

ENDORSED FILED  
SUPERIOR COURT  
COUNTY OF SAN FRANCISCO

MAY 17 2012

CLERK OF THE COURT  
BY: DENNIS TOYAMA  
Deputy Clerk

1 Reuben Yeroushalmi (SBN 193981)  
2 Daniel D. Cho (SBN 105409)  
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9 Attorneys for Plaintiff,  
10 Consumer Advocacy Group, Inc.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO

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

15 Plaintiff,

16 v.

17 THE CHILDREN'S PLACE RETAIL  
18 STORES, INC., a Delaware Corporation and  
19 DOES 1-20;

20 Defendants.

CASE NO C G C 12-520879

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)

BY FAX

21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendant  
22 THE CHILDREN'S PLACE RETAIL STORES, INC., and Does 1-20 as follows:

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**THE PARTIES**

- 1  
2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG") is an organization  
3 qualified to do business in the State of California. CAG is a person within the meaning  
4 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private  
5 attorney general, brings this action in the public interest as defined under Health and  
6 Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant THE CHILDREN'S PLACE RETAIL STORES, INC. ("CHILDREN") is a  
8 Delaware corporation qualified to do business in the State of California and has been  
9 doing business in the State of California at all relevant times herein.
- 10 3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,  
11 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
12 complaint to allege their true names and capacities when ascertained. Plaintiff is  
13 informed, believes, and thereon alleges that each fictitiously named defendant is  
14 responsible in some manner for the occurrences herein alleged and the damages caused  
15 thereby.
- 16 4. At all times mentioned herein, the term "Defendants" includes CHILDREN and Does 1-  
17 20.
- 18 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
19 times mentioned herein have conducted business within the State of California.
- 20 6. At all times relevant to this action, each of the Defendants, including Does 1-20, was an  
21 agent, servant, or employee of each of the other Defendants. In conducting the activities  
22 alleged in this Complaint, each of the Defendants was acting within the course and scope  
23 of this agency, service, or employment, and was acting with the consent, permission, and  
24 authorization of each of the other Defendants. All actions of each of the Defendants  
25 alleged in this Complaint were ratified and approved by every other Defendant or their  
26 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
27 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 San Francisco because one or more of the instances of  
20 wrongful conduct occurred, and continues to occur, in the County of San Francisco  
21 and/or because Defendants conducted, and continue to conduct, business in the County of  
22 San Francisco 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 DEHP and DBP-  
23 bearing 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 January 1, 1988, the Governor of California added DEHP to the list of chemicals  
28 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP

1 to the list of chemicals known to the State to cause developmental male reproductive  
2 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
3 months after addition of DEHP to the list of chemicals known to the State to cause  
4 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
5 requirements and discharge prohibitions.

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

12  
13 **SATISFACTION OF PRIOR NOTICE**

- 14 18. On or about August 31, 2011, Plaintiff gave notice of alleged violations of Health and  
15 Safety Code section 25249.6, concerning consumer products exposures and occupational  
16 exposures, subject to a private action to The Children's Place Retail Stores, Inc., and to  
17 the California Attorney General, County District Attorneys, and City Attorneys for each  
18 city containing a population of at least 750,000 people in whose jurisdictions the  
19 violations allegedly occurred, concerning the product Footwear.
- 20 19. On or about December 5, 2011, 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 The Children's Place Retail Stores, Inc., and to  
23 the California Attorney General, County District Attorneys, and City Attorneys for each  
24 city containing a population of at least 750,000 people in whose jurisdictions the  
25 violations allegedly occurred, concerning the product Children's Sandals.
- 26 20. 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

1 significant exposures to DEHP and DBP, and the corporate structure of each of the  
2 Defendants.

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

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

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

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

22 **FIRST CAUSE OF ACTION**

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

26 **Footwear**

27 25. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
28 paragraphs 1 through 24 of this complaint as though fully set forth herein.

- 1 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
2 distributor, promoter, or retailer of Footwear, including but not limited to Children's  
3 Flip-Flops, Size M (4-5), Pink with Polka Dots, White Straps, a consumer product  
4 designed for use as footwear for children.
- 5 27. Plaintiff is informed, believes, and thereon alleges that Footwear contains DEHP and  
6 DBP.
- 7 28. Defendants knew or should have known that DEHP and DBP has been identified by the  
8 State of California as chemicals known to cause cancer and reproductive toxicity and  
9 therefore was subject to Proposition 65 warning requirements. Defendants were also  
10 informed of the presence of DEHP and DBP in Footwear within Plaintiff's notice of  
11 alleged violations further discussed above at Paragraph 18.
- 12 29. Plaintiff's allegations regarding Footwear concerns "[c]onsumer products exposure[s],"  
13 which "is an exposure that results from a person's acquisition, purchase, storage,  
14 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
15 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.  
16 Footwear is a consumer product, and, as mentioned herein, exposures to DEHP and DBP  
17 took place as a result of such normal and foreseeable consumption and use.
- 18 30. Plaintiff's allegations regarding Footwear also concern "[o]ccupational exposure[s],"  
19 which are exposures "to any employees in his or her employer's workplace." *Cal. Code*  
20 *Reg. tit. 27, § 25602(f)*. As mentioned herein, employees were exposed to DEHP and  
21 DBP in their employer's workplace as a result of handling Footwear, in conjunction with  
22 packaging, shipping, distributing and/or selling Footwear, among other activities, without  
23 having first been given clear and reasonable warnings that such handling would cause  
24 exposures to DEHP and DBP
- 25 31. Plaintiff's allegations regarding Footwear also concern Environmental Exposures. An  
26 "[e]nvironmental exposure" is an exposure which may foreseeably occur as the result of  
27 contact with an environmental medium, including, but not limited to, ambient air, indoor  
28 air, drinking water, standing water, running water, soil, vegetation, or manmade or

1 natural substances, either through inhalation, ingestion, skin contact or otherwise.

2 Environmental exposures include all exposures which are not consumer products  
3 exposures, or occupational exposure.” *Cal. Code Regs. tit. 27, § 25602(c)*. Defendants  
4 failed to provide clear and reasonable Proposition 65-compliant warnings to exposed  
5 persons prior to the knowing and intentional exposures to DEHP and DBP as described  
6 herein, and thereby violated Proposition 65.

7 32. Plaintiff is informed, believes, and thereon alleges that between August 31, 2008 and the  
8 present, each of the Defendants knowingly and intentionally exposed their employees and  
9 California consumers and users of Footwear, which Defendants manufactured,  
10 distributed, or sold as mentioned above, to DEHP and DBP, without first providing any  
11 type of clear and reasonable warning of such to the exposed persons before the time of  
12 exposure. Defendants have distributed and sold Footwear in California. Defendants  
13 know and intend that California consumers will use and consume Footwear, thereby  
14 exposing them to DEHP and DBP. Defendants thereby violated Proposition 65.

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

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

1 35. 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 36. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to DEHP and DBP from Footwear, pursuant to  
6 Health and Safety Code section 25249.7(b).

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

## 12 SECOND CAUSE OF ACTION

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

### 16 Children's Sandals

17 38. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
18 paragraphs 1 through 37 of this complaint as though fully set forth herein.

19 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
20 distributor, promoter, or retailer of Children's Sandals, including but not limited to  
21 Children's Sandal, Size (4-5) Pink Princess Crown Peony, a consumer product designed  
22 for use as footwear for children.

23 40. Plaintiff is informed, believes, and thereon alleges that Children's Sandals contains  
24 DEHP.

25 41. Defendants knew or should have known that DEHP has been identified by the State of  
26 California as chemicals known to cause cancer and reproductive toxicity and therefore  
27 was subject to Proposition 65 warning requirements. Defendants were also informed of  
28

1 the presence of DEHP in Children's Sandals within Plaintiff's notice of alleged violations  
2 further discussed above at Paragraph 19.

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

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

17 44. Plaintiff is informed, believes, and thereon alleges that between December 5, 2008 and  
18 the present, each of the Defendants knowingly and intentionally exposed their employees  
19 and California consumers and users of Children's Sandals, which Defendants  
20 manufactured, distributed, or sold as mentioned above, to DEHP, without first providing  
21 any type of clear and reasonable warning of such to the exposed persons before the time  
22 of exposure. Defendants have distributed and sold Children's Sandals in California.

23 Defendants know and intend that California consumers will use and consume Children's  
24 Sandals, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

25 45. The principal routes of exposure are through dermal contact, ingestion and inhalation.

26 Persons sustain exposures by handling Children's Sandals without wearing gloves or any  
27 other personal protective equipment, or by touching bare skin or mucous membranes with  
28 gloves after handling Children's Sandals, as well as through direct and indirect hand to

1 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
2 from Children's Sandals. And as to Defendants' employees, employees may be exposed  
3 to DEHP in the course of their employment by handling, distributing, and selling  
4 Children's Sandals.

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

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

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

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

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

25  
26 **THIRD CAUSE OF ACTION**

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

## Children's Sandals

1  
2 51. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
3 paragraphs 1 through 50 of this complaint as though fully set forth herein.

4 52. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
5 distributor, promoter, or retailer of Children's Sandals, including but not limited to  
6 Children's Sandal, Size (8/9T), Black Home Team F New Navy, a consumer product  
7 designed for use as footwear for children.

8 53. Plaintiff is informed, believes, and thereon alleges that Children's Sandals contains  
9 DEHP and DBP.

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

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

22 56. Plaintiff's allegations regarding Children's Sandals also concern "[o]ccupational  
23 exposure[s]," which are exposures "to any employees in his or her employer's  
24 workplace." *Cal. Code Reg. tit. 27, § 25602(f)*. As mentioned herein, employees were  
25 exposed to DEHP and DBP in their employer's workplace as a result of handling  
26 Children's Sandals, in conjunction with packaging, shipping, distributing and/or selling  
27 Children's Sandals, among other activities, without having first been given clear and  
28 reasonable warnings that such handling would cause exposures to DEHP and DBP

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

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

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

25 60. 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.  
28

1 61. 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 and DBP from Children's Sandals,  
3 pursuant to Health and Safety Code section 25249.7(b).

4 62. In the absence of equitable relief, the general public and Defendants' employees will  
5 continue to be involuntarily exposed to DEHP and DBP that is contained in Children's  
6 Sandals, creating a substantial risk of irreparable harm. Thus, by committing the acts  
7 alleged herein, Defendants have caused irreparable harm for which there is no plain,  
8 speedy, or adequate remedy at law.

#### 9 FOURTH CAUSE OF ACTION

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

#### 13 Children's Sandals

14 63. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
15 paragraphs 1 through 62 of this complaint as though fully set forth herein.

16 64. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
17 distributor, promoter, or retailer of Children's Sandals, including but not limited to  
18 Children's Sandal, Size (8/9T), Light Blue Surf Monkey Seaside, a consumer product  
19 designed for use as footwear for children.

20 65. Plaintiff is informed, believes, and thereon alleges that Children's Sandals contains DBP.

21 66. Defendants knew or should have known that DBP has been identified by the State of  
22 California as chemicals known to cause cancer and reproductive toxicity and therefore  
23 was subject to Proposition 65 warning requirements. Defendants were also informed of  
24 the presence of DBP in Children's Sandals within Plaintiff's notice of alleged violations  
25 further discussed above at Paragraph 19.

26 67. Plaintiff's allegations regarding Children's Sandals concerns "[c]onsumer products  
27 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
28 storage, consumption, or other reasonably foreseeable use of a consumer good, or any

1 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
2 25602(b). Children’s Sandals are a consumer product, and, as mentioned herein,  
3 exposures to DBP took place as a result of such normal and foreseeable consumption and  
4 use.

5 68. Plaintiff’s allegations regarding Children’s Sandals also concern “[o]ccupational  
6 exposure[s],” which are exposures “to any employees in his or her employer’s  
7 workplace.” *Cal. Code Reg. tit. 27, § 25602(f)*. As mentioned herein, employees were  
8 exposed to DBP in their employer’s workplace as a result of handling Children’s Sandals,  
9 in conjunction with packaging, shipping, distributing and/or selling Children’s Sandals,  
10 among other activities, without having first been given clear and reasonable warnings that  
11 such handling would cause exposures to DBP

12 69. Plaintiff is informed, believes, and thereon alleges that between December 5, 2008 and  
13 the present, each of the Defendants knowingly and intentionally exposed their employees  
14 and California consumers and users of Children’s Sandals, which Defendants  
15 manufactured, distributed, or sold as mentioned above, to DBP, without first providing  
16 any type of clear and reasonable warning of such to the exposed persons before the time  
17 of exposure. Defendants have distributed and sold Children’s Sandals in California.  
18 Defendants know and intend that California consumers will use and consume Children’s  
19 Sandals, thereby exposing them to DBP. Defendants thereby violated Proposition 65.

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

1 71. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
2 Proposition 65 as to Children's Sandals have been ongoing and continuous to the date of  
3 the signing of this complaint, as Defendants engaged and continue to engage in conduct  
4 which violates Health and Safety Code section 25249.6, including the manufacture,  
5 distribution, promotion, and sale of Children's Sandals, so that a separate and distinct  
6 violation of Proposition 65 occurred each and every time a person was exposed to DBP  
7 by Children's Sandals as mentioned herein.

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

11 73. Based on the allegations herein, Defendants are liable for civil penalties of up to  
12 \$2,500.00 per day per individual exposure to DBP from Children's Sandals, pursuant to  
13 Health and Safety Code section 25249.7(b).

14 74. In the absence of equitable relief, the general public and Defendants' employees will  
15 continue to be involuntarily exposed to DBP that is contained in Children's Sandals,  
16 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
17 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
18 adequate remedy at law.

19  
20 **FIFTH CAUSE OF ACTION**

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

24 **Children's Sandals**

25 75. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
26 paragraphs 1 through 74 of this complaint as though fully set forth herein.

27 76. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
28 distributor, promoter, or retailer of Children's Sandals, including but not limited to

1 Children's Sandal, Size (6/&T), Green Kick It FF, a consumer product designed for use  
2 as footwear for children.

3 77. Plaintiff is informed, believes, and thereon alleges that Children's Sandals contains  
4 DEHP and DBP.

5 78. Defendants knew or should have known that DEHP and DBP has been identified by the  
6 State of California as chemicals known to cause cancer and reproductive toxicity and  
7 therefore was subject to Proposition 65 warning requirements. Defendants were also  
8 informed of the presence of DEHP and DBP in Children's Sandals within Plaintiff's  
9 notice of alleged violations further discussed above at Paragraph 19.

10 79. Plaintiff's allegations regarding Children's Sandals concerns "[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 Sandals are a consumer product, and, as mentioned herein,  
15 exposures to DEHP and DBP took place as a result of such normal and foreseeable  
16 consumption and use.

17 80. Plaintiff's allegations regarding Children's Sandals also concern "[o]ccupational  
18 exposure[s]," which are exposures "to any employees in his or her employer's  
19 workplace." *Cal. Code Reg.* tit. 27, § 25602(f). As mentioned herein, employees were  
20 exposed to DEHP and DBP in their employer's workplace as a result of handling  
21 Children's Sandals, in conjunction with packaging, shipping, distributing and/or selling  
22 Children's Sandals, among other activities, without having first been given clear and  
23 reasonable warnings that such handling would cause exposures to DEHP and DBP

24 81. Plaintiff is informed, believes, and thereon alleges that between December 5, 2008 and  
25 the present, each of the Defendants knowingly and intentionally exposed their employees  
26 and California consumers and users of Children's Sandals, which Defendants  
27 manufactured, distributed, or sold as mentioned above, to DEHP and DBP, without first  
28 providing any type of clear and reasonable warning of such to the exposed persons before

1 the time of exposure. Defendants have distributed and sold Children's Sandals in  
2 California. Defendants know and intend that California consumers will use and consume  
3 Children's Sandals, thereby exposing them to DEHP and DBP. Defendants thereby  
4 violated Proposition 65.

5 82. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
6 Persons sustain exposures by handling Children's Sandals without wearing gloves or any  
7 other personal protective equipment, or by touching bare skin or mucous membranes with  
8 gloves after handling Children's Sandals, as well as through direct and indirect hand to  
9 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
10 from Children's Sandals. And as to Defendants' employees, employees may be exposed  
11 to DEHP and DBP in the course of their employment by handling, distributing, and  
12 selling Children's Sandals.

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

20 84. 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 85. 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 and DBP from Children's Sandals,  
25 pursuant to Health and Safety Code section 25249.7(b).

26 86. In the absence of equitable relief, the general public and Defendants' employees will  
27 continue to be involuntarily exposed to DEHP and DBP that is contained in Children's  
28 Sandals, creating a substantial risk of irreparable harm. Thus, by committing the acts

1 alleged herein, Defendants have caused irreparable harm for which there is no plain,  
2 speedy, or adequate remedy at law.

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

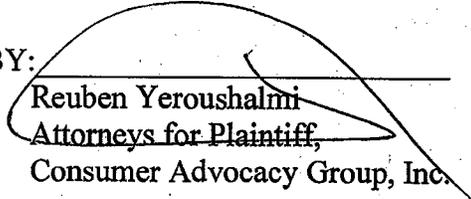
5 **PRAYER FOR RELIEF**

6 Plaintiff demands against each of the Defendants as follows:

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

12  
13 Dated: May 17, 2012

YEROUSHALMI & ASSOCIATES

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15  
16 BY:   
17 Reuben Yeroushalmi  
18 Attorneys for Plaintiff,  
19 Consumer Advocacy Group, Inc.  
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