all relevant times herein.
- 15 5. Defendant RALPH'S GROCERY COMPANY, ("RALPHS") is an Ohio corporation,
16 qualified to do business and doing business in the State of California at all relevant times
17 herein.
- 18 6. Defendant FOOD 4 LESS HOLDINGS, INC., ("FOOD") is a Delaware corporation,
19 qualified to do business and doing business in the State of California at all relevant times
20 herein.
- 21 7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
22 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
23 complaint to allege their true names and capacities when ascertained. Plaintiff is
24 informed, believes, and thereon alleges that each fictitiously named defendant is
25 responsible in some manner for the occurrences herein alleged and the damages caused
26 thereby.
- 27 8. At all times mentioned herein, the term "Defendants" includes TRIPLE T, FOOTWEAR,
28 KROGER, RALPHS, FOOD, and DOES 1-20.

1 9. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
2 times mentioned herein have conducted business within the State of California.

3 10. At all times relevant to this action, each of the Defendants, including DOES 1-20, was an
4 agent, servant, or employee of each of the other Defendants. In conducting the activities
5 alleged in this Complaint, each of the Defendants was acting within the course and scope
6 of this agency, service, or employment, and was acting with the consent, permission, and
7 authorization of each of the other Defendants. All actions of each of the Defendants
8 alleged in this Complaint were ratified and approved by every other Defendant or their
9 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
10 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

15 JURISDICTION

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

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

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

5 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

26 18. 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 "Threaten to violate" means "to create a condition in which there is a substantial

1 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

4 19. Plaintiff identified certain practices of manufacturers and distributors of Di-n-butyl
5 Phthalate ("DBP")-bearing products of exposing, knowingly and intentionally, persons in
6 California to the Proposition 65-listed chemicals of such products without first providing
7 clear and reasonable warnings of such to the exposed persons prior to the time of
8 exposure. Plaintiff later discerned that Defendants engaged in such practice.

9 20. On December 2, 2005, the Governor of California added DBP to the list of chemicals
10 known to the state to cause developmental, female, and male reproductive toxicity.
11 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
12 after addition of DBP to the list of chemicals known to the State to cause reproductive
13 toxicity, DBP became fully subject to Proposition 65 warning requirements and discharge
14 prohibitions.

15 **SATISFACTION OF PRIOR NOTICE**

16 21. On or about August 17, 2011 Plaintiff gave notice of alleged violations of Health and
17 Safety Code section 25249.6, concerning consumer products exposures, subject to a
18 private-action to Triple T Trading Ltd., Triple T Footwear, The Kroger Co., Ralphs
19 Grocery Company and to the California Attorney General, County District Attorneys, and
20 City Attorneys for each city containing a population of at least 750,000 people in whose
21 jurisdictions the violations allegedly occurred, concerning the product Kids' Flip Flops.

22 22. On or about November 3, 2011 Plaintiff gave notice of alleged violations of Health and
23 Safety Code section 25249.6, concerning consumer products exposures, subject to a
24 private action to Triple T Footwear, The Kroger Co., Food 4 Less Holdings, Inc., and to
25 the California Attorney General, County District Attorneys, and City Attorneys for each
26 city containing a population of at least 750,000 people in whose jurisdictions the
27 violations allegedly occurred, concerning the product Children's Flip Flops.

1 23. Before sending the notices of alleged violation, Plaintiff investigated the consumer
2 products involved, the likelihood that such products would cause users to suffer
3 significant exposures to DBP, and the corporate structure of each of the Defendants.

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

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

17 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
18 gave notices of the alleged violations to Defendants, and the public prosecutors
19 referenced in Paragraph 21-22.

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

23 **FIRST CAUSE OF ACTION**

24 **(By Consumer Advocacy Group, Inc. and against Triple T, Footwear, Kroger, Ralphs, and**
25 **Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
26 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

27 **Kids' Flip Flops**

- 1 28. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
2 paragraphs 1 through 27 of this complaint as though fully set forth herein.
- 3 29. Each of the Defendants are, and at all times mentioned herein were, a manufacturer,
4 distributor, promoter, or retailer of Kids' Flip Flops, an exemplar of which includes but is
5 not limited to Beach Basics™ Kids Flip Flops, Size 11/12, a consumer product designed
6 for children to wear as an article of footwear.
- 7 30. Plaintiff is informed, believes, and thereon alleges that Kids' Flip Flops contains DBP.
- 8 31. Defendants knew or should have known that DBP has been identified by the State of
9 California as a chemical known to cause reproductive toxicity and therefore was subject
10 to Proposition 65 warning requirements. Defendants were also informed of the presence
11 of DBP in Kids' Flip Flops within Plaintiff's notice of alleged violations further discussed
12 above at Paragraph 21-22.
- 13 32. Plaintiff's allegations regarding Kids' Flip Flops concern "[c]onsumer products
14 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
15 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
16 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
17 *25602(b)*. Kids' Flip Flops are a consumer product, and, as mentioned herein, exposures
18 to DBP took place as a result of such normal and foreseeable consumption and use.
- 19 33. Plaintiff's allegations regarding Kids' Flip Flops also concern Occupational Exposures,
20 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
21 *Code Regs. tit. 27, § 25602(f)*. Exposures of DBP to Defendants' employees occurred
22 through the course of their employment in their employers' workplaces.
- 23 34. Plaintiff is informed, believes, and thereon alleges that between August 17, 2008 and the
24 present, each of the Defendants knowingly and intentionally exposed their employees and
25 California consumers and users of Kids' Flip Flops, which Defendants manufactured,
26 distributed, or sold as mentioned above, to DBP, without first providing any type of clear
27 and reasonable warning of such to the exposed persons before the time of exposure.
- 28 Defendants have distributed and sold Kids' Flip Flops in California. Defendants know

1 and intend that California consumers will use and consume Kids' Flip Flops thereby
2 exposing them to DBP. Defendants thereby violated Proposition 65.

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

4 Persons sustain exposures, including but not limited to handling Kids' Flip Flops without
5 wearing gloves or any other personal protective equipment, or by touching bare skin or
6 mucous membranes with gloves after handling Kids' Flip Flops, as well as through direct
7 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
8 particulate matter dispersed from Kids' Flip Flops.

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

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

19 38. Based on the allegations herein, Defendants are liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to DBP from Kids' Flip Flops, pursuant to
21 Health and Safety Code section 25249.7(b).

22 SECOND CAUSE OF ACTION

23 **(By Consumer Advocacy Group, Inc. and against Footwear, Kroger, Food, and Does 1-20**
24 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of**
25 **1986 (Health & Safety Code, §§ 25249.5, et seq.))**

26 **Children's Flip Flops**

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

1 40. Each of the Defendants are, and at all times mentioned herein were, a manufacturer,
2 distributor, promoter, or retailer of Children's Flip Flops, an exemplar of which includes
3 but is not limited to Beach Basics™ Children's Flip Flops, Size 11/12, a consumer
4 product designed for children to wear as an article of footwear.

5 41. Plaintiff is informed, believes, and thereon alleges that Children's Flip Flops contains
6 DBP.

7 42. Defendants knew or should have known that DBP has been identified by the State of
8 California as a chemical known to cause reproductive toxicity and therefore was subject
9 to Proposition 65 warning requirements. Defendants were also informed of the presence
10 of DBP in Children's Flip Flops within Plaintiff's notice of alleged violations further
11 discussed above at Paragraph 21-22.

12 43. Plaintiff's allegations regarding Children's Flip Flops concern "[c]onsumer products
13 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
14 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
15 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
16 *25602(b)*. Children's Flip Flops are a consumer product, and, as mentioned herein,
17 exposures to DBP took place as a result of such normal and foreseeable consumption and
18 use.

19 44. Plaintiff's allegations regarding Children's Flip Flops also concern Occupational
20 Exposures, which "means an exposure to any employee in his or her employer's
21 workplace." *Cal. Code Regs. tit. 27, § 25602(f)*. Exposures of DBP to Defendants'
22 employees occurred through the course of their employment in their employers'
23 workplaces.

24 45. Plaintiff is informed, believes, and thereon alleges that between November 3, 2008 and
25 the present, each of the Defendants knowingly and intentionally exposed their employees
26 and California consumers and users of Children's Flip Flops, which Defendants
27 manufactured, distributed, or sold as mentioned above, to DBP, without first providing
28 any type of clear and reasonable warning of such to the exposed persons before the time

- 1 of exposure. Defendants have distributed and sold Children's Flip Flops in California.
2 Defendants know and intend that California consumers will use and consume Children's
3 Flip Flops thereby exposing them to DBP. Defendants thereby violated Proposition 65.
4 46. The principal routes of exposure are through dermal contact, ingestion and inhalation.
5 Persons sustain exposures, including but not limited to handling Children's Flip Flops
6 without wearing gloves or any other personal protective equipment, or by touching bare
7 skin or mucous membranes with gloves after handling Children's Flip Flops, as well as
8 through direct and indirect hand to mouth contact, hand to mucous membrane, or
9 breathing in particulate matter dispersed from Children's Flip Flops.
10 47. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
11 Proposition 65 as to Children's Flip Flops have been ongoing and continuous to the date
12 of the signing of this complaint, as Defendants engaged and continue to engage in
13 conduct which violates Health and Safety Code section 25249.6, including the
14 manufacture, distribution, promotion, and sale of Children's Flip Flops, so that a separate
15 and distinct violation of Proposition 65 occurred each and every time a person was
16 exposed to DBP by Children's Flip Flops as mentioned herein.
17 48. 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 49. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to DBP from Children's Flip Flops, pursuant
22 to Health and Safety Code section 25249.7(b).
23 50. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
24 filing this Complaint.

25 **PRAYER FOR RELIEF**

26 Plaintiff demands against each of the Defendants as follows:

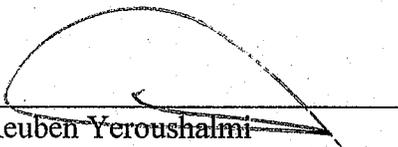
- 27 1. A permanent injunction mandating Proposition 65-compliant warnings;
28 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);

- 1 3. Costs of suit;
- 2 4. Reasonable attorney fees and costs; and
- 3 5. Any further relief that the court may deem just and equitable.

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Dated: April 11/12, 2012

YEROUSHALMI & ASSOCIATES

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