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YEROUSHALMI

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 DEPT #51  
 (HON. MICHAEL J.)  
 RAPHAEL

**FILED**  
 Los Angeles Superior Court

AUG 03 2016

Sherril R. Carter, Executive Officer/Clerk  
 By Dawn Alexander Deputy

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

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 10 **COUNTY OF LOS ANGELES**

12 CONSUMER ADVOCACY GROUP, INC.,  
 in the public interest,

13 Plaintiff,

14 v.

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

CASE NO. **BC 6 2 8 8 7 1**

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)

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

THE PARTIES

25 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
 26 organization qualified to do business in the State of California. CAG is a person within  
 27 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting

RECEIPT #: CCH481620005  
 DATE PAID: 08/04/16 08:45 AM  
 PAYMENT: \$435.00  
 RECEIVED:  
 CHECK: \$0.00  
 CASH: \$0.00  
 CHANGE: \$0.00  
 CARD: \$435.00

CIT/CASE: BC628871  
 LEA/DEF#:

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

1  
2 **JURISDICTION**

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

20 **BACKGROUND AND PRELIMINARY FACTS**

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

1 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
2 fit.

3 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
4 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
5 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
6 chemicals and chemical families. Proposition 65 imposes warning requirements and  
7 other controls that apply to Proposition 65-listed chemicals.

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

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

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

26 16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
27 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
28 to the list of chemicals known to the State to cause developmental male reproductive

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

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

12 **SATISFACTION OF PRIOR NOTICE**

13 18. On or about January 11, 2016 Plaintiff gave notice of alleged violations of Health and  
14 Safety Code section 25249.6, concerning consumer products exposures subject to a  
15 private action to SUPER CENTER, and to the California Attorney General, County  
16 District Attorneys, and City Attorneys for each city containing a population of at least  
17 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the  
18 product Flip Flops, containing DBP and DEHP.

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

23 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
24 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
25 Plaintiff who executed the certificate had consulted with at least one person with relevant  
26 and appropriate expertise who reviewed data regarding the exposures to DBP and DEHP,  
27 the subject Proposition 65-listed chemicals of this action. Based on that information, the  
28 attorney for Plaintiff who executed the Certificate of Merit believed there was a

1 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
2 to the Certificate of Merit served on the Attorney General the confidential factual  
3 information sufficient to establish the basis of the Certificate of Merit.

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

7 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
8 gave notices of the alleged violation SUPER CENTER and the public prosecutors  
9 referenced in Paragraph 18.

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

### 13 FIRST CAUSE OF ACTION

14 (By CONSUMER ADVOCACY GROUP, INC. and against SUPER CENTER, 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 **Flip Flops**

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 Flip Flops, which includes but is not limited to (1) Black Flip  
22 Flops with Pink Floral Pattern and White Stripes, Size 6. 'Perfect Home™ Sandals'.  
23 ITEM # CHN-8514, Made In China. Perfect Home Vernon, CA 90058 USA. "Perfect  
24 Home is a Trademark of Volume Brands" UPC: 7 49732 08514 4" (2) Blue Flip Flops,  
25 Size 8. 'Perfect Home™ Sandals'. ITEM # CHN-8848, Made In China. Perfect Home  
26 Vernon, CA 90058 USA. "Perfect Home is a Trademark of Volume Brands" UPC: 7  
27 49732 08848 0 ("FLIP FLOPS")

28 25. FLIP FLOPS contains DBP and DEHP.

1 26. Defendants knew or should have known that DBP and DEHP 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 DBP and DEHP in FLIP FLOPS within Plaintiff's notice of  
5 alleged violations further discussed above at Paragraph 18.

6 27. Plaintiff's allegations regarding FLIP FLOPS concern "[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 and DEHP took place as a result of such normal and foreseeable use.

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

16 29. Plaintiff is informed, believes, and thereon alleges that between January 11, 2013 and the  
17 present, each of the Defendants knowingly and intentionally exposed their employees,  
18 California consumers of FLIP FLOPS, which Defendants manufactured, distributed, or  
19 sold as mentioned above, to DBP and DEHP without first providing any type of clear and  
20 reasonable warning of such to the exposed persons before the time of exposure.

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

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

3 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to FLIP FLOPS 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 FLIP FLOPS, so that a separate and distinct violation  
8 of Proposition 65 occurred each and every time a person was exposed to DBP and DEHP  
9 by FLIP FLOPS 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 lead from FLIP FLOPS, pursuant to Health  
15 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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1 **PRAYER FOR RELIEF**

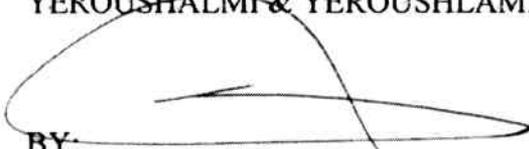
2 Plaintiff demands against each of the Defendants as follows:

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

8

9 Dated: August 3, 2016

YEROUSHALMI & YEROUSHLAMI

10   
11 BY: \_\_\_\_\_

12 Reuben Yeroushalmi  
13 Attorneys for Plaintiff,  
14 Consumer Advocacy Group, Inc.

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