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7

ENDORSED  
FILED  
ALAMEDA COUNTY

APR - 5 2016

CLERK OF THE SUPERIOR COURT  
By S. IYAMU Deputy

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

9 **COUNTY OF ALAMEDA**

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

12 Plaintiff,

13 v.

14 NATIONAL STORES, INC. DBA FALLAS  
15 PAREDES, FACTORY 2-U, and FALLAS  
16 DISCOUNT STORES, a California  
17 Corporation; and DOES 1-20;

18 Defendants.

CASE NO. **RG16810206**

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 NATIONAL STORES, INC. DBA FALLAS PAREDES, FACTORY 2-U, and  
21 FALLAS DISCOUNT STORES, 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).

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1 2. Defendant NATIONAL STORES, INC. DBA FALLAS PAREDES, FACTORY 2-U,  
2 and FALLAS DISCOUNT STORES, (“NATIONAL”), is a California corporation doing  
3 business in the State of California at all relevant times herein.

4 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
5 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
6 complaint to allege their true names and capacities when ascertained. Plaintiff is  
7 informed, believes, and thereon alleges that each fictitiously named defendant is  
8 responsible in some manner for the occurrences herein alleged and the damages caused  
9 thereby.

10 4. At all times mentioned herein, the term “Defendants” includes NATIONAL and DOES  
11 1-20.

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

14 6. Upon information and belief, at all times relevant to this action, each of the Defendants,  
15 including DOES 1-20, was an agent, servant, or employee of each of the other  
16 Defendants. In conducting the activities alleged in this Complaint, each of the  
17 Defendants was acting within the course and scope of this agency, service, or  
18 employment, and was acting with the consent, permission, and authorization of each of  
19 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
20 were ratified and approved by every other Defendant or their officers or managing agents.  
21 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
22 wrongful conduct of each of the other Defendants.

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

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1 **JURISDICTION**

2 8. 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 9. 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 10. Venue is proper in the County of Alameda because one or more of the instances of  
16 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or  
17 because Defendants conducted, and continue to conduct, business in the County of  
18 Alameda with respect to the consumer product that is the subject of this action.

19 **BACKGROUND AND PRELIMINARY FACTS**

20 11. 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 12. 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 13. 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 14. 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 15. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate, also  
19 known as Bis (2-ethylhexyl) phthalate (“DEHP”) to the list of chemicals known to the  
20 State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of  
21 chemicals known to the State to cause developmental male reproductive toxicity.  
22 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
23 after addition of DEHP to the list of chemicals known to the State to cause reproductive  
24 toxicity, DEHP became fully subject to Proposition 65 warning requirements and  
25 discharge prohibitions.

26 16. On December 2, 2005, the Governor of California added Di-*n*-Butyl Phthalate (“DBP”)  
27 to the list of chemicals known to the State to cause reproductive toxicity (Cal. Code Regs.  
28 tit. 27, § 27001(c)). DBP is known to the State to cause developmental, female, and male

1 reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and  
2 25249.10, twenty (20) months after addition DBP to the list of chemicals known to the  
3 State to cause reproductive toxicity, DBP became fully subject to Proposition 65 warning  
4 requirements and discharge prohibitions.

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

10 **SATISFACTION OF PRIOR NOTICE**

11 18. On or about December 15, 2015 Plaintiff gave notice of alleged violations of Health and  
12 Safety Code section 25249.6, concerning consumer products exposures subject to a  
13 private action to NATIONAL and to the California Attorney General, County District  
14 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
15 people in whose jurisdictions the violations allegedly occurred, concerning the product  
16 Mats, containing DEHP and DBP.

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

21 20. 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 DEHP and DBP,  
25 the subject Proposition 65-listed chemicals of this action. Based on that information, the  
26 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
27 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
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1 to the Certificate of Merit served on the Attorney General the confidential factual  
2 information sufficient to establish the basis of the Certificate of Merit.

3 21. Plaintiff's notices 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 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
7 gave notices of the alleged violation to NATIONAL and the public prosecutors  
8 referenced in Paragraph 18.

9 23. 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.

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13 **FIRST CAUSE OF ACTION**

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

17 **Room Mats**

18 24. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
19 reference paragraphs 1 through 23 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 room mats with PVC, which includes but is not limited to (1)  
22 "Orange "Microfiber ROOM MAT"; "Mircofiber chenille anti-slip mat"; "081-811-140  
23 N14YJ006 32/4 F24 PG"; "MADE IN CHINA"; UPC: 6 966646 582055" and (2) "Pink  
24 "Microfiber ROOM MAT"; "Mircofiber chenille anti-slip mat"; "081-811-140  
25 N14YJ006 32/4 F24 PG"; "MADE IN CHINA"; UPC: 6 966646 582055" (ROOM  
26 MATS)

27 25. ROOM MATS contains DEHP and DBP.

28 26. Defendants knew or should have known that DEHP and DBP has been identified by the  
State of California as a chemical known to cause cancer and reproductive toxicity and

1 therefore was subject to Proposition 65 warning requirements. Defendants were also  
2 informed of the presence of DEHP and DBP in ROOM MATS within Plaintiff's notice of  
3 alleged violations further discussed above at Paragraph 18.

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

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

15 29. Plaintiff is informed, believes, and thereon alleges that between May 5, 2012, and the  
16 present, each of the Defendants knowingly and intentionally exposed their employees,  
17 California consumers of ROOM MATS, which Defendants manufactured, distributed, or  
18 sold as mentioned above, to DEHP and DBP without first providing any type of clear and  
19 reasonable warning of such to the exposed persons before the time of exposure.

20 Defendants have distributed and sold ROOM MATS in California. Defendants know and  
21 intend that California consumers will use and consume ROOM MATS, thereby exposing  
22 them to DEHP and DBP. Defendants thereby violated Proposition 65.

23 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
24 Persons sustain exposures by eating and consuming ROOM MATS, handling ROOM  
25 MATS without wearing gloves or any other personal protective equipment, or by  
26 touching bare skin or mucous membranes with gloves after handling ROOM MATS, as  
27 well as through direct and indirect hand to mouth contact, hand to mucous membrane, or  
28 breathing in particulate matter dispersed from ROOM MATS. And as to Defendants'

1 employees, employees may be exposed to DINP in the course of their employment by  
2 handling, distributing, and selling PLACEMATS.

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

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

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

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

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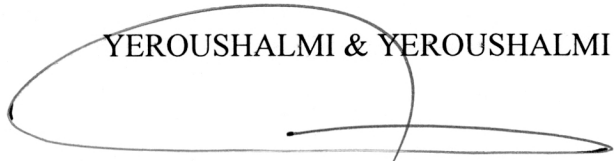
**PRAYER FOR RELIEF**

Plaintiff demands against each of the Defendants as follows:

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

Dated: April 5, 2016

YEROUSHALMI & YEROUSHALMI



BY: \_\_\_\_\_

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