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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 DOLLAR MAX #9, business entity form  
18 unknown; and DOES 1-20;

19 Defendants.

CASE NO. **BC547937**

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)

20 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
21 Defendants DOLLAR MAX #9, and DOES 1-20 as follows:

22 **THE PARTIES**

- 23 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
24 organization qualified to do business in the State of California. CAG is a person within  
25 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
26 as a private attorney general, brings this action in the public interest as defined under  
27 Health and Safety Code section 25249.7, subdivision (d).

COPY

- 1 2. Defendant DOLLAR MAX #9 ("DOLLAR") ~~does~~ business in the State of California at  
2 all relevant times herein.
- 3 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
4 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
5 complaint to allege their true names and capacities when ascertained. Plaintiff is  
6 informed, believes, and thereon alleges that each fictitiously named defendant is  
7 responsible in some manner for the occurrences herein alleged and the damages caused  
8 thereby.
- 9 4. At all times mentioned herein, the term "Defendants" includes DOLLAR, and DOES 1-  
10 20.
- 11 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
12 times mentioned herein have conducted business within the State of California.
- 13 6. Upon information and belief, at all times relevant to this action, each of the Defendants,  
14 including DOES 1-20, was an agent, servant, or employee of each of the other  
15 Defendants. In conducting the activities alleged in this Complaint, each of the  
16 Defendants was acting within the course and scope of this agency, service, or  
17 employment, and was acting with the consent, permission, and authorization of each of  
18 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
19 were ratified and approved by every other Defendant or their officers or managing agents.  
20 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
21 wrongful conduct of each of the other Defendants.
- 22 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
23 Defendants was a person doing business within the meaning of Health and Safety Code  
24 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
25 employees at all relevant times.

#### 26 JURISDICTION

- 27 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
28 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except

1 those given by statute to other trial courts. ~~This Court has~~ jurisdiction over this action  
2 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
3 violations of Proposition 65 in any Court of competent jurisdiction.

4 9. This Court has jurisdiction over Defendants named herein because Defendants either  
5 reside or are located in this State or are foreign corporations authorized to do business in  
6 California, are registered with the California Secretary of State, or who do sufficient  
7 business in California, have sufficient minimum contacts with California, or otherwise  
8 intentionally avail themselves of the markets within California through their manufacture,  
9 distribution, promotion, marketing, or sale of their products within California to render  
10 the exercise of jurisdiction by the California courts permissible under traditional notions  
11 of fair play and substantial justice.

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

16 **BACKGROUND AND PRELIMINARY FACTS**

17 11. In 1986, California voters approved an initiative to address growing concerns about  
18 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
19 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
20 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
21 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
22 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
23 from contamination, to allow consumers to make informed choices about the products  
24 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
25 fit.

26 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
27 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
28 § 25249.8. The list, which the Governor updates at least once a year, contains over 700

1 chemicals and chemical families. Proposition 65 imposes warning requirements and  
2 other controls that apply to Proposition 65-listed chemicals.

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

9 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
10 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
11 "Threaten to violate" means "to create a condition in which there is a substantial  
12 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

15 15. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl  
16 Phthalate ("DEHP"), Di-n-Butyl Phthalate (DBP) and lead-bearing products of exposing,  
17 knowingly and intentionally, persons in California to the Proposition 65-listed chemicals  
18 of such products without first providing clear and reasonable warnings of such to the  
19 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants  
20 engaged in such practice.

21 16. On February 27, 1987, the Governor of California added lead to the list of chemicals  
22 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).  
23 Lead is known to the State to cause developmental, female, and male reproductive  
24 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
25 months after addition of lead to the list of chemicals known to the State to cause  
26 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements  
27 and discharge prohibitions.

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

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

14 **SATISFACTION OF PRIOR NOTICE**

15 19. On or about December 13, 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 DOLLAR and to the California Attorney General, County District  
18 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
19 people in whose jurisdictions the violations allegedly occurred, concerning the product  
20 Flip Flops, Women's Flip Flops and Sandals containing DEHP, DBP and Lead.

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

25 21. 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, DBP and

1 Lead, 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 22. 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 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
11 gave notices of the alleged violation to DOLLAR and the public prosecutors referenced  
12 in Paragraph 19.

13 24. 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 DOLLA MAX #9, and DOES**  
18 **1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**  
19 **of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

20 **Flip Flops**

21 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
22 reference paragraphs 1 through 24 of this complaint as though fully set forth herein. Each  
23 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
24 promoter, or retailer of Flip Flops, which includes but is not limited to, "Toddler's black  
25 polymeric sandals with painted World Wrestling "WW®" "JOHN CENA®" Design and  
26 red plastic tongs, "HNX, SEP 2010, 45836, SIZE: 5/6, ALL MAN MADE MATERIALS,  
27 FUZHOU, CHINA"" ("FLIP FLOPS").

28 26. FLIP FLOPS contain DBP.

1 27. Defendants knew or should have known that DBP has been identified by the State of  
2 California as a chemical known to cause cancer and reproductive toxicity and therefore  
3 was subject to Proposition 65 warning requirements. Defendants were also informed of  
4 the presence of DBP in FLIP FLOPS within Plaintiff's notice of alleged violations further  
5 discussed above at Paragraph 19.

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

12 29. Plaintiff is informed, believes, and thereon alleges that between December 13, 2010 and  
13 the present, each of the Defendants knowingly and intentionally exposed their California  
14 consumers and users of FLIP FLOPS, which Defendants manufactured, distributed, or  
15 sold as mentioned above, to DBP, without first providing any type of clear and  
16 reasonable warning of such to the exposed persons before the time of exposure.

17 Defendants have distributed and sold FLIP FLOPS in California. Defendants know and  
18 intend that California consumers will use and consume FLIP FLOPS, thereby exposing  
19 them to DBP. Defendants thereby violated Proposition 65.

20 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
21 Persons sustain exposures by handling FLIP FLOPS without wearing gloves or any other  
22 personal protective equipment, or by touching bare skin or mucous membranes with  
23 gloves after handling FLIP FLOPS, as well as through direct and indirect hand to mouth  
24 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
25 FLIP FLOPS.

26 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
27 Proposition 65 as to FLIP FLOPS have been ongoing and continuous to the date of the  
28 signing of this complaint, as Defendants engaged and continue to engage in conduct

1 which violates Health and Safety Code section 25249.6, including the manufacture,  
2 distribution, promotion, and sale of FLIP FLOPS, so that a separate and distinct violation  
3 of Proposition 65 occurred each and every time a person was exposed to DBP by FLIP  
4 FLOPS as mentioned herein.

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

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

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

### 13 SECOND CAUSE OF ACTION

14 (By CONSUMER ADVOCACY GROUP, INC. and against DOLLA MAX #9, and DOES  
15 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act  
16 of 1986 (Health & Safety Code, §§ 25249.5, et seq.))

### 17 **Women's Flip Flops**

18 35. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
19 reference paragraphs 1 through 34 of this complaint as though fully set forth herein. Each  
20 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
21 promoter, or retailer of Flip Flops, which includes but is not limited to, "Women's black  
22 polymeric flip flops with gold and white painted floral and butterfly design and red,  
23 yellow, and white plastic flowers on the plastic black tongs, NO-229, (9/40)"  
24 ("WOMEN'S FLIP FLOPS").

25 36. WOMEN'S FLIP FLOPS contain Lead.

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



1 the presence of Lead in WOMEN'S FLIP FLOPS ~~with~~in Plaintiff's notice of alleged  
2 violations further discussed above at Paragraph 19.

3 38. Plaintiff's allegations regarding WOMEN'S FLIP FLOPS concerns "[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). WOMEN'S FLIP FLOPS are consumer products, and, as mentioned herein,  
8 exposures to Lead took place as a result of such normal and foreseeable consumption and  
9 use.

10 39. Plaintiff is informed, believes, and thereon alleges that between December 13, 2010 and  
11 the present, each of the Defendants knowingly and intentionally exposed their California  
12 consumers and users of WOMEN'S FLIP FLOPS, which Defendants manufactured,  
13 distributed, or sold as mentioned above, to Lead, without first providing any type of clear  
14 and reasonable warning of such to the exposed persons before the time of exposure.  
15 Defendants have distributed and sold WOMEN'S FLIP FLOPS in California.  
16 Defendants know and intend that California consumers will use and consume WOMEN'S  
17 FLIP FLOPS, thereby exposing them to Lead. Defendants thereby violated Proposition  
18 65.

19 40. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
20 Persons sustain exposures by handling WOMEN'S FLIP FLOPS without wearing gloves  
21 or any other personal protective equipment, or by touching bare skin or mucous  
22 membranes with gloves after handling WOMEN'S FLIP FLOPS, as well as through  
23 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in  
24 particulate matter dispersed from WOMEN'S FLIP FLOPS.

25 41. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
26 Proposition 65 as to WOMEN'S FLIP FLOPS have been ongoing and continuous to the  
27 date of the signing of this complaint, as Defendants engaged and continue to engage in  
28 conduct which violates Health and Safety Code section 25249.6, including the

1 manufacture, distribution, promotion, and sale of WOMEN'S FLIP FLOPS, so that a  
2 separate and distinct violation of Proposition 65 occurred each and every time a person  
3 was exposed to Lead by WOMEN'S FLIP FLOPS as mentioned herein.

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

7 43. Based on the allegations herein, Defendants are liable for civil penalties of up to  
8 \$2,500.00 per day per individual exposure to Lead from WOMEN'S FLIP FLOPS,  
9 pursuant to Health and Safety Code section 25249.7(b).

10 44. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
11 filing this Complaint.

12 **THIRD CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against DOLLA MAX #9, and DOES**  
14 **1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**  
15 **of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

16 **Sandals**

17 45. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
18 reference paragraphs 1 through 44 of this complaint as though fully set forth herein. Each  
19 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
20 promoter, or retailer of Sandals, which includes but is not limited to, (1) Toddler's beige  
21 polymeric sandals with multi-colored painted super hero cartoon character design and red  
22 and orange plastic straps with an anime super hero appliqué "NO:2028" and (2)  
23 "Children's purple polymeric sandals with a beaded silver border and intricate  
24 multicolored floral and bee cartoon character painted design on the sole and a translucent  
25 plastic purple strap containing an intricate textured geometric design with an orange and  
26 clear purple beaded flower appliqué with purple gems (30) "328." ("SANDALS").

27 46. SANDALS contain DEHP and DBP.  
28

1 47. Defendants knew or should have known that DEHP and DBP has been identified by the  
2 State of California as a chemical known to cause cancer and reproductive toxicity and  
3 therefore was 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 19.

6 48. Plaintiff's allegations regarding SANDALS concerns "[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 DBP took  
11 place as a result of such normal and foreseeable consumption and use.

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

20 50. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
21 Persons sustain exposures by handling SANDALS without wearing gloves or any other  
22 personal protective equipment, or by touching bare skin or mucous membranes with  
23 gloves after handling SANDALS, as well as through direct and indirect hand to mouth  
24 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
25 SANDALS.

26 51. 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  
28 signing of this complaint, as Defendants engaged and continue to engage in conduct

1 which violates Health and Safety Code section 25249.6, including the manufacture,  
2 distribution, promotion, and sale of SANDALS, so that a separate and distinct violation  
3 of Proposition 65 occurred each and every time a person was exposed to DEHP and DBP  
4 by SANDALS as mentioned herein.

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

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

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

13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

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

22 Dated: June 5, 2014

23 YEROUSHALMI & YEROUSHLAMI

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

26 Reuben Yeroushalmi  
27 Attorneys for Plaintiff,  
28 Consumer Advocacy Group, Inc.