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10 Attorneys for Plaintiff,  
11 Consumer Advocacy Group, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 v.

18 VIVA BARGAIN CENTER, INC., a  
19 California Corporation; VIVA BARGAIN  
20 CENTER, a business entity form unknown;  
21 CRAZY Q BARGAIN, a California  
22 Corporation; ATLAPAC TRADING  
23 COMPANY, INC., a California Corporation;  
24 LA LUO CHENG, INC., a business entity  
25 form unknown; ACME FOOD SALES, INC.,  
26 a Washington Corporation;  
27 TRANSNATIONAL FOODS, INC., a  
28 Florida Profit Corporation; and DOES 1-70;

Defendants.

CASE NO.

BC 6 4 2 6 7 3

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
Defendants VIVA BARGAIN CENTER, INC.; VIVA BARGAIN CENTER; CRAZY Q  
BARGAIN; ATLAPAC TRADING COMPANY, INC.; LA LUO CHENG, INC.; ACME FOOD  
SALES, INC.; TRANSNATIONAL FOODS, INC.; and DOES 1-70 as follows:

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

DEC 02 2016

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

COPY

**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within 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).
2. Defendant VIVA BARGAIN CENTER, INC. (“VIVA BARGAIN INC”) is a California Corporation, doing business in the State of California at all relevant times herein.
3. Defendant VIVA BARGAIN CENTER (“VIVA BARGAIN”) is a business entity form unknown, doing business in the State of California at all relevant times herein.
4. Defendant CRAZY Q BARGAIN (“CRAZY Q”) is a California Corporation, doing business in the State of California at all relevant times herein.
5. Defendant ATLAPAC TRADING COMPANY, INC. (“ATLAPAC”) is a California Corporation, doing business in the State of California at all relevant times herein.
6. Defendant LA LUO CHENG, INC. (“LUO CHENG”) is a business entity form unknown, doing business in the State of California at all relevant times herein.
7. Defendant ACME FOOD SALES, INC. (“ACME”) is a Washington Corporation, doing business in the State of California at all relevant times herein.
8. Defendant TRANSNATIONAL FOODS, INC. (“TRANSNATIONAL”) is a Florida Profit Corporation, doing business in the State of California at all relevant times herein.
9. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-70, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.

1 10. At all times mentioned herein, the term "Defendants" includes VIVA BARGAIN INC,  
2 VIVA BARGAIN, CRAZY Q, ATLPAC, LUO CHENG, ACME,  
3 TRANSNATIONAL, and DOES 1-70.

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

6 12. Upon information and belief, at all times relevant to this action, each of the Defendants,  
7 including DOES 1-70, was an agent, servant, or employee of each of the other  
8 Defendants. In conducting the activities alleged in this Complaint, each of the  
9 Defendants was acting within the course and scope of this agency, service, or  
10 employment, and was acting with the consent, permission, and authorization of each of  
11 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
12 were ratified and approved by every other Defendant or their officers or managing  
13 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated  
14 the alleged wrongful conduct of each of the other Defendants.

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

19 **JURISDICTION**

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

25 15. This Court has jurisdiction over Defendants named herein because Defendants either  
26 reside or are located in this State or are foreign corporations authorized to do business in  
27 California, are registered with the California Secretary of State, or who do sufficient  
28 business in California, have sufficient minimum contacts with California, or otherwise

1 intentionally avail themselves of the markets within California through their  
2 manufacture, distribution, promotion, marketing, or sale of their products within  
3 California to render the exercise of jurisdiction by the California courts permissible  
4 under traditional notions of fair play and substantial justice.

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

9 **BACKGROUND AND PRELIMINARY FACTS**

10 17. In 1986, California voters approved an initiative to address growing concerns about  
11 exposure to toxic chemicals and declared their right “[t]o be informed about exposures  
12 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
13 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
14 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
15 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
16 from contamination, to allow consumers to make informed choices about the products  
17 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
18 fit.

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

24 19. All businesses with ten (10) or more employees that operate or sell products in  
25 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)  
26 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of  
27 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
28



1 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
2 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

3 20. Proposition 65 provides that any person "violating or threatening to violate" the statute  
4 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
5 25249.7. "Threaten to violate" means "to create a condition in which there is a  
6 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
7 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
8 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

9 21. Plaintiff identified certain practices of manufacturers and distributors of products  
10 bearing Di (2-ethylhexyl) phthalate, also known as Diethyl Hexyl Phthalate and Bis (2-  
11 ethylhexyl) phthalate (“DEHP”), Di-n-Butyl Phthalate, also known as Dibutyl Phthalate  
12 (“DBP”), Lead and Lead Compounds (“LEAD”), and Cadmium and Cadmium  
13 Compounds (“CADMIUM”) of exposing, knowingly and intentionally, persons in  
14 California to the Proposition 65-listed chemicals of such products without first providing  
15 clear and reasonable warnings of such to the exposed persons prior to the time of  
16 exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

24 23. On December 2, 2005, the Governor of California added DBP to the list of chemicals  
25 known to the State to cause developmental, female, and male reproductive toxicity.  
26 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
27 after addition of DBP to the list of chemicals known to the State to cause reproductive  
28

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

3 24. On February 27, 1987, the Governor of California added LEAD to the list of chemicals  
4 known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)).  
5 LEAD is known to the State to cause developmental, female, and male reproductive  
6 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty  
7 (20) months after addition of LEAD to the list of chemicals known to the State to cause  
8 reproductive toxicity, LEAD became fully subject to Proposition 65 warning  
9 requirements and discharge prohibitions.

10 25. On October 1, 1992, the Governor of California added LEAD to the list of chemicals  
11 known to the State to cause cancer (Cal. Code Regs. tit. 27, § 27001(b)). Pursuant to  
12 Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after  
13 addition of LEAD to the list of chemicals known to the State to cause cancer, LEAD  
14 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

15 26. On October 1, 1981, the Governor of California added CADMIUM to the list of  
16 chemicals known to the State to cause cancer (Cal. Code Regs. tit. 27, § 27001(c)).  
17 CADMIUM is known to the State to cause cancer and developmental, male reproductive  
18 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty  
19 (20) months after addition of CADMIUM to the list of chemicals known to the State to  
20 cause cancer and reproductive toxicity, CADMIUM became fully subject to Proposition  
21 65 warning requirements and discharge prohibitions.

22 **SATISFACTION OF PRIOR NOTICE**

23 27. On or about February 19, 2016, Plaintiff served notice of alleged violations of Health  
24 and Safety Code section 25249.6, concerning consumer products exposures, subject to a  
25 private action to CRAZY Q and to the California Attorney General, County District  
26 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
27 people in whose jurisdictions the violations allegedly occurred, concerning the product  
28 Flip Flops containing DEHP.

1 28. On or about February 19, 2016, Plaintiff served notice of alleged violations of Health  
2 and Safety Code section 25249.6, concerning consumer products exposures, subject to a  
3 private action to VIVA BARGAIN INC, VIVA BARGAIN, and to the California  
4 Attorney General, County District Attorneys, and City Attorneys for each city  
5 containing a population of at least 750,000 people in whose jurisdictions the violations  
6 allegedly occurred, concerning the product Flip Flops containing DBP.

7 29. On or about April 20, 2016, Plaintiff served notice of alleged violations of Health and  
8 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
9 private action to CRAZY Q and to the California Attorney General, County District  
10 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
11 people in whose jurisdictions the violations allegedly occurred, concerning the product  
12 Flip Flops containing DEHP and DBP.

13 30. On or about May 25, 2016, Plaintiff served notice of alleged violations of Health and  
14 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
15 private action to VIVA BARGAIN INC, VIVA BARGAIN, LUO CHENG, and to the  
16 California Attorney General, County District Attorneys, and City Attorneys for each city  
17 containing a population of at least 750,000 people in whose jurisdictions the violations  
18 allegedly occurred, concerning the product Flip Flops containing DBP.

19 31. On or about June 7, 2016, Plaintiff served notice of alleged violations of Health and  
20 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
21 private action to VIVA BARGAIN INC, VIVA BARGAIN, ATLPAC, and to the  
22 California Attorney General, County District Attorneys, and City Attorneys for each city  
23 containing a population of at least 750,000 people in whose jurisdictions the violations  
24 allegedly occurred, concerning the product Smoked Mussels containing LEAD and  
25 CADMIUM.

26 32. On or about June 16, 2016, Plaintiff served notice of alleged violations of Health and  
27 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
28 private action to VIVA BARGAIN INC, VIVA BARGAIN, ACME, and to the

1 California Attorney General, County District Attorneys, and City Attorneys for each city  
2 containing a population of at least 750,000 people in whose jurisdictions the violations  
3 allegedly occurred, concerning the product Baby Clams containing LEAD and  
4 CADMIUM.

5 33. On or about June 16, 2016, Plaintiff served notice of alleged violations of Health and  
6 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
7 private action to VIVA BARGAIN INC, VIVA BARGAIN, TRANSNATIONAL, and  
8 to the California Attorney General, County District Attorneys, and City Attorneys for  
9 each city containing a population of at least 750,000 people in whose jurisdictions the  
10 violations allegedly occurred, concerning the product Smoked Oysters containing LEAD  
11 and CADMIUM.

12 34. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
13 products involved, the likelihood that such products would cause users to suffer  
14 significant exposures to DEHP, DBP, LEAD, and CADMIUM, and the corporate  
15 structure of each of the Defendants.

16 35. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
17 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney  
18 for Plaintiff who executed the certificate had consulted with at least one person with  
19 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP,  
20 DBP, LEAD, and CADMIUM, the subject Proposition 65-listed chemicals of this  
21 action. Based on that information, the attorney for Plaintiff who executed the Certificate  
22 of Merit believed there was a reasonable and meritorious case for this private action.  
23 The attorney for Plaintiff attached to the Certificate of Merit served on the Attorney  
24 General the confidential factual information sufficient to establish the basis of the  
25 Certificate of Merit.

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



- 1 37. Plaintiff is commencing this action more than sixty (60) days from the dates that  
2 Plaintiff gave notices of the alleged violation to VIVA BARGAIN INC, VIVA  
3 BARGAIN, CRAZY Q, ATLPAC, LUO CHENG, ACME, TRANSNATIONAL, and  
4 the public prosecutors referenced in Paragraphs 27-33.
- 5 38. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
6 any applicable district attorney or city attorney has commenced and is diligently  
7 prosecuting an action against the Defendants.

8  
9 **FIRST CAUSE OF ACTION**

10 **(By CONSUMER ADVOCACY GROUP, INC. and against CRAZY Q and DOES 1-10 for**  
11 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
12 **(Health & Safety Code, §§ 25249.5, et seq.))**

13 **Flip Flops**

- 14 39. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
15 reference paragraphs 1 through 38 of this complaint as though fully set forth herein.  
16 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
17 distributor, promoter, or retailer of Flip Flops, which includes but is not limited to,  
18 “Women’s Flip Flops; size L 10/11; style leonie; color black; dpci 096 13 1529;  
19 Distributed by Target Corporation; 7EM0016; F16730088-04/14; RN#17730; CA#  
20 57147; Barcode# 4 90961 31529 7” (“SIZE L LEONIE FLIP FLOPS”).
- 21 40. SIZE L LEONIE FLIP FLOPS contain DEHP.
- 22 41. Defendants knew or should have known that DEHP has been identified by the State of  
23 California as a chemical known to cause cancer and reproductive toxicity and therefore  
24 was subject to Proposition 65 warning requirements. Defendants were also informed of  
25 the presence of DEHP in SIZE L LEONIE FLIP FLOPS within Plaintiff’s notice of  
26 alleged violations further discussed above at Paragraphs 27.
- 27 42. Plaintiff’s allegations regarding SIZE L LEONIE FLIP FLOPS concerns “[c]onsumer  
28 products exposure[s],” which “is an exposure that results from a person’s acquisition,  
purchase, storage, consumption, or other reasonably foreseeable use of a consumer

1 good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.*  
2 tit. 27, § 25602(b). SIZE L LEONIE FLIP FLOPS are consumer products, and, as  
3 mentioned herein, exposures to DEHP took place as a result of such normal and  
4 foreseeable use.

5 43. Plaintiff’s allegations regarding SIZE L LEONIE FLIP FLOPS also concern  
6 occupational exposures, which “means an exposure to any employee in his or her  
7 employer’s workplace.” *Cal. Code Regs.* tit. 27, § 25602(f). Exposures of DEHP to  
8 Defendants’ employees occurred through the course of their employment in their  
9 employers’ workplaces.

10 44. Plaintiff is informed, believes, and thereon alleges that between February 19, 2013 and  
11 the present, each of the Defendants knowingly and intentionally exposed their  
12 employees, California consumers and users of SIZE L LEONIE FLIP FLOPS, which  
13 Defendants manufactured, distributed, or sold as mentioned above, to DEHP, without  
14 first providing any type of clear and reasonable warning of such to the exposed persons  
15 before the time of exposure. Defendants have distributed and sold SIZE L LEONIE  
16 FLIP FLOPS in California. Defendants know and intend that California consumers will  
17 use SIZE L LEONIE FLIP FLOPS, thereby exposing them to DEHP. Defendants  
18 thereby violated Proposition 65.

19 45. The principal routes of exposure are through dermal contact, ingestion, and inhalation.  
20 Persons sustain exposures by wearing and handling SIZE L LEONIE FLIP FLOPS  
21 without wearing gloves or any other personal protective equipment, or by touching bare  
22 skin or mucous membranes with gloves after handling SIZE L LEONIE FLIP FLOPS,  
23 as well as through direct and indirect hand to mouth contact, hand to mucous membrane,  
24 or breathing in particulate matter dispersed from SIZE L LEONIE FLIP FLOPS. And as  
25 to Defendants’ employees, employees may be exposed to DEHP in the course of their  
26 employment by handling, distributing, and selling SIZE L LEONIE FLIP FLOPS.

27 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of  
28 Proposition 65 as to SIZE L LEONIE FLIP FLOPS have been ongoing and continuous

1 to the date of the signing of this complaint, as Defendants engaged and continue to  
2 engage in conduct which violates Health and Safety Code section 25249.6, including the  
3 manufacture, distribution, promotion, and sale of SIZE L LEONIE FLIP FLOPS, so that  
4 a separate and distinct violation of Proposition 65 occurred each and every time a person  
5 was exposed to DEHP by SIZE L LEONIE FLIP FLOPS as mentioned herein.

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

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

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

14 **SECOND CAUSE OF ACTION**

15 **(By CONSUMER ADVOCACY GROUP, INC. and against VIVA BARGAIN INC, VIVA**  
16 **BARGAIN, and DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water**  
17 **and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

18 **Flip Flops**

19 50. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
20 reference paragraphs 1 through 49 of this complaint as though fully set forth herein.  
21 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
22 distributor, promoter, or retailer of Flip Flops, which includes but is not limited to,  
23 “Women’s Flip Flops; size S 6/7; style leonie; color black; dpci 096 13 1527;  
24 Distributed by Target Corporation; 3EM0030; Made in China; F16730088-08/14;  
25 RN#17730; CA# 57147; Barcode# 4 90961 31527 3” (“SIZE S LEONIE FLIP  
26 FLOPS”).

27 51. SIZE S LEONIE FLIP FLOPS contain DBP.  
28

1 52. 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 SIZE S LEONIE FLIP FLOPS within Plaintiff's notice of  
5 alleged violations further discussed above at Paragraphs 28.

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

13 54. Plaintiff's allegations regarding SIZE S LEONIE FLIP FLOPS also concern  
14 occupational exposures, which "means an exposure to any employee in his or her  
15 employer's workplace." *Cal. Code Regs.* tit. 27, § 25602(f). Exposures of DBP to  
16 Defendants' employees occurred through the course of their employment in their  
17 employers' workplaces.

18 55. Plaintiff is informed, believes, and thereon alleges that between February 19, 2013 and  
19 the present, each of the Defendants knowingly and intentionally exposed their  
20 employees, California consumers and users of SIZE S LEONIE FLIP FLOPS, which  
21 Defendants manufactured, distributed, or sold as mentioned above, to DBP, without first  
22 providing any type of clear and reasonable warning of such to the exposed persons  
23 before the time of exposure. Defendants have distributed and sold SIZE S LEONIE  
24 FLIP FLOPS in California. Defendants know and intend that California consumers will  
25 use SIZE S LEONIE FLIP FLOPS, thereby exposing them to DBP. Defendants thereby  
26 violated Proposition 65.

27 56. The principal routes of exposure are through dermal contact, ingestion, and inhalation.  
28 Persons sustain exposures by wearing and handling SIZE S LEONIE FLIP FLOPS



1 without wearing gloves or any other personal protective equipment, or by touching bare  
2 skin or mucous membranes with gloves after handling SIZE S LEONIE FLIP FLOPS, as  
3 well as through direct and indirect hand to mouth contact, hand to mucous membrane, or  
4 breathing in particulate matter dispersed from SIZE S LEONIE FLIP FLOPS. And as to  
5 Defendants' employees, employees may be exposed to DBP in the course of their  
6 employment by handling, distributing, and selling SIZE S LEONIE FLIP FLOPS.

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

14 58. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
15 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
16 violations alleged herein will continue to occur into the future.

17 59. Based on the allegations herein, Defendants are liable for civil penalties of up to  
18 \$2,500.00 per day per individual exposure to DBP from SIZE S LEONIE FLIP FLOPS,  
19 pursuant to Health and Safety Code section 25249.7(b).

20 60. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
21 filing this Complaint.

### 22 **THIRD CAUSE OF ACTION**

23 **(By CONSUMER ADVOCACY GROUP, INC. and against CRAZY Q and DOES 21-30**  
24 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of**  
25 **1986 (Health & Safety Code, §§ 25249.5, et seq.))**

### 26 **Flip Flops**

27 61. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
28 reference paragraphs 1 through 60 of this complaint as though fully set forth herein.

1 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
2 distributor, promoter, or retailer of Flip Flops, which includes but is not limited to,  
3 “Brown size 11 sandals with ‘SPORT’ printed in a yellow and green oval on the strap;  
4 “41” and “SDY-0081” printed on the bottom of the sole; cellophane package with a  
5 purple band; soccer ball picture with Hermosa along the top of the packaging”  
6 (“BROWN SANDALS”).

7 62. BROWN SANDALS contain DEHP and DBP.

8 63. Defendants knew or should have known that DEHP and DBP has been identified by the  
9 State of California as a chemical known to cause cancer and reproductive toxicity and  
10 therefore was subject to Proposition 65 warning requirements. Defendants were also  
11 informed of the presence of DEHP and DBP in BROWN SANDALS within Plaintiff’s  
12 notice of alleged violations further discussed above at Paragraphs 29.

13 64. Plaintiff’s allegations regarding BROWN SANDALS concerns “[c]onsumer products  
14 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
15 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
16 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
17 *25602(b)*. BROWN SANDALS are consumer products, and, as mentioned herein,  
18 exposures to DEHP and DBP took place as a result of such normal and foreseeable use.

19 65. Plaintiff is informed, believes, and thereon alleges that between April 20, 2013 and the  
20 present, each of the Defendants knowingly and intentionally exposed California  
21 consumers and users of BROWN SANDALS, which Defendants manufactured,  
22 distributed, or sold as mentioned above, to DEHP and DBP, without first providing any  
23 type of clear and reasonable warning of such to the exposed persons before the time of  
24 exposure. Defendants have distributed and sold BROWN SANDALS in California.  
25 Defendants know and intend that California consumers will use BROWN SANDALS,  
26 thereby exposing them to DEHP and DBP. Defendants thereby violated Proposition 65.

27 66. The principal routes of exposure are through dermal contact, ingestion, and inhalation.  
28 Persons sustain exposures by wearing and handling BROWN SANDALS without

1 wearing gloves or any other personal protective equipment, or by touching bare skin or  
2 mucous membranes with gloves after handling BROWN SANDALS, as well as through  
3 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in  
4 particulate matter dispersed from BROWN SANDALS.

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

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

15 69. Based on the allegations herein, Defendants are liable for civil penalties of up to  
16 \$2,500.00 per day per individual exposure to DEHP and DBP from BROWN  
17 SANDALS, pursuant to Health and Safety Code section 25249.7(b).

18 70. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
19 filing this Complaint.

#### 20 **FOURTH CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY GROUP, INC. and against VIVA BARGAIN INC, VIVA**  
22 **BARGAIN, LUO CHENG, and DOES 31-40 for Violations of Proposition 65, The Safe**  
23 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***  
***seq.*))**

#### 24 **Flip Flops**

25 71. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
26 reference paragraphs 1 through 70 of this complaint as though fully set forth herein.  
27 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
28 distributor, promoter, or retailer of Flip Flops, which includes but is not limited to,

1 “White "Sandal King" brand flip flops; size USA 6, EUR 37, BRA 35; "KZ-908;  
2 featuring a silver stripe around the sole, and a white strap decorated with imitation  
3 jewels” (“SANDAL KING FLIP FLOPS”).

4 72. SANDAL KING FLIP FLOPS contain DBP.

5 73. Defendants knew or should have known that DBP has been identified by the State of  
6 California as a chemical known to cause cancer and reproductive toxicity and therefore  
7 was subject to Proposition 65 warning requirements. Defendants were also informed of  
8 the presence of DBP in SANDAL KING FLIP FLOPS within Plaintiff's notice of  
9 alleged violations further discussed above at Paragraphs 30.

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

17 75. Plaintiff is informed, believes, and thereon alleges that between May 25, 2013 and the  
18 present, each of the Defendants knowingly and intentionally exposed California  
19 consumers and users of SANDAL KING FLIP FLOPS, which Defendants  
20 manufactured, distributed, or sold as mentioned above, to DBP, without first providing  
21 any type of clear and reasonable warning of such to the exposed persons before the time  
22 of exposure. Defendants have distributed and sold SANDAL KING FLIP FLOPS in  
23 California. Defendants know and intend that California consumers will use SANDAL  
24 KING FLIP FLOPS, thereby exposing them to DBP. Defendants thereby violated  
25 Proposition 65.

26 76. The principal routes of exposure are through dermal contact, ingestion, and inhalation.  
27 Persons sustain exposures by wearing and handling SANDAL KING FLIP FLOPS  
28 without wearing gloves or any other personal protective equipment, or by touching bare



1 skin or mucous membranes with gloves after handling SANDAL KING FLIP FLOPS,  
2 as well as through direct and indirect hand to mouth contact, hand to mucous membrane,  
3 or breathing in particulate matter dispersed from SANDAL KING FLIP FLOPS.

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

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

14 79. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to DBP from SANDAL KING FLIP FLOPS,  
16 pursuant to Health and Safety Code section 25249.7(b).

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

19  
20 **FIFTH CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY GROUP, INC. and against VIVA BARGAIN INC, VIVA**  
22 **BARGAIN, AT LAPAC, and DOES 41-50 for Violations of Proposition 65, The Safe**  
23 **Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et**  
24 **seq.))**

25 **Smoked Mussels**

26 81. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
27 reference paragraphs 1 through 80 of this complaint as though fully set forth herein.  
28 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
distributor, promoter, or retailer of Smoked Mussels, which includes but is not limited  
to, ““Sea Island®”; “Smoked Mussels”; “In Cottonseed Oil”; “Salt Added”; Net wt. 3

1 OZ. 85 GR; “Mejillones Ahumados”; “en Aceite de Algodon con Sal”; Peso neto 3 OZ.  
2 85 GR; “Product of China”; “Atlapac™ Trading Company”; “Distributed by: Atlapac  
3 Trading Co., Inc. Los Angeles, CA 90040” UPC: 0 52391 55042 8” (“MUSSELS”).

4 82. MUSSELS contain LEAD and CADMIUM.

5 83. Defendants knew or should have known that LEAD and CADMIUM has been identified  
6 by the State of California as a chemical known to cause cancer and reproductive toxicity  
7 and therefore was subject to Proposition 65 warning requirements. Defendants were  
8 also informed of the presence of LEAD and CADMIUM in MUSSELS within Plaintiff's  
9 notice of alleged violations further discussed above at Paragraphs 31.

10 84. Plaintiff's allegations regarding MUSSELS concerns “[c]onsumer products  
11 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,  
12 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
13 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §  
14 25602(b). MUSSELS are consumer products, and, as mentioned herein, exposures to  
15 LEAD and CADMIUM took place as a result of such normal and foreseeable use.

16 85. Plaintiff is informed, believes, and thereon alleges that between June 7, 2013 and the  
17 present, each of the Defendants knowingly and intentionally exposed California  
18 consumers and users of MUSSELS, which Defendants manufactured, distributed, or  
19 sold as mentioned above, to LEAD and CADMIUM, without first providing any type of  
20 clear and reasonable warning of such to the exposed persons before the time of  
21 exposure. Defendants have distributed and sold MUSSELS in California. Defendants  
22 know and intend that California consumers will use MUSSELS, thereby exposing them  
23 to LEAD and CADMIUM. Defendants thereby violated Proposition 65.

24 86. The principal routes of exposure were through ingestion, including hand to mouth  
25 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by  
26 eating and consuming MUSSELS, handling MUSSELS without wearing gloves or by  
27 touching bare skin or mucus membranes with gloves after handling MUSSELS, or  
28 through direct and indirect hand to mouth contact, hand to food to mouth, direct contact

1 to food then to mouth, hand to mucous membrane, or breathing in particulate matter  
2 emanating from MUSSELS, as well as through environmental mediums that carry the  
3 LEAD and CADMIUM once contained within the MUSSELS.

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

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

14 89. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to LEAD and CADMIUM from MUSSELS,  
16 pursuant to Health and Safety Code section 25249.7(b).

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

19  
20 **SIXTH CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY GROUP, INC. and against VIVA BARGAIN INC, VIVA**  
22 **BARGAIN, ACME, and DOES 51-60 for Violations of Proposition 65, The Safe Drinking**  
23 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

24 **Baby Clams**

25 91. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
26 reference paragraphs 1 through 90 of this complaint as though fully set forth herein.  
27 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
28 distributor, promoter, or retailer of Baby Clams, which includes but is not limited to,  
“Pacific Crest”; “Baby Clams”; “Net Wt 10 oz (284 g)”; “Delicious in chowders, pasta,

1 sauces, dips & salads!"; "Distributed by: Acme Food Sales, Inc. Seattle, WA 98108";  
2 "Product of China"; "Farm Raised"; UPC: 0 73723 00084 8" ("CLAMS").

3 92. CLAMS contain LEAD and CADMIUM.

4 93. Defendants knew or should have known that LEAD and CADMIUM has been identified  
5 by the State of California as a chemical known to cause cancer and reproductive toxicity  
6 and therefore was subject to Proposition 65 warning requirements. Defendants were  
7 also informed of the presence of LEAD and CADMIUM in CLAMS within Plaintiff's  
8 notice of alleged violations further discussed above at Paragraphs 32.

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

15 95. Plaintiff is informed, believes, and thereon alleges that between June 16, 2013 and the  
16 present, each of the Defendants knowingly and intentionally exposed California  
17 consumers and users of CLAMS, which Defendants manufactured, distributed, or sold  
18 as mentioned above, to LEAD and CADMIUM, without first providing any type of clear  
19 and reasonable warning of such to the exposed persons before the time of exposure.  
20 Defendants have distributed and sold CLAMS in California. Defendants know and  
21 intend that California consumers will use CLAMS, thereby exposing them to LEAD and  
22 CADMIUM. Defendants thereby violated Proposition 65.

23 96. The principal routes of exposure were through ingestion, including hand to mouth  
24 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by  
25 eating and consuming CLAMS, handling CLAMS without wearing gloves or by  
26 touching bare skin or mucus membranes with gloves after handling CLAMS, or through  
27 direct and indirect hand to mouth contact, hand to food to mouth, direct contact to food  
28 then to mouth, hand to mucous membrane, or breathing in particulate matter emanating



1 from CLAMS, as well as through environmental mediums that carry the LEAD and  
2 CADMIUM once contained within the CLAMS.

3 97. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to CLAMS 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 CLAMS, so that a separate and distinct violation of  
8 Proposition 65 occurred each and every time a person was exposed to LEAD and  
9 CADMIUM by CLAMS as mentioned herein.

10 98. 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 99. 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 and CADMIUM from CLAMS,  
15 pursuant to Health and Safety Code section 25249.7(b).

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

18 **SEVENTH CAUSE OF ACTION**

19 **(By CONSUMER ADVOCACY GROUP, INC. and against VIVA BARGAIN INC, VIVA**  
20 **BARGAIN, TRANSNATIONAL, and DOES 61-70 for Violations of Proposition 65, The**  
21 **Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**  
22 **25249.5, et seq.))**

23 **Smoked Oysters**

24 101. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
25 reference paragraphs 1 through 100 of this complaint as though fully set forth herein.  
26 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
27 distributor, promoter, or retailer of Smoked Oysters, which includes but is not limited to,  
28 ““Pampa®”; “Smoked Oysters”; “in vegetable oil”; “NET WT 3 OZ 85g”; “Distributed  
by: Transnational Foods, Inc.”; “Miami, FL 33131”; “Product of China”; “Farm

1 Raised”; www.transnationalfoods.com; “Pampa is a registered trademark of  
2 Transnational Foods, Inc.”; UPC: 8 57361 00088 6” (“OYSTERS”).

3 102. OYSTERS contain LEAD and CADMIUM.

4 103. Defendants knew or should have known that LEAD and CADMIUM has been  
5 identified by the State of California as a chemical known to cause cancer and  
6 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.  
7 Defendants were also informed of the presence of LEAD and CADMIUM in OYSTERS  
8 within Plaintiff’s notice of alleged violations further discussed above at Paragraphs 33.

9 104. Plaintiff’s allegations regarding OYSTERS concerns “[c]onsumer products  
10 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
11 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
12 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §  
13 25602(b). OYSTERS are consumer products, and, as mentioned herein, exposures to  
14 LEAD and CADMIUM took place as a result of such normal and foreseeable use.

15 105. Plaintiff is informed, believes, and thereon alleges that between June 16, 2013 and  
16 the present, each of the Defendants knowingly and intentionally exposed California  
17 consumers and users of OYSTERS, which Defendants manufactured, distributed, or sold  
18 as mentioned above, to LEAD and CADMIUM, without first providing any type of clear  
19 and reasonable warning of such to the exposed persons before the time of exposure.  
20 Defendants have distributed and sold OYSTERS in California. Defendants know and  
21 intend that California consumers will use OYSTERS, thereby exposing them to LEAD  
22 and CADMIUM. Defendants thereby violated Proposition 65.

23 106. The principal routes of exposure were through ingestion, including hand to mouth  
24 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by  
25 eating and consuming OYSTERS, handling OYSTERS without wearing gloves or by  
26 touching bare skin or mucus membranes with gloves after handling OYSTERS, or  
27 through direct and indirect hand to mouth contact, hand to food to mouth, direct contact  
28 to food then to mouth, hand to mucous membrane, or breathing in particulate matter

1 emanating from OYSTERS, as well as through environmental mediums that carry the  
2 LEAD and CADMIUM once contained within the OYSTERS.

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

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

13 109. 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 and CADMIUM from OYSTERS,  
15 pursuant to Health and Safety Code section 25249.7(b).

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

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25 **PRAYER FOR RELIEF**

26 Plaintiff demands against each of the Defendants as follows:

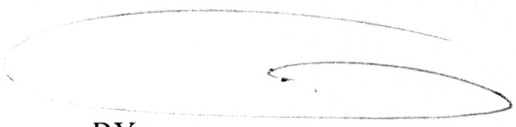
- 27 1. A permanent injunction mandating Proposition 65-compliant warnings;  
28 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);

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- 3. Costs of suit;
- 4. Reasonable attorney fees and costs; and
- 5. Any further relief that the court may deem just and equitable.

Dated: December 2, 2016

YEROUSHALMI & YEROUSHALMI



BY: \_\_\_\_\_  
Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.