

DEC 21 2012

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By SHAUNYA WESLEY, Deputy

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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 UNITED PACIFIC DESIGNS, INC.,  
18 California Corporation, ACI  
19 INTERNATIONAL, a California  
20 Corporation, VIACOM INTERNATIONAL,  
21 INC., a Delaware Corporation, VIACOM,  
22 INC., a Delaware Corporation, NATIONAL  
23 AMUSEMENTS, INC., a Massachusetts  
24 Corporation; and DOES 1-20;

25 Defendants.

26 CASE NO. BC 497912

27 COMPLAINT FOR PENALTY AND  
28 INJUNCTION

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
defendants UNITED PACIFIC DESIGN, INC., ACI INTERNATIONAL, VIACOM  
INTERNATIONAL, INC., VIACOM, INC., NATIONAL AMUSEMENTS, 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  
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 UNITED PACIFIC DESIGNS, INC. ("UPD") is a California corporation,  
8 qualified to do business and doing business in the State of California at all relevant times  
9 herein.
- 10 3. Defendant ACI INTERNATIONAL ("ACI") is a California corporation, qualified to do  
11 business and doing business in the State of California at all relevant times herein.
- 12 4. Defendant VIACOM INTERNATIONAL, INC. ("VIACOM INTERNATIONAL") is a  
13 Delaware corporation, qualified to do business and doing business in the State of  
14 California at all relevant times herein.
- 15 5. Defendant VIACOM, INC. ("VIACOM") is a Delaware corporation, qualified to do  
16 business and doing business in the State of California at all relevant times herein.
- 17 6. Defendant NATIONAL AMUSEMENTS, INC. ("NATIONAL") is a Massachusetts  
18 corporation, doing business in the State of California at all relevant times herein.
- 19 7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
20 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
21 complaint to allege their true names and capacities when ascertained. Plaintiff is  
22 informed, believes, and thereon alleges that each fictitiously named defendant is  
23 responsible in some manner for the occurrences herein alleged and the damages caused  
24 thereby.
- 25 8. At all times mentioned herein, the term "Defendants" includes UPD, ACI, VIACOM  
26 INTERNATIONAL, VIACOM, NATIONAL, 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. Upon information and belief, at all times relevant to this action, each of the Defendants,  
4 including DOES 1-20, was an agent, servant, or employee of each of the other  
5 Defendants. Defendant VIACOM is the immediate parent of Defendant VIACOM  
6 INTERNATIONAL. Defendant NATIONAL is the ultimate parent of Defendants  
7 VIACOM and VIACOM INTERNATIONAL. In conducting the activities alleged in this  
8 Complaint, each of the Defendants was acting within the course and scope of this agency,  
9 service, or employment, and was acting with the consent, permission, and authorization  
10 of each of the other Defendants. All actions of each of the Defendants alleged in this  
11 Complaint were ratified and approved by every other Defendant or their officers or  
12 managing agents. Alternatively, each of the Defendants aided, conspired with and/or  
13 facilitated the alleged wrongful conduct of each of the other Defendants.

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

### 18 JURISDICTION

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

24 13. This Court has jurisdiction over Defendants named herein because Defendants either  
25 reside or are located in this State or are foreign corporations authorized to do business in  
26 California, are registered with the California Secretary of State, or who do sufficient  
27 business in California, have sufficient minimum contacts with California, or otherwise  
28

1 intentionally avail themselves of the markets within California through their manufacture,  
2 distribution, promotion, marketing, or sale of their products within California to render  
3 the exercise of jurisdiction by the California courts permissible under traditional notions  
4 of fair play and substantial justice.

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

### 9 BACKGROUND AND PRELIMINARY FACTS

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

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

24 17. All businesses with ten (10) or more employees that operate or sell products in California  
25 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
26 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
27 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
28

1 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
2 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

3 18. Proposition 65 provides that any person "violating or threatening to violate" the statute  
4 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

5 "Threaten to violate" means "to create a condition in which there is a substantial  
6 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

9 19. Plaintiff identified certain practices of manufacturers and distributors of DBP-bearing  
10 products of exposing, knowingly and intentionally, persons in California to the  
11 Proposition 65-listed chemicals of such products without first providing clear and  
12 reasonable warnings of such to the exposed persons prior to the time of exposure.  
13 Plaintiff later discerned that Defendants engaged in such practice.

14 20. On December 2, 2005, the Governor of California added Di-n-butyl Phthalate ("DBP") to  
15 the list of chemicals known to the State to cause developmental, female, and male  
16 reproductive toxicity. The addition took place more than twenty (20) months before CAG  
17 served this Notice. Pursuant to Health and Safety Code sections 25249.9 and 25249.10,  
18 twenty (20) months after addition of DBP to the list of chemicals known to the State to  
19 cause developmental, female, and male reproductive toxicity, DBP became fully subject  
20 to Proposition 65 warning requirements and discharge prohibitions.

#### 21 SATISFACTION OF PRIOR NOTICE

22 21. On or about July 27, 2012, Plaintiff gave notice of alleged violations of Health and Safety  
23 Code section 25249.6, concerning consumer products exposures and occupational  
24 exposures, subject to a private action to VIACOM INTERNATIONAL, VIACOM,  
25 NATIONAL, ACI, UPD, and to the California Attorney General, County District  
26 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
27  
28

1 people in whose jurisdictions the violations allegedly occurred, concerning the product  
2 Children's Sandals.

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

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

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

18 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
19 gave notices of the alleged violations to VIACOM, NATIONAL, ACI, UPD, and the  
20 public prosecutors referenced in Paragraph 21.

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

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against UPD, ACI, VIACOM  
3 INTERNATIONAL, VIACOM, NATIONAL, and DOES 1-20 for Violations of  
4 Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
5 (Health & Safety Code, §§ 25249.5, et seq.))

6 **Children's Sandals**

- 7 27. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
8 reference paragraphs 1 through 26 of this complaint as though fully set forth herein.
- 9 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
10 distributor, promoter, or retailer of Children's Sandals ("Sandals"), including but not  
11 limited to "Dora The Explorer" Sandals, Size 7/8, Dark Pink, with "DoRa", a print of a  
12 dancing girl with black hair in a green dress, purple and yellow flowers, and a light  
13 green plastic toe strap connected to the sandal at three points; attached tag reads, "DORA  
14 THE EXPLORER™; © VIACOM INTERNATIONAL INC. All Rights Reserved",  
15 "Manufactured Exclusively for ACI International Los Angeles, CA 90049.
- 16 29. Sandals contain DBP.
- 17 30. Defendants knew or should have known that DBP has been identified by the State of  
18 California as a chemical known to cause developmental, female, and male reproductive  
19 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants  
20 were also informed of the presence of DBP in Sandals within Plaintiff's notice of alleged  
21 violations further discussed above at Paragraph 20.
- 22 31. Plaintiff's allegations regarding Sandals concerns "[c]onsumer products exposure[s],"  
23 which "is an exposure that results from a person's acquisition, purchase, storage,  
24 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
25 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.  
26 Sandals are consumer products, and, as mentioned herein, exposures to DBP took place  
27 as a result of such normal and foreseeable consumption and use.
- 28 32. Plaintiff's allegations regarding Sandals also concern Occupational Exposures, which  
"means an exposure to any employee in his or her employer's workplace." *Cal. Code*

1           *Regs. tit. 27, § 25602(f)*. Exposures of DBP to Defendants' employees occurred through  
2           the course of their employment in their employers' workplaces.

3           33. Plaintiff is informed, believes, and thereon alleges that between July 27, 2009 and the  
4           present, each of the Defendants knowingly and intentionally exposed their employees and  
5           California consumers and users of Sandals, which Defendants manufactured, distributed,  
6           or sold as mentioned above, to DBP, without first providing any type of clear and  
7           reasonable warning of such to the exposed persons before the time of exposure.  
8           Defendants have distributed and sold Sandals in California. Defendants know and intend  
9           that California consumers will use and consume Sandals, thereby exposing them to DBP.  
10          Defendants thereby violated Proposition 65.

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

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

25          36. 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.



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

4 38. 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 Dated: 12-21, 2012

YEROUSHALMI & ASSOCIATES

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