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ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 09 2016

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

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

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

9 **COUNTY OF LOS ANGELES**

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

12 Plaintiff,

13 v.

14 FAMILY DOLLAR STORES, INC., a
15 Delaware Corporation; ALIN PARTY
16 SUPPLY CO., a California Corporation and
17 DOES 1-20;

18 Defendants.

CASE NO.

BC 597530

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 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
20 Defendants and FAMILY DOLLAR STORES, INC., ALIN PARTY SUPPLY CO. and DOES 1-
21 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).

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

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1 **JURISDICTION**

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

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

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

19 **BACKGROUND AND PRELIMINARY FACTS**

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

- 1 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to
2 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
3 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
4 chemicals and chemical families. Proposition 65 imposes warning requirements and
5 other controls that apply to Proposition 65-listed chemicals.
- 6 14. All businesses with ten (10) or more employees that operate or sell products in California
7 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
8 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
9 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
10 reasonable" warnings before exposing a person, knowingly and intentionally, to a
11 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 12 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
13 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
14 "Threaten to violate" means "to create a condition in which there is a substantial
15 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
16 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
17 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 18 16. On February 27, 1987, the Governor of California added lead to the list of chemicals
19 known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)).
20 lead is known to the State to cause developmental, female, and male reproductive
21 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
22 months after addition of lead to the list of chemicals known to the State to cause
23 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements
24 and discharge prohibitions.
- 25 17. On October 1, 1992, the Governor of California added lead and lead compounds
26 ("LEAD") to the list of chemicals known to the State to cause cancer (Cal. Code Regs.
27 tit. 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
28 twenty (20) months after addition of lead and lead compounds to the list of chemicals

1 known to the State to cause cancer, lead and lead compounds became fully subject to
2 Proposition 65 warning requirements and discharge prohibitions.

3 18. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate, also
4 known as Bis (2-ethylhexyl) phthalate (“DEHP”) to the list of chemicals known to the
5 State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of
6 chemicals known to the State to cause developmental male reproductive toxicity.
7 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
8 after addition of DEHP to the list of chemicals known to the State to cause reproductive
9 toxicity, DEHP became fully subject to Proposition 65 warning requirements and
10 discharge prohibitions.

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

16 SATISFACTION OF PRIOR NOTICE

17 20. On or about November 3, 2014 Plaintiff gave notice of alleged violations of Health and
18 Safety Code section 25249.6, concerning consumer products exposures subject to a
19 private action to FAMILY and to the California Attorney General, County District
20 Attorneys, and City Attorneys for each city containing a population of at least 750,000
21 people in whose jurisdictions the violations allegedly occurred, concerning the product
22 Chocolate Flavored Candy, containing LEAD.

23 21. On or about June 16, 2015, Plaintiff gave notice of alleged violations of Health and
24 Safety Code section 25249.6, concerning consumer products exposures and occupational
25 exposures, subject to a private action to ALIN and to the California Attorney General,
26 County District Attorneys, and City Attorneys for each city containing a population of at
27 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
28 the product Flip Flops containing DEHP.

1 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer
2 products involved, the likelihood that such products would cause users to suffer
3 significant exposures to LEAD and DEHP and the corporate structure of each of the
4 Defendants.

5 23. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
6 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
7 Plaintiff who executed the certificate had consulted with at least one person with relevant
8 and appropriate expertise who reviewed data regarding the exposures to LEAD and
9 DEHP, the subject Proposition 65-listed chemicals of this action. Based on that
10 information, the attorney for Plaintiff who executed the Certificate of Merit believed
11 there was a reasonable and meritorious case for this private action. The attorney for
12 Plaintiff attached to the Certificate of Merit served on the Attorney General the
13 confidential factual information sufficient to establish the basis of the Certificate of
14 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 violation to FAMILY, ALIN and the public prosecutors
20 referenced in Paragraphs 20 and 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 FAMILY and DOES 1-20 for
3 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986
4 (*Health & Safety Code, §§ 25249.5, et seq.*))

5 **Chocolate Flavored Candy**

6 27. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 26 of this complaint as though fully set forth herein. Each
8 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
9 promoter, or retailer of Chocolate Flavored Candy, which includes but is not limited to
10 "Sixlets" "Candy Coated... Chocolate Flavored Candy" "Gluten Free", "Made In A
11 Facility That Does Not Process Nuts", "Manufactured In Canada" "3288T3" "NET WT:
12 4oz (113g)" UPC: "0 89669 03720 6" ("CANDY").

13 28. CANDY contains LEAD.

14 29. Defendants knew or should have known that LEAD has been identified by the State of
15 California as a chemical known to cause cancer and reproductive toxicity and therefore
16 was subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of LEAD in CANDY within Plaintiff's notice of alleged violations further
18 discussed above at Paragraph 20.

19 30. Plaintiff's allegations regarding CANDY concern "[c]onsumer products exposure[s],"
20 which "is an exposure that results from a person's acquisition, purchase, storage,
21 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
22 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.
23 CANDY is a consumer product, and, as mentioned herein, exposures to lead took place
24 as a result of such normal and foreseeable consumption and use.

25 31. Plaintiff is informed, believes, and thereon alleges that between November 3, 2011, and
26 the present, each of the Defendants knowingly and intentionally exposed California
27 consumers of CANDY, which Defendants manufactured, distributed, or sold as
28 mentioned above, to LEAD without first providing any type of clear and reasonable
warning of such to the exposed persons before the time of exposure. Defendants have

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

4 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.
5 Persons sustain exposures by eating and consuming CANDY, handling CANDY without
6 wearing gloves or any other personal protective equipment, or by touching bare skin or
7 mucous membranes with gloves after handling CANDY, as well as through direct and
8 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
9 matter dispersed from CANDY.

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

17 34. 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 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to LEAD from CANDY, pursuant to Health
22 and Safety Code section 25249.7(b).

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

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1 SECOND CAUSE OF ACTION

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

4 Flip Flops

5 37. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
6 reference paragraphs 1 through 36 of this complaint as though fully set forth herein. Each
7 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
8 promoter, or retailer of Flip Flops, which includes but is not limited to “Blossom
9 Boutique” Nautical Anchor Flip Flops, Mint; 7FTW015; Made in China; Size 6; UPC #:
10 8 08412 27965 2” (“FLIP FLOPS”).

11 38. FLIP FLOPS contain DEHP.

12 39. Defendants knew or should have known that DEHP has been identified by the State of
13 California as a chemical known to cause cancer and reproductive toxicity and therefore
14 was subject to Proposition 65 warning requirements. Defendants were also informed of
15 the presence of DEHP in FLIP FLOPS within Plaintiff's notice of alleged violations
16 further discussed above at Paragraph 21.

17 40. Plaintiff's allegations regarding FLIP FLOPS concern “[c]onsumer products
18 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
20 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
21 *25602(b)*. FLIP FLOPS is a consumer product, and, as mentioned herein, exposures to
22 lead took place as a result of such normal and foreseeable use.

23 41. Plaintiff's allegations regarding FLIP FLOPS also concern Occupational Exposures,
24 which “means an exposure to any employee in his or her employer's workplace.” *Cal.*
25 *Code Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Defendants' employees occurred
26 through the course of their employment in their employers' workplaces.

27 42. Plaintiff is informed, believes, and thereon alleges that between June 16, 2013, and the
28 present, each of the Defendants knowingly and intentionally exposed their employees,

1 California consumers of FLIP FLOPS, which Defendants manufactured, distributed, or
2 sold as mentioned above, to DEHP without first providing any type of clear and
3 reasonable warning of such to the exposed persons before the time of exposure.

4 Defendants have distributed and sold FLIP FLOPS in California. Defendants know and
5 intend that California consumers will use and wear FLIP FLOPS, thereby exposing them
6 to DEHP. Defendants thereby violated Proposition 65.

7 43. The principal routes of exposure are through dermal contact, ingestion and inhalation.

8 Persons sustain exposures by wearing FLIP FLOPS, handling FLIP FLOPS without
9 wearing gloves or any other personal protective equipment, or by touching bare skin or
10 mucous membranes with gloves after handling FLIP FLOPS, as well as through direct
11 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
12 particulate matter dispersed from FLIP FLOPS. And as to Defendant's employees,
13 employees may be exposed to DEHP in their course of their employment by handling,
14 distributing, and selling FLIP FLOPS.

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

22 45. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
23 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
24 violations alleged herein will continue to occur into the future.

25 46. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to lead from FLIP FLOPS, pursuant to Health
27 and Safety Code section 25249.7(b).

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1 47. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

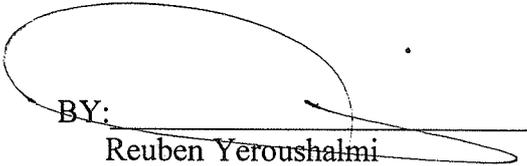
3 **PRAYER FOR RELIEF**

4 Plaintiff demands against each of the Defendants as follows:

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

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11 Dated: October 9, 2015

YEROUSHALMI & YEROUSHLAMI

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13 BY: 

14 Reuben Yeroushalmi
15 Attorney for Plaintiff,
16 Consumer Advocacy Group, Inc.
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