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ORIGINAL FILED  
Superior Court Of California  
County Of Los Angeles

JUN 18 2014

Sherri R. Carter, Executive Officer/Clerk  
By: Kristina Vargas, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES**

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

15 Plaintiff,

16 v.

17 DOLGENCORP, LLC, a Kentucky Limited  
18 Liability Company; DOLLAR GENERAL  
19 CORPORATION, a Tennessee Corporation;  
20 DOLGEN CALIFORNIA, LLC, a Tennessee  
21 Limited Liability Company; and DOES 1-20;

22 Defendants.

CASE NO.

BC548895

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)

23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
24 defendants DOLGENCORP, LLC, DOLLAR GENERAL CORPORATION, DOLGEN  
25 CALIFORNIA, LLC and DOES 1-20 as follows:

26 **THE PARTIES**

- 27 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
28 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

1 as a private attorney general, brings this action in the public interest as defined under  
2 Health and Safety Code section 25249.7, subdivision (d).

3 2. Defendant DOLGENCORP, LLC ("DOLGENCORP") is a Kentucky limited liability  
4 company, doing business in the State of California at all relevant times herein.

5 3. Defendant DOLLAR GENERAL CORPORATION ("DOLLAR GENERAL") is a  
6 Tennessee corporation, doing business in the State of California at all relevant times  
7 herein.

8 4. Defendant DOLGEN CALIFORNIA, LLC ("DOLGEN CALIFORNIA") is a Tennessee  
9 limited liability company, doing business in the State of California at all relevant times  
10 herein.

11 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
12 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
13 complaint to allege their true names and capacities when ascertained. Plaintiff is

14 informed, believes, and thereon alleges that each fictitiously named defendant is  
15 responsible in some manner for the occurrences herein alleged and the damages caused  
16 thereby.

17 6. At all times mentioned herein, the term "Defendants" includes DOLGENCORP,  
18 DOLLAR GENERAL, DOLGEN CALIFORNIA and DOES 1-20.

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

21 8. Upon information and belief, at all times relevant to this action, each of the Defendants,  
22 including DOES 1-20, was an agent, servant, or employee of each of the other  
23 Defendants. In conducting the activities alleged in this Complaint, each of the  
24 Defendants was acting within the course and scope of this agency, service, or  
25 employment, and was acting with the consent, permission, and authorization of each of  
26 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
27 were ratified and approved by every other Defendant or their officers or managing agents.  
28

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

3 9. 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 10. 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 11. 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 12. 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 13. 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  
28

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 14. 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 15. 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 16. 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 17. Plaintiff identified certain practices of manufacturers and distributors of Di-*n*-butyl  
26 Phthalate ("DBP") and Diethyl Hexyl Phthalate ("DEHP")-bearing products of exposing,  
27 knowingly and intentionally, persons in California to the Proposition 65-listed chemicals  
28 of such products without first providing clear and reasonable warnings of such to the

1 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants  
2 engaged in such practice.

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

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

17 **SATISFACTION OF PRIOR NOTICE**

18 20. On or about July 12, 2013, Plaintiff gave notice of alleged violations of Health and Safety  
19 Code section 25249.6, concerning consumer products exposures, subject to a private  
20 action to DOLGENCORP, DOLLAR GENERAL, DOLGEN CALIFORNIA and to the  
21 California Attorney General, County District Attorneys, and City Attorneys for each city  
22 containing a population of at least 750,000 people in whose jurisdictions the violations  
23 allegedly occurred, concerning the products Footwear containing DBP.

24 21. On or about December 13, 2013, Plaintiff gave notice of alleged violations of Health and  
25 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
26 private action to DOLGENCORP, DOLLAR GENERAL, DOLGEN CALIFORNIA and  
27 to the California Attorney General, County District Attorneys, and City Attorneys for  
28

1 each city containing a population of at least 750,000 people in whose jurisdictions the  
2 violations allegedly occurred, concerning the products Flip Flops containing DBP.

3 22. On or about December 31, 2013, Plaintiff gave notice of alleged violations of Health and  
4 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
5 private action to DOLGENCORP, DOLLAR GENERAL, DOLGEN CALIFORNIA and  
6 to the California Attorney General, County District Attorneys, and City Attorneys for  
7 each city containing a population of at least 750,000 people in whose jurisdictions the  
8 violations allegedly occurred, concerning the products Flip Flops containing DBP.

9 23. On or about August 1, 2013, Plaintiff gave notice of alleged violations of Health and  
10 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
11 private action to DOLGENCORP, DOLLAR GENERAL, DOLGEN CALIFORNIA and  
12 to the California Attorney General, County District Attorneys, and City Attorneys for  
13 each city containing a population of at least 750,000 people in whose jurisdictions the  
14 violations allegedly occurred, concerning the products Pliers containing DEHP.

15 24. On or about December 31, 2013, Plaintiff gave notice of alleged violations of Health and  
16 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
17 private action to DOLGENCORP, DOLLAR GENERAL, DOLGEN CALIFORNIA and  
18 to the California Attorney General, County District Attorneys, and City Attorneys for  
19 each city containing a population of at least 750,000 people in whose jurisdictions the  
20 violations allegedly occurred, concerning the products Pliers containing DEHP.

21 25. 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 DBP and DEHP, and the corporate structure of each of the  
24 Defendants.

25 26. 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 DBP and DEHP.

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

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

9 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
10 gave notices of the alleged violations to DOLGENCORP, DOLLAR GENERAL,  
11 DOLGEN CALIFORNIA and the public prosecutors referenced in Paragraph 20 through  
12 24.

13 29. 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 DOLGENCORP,**  
18 **DOLLAR GENERAL, DOLGEN CALIFORNIA and DOES 1-20 for Violations of**  
19 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
*(Health & Safety Code, §§ 25249.5, et seq.)*

20 **Footwear**

21 30. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
22 reference paragraphs 1 through 29 of this complaint as though fully set forth herein.

23 31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
24 distributor, promoter, or retailer of Footwear, which includes but is not limited to: (1)  
25 Dollar General® Children's Sandals, Color: Blue, baseball themed SY13 DEPT 350,  
26 "Size S (5-6)" "4 30000 13135 8" Tracking No. "3210B13"; (2) Dollar General®  
27 Children's Sandals, Color: Purple, "SY13 DEPT 350," "Size M (7-8)" "4 30000 13173  
28 0" Tracking No. "5432B13" "SKU#: 11408915"; (3) Dollar General® Children's Sandals,

1 Color: Fuschia/Black, zebra print "SY13 DEPT 350," "Size M (13-1)" "4 30000 12911 9:  
2 "6543B13" "SKU #: 11404806"; (4) Dollar General® Children's Sandals, Color: Blue,  
3 baseball themed SY13 DEPT 350, "Size L (9-10)" "4 30000 13137 2" Tracking No.  
4 "3210B13" "SKU# 11408110"; (5) Dollar General® Children's Sandals, Color: Pink,  
5 /Yellow, "SY 13 DEPT 350" "Size L (9-10)" "4 30000 13162 4" Tracking NO.  
6 "5432B13" "SKU 11408904"; and (6) Dollar General® Children's Sandals, Color:  
7 Turquoise "SIZE L (2/3)" "Tracking No. 7654B13" "SKU #: 11405610" ("SANDALS").

8 32. SANDALS contain DBP.

9 33. Defendants knew or should have known that DBP has been identified by the State of  
10 California as a chemical known to cause reproductive toxicity and therefore was subject  
11 to Proposition 65 warning requirements. Defendants were also informed of the presence  
12 of DBP in SANDALS within Plaintiff's notice of alleged violations further discussed  
13 above at Paragraph 20.

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

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

24 36. Plaintiff is informed, believes, and thereon alleges that between July 12, 2010 and the  
25 present, each of the Defendants knowingly and intentionally exposed their employees and  
26 California consumers and users of SANDALS, which Defendants manufactured,  
27 distributed, or sold as mentioned above, to DBP, without first providing any type of clear  
28 and reasonable warning of such to the exposed persons before the time of exposure.



1 Defendants have distributed and sold DBP in California. Defendants know and intend  
2 that California consumers will use and consume SANDALS, thereby exposing them to  
3 DBP. Defendants thereby violated Proposition 65.

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

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

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

21 40. Based on the allegations herein, Defendants are liable for civil penalties of up to  
22 \$2,500.00 per day per individual exposure to DBP from SANDALS, pursuant to Health  
23 and Safety Code section 25249.7(b).

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

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1 **SECOND CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against DOLGENCORP,**  
3 **DOLLAR GENERAL, DOLGEN CALIFORNIA 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 **Flip Flops**

7 42. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
8 reference paragraphs 1 through 41 of this complaint as though fully set forth herein.

9 43. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
10 distributor, promoter, or retailer of Flip Flops, which includes but is not limited to: (1)  
11 Children's solid light blue polymeric flip flops with diamond cross hatching on the top of  
12 the soles and linear cross hatching on the bottom of the sole and translucent blue tinted  
13 plastic tongs, "DOLLAR GENERAL® SY13 DEPT 350 SIZE S(11-12) Bar Code: 4  
14 30000 12973 7, SKU#11405614, TRACKING NO: 7654B13, "ALL MAN MADE  
15 MATERIALS" "MADE IN CHINA" Yellow Dot \$1.; (2) Children's green polymeric flip  
16 flops with shark and light green circle painted print on sole and opaque green plastic  
17 tongs, "DOLLAR GENERAL® ""SY13-B-1FF TB SHARK 1 430000131297-350"  
18 SIZE: S(5-6) SKU#11408102, TRACKING NO: 3210B13, "ALL MAN MADE  
19 MATERIALS" "MADE IN CHINA"; and (3) Children's solid green polymeric flip flops  
20 with diamond cross hatching on the top of the soles and linear cross hatching on the  
21 bottom of the sole and opaque green plastic tongs, "DOLLAR GENERAL® SY13 DEPT  
22 350 SIZE S(5-6) Bar Code: 4 30000 13129 7, SKU#11408111, TRACKING NO:  
23 3210B13, "ALL MAN MADE MATERIALS" "MADE IN CHINA" Yellow Dot \$1., (4)  
24 Solid Purple polymeric flip flops with diamond cross hatching on the top of the soles and  
25 linear cross hatching on the bottom of the sole and opaque plastic purple tongs (S), "SIZE  
26 (5-6) ALL MAN MADE MATERIAL MADE IN CHINA" "DOLLAR GENERAL S13  
27 DEPT 350 SIZE S (5-6)" "bar code 4 3000 13340 6" "\$1" "Distributed by:  
28 DOLGENCORP, LLC 100 MISSON RIDGE GOODLETTSVILLE, TN 37072-2170  
MADE IN CHINA." ("FLIP FLOPS").

1 44. FLIP FLOPS contain DBP.

2 45. Defendants knew or should have known that DBP has been identified by the State of  
3 California as a chemical known to cause reproductive toxicity and therefore was subject  
4 to Proposition 65 warning requirements. Defendants were also informed of the presence  
5 of DBP in FLIP FLOPS within Plaintiff's notice of alleged violations further discussed  
6 above at Paragraph 21 through 22.

7 46. Plaintiff's allegations regarding FLIP FLOPS concern "[c]onsumer products  
8 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
9 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
10 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
11 *25602(b)*. FLIP FLOPS are consumer products, and, as mentioned herein, exposures to  
12 DBP took place as a result of such normal and foreseeable consumption and use.

13 47. Plaintiff's allegations regarding FLIP FLOPS also concern Occupational Exposures,  
14 which "means an exposure to any employee in his or her employer's workplace." *Cal.*  
15 *Code Regs. tit. 27, § 25602(f)*. Exposures of DBP to Defendants' employees occurred  
16 through the course of their employment in their employers' workplaces.

17 48. Plaintiff is informed, believes, and thereon alleges that between December 13, 2010 and  
18 the present, each of the Defendants knowingly and intentionally exposed their employees  
19 and California consumers and users of FLIP FLOPS, which Defendants manufactured,  
20 distributed, or sold as mentioned above, to DBP, without first providing any type of clear  
21 and reasonable warning of such to the exposed persons before the time of exposure.  
22 Defendants have distributed and sold DBP in California. Defendants know and intend  
23 that California consumers will use and consume FLIP FLOPS, thereby exposing them to  
24 DBP. Defendants thereby violated Proposition 65.

25 49. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
26 Persons sustain exposures by handling FLIP FLOPS without wearing gloves or any other  
27 personal protective equipment, or by touching bare skin or mucous membranes with  
28 gloves after handling FLIP FLOPS, as well as through direct and indirect hand to mouth

1 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
2 FLIP FLOPS. And as to Defendants' employees, employees may be exposed to DBP in  
3 the course of their employment by handling, distributing, and selling FLIP FLOPS.

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

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

14 52. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to DBP from FLIP FLOPS, pursuant to Health  
16 and Safety Code section 25249.7(b).

17 53. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
18 filing this Complaint.

19 **THIRD CAUSE OF ACTION**

20 **(By CONSUMER ADVOCACY GROUP, INC. and against DOLGENCORP,  
21 DOLLAR GENERAL, DOLGEN CALIFORNIA and DOES 1-20 for Violations of  
22 Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
(Health & Safety Code, §§ 25249.5, et seq.))**

23 **Pliers**

24 54. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
25 reference paragraphs 1 through 53 of this complaint as though fully set forth herein.

26 55. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
27 distributor, promoter, or retailer of Pliers which includes but is not limited to: (1) DG™  
28 hardware Long Nose Pliers, "Durable", Black "Matte Grip", "Drop Forged", "6 in.",

1 “N0050”, “Made in China”, barcode: 4 00006 07970 1; (2) DG™ hardware Slip Joint  
2 Pliers, “Durable”, Black “Matte Grip”, “Drop Forged”, “6 in.”, “N0052”, “Made in  
3 China”, barcode: 4 00006 07988 6; and (3) DG™ hardware Long Nose Pliers, “Durable”,  
4 “Matte Grip”, “Drop Forged”, “6 in.”, “N0050”, “Made in China”, barcode: 4 00006  
5 07970 1. (“PLIERS”).

6 56. PLIERS contain DEHP.

7 57. Defendants knew or should have known that DEHP 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 DEHP in PLIERS within Plaintiff’s notice of alleged violations further discussed  
11 above at Paragraph 23 through 24.

12 58. Plaintiff’s allegations regarding PLIERS concern “[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 PLIERS are consumer products, and, as mentioned herein, exposures to DEHP took place  
17 as a result of such normal and foreseeable consumption and use.

18 59. Plaintiff’s allegations regarding PLIERS also concern Occupational Exposures, which  
19 “means an exposure to any employee in his or her employer’s workplace.” *Cal. Code*  
20 *Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendants’ employees occurred through  
21 the course of their employment in their employers’ workplaces.

22 60. Plaintiff is informed, believes, and thereon alleges that between July 29, 2010 and the  
23 present, each of the Defendants knowingly and intentionally exposed their employees and  
24 California consumers and users of PLIERS, which Defendants manufactured, distributed,  
25 or sold as mentioned above, to DEHP, without first providing any type of clear and  
26 reasonable warning of such to the exposed persons before the time of exposure.

27 Defendants have distributed and sold DEHP in California. Defendants know and intend  
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1 that California consumers will use and consume PLIERS, thereby exposing them to  
2 DEHP. Defendants thereby violated Proposition 65.

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

4 Persons sustain exposures by handling PLIERS without wearing gloves or any other  
5 personal protective equipment, or by touching bare skin or mucous membranes with  
6 gloves after handling PLIERS, as well as through direct and indirect hand to mouth  
7 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
8 PLIERS. And as to Defendants' employees, employees may be exposed to DEHP in the  
9 course of their employment by handling, distributing, and selling PLIERS.

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

17 63. 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 64. Based on the allegations herein, Defendants are liable for civil penalties of up to  
21 \$2,500.00 per day per individual exposure to DEHP from PLIERS, pursuant to Health  
22 and Safety Code section 25249.7(b).

23 65. 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: JUNE 18, 2014

YEROUSHALMI & YEROUSHALMI

6  
7 BY: \_\_\_\_\_  
8 Reuben Yeroushalmi  
9 Attorneys for Plaintiff,  
10 Consumer Advocacy Group, Inc.  
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