

1 Reuben Yeroushalmi (SBN 193981)
2 Ben Yeroushalmi (SBN 232540)
3 Peter T. Sato (SBN 238486)
4 **YEROUSHALMI & YEROUSHALMI**
5 An Association of Independent Law Corporations
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, California 90212
8 Telephone: 310.623.1926
9 Facsimile: 310.623.1930

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

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN MATEO**

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

16 Plaintiff,

17 v.

18 ROSS STORES, INC. dba DD'S
19 DISCOUNTS, a Delaware Corporation; T.J.
20 MAXX, a business entity form unknown;
21 THE TJX COMPANIES, INC., a Delaware
22 Corporation; T.J. MAXX OF CA, LLC, a
23 Delaware Limited Liability Company;
24 MARMAXX OPERATING CORP., a
25 Delaware Corporation; BURLINGTON, a
26 business entity form unknown;
27 BURLINGTON COAT FACTORY
28 WAREHOUSE CORPORATION, a
Delaware Corporation; and DOES 1-30;

Defendants.

CASE NO. **16CIV02377**

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 ROSS STORES, INC. dba DD'S DISCOUNTS; T.J. MAXX; THE TJX
COMPANIES, INC.; T.J. MAXX OF CA, LLC; MARMAXX OPERATING CORP.;

ENDORSED FILED
SAN MATEO COUNTY

NOV 15 2016

Clerk of the Superior Court
By JORDAN MAXWELL
DEPUTY CLERK

1 BURLINGTON; BURLINGTON COAT FACTORY WAREHOUSE CORPORATION; and
2 DOES 1-30 as follows:

3 **THE PARTIES**

- 4 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
5 organization qualified to do business in the State of California. CAG is a person within
6 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
7 as a private attorney general, brings this action in the public interest as defined under
8 Health and Safety Code section 25249.7, subdivision (d).
- 9 2. Defendant ROSS STORES, INC. dba DD’S DISCOUNTS (“ROSS”) is a Delaware
10 Corporation doing business in the State of California at all relevant times herein.
- 11 3. Defendant T.J. MAXX (“TJ MAXX”) is a business entity form unknown doing business
12 in the State of California at all relevant times herein.
- 13 4. Defendant THE TJX COMPANIES, INC. (“TJX”) is a Delaware Corporation doing
14 business in the State of California at all relevant times herein.
- 15 5. Defendant T.J. MAXX OF CA, LLC (“TJ MAXX OF CA”) is a Delaware Limited
16 Liability Company doing business in the State of California at all relevant times herein.
- 17 6. Defendant MARMAXX OPERATING CORP. (“MARMAXX”) is a Delaware
18 Corporation doing business in the State of California at all relevant times herein.
- 19 7. Defendant BURLINGTON (“BURLINGTON”) is a business entity form unknown doing
20 business in the State of California at all relevant times herein.
- 21 8. Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
22 (“BURLINGTON COAT”) is a Delaware Corporation doing business in the State of
23 California at all relevant times herein.
- 24 9. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
25 30, and therefore sues these defendants by such fictitious names. Plaintiff will amend
26 this complaint to allege their true names and capacities when ascertained. Plaintiff is
27 informed, believes, and thereon alleges that each fictitiously named defendant is
28

1 responsible in some manner for the occurrences herein alleged and the damages caused
2 thereby.

3 10. At all times mentioned herein, the term "Defendants" includes ROSS, TJ MAXX, TJX,
4 TJ MAXX OF CA, MARMAXX, BURLINGTON, BURLINGTON COAT, and DOES
5 1-30.

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

8 12. Upon information and belief, at all times relevant to this action, each of the Defendants,
9 including DOES 1-30, was an agent, servant, or employee of each of the other
10 Defendants. In conducting the activities alleged in this Complaint, each of the
11 Defendants was acting within the course and scope of this agency, service, or
12 employment, and was acting with the consent, permission, and authorization of each of
13 the other Defendants. All actions of each of the Defendants alleged in this Complaint
14 were ratified and approved by every other Defendant or their officers or managing
15 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
16 the alleged wrongful conduct of each of the other Defendants.

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

21 **JURISDICTION**

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

27 15. This Court has jurisdiction over Defendants named herein because Defendants either
28 reside or are located in this State or are foreign corporations authorized to do business in

1 California, are registered with the California Secretary of State, or who do sufficient
2 business in California, have sufficient minimum contacts with California, or otherwise
3 intentionally avail themselves of the markets within California through their
4 manufacture, distribution, promotion, marketing, or sale of their products within
5 California to render the exercise of jurisdiction by the California courts permissible
6 under traditional notions of fair play and substantial justice.

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

11 **BACKGROUND AND PRELIMINARY FACTS**

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

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

- 26 19. All businesses with ten (10) or more employees that operate or sell products in
27 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
28 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of

1 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
2 reasonable” warnings before exposing a person, knowingly and intentionally, to a
3 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

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

10 21. Plaintiff identified certain practices of manufacturers and distributors of products
11 bearing Bis (2-ethylhexyl) Phthalate, also known as Diethyl Hexyl Phthalate (“DEHP”),
12 and Diisononyl Phthalate, also known as Di Isononyl Phthalate (“DINP”), of exposing,
13 knowingly and intentionally, persons in California to the Proposition 65-listed chemicals
14 of such products without first providing clear and reasonable warnings of such to the
15 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants
16 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, twelve
21 (12) months after addition of DEHP to the list of chemicals known to the State to cause
22 cancer and reproductive toxicity, DEHP became fully subject to Proposition 65 warning
23 requirements.

24 23. On December 20, 2013, the Governor of California added DINP to the list of chemicals
25 known to the State to cause cancer. Pursuant to Health and Safety Code sections 25249.9
26 and 25249.10, twelve (12) months after addition of DINP to the list of chemicals known
27 to the State to cause cancer, DINP became fully subject to Proposition 65 warning
28 requirements.

SATISFACTION OF PRIOR NOTICE

1
2 24. On or about July 7, 2016, Plaintiff served notice of alleged violations of Health and
3 Safety Code section 25249.6, concerning consumer products exposures, subject to a
4 private action to ROSS and to the California Attorney General, County District
5 Attorneys, and City Attorneys for each city containing a population of at least 750,000
6 people in whose jurisdictions the violations allegedly occurred, concerning the product
7 Fitness Balls containing DEHP.

8 25. On or about July 26, 2016, Plaintiff served notice of alleged violations of Health and
9 Safety Code section 25249.6, concerning consumer products exposures, subject to a
10 private action to TJ MAXX, TJX, TJ MAXX OF CA, MARMAXX, and to the California
11 Attorney General, County District Attorneys, and City Attorneys for each city containing
12 a population of at least 750,000 people in whose jurisdictions the violations allegedly
13 occurred, concerning the product Polymer Fitness Balls containing DEHP and DINP.

14 26. On or about July 26, 2016, Plaintiff served notice of alleged violations of Health and
15 Safety Code section 25249.6, concerning consumer products exposures, subject to a
16 private action to BURLINGTON, BURLINGTON COAT, and to the California Attorney
17 General, County District Attorneys, and City Attorneys for each city containing a
18 population of at least 750,000 people in whose jurisdictions the violations allegedly
19 occurred, concerning the product Polymer Fitness Balls containing DEHP.

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

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

1 information, the attorney for Plaintiff who executed the Certificate of Merit believed
2 there was a reasonable and meritorious case for this private action. The attorney for
3 Plaintiff attached to the Certificate of Merit served on the Attorney General the
4 confidential factual information sufficient to establish the basis of the Certificate of
5 Merit.

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

9 30. Plaintiff is commencing this action more than sixty (60) days from the dates that
10 Plaintiff gave notices of the alleged violation to ROSS, TJ MAXX, TJX, TJ MAXX OF
11 CA, MARMAXX, BURLINGTON, BURLINGTON COAT, and the public prosecutors
12 referenced in Paragraphs 24-26.

13 31. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
14 any applicable district attorney or city attorney has commenced and is diligently
15 prosecuting an action against the Defendants.

16 **FIRST CAUSE OF ACTION**

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

20 **Fitness Balls**

21 32. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
22 reference paragraphs 1 through 31 of this complaint as though fully set forth herein.
23 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of Fitness Balls, which includes but is not limited to,
25 "Avia®"; "65cm Fitness Ball"; "Balance & Core Strength"; "Hand Pump Included";
26 "Great for Stretching, Pilates, and Fitness Training"; "Includes a Hand Pump for Easy
27 Inflation"; "Builds Strength and Flexibility"; "Ross"; "612 D1066 C6611"; "Compare at
28

1 \$18.00”; “Ross Price \$9.99”; “Website: AviaFit.com”; “New York, NY 10018”; AV-
2 FN1000C; UPC 8 12350 07295 4” (“ROSS FITNESS BALLS”).

3 33. ROSS FITNESS BALLS contain DEHP.

4 34. Defendants knew or should have known that DEHP has been identified by the State of
5 California as a chemical known to cause cancer and reproductive toxicity and therefore
6 was subject to Proposition 65 warning requirements. Defendants were also informed of
7 the presence of DEHP in ROSS FITNESS BALLS within Plaintiff’s notice of alleged
8 violations further discussed above at Paragraphs 24.

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

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

23 37. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
24 Persons sustain exposures by using or handling ROSS FITNESS BALLS without
25 wearing gloves or any other personal protective equipment, or by touching bare skin or
26 mucous membranes with gloves after handling ROSS FITNESS BALLS, as well as
27 through direct and indirect hand to mouth contact, hand to food to mouth, hand to
28

1 mucous membrane, or breathing in particulate matter dispersed from ROSS FITNESS
2 BALLS.

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

10 39. 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 40. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to DEHP from ROSS FITNESS BALLS,
15 pursuant to Health and Safety Code section 25249.7(b).

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

18 **SECOND CAUSE OF ACTION**

19 **(By CONSUMER ADVOCACY GROUP, INC. and against TJ MAXX, TJX, TJ MAXX**
20 **OF CA, MARMAXX, and DOES 11-20 for Violations of Proposition 65, The Safe Drinking**
21 **Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

22 **Polymer Fitness Balls**

23 42. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
24 reference paragraphs 1 through 41 of this complaint as though fully set forth herein.
25 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
26 distributor, promoter, or retailer of Polymer Fitness Balls, which includes but is not
27 limited to, ""AVIA®"; "65CM Fitness Ball"; "Balance & Core Strength"; "Avia and the
28 Avia logo are registered trademarks of American Sporting Goods Inc. All other

1 trademarks are property of their respective owners. New York, NY 10018”; “ • Great
2 for stretching, Pilates and fitness training • Includes a hand pump for easy inflation •
3 Builds Strength and flexibility ”; “Made in China”; “T.J. MAXX 73-8817-388278-
4 000999-03-2”; “AV-FN1000P”; UPC: 8 12350 07296 1” (“TJ MAXX FITNESS
5 BALLS”).

6 43. TJ MAXX FITNESS BALLS contain DEHP and DINP.

7 44. Defendants knew or should have known that DEHP and DINP has been identified by the
8 State of California as a chemical known to cause cancer and reproductive toxicity and
9 therefore was subject to Proposition 65 warning requirements. Defendants were also
10 informed of the presence of DEHP and DINP in TJ MAXX FITNESS BALLS within
11 Plaintiff’s notice of alleged violations further discussed above at Paragraphs 25.

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

19 46. Plaintiff is informed, believes, and thereon alleges that between July 26, 2013 and the
20 present, each of the Defendants knowingly and intentionally exposed California
21 consumers and users of TJ MAXX FITNESS BALLS, which Defendants manufactured,
22 distributed, or sold as mentioned above, to DEHP and DINP, 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 TJ MAXX FITNESS BALLS in
25 California. Defendants know and intend that California consumers will use TJ MAXX
26 FITNESS BALLS, thereby exposing them to DEHP and DINP. Defendants thereby
27 violated Proposition 65.
28

- 1 47. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
2 Persons sustain exposures by using or handling TJ MAXX FITNESS BALLS without
3 wearing gloves or any other personal protective equipment, or by touching bare skin or
4 mucous membranes with gloves after handling TJ MAXX FITNESS BALLS, as well as
5 through direct and indirect hand to mouth contact, hand to food to mouth, hand to
6 mucous membrane, or breathing in particulate matter dispersed from TJ MAXX
7 FITNESS BALLS.
- 8 48. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
9 Proposition 65 as to TJ MAXX FITNESS BALLS have been ongoing and continuous to
10 the date of the signing of this complaint, as Defendants engaged and continue to engage
11 in conduct which violates Health and Safety Code section 25249.6, including the
12 manufacture, distribution, promotion, and sale of TJ MAXX FITNESS BALLS, so that a
13 separate and distinct violation of Proposition 65 occurred each and every time a person
14 was exposed to DEHP and DINP by TJ MAXX FITNESS BALLS as mentioned herein.
- 15 49. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
16 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
17 violations alleged herein will continue to occur into the future.
- 18 50. Based on the allegations herein, Defendants are liable for civil penalties of up to
19 \$2,500.00 per day per individual exposure to DEHP and DINP from TJ MAXX
20 FITNESS BALLS, pursuant to Health and Safety Code section 25249.7(b).
- 21 51. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
22 filing this Complaint.

23
24 **THIRD CAUSE OF ACTION**

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

Polymer Fitness Balls

1 52. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
2 reference paragraphs 1 through 51 of this complaint as though fully set forth herein.
3 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Polymer Fitness Balls, which includes but is not
5 limited to, ““RBX”; “Live Life Active”; “Hand Pump Included”; “65cm”; “Performance
6 Fitness Ball & Hand Pump”; “RBX is designed to give ALL levels of athletes
7 performance wear to dig deep, push their limits and go to X-treme.”; “RBX®”; “Live
8 Life Active”; “RBXFIT.COM”; “©2013, RBX and the RBX logo are registered
9 trademarks of RBX, NY, NY, 10001 USA”; “Made in China”; “model: RF-Y4002U”;
10 “Style RF-Y4002US6”; “Color PRP”; “A EXER”; “60502 DC-9”; “Ven 679914”;
11 “Compare \$20.99”; “\$9.99”; “SEA 7”; “ACC 09 642 63175053 8”;
12 “00208863321230288695”; UPC: 8 12350 04909 3” (“RBX FITNESS BALLS”).

13 53. RBX FITNESS BALLS contain DEHP.

14 54. Defendants knew or should have known that DEHP has been identified by the State of
15 California as a chemical known to cause cancer and reproductive toxicity and therefore
16 was subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of DEHP in RBX FITNESS BALLS within Plaintiff's notice of alleged
18 violations further discussed above at Paragraphs 26.

19 55. Plaintiff's allegations regarding RBX FITNESS BALLS 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). RBX FITNESS BALLS are consumer products, and, as mentioned herein,
24 exposures to DEHP took place as a result of such normal and foreseeable use.

25 56. Plaintiff is informed, believes, and thereon alleges that between July 26, 2013 and the
26 present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of RBX FITNESS BALLS, which Defendants manufactured,
28 distributed, or sold as mentioned above, to DEHP, without first providing any type of

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

5 57. The principal routes of exposure are through dermal contact, ingestion, and inhalation.

6 Persons sustain exposures by using or handling RBX FITNESS BALLS without wearing
7 gloves or any other personal protective equipment, or by touching bare skin or mucous
8 membranes with gloves after handling RBX FITNESS BALLS, as well as through direct
9 and indirect hand to mouth contact, hand to food to mouth, hand to mucous membrane, or
10 breathing in particulate matter dispersed from RBX FITNESS BALLS.

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

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

21 60. Based on the allegations herein, Defendants are liable for civil penalties of up to
22 \$2,500.00 per day per individual exposure to DEHP from RBX FITNESS BALLS,
23 pursuant to Health and Safety Code section 25249.7(b).

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

26 **PRAYER FOR RELIEF**

27 Plaintiff demands against each of the Defendants as follows:

28 1. A permanent injunction mandating Proposition 65-compliant warnings;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: November 14, 2016

YEROUSHALMI & YEROUSHALMI

BY: _____

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