

1 Reuben Yeroushalmi (SBN 193981)  
Daniel D. Cho (SBN 105409)  
2 Ben Yeroushalmi (SBN 232540)  
**YEROUSHALMI & ASSOCIATES**  
3 9100 Wilshire Boulevard, Suite 610E  
4 Beverly Hills, California 90212  
Telephone: 310.623.1926  
5 Facsimile: 310.623.1930

6 Attorneys for Plaintiff,  
7 Consumer Advocacy Group, Inc.

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ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

JUL 09 2013

John A. Clarke, Executive Officer/Clerk  
BY Cristina Grigalva Deputy  
Cristina Grigalva

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10  
11 **CONSUMER ADVOCACY GROUP, INC.,**  
12 in the public interest,

13 Plaintiff,

14 v.

15  
16 **SUPER CENTER CONCEPTS, INC. dba**  
17 **SUPERIOR GROCERS, a California**  
Corporation; and DOES 1-20;

18 Defendants.

CASE NO. **BC 514537**

COMPLAINT FOR PENALTY AND  
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)

19  
20  
21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
22 defendants SUPER CENTER CONCEPTS, INC. dba SUPERIOR GROCERS, and DOES 1-20  
23 as follows:

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27 //

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 SUPER CENTER CONCEPTS, INC. dba SUPERIOR GROCERS (“SUPER  
8 CENTER”) is a California corporation, doing business in the State of California at all  
9 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 SUPER CENTER and  
17 DOES 1-20.
- 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. Upon information and belief, at all times relevant to this action, each of the Defendants,  
21 including DOES 1-20, was an agent, servant, or employee of each of the other  
22 Defendants. In conducting the activities alleged in this Complaint, each of the  
23 Defendants was acting within the course and scope of this agency, service, or  
24 employment, and was acting with the consent, permission, and authorization of each of  
25 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
26 were ratified and approved by every other Defendant or their officers or managing agents.

1 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
2 wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

- 8 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
9 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
10 those given by statute to other trial courts. This Court has jurisdiction over this action  
11 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
12 violations of Proposition 65 in any Court of competent jurisdiction.
- 13 9. This Court has jurisdiction over Defendants named herein because Defendants either  
14 reside or are located in this State or are foreign corporations authorized to do business in  
15 California, are registered with the California Secretary of State, or who do sufficient  
16 business in California, have sufficient minimum contacts with California, or otherwise  
17 intentionally avail themselves of the markets within California through their manufacture,  
18 distribution, promotion, marketing, or sale of their products within California to render  
19 the exercise of jurisdiction by the California courts permissible under traditional notions  
20 of fair play and substantial justice.
- 21 10. Venue is proper in the County of Los Angeles because one or more of the instances of  
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
23 because Defendants conducted, and continue to conduct, business in the County of Los  
24 Angeles with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

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

8 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
9 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
10 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
11 chemicals and chemical families. Proposition 65 imposes warning requirements and  
12 other controls that apply to Proposition 65-listed chemicals.

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

19 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
20 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
21 "Threaten to violate" means "to create a condition in which there is a substantial  
22 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
23 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
24 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

25 15. Plaintiff identified certain practices of manufacturers and distributors of Di-*n*-butyl  
26 Phthalate ("DBP")-bearing products of exposing, knowingly and intentionally, persons in  
27 California to the Proposition 65-listed chemicals of such products without first providing  
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1 clear and reasonable warnings of such to the exposed persons prior to the time of  
2 exposure. Plaintiff later discerned that Defendants engaged in such practice.

3 16. On December 2, 2005, the Governor of California added Di-*n*-butyl Phthalate (DBP) to  
4 the list of chemicals known to the State to cause reproductive toxicity (*Cal. Code Regs.*  
5 tit. 27, § 27001(c)). Di-*n*-butyl Phthalate (DBP) is known to the State to cause  
6 developmental, female, and male reproductive toxicity. Pursuant to Health and Safety  
7 Code sections 25249.9 and 25249.10, twenty (20) months after addition of Di-*n*-butyl  
8 Phthalate (DBP) to the list of chemicals known to the State to cause reproductive toxicity,  
9 Di-*n*-butyl Phthalate (DBP) became fully subject to Proposition 65 warning requirements  
10 and discharge prohibitions.

11 **SATISFACTION OF PRIOR NOTICE**

12 17. On or about October 12, 2012, Plaintiff gave notice of alleged violations of Health and  
13 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
14 private action to SUPER CENTER and to the California Attorney General, County  
15 District Attorneys, and City Attorneys for each city containing a population of at least  
16 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the  
17 product Sandals.

18 18. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
19 products involved, the likelihood that such products would cause users to suffer  
20 significant exposures to lead, and the corporate structure of each of the Defendants.

21 19. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
22 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
23 Plaintiff who executed the certificate had consulted with at least one person with relevant  
24 and appropriate expertise who reviewed data regarding the exposures to DBP, the subject  
25 Proposition 65-listed chemical of this action. Based on that information, the attorney for  
26 Plaintiff who executed the Certificate of Merit believed there was a reasonable and  
27 meritorious case for this private action. The attorney for Plaintiff attached to the  
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1 Certificate of Merit served on the Attorney General the confidential factual information  
2 sufficient to establish the basis of the Certificate of Merit.

3 20. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
4 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
5 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d)*.

6 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
7 gave notices of the alleged violations to SUPER CENTER and the public prosecutors  
8 referenced in Paragraph 17.

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

12 **FIRST CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against SUPER CENTER and**  
14 **DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
15 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

16 **Sandals**

17 23. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
18 reference paragraphs 1 through 22 of this complaint as though fully set forth herein.

19 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
20 distributor, promoter, or retailer of Sandals, which include but are not limited to "Brown  
21 Sandals with Plaid Pattern, with "STARBOW" and "OUTDOOR" Logos, Size 8, Bar  
22 Code 6272030399, "All Man Made Materials" "Made in China"" ("SANDALS").

23 25. SANDALS contain DBP.

24 26. Defendants knew or should have known that DBP has been identified by the State of  
25 California as a chemical known to cause reproductive toxicity and therefore was subject  
26 to Proposition 65 warning requirements. Defendants were also informed of the presence  
27 of DBP in SANDALS within Plaintiff's notice of alleged violations further discussed  
28 above at Paragraph 17.

- 1 27. Plaintiff's allegations regarding SANDALS concern "[c]onsumer products exposure[s],"  
2 which "is an exposure that results from a person's acquisition, purchase, storage,  
3 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
4 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).  
5 SANDALS are consumer products, and, as mentioned herein, exposures to DBP took  
6 place as a result of such normal and foreseeable consumption and use.
- 7 28. Plaintiff's allegations regarding SANDALS also concern occupational exposures, which  
8 "means an exposure to any employee in his or her employer's workplace." *Cal. Code*  
9 *Regs.* tit. 27, § 25602(f). Exposures of DBP to Defendants' employees occurred through  
10 the course of their employment in their employers' workplaces.
- 11 29. Plaintiff is informed, believes, and thereon alleges that between October 12, 2009 and the  
12 present, each of the Defendants knowingly and intentionally exposed their employees and  
13 California consumers and users of SANDALS, which Defendants manufactured,  
14 distributed, or sold as mentioned above, to DBP, without first providing any type of clear  
15 and reasonable warning of such to the exposed persons before the time of exposure.  
16 Defendants have distributed and sold SANDALS in California. Defendants know and  
17 intend that California consumers will use and consume SANDALS, thereby exposing  
18 them to DBP. Defendants thereby violated Proposition 65.
- 19 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
20 Persons sustain exposures by handling SANDALS without wearing gloves or any other  
21 personal protective equipment, or by touching bare skin or mucous membranes with  
22 gloves after handling SANDALS, as well as through direct and indirect hand to mouth  
23 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
24 SANDALS. And as to Defendants' employees, employees may be exposed to DBP in the  
25 course of their employment by handling, distributing, and selling SANDALS.
- 26 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
27 Proposition 65 as to SANDALS have been ongoing and continuous to the date of the  
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1 signing of this complaint, as Defendants engaged and continue to engage in conduct  
2 which violates Health and Safety Code section 25249.6, including the manufacture,  
3 distribution, promotion, and sale of SANDALS, so that a separate and distinct violation  
4 of Proposition 65 occurred each and every time a person was exposed to DBP by  
5 SANDALS as mentioned herein.

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

9 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
10 \$2,500.00 per day per individual exposure to DBP from SANDALS, pursuant to Health  
11 and Safety Code section 25249.7(b).

12 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
13 filing this Complaint.

14  
15 **PRAYER FOR RELIEF**

16 Plaintiff demands against each of the Defendants as follows:

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

22  
23 Dated: 07/09, 2013

YEROUSHALMI & ASSOCIATES

24  
25 BY: \_\_\_\_\_

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