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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

JUN 08 2012

John A. Clarke, Executive Officer/Clerk  
BY Cristina M. Grimalva Deputy  
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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 EUROSTAR, INC., dba WAREHOUSE  
18 SHOE STORES, INC., a California  
19 corporation, and DOES 1-20;

20 Defendants.

CASE NO.

**BC 486206**

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 defendants,  
22 EUROSTAR, INC. dba WAREHOUSE SHOE STORES, INC. and DOES 1-20 as follows:

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**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 EUROSTAR, INC., dba WAREHOUSE SHOE STORES, INC., ("EUROSTAR") is a California corporation, qualified to do business and doing business in the State of California at all relevant times herein.
3. 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.
4. At all times mentioned herein, the term "Defendants" includes EUROSTAR and Does 1-20.
5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
6. At all times relevant to this action, each of the Defendants, including Does 1-20, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with 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 Di (2-ethylhexyl)  
23 phthalate (DEHP) and DiButyl Phthalate (DBP)-bearing products of exposing, knowingly  
24 and intentionally, persons in California to the Proposition 65-listed chemicals of such  
25 products without first providing clear and reasonable warnings of such to the exposed  
26 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged  
27 in such practice.

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

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

14 **SATISFACTION OF PRIOR NOTICE**

15 18. On or about February 17, 2012, Plaintiff gave notice of alleged violations of Health and  
16 Safety Code section 25249.6, concerning consumer products exposures and occupational  
17 exposures subject to a private action to Eurostar and to the California Attorney General,  
18 County District Attorneys, and City Attorneys for each city containing a population of at  
19 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
20 the product Sandals.

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

25 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
26 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
27 Plaintiff who executed the certificate had consulted with at least one person with relevant  
28 and appropriate expertise who reviewed data regarding the exposures to DEHP and DBP,

1 which are the subject Proposition 65-listed chemicals of this action. Based on that  
2 information, the attorney for Plaintiff who executed the Certificate of Merit believed  
3 there was a reasonable and meritorious case for this private action. The attorney for  
4 Plaintiff attached to the Certificate of Merit served on the Attorney General the  
5 confidential factual information sufficient to establish the basis of the Certificate of  
6 Merit.

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

10 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
11 gave notices of the alleged violations to Eurostar, and the public prosecutors referenced  
12 in Paragraph 18.

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

### 16 FIRST CAUSE OF ACTION

17 **(By Consumer Advocacy Group, Inc. and against EUROSTAR, 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 **Sandals**

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

23 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
24 distributor, promoter, or retailer of Sandals, which includes but is not limited to "Cobra  
25 Sporty Soccer Sandals "Size 6" Item No. 002688353" a consumer product designed as  
26 footwear.

27 26. Plaintiff is informed, believes, and thereon alleges that Sandals contain DEHP and DBP.  
28

1 27. Defendants knew or should have known that DEHP and DBP have been identified by the  
2 State of California as chemicals known to cause cancer and reproductive toxicity and  
3 therefore were subject to Proposition 65 warning requirements. Defendants were also  
4 informed of the presence of DEHP and DBP in Sandals within Plaintiff's notice of  
5 alleged violations further discussed above at Paragraph 18.

6 28. Plaintiff's allegations regarding Sandals 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 Sandals are consumer products, and, as mentioned herein, exposures to DEHP and DBP  
11 took place as a result of such normal and foreseeable consumption and use.

12 29. Plaintiff's allegations regarding Sandals 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 DEHP and  
15 DBP in their employer's workplace as a result of handling Sandals, in conjunction with  
16 packaging, shipping, distributing and/or selling Sandals, among other activities, without  
17 having first been given clear and reasonable warnings that such handling would cause  
18 exposures to DEHP and DBP.

19 30. Plaintiff is informed, believes, and thereon alleges that between February 17, 2009 and  
20 the present, each of the Defendants knowingly and intentionally exposed their employees  
21 and California consumers and users of Sandals, which Defendants manufactured,  
22 distributed, or sold as mentioned above, to DEHP and DBP, without first providing any  
23 type of clear and reasonable warning of such to the exposed persons before the time of  
24 exposure. Defendants have distributed and sold Sandals in California. Defendants know  
25 and intend that California consumers will use and consume Sandals thereby exposing  
26 them to DEHP and DBP. Defendants thereby violated Proposition 65.

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

1 personal protective equipment, or by touching bare skin or mucous membranes with  
2 gloves after handling Sandals, as well as through direct and indirect hand to mouth  
3 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
4 Sandals.

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

12 33. 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 34. 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 and DBP from Sandals, pursuant to  
17 Health and Safety Code section 25249.7(b).

18 35. In the absence of equitable relief, the general public and Defendants' employees will  
19 continue to be involuntarily exposed to DEHP and DBP that is contained in 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 36. 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.

4  
5 Dated: 6/6, 2012

YEROUSHALMI & ASSOCIATES

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8 BY:   
9 Reuben Yeroushalmi  
10 Attorneys for Plaintiff,  
11 Consumer Advocacy Group, Inc.  
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