

ENDORSED
FILED
San Francisco County Superior Court

JUL 27 2016

CLERK OF THE COURT

BY: ~~MADONNA GARANTO~~
Deputy Clerk

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF SAN FRANCISCO**

BY FAX

15 CONSUMER ADVOCACY GROUP, INC.,
16 in the public interest,

17 Plaintiff,

18 v.

19 SFC MARKETPLACE, INC., a California
20 Limited Liability Corporation; and DOES 1-
21 20;

22 Defendants.

CASE NO.

CGC-16-553288

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 SFC MARKETPLACE, INC., and DOES 1-20 as follows:

25 **THE PARTIES**

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

- 1 2. Defendant SFC MARKETPLACE, INC. (“SFC MARKETPLACE”) is a California
2 Limited Liability Corporation, doing business in the State of California at all relevant
3 times herein.
- 4 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
5 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend
6 this 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 “Defendant” includes SFC MARKETPLACE,
11 and DOES 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
21 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
22 the alleged 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.

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
12 manufacture, distribution, promotion, marketing, or sale of their products within
13 California to render the exercise of jurisdiction by the California courts permissible
14 under traditional notions of fair play and substantial justice.

15 10. 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 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
22 to 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
2 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
3 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains
4 over 700 chemicals and chemical families. Proposition 65 imposes warning
5 requirements and 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
7 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
8 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of
9 drinking 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* §
14 25249.7. "Threaten to violate" means "to create a condition in which there is a
15 substantial 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. Plaintiff identified certain practices of manufacturers and distributors of products
19 bearing Di (2-ethylhexyl) phthalate (“DEHP”) and Di-n-Butyl Phthalate (“DBP”),
20 exposing, knowingly and intentionally, persons in California to said Proposition 65-
21 listed chemical without first providing clear and reasonable warnings to the exposed
22 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged
23 in such practice.
- 24 16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
25 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
26 to the list of chemicals known to the State to cause developmental male reproductive
27 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
28 months after addition of DEHP to the list of chemicals known to the State to cause

1 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
2 requirements and discharge prohibitions.

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

9 **SATISFACTION OF PRIOR NOTICE**

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

16 19. On or about January 11, 2016, Plaintiff gave notice of alleged violations of Health and
17 Safety Code section 25249.6, concerning consumer products exposures, subject to a
18 private action to SFC MARKETPLACE, and to the California Attorney General, County
19 District Attorneys, and City Attorneys for each city containing a population of at least
20 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
21 product Footwear containing DEHP.

22 20. On or about January 11, 2016, Plaintiff gave notice of alleged violations of Health and
23 Safety Code section 25249.6, concerning consumer products exposures, subject to a
24 private action to SFC MARKETPLACE, and to the California Attorney General, County
25 District Attorneys, and City Attorneys for each city containing a population of at least
26 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
27 product Footwear containing DEHP and DBP.
28

- 1 21. On or about February 19, 2016, Plaintiff gave notice of alleged violations of Health and
2 Safety Code section 25249.6, concerning consumer products exposures, subject to a
3 private action to SFC MARKETPLACE, and to the California Attorney General, County
4 District Attorneys, and City Attorneys for each city containing a population of at least
5 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
6 product Footwear containing DEHP.
- 7 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer
8 products involved, the likelihood that such products would cause users to suffer
9 significant exposures to DEHP and DBP, and the corporate structure of each of the
10 Defendants.
- 11 23. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
12 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney
13 for Plaintiff who executed the certificate had consulted with at least one person with
14 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP
15 and DBP, the subject Proposition 65-listed chemicals of this action. Based on that
16 information, the attorney for Plaintiff who executed the Certificate of Merit believed
17 there was a reasonable and meritorious case for this private action. The attorney for
18 Plaintiff attached to the Certificate of Merit served on the Attorney General the
19 confidential factual information sufficient to establish the basis of the Certificate of
20 Merit.
- 21 24. Plaintiff's notices of alleged violations also included a Certificate of Service and a
22 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
23 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
- 24 25. Plaintiff is commencing this action more than sixty (60) days from the dates that
25 Plaintiff gave notices of the alleged violation to SFC MARKETPLACE, and the public
26 prosecutors referenced in Paragraph 18-21.
- 27
28

1 26. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
2 any applicable district attorney or city attorney has commenced and is diligently
3 prosecuting an action against the Defendants.

4 **FIRST CAUSE OF ACTION**

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

8 **Flip Flops**

9 27. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
10 reference paragraphs 1 through 26 of this complaint as though fully set forth herein.
11 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Flip Flops, which includes but is not limited to,
13 “Black Sandals with White and Blue Stripes. “802, 9. ‘Lien Thinh-VN’ ITEM NO-
14 S0450, Man Slipper., Made in Vietnam UPC: 1 090022 967510” (“Flip Flops”).

15 28. FLIP FLOPS contain DEHP and DBP.

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

21 30. Plaintiff’s allegations regarding FLIP FLOPS concerns “[c]onsumer products
22 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
23 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
24 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
25 *25602(b)*. FLIP FLOPS is a consumer product, and, as mentioned herein, exposures to
26 DEHP and DBP took place as a result of such normal and foreseeable use.

27 31. Plaintiff is informed, believes, and thereon alleges that between January 11, 2013, and the
28 present, each of the Defendants knowingly and intentionally exposed their California

1 consumers and users of FLIP FLOPS, which Defendants manufactured, distributed, or
2 sold as mentioned above, to DEHP and DBP, without first providing any type of clear
3 and 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 FLIP FLOPS, thereby exposing them to DEHP
6 and DBP. Defendants thereby violated Proposition 65.

7 32. The principal routes of exposure are through dermal contact, ingestion, including direct
8 and indirect hand to mouth exposure, and, possibly, inhalation. Persons sustained
9 exposures by handling FLIP FLOPS without wearing gloves or by touching bare skin or
10 mucus membranes with or without gloves after handling FLIP FLOPS, or through direct
11 and indirect hand to mouth contact, hand to food to mouth, hand to mucous membrane,
12 as well as through environmental mediums that carry the DEHP and DBP once
13 contained within the FLIP FLOPS.

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

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

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

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

1 **SECOND CAUSE OF ACTION**

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

5 **Flip Flops**

6 37. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 36 of this complaint as though fully set forth herein.

8 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Flip Flops, which includes but is not limited to,
10 ““BANANA PEEL™” BP, Made in China – ©Neat Inc. [size 5] Distributed by: Neat
11 Incorporated, Manila, Philippines, sales@bananapeel.net. ‘Status Quo’ ‘Luxe 5-9’
12 Banana Peel ‘Solstice’ “Yellow/Purple SZS” UPC: 4 800637 056267, SKU: 0 608680
13 0” (“Flip Flops”).

14 38. FLIP FLOPS contain DEHP.

15 39. Defendants knew or should have known that DEHP has been identified by the State of
16 California as a chemical known to cause cancer and reproductive toxicity and therefore
17 was subject to Proposition 65 warning requirements. Defendants were also informed of
18 the presence of DEHP in FLIP FLOPS within Plaintiff’s notice of alleged violations
19 further discussed above at Paragraph 19.

20 40. Plaintiff’s allegations regarding FLIP FLOPS concerns “[c]onsumer products
21 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
22 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
23 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
24 25602(b). FLIP FLOPS is a consumer product, and, as mentioned herein, exposures to
25 DEHP took place as a result of such normal and foreseeable use.

26 41. Plaintiff is informed, believes, and thereon alleges that between January 11, 2013, and the
27 present, each of the Defendants knowingly and intentionally exposed their California
28 consumers and users of FLIP FLOPS, which Defendants manufactured, distributed, or

1 sold as mentioned above, to DEHP without first providing any type of clear and
2 reasonable warning of such to the exposed persons before the time of exposure.

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

6 42. The principal routes of exposure are through dermal contact, ingestion, including direct
7 and indirect hand to mouth exposure, and, possibly, inhalation. Persons sustained
8 exposures by handling FLIP FLOPS without wearing gloves or by touching bare skin or
9 mucus membranes with or without gloves after handling FLIP FLOPS, or through direct
10 and indirect hand to mouth contact, hand to food to mouth, hand to mucous membrane,
11 as well as through environmental mediums that carry the DEHP once contained within
12 the FLIP FLOPS.

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

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

23 45. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to DEHP from FLIP FLOPS, pursuant to
25 Health and Safety Code section 25249.7(b).

26 46. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
27 filing this Complaint.
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1 **THIRD CAUSE OF ACTION**

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

5 **Flip Flops**

6 47. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 46 of this complaint as though fully set forth herein.
8 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Flip Flops, which includes but is not limited to, “Pink
10 Flip Flops with Yellow Flower on the Strap and Light-Up Heels. “26, M.D.S., MY-
11 0589. Girl’s Size #8, Made In China, ‘All Man Made Materials’ UPC: 8 41040 10081
12 3”” (“Flip Flops”).

13 48. FLIP FLOPS contain DEHP and DBP.

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

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

25 51. Plaintiff is informed, believes, and thereon alleges that between January 11, 2013, and the
26 present, each of the Defendants knowingly and intentionally exposed their California
27 consumers and users of FLIP FLOPS, which Defendants manufactured, distributed, or
28 sold as mentioned above, to DEHP and DBP, without first providing any type of clear

1 and reasonable warning of such to the exposed persons before the time of exposure.
2 Defendants have distributed and sold FLIP FLOPS in California. Defendants know and
3 intend that California consumers will use FLIP FLOPS, thereby exposing them to DEHP
4 and DBP. Defendants thereby violated Proposition 65.

5 52. The principal routes of exposure are through dermal contact, ingestion, including direct
6 and indirect hand to mouth exposure, and, possibly, inhalation. Persons sustained
7 exposures by handling FLIP FLOPS without wearing gloves or by touching bare skin or
8 mucus membranes with or without gloves after handling FLIP FLOPS, or through direct
9 and indirect hand to mouth contact, hand to food to mouth, hand to mucous membrane,
10 as well as through environmental mediums that carry the DEHP and DBP once
11 contained within the FLIP FLOPS.

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

5 **Flip Flops**

6 57. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 56 of this complaint as though fully set forth herein.
8 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Flip Flops, which includes but is not limited to, BP
10 “BANANA PEEL™ Gray Flip Flops with pink stripes; Four Seasons Collection; Made
11 in China – ©Neat Inc.; size 5; Distributed by: Neat Incorporated, Manila, Philippines,
12 sales@bananapeel.net.; Hide & Chick; Posh Warm Gray SZS; 4 Seasons 5-9; UPC: 4
13 800637 018906, SKU: 0 608682 8” (“Flip Flops”).

14 58. FLIP FLOPS contain DEHP.

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

20 60. Plaintiff’s allegations regarding FLIP FLOPS concerns “[c]onsumer products
21 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
22 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
23 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
24 *25602(b)*. FLIP FLOPS is a consumer product, and, as mentioned herein, exposures to
25 DEHP took place as a result of such normal and foreseeable use.

26 61. Plaintiff is informed, believes, and thereon alleges that between February 19, 2013, and
27 the present, each of the Defendants knowingly and intentionally exposed their California
28 consumers and users of FLIP FLOPS, which Defendants manufactured, distributed, or

1 sold as mentioned above, to DEHP without first providing any type of clear and
2 reasonable warning of such to the exposed persons before the time of exposure.

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

6 62. The principal routes of exposure are through dermal contact, ingestion, including direct
7 and indirect hand to mouth exposure, and, possibly, inhalation. Persons sustained
8 exposures by handling FLIP FLOPS without wearing gloves or by touching bare skin or
9 mucus membranes with or without gloves after handling FLIP FLOPS, or through direct
10 and indirect hand to mouth contact, hand to food to mouth, hand to mucous membrane,
11 as well as through environmental mediums that carry the DEHP once contained within
12 the FLIP FLOPS.

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

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

23 65. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to DEHP from FLIP FLOPS, pursuant to
25 Health and Safety Code section 25249.7(b).

26 66. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
27 filing this Complaint.

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1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

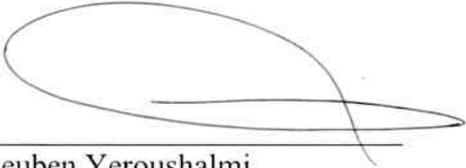
- 3 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 4 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 5 3. Costs of suit;
- 6 4. Reasonable attorney fees and costs; and
- 7 5. Any further relief that the court may deem just and equitable.

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10 Dated: July 27, 2016

YEROUSHALMI & YEROUSHALMI

11 

12 BY: _____

13 Reuben Yeroushalmi

14 Attorneys for Plaintiff,

15 Consumer Advocacy Group, Inc.

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