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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

APR 19 2017

Sharri R. Carisi, Executive Officer/Clerk  
By: M. Soto, Deputy  
Moses Soto

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 NATIONAL STORES, INC. DBA FALLAS  
19 PAREDES AND DBA FALLAS  
20 DISCOUNT STORES, a California  
21 Corporation; MET-RX SUBSTRATE  
22 TECHNOLOGY, INC., a California  
23 Corporation; and DOES 1-20;

24 Defendants.

CASE NO. **BC 658596**

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)

25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
26 Defendants NATIONAL STORES, INC. DBA FALLAS PAREDES AND DBA FALLAS  
27 DISCOUNT STORES, MET-RX SUBSTRATE TECHNOLOGY INC., and DOES 1-20 as  
28 follows:

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**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 NATIONAL STORES, INC. DBA FALLAS PAREDES AND DBA FALLAS DISCOUNT STORES, ("NATIONAL STORES") is a California Corporation, doing business in the State of California at all relevant times herein.
3. Defendant MET-RX SUBSTRATE TECHNOLOGY INC., ("MET RX") is a California Corporation, doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, 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.
5. At all times mentioned herein, the term "Defendants" includes, NATIONAL STORES, MET RX, and DOES 1-20.
6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
7. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing

1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated  
2 the alleged wrongful conduct of each of the other Defendants.

- 3 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
4 Defendants was a person doing business within the meaning of Health and Safety Code  
5 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
6 employees at all relevant times.

7 **JURISDICTION**

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

25  
26 **BACKGROUND AND PRELIMINARY FACTS**

- 27 12. In 1986, California voters approved an initiative to address growing concerns about  
28 exposure to toxic chemicals and declared their right “[t]o be informed about exposures

1 to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
2 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
3 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
4 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
5 from contamination, to allow consumers to make informed choices about the products  
6 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
7 fit.

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

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

19 15. Proposition 65 provides that any person "violating or threatening to violate" the statute  
20 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
21 25249.7. "Threaten to violate" means "to create a condition in which there is a  
22 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
23 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
24 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

25 16. Plaintiff identified certain practices of manufacturers and distributors of products  
26 bearing Di-n-butyl Phthalate ("DBP") of exposing, knowingly and intentionally, persons  
27 in California to the Proposition 65-listed chemicals of such products without first  
28

1 providing clear and reasonable warnings of such to the exposed persons prior to the time  
2 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

3 17. On December 02, 2005, the Governor of California added DBP to the list of chemicals  
4 known to the State to cause reproductive toxicity. DBP is known to the State to cause  
5 developmental toxicity, male reproductive toxicity, and female reproductive toxicity.  
6 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
7 after addition of DBP to the list of chemicals known to the State to cause reproductive  
8 toxicity, DBP became fully subject to Proposition 65 warning requirements and  
9 discharge prohibitions.

10 **SATISFACTION OF PRIOR NOTICE**

11 18. On or about August 9, 2016, Plaintiff served notice of alleged violations of Health and  
12 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
13 private action to NATIONAL STORES, MET RX, and to the California Attorney  
14 General, County District Attorneys, and City Attorneys for each city containing a  
15 population of at least 750,000 people in whose jurisdictions the violations allegedly  
16 occurred, concerning the product Polymer Exercise Balls containing DBP.

17 19. On or about August 31, 2016, Plaintiff served notice of alleged violations of Health and  
18 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
19 private action to NATIONAL STORES, MET RX, and to the California Attorney  
20 General, County District Attorneys, and City Attorneys for each city containing a  
21 population of at least 750,000 people in whose jurisdictions the violations allegedly  
22 occurred, concerning the product Polymer Exercise Balls containing DBP.

23 20. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
24 products involved, the likelihood that such products would cause users to suffer  
25 significant exposures to DPB, and the corporate structure of each of the Defendants.

26 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
27 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney  
28 for Plaintiff who executed the certificate had consulted with at least one person with



1 relevant and appropriate expertise who reviewed data regarding the exposures to DBP,  
2 the subject Proposition 65-listed chemicals of this action. Based on that information, the  
3 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
4 reasonable and meritorious case for this private action. The attorney for Plaintiff  
5 attached to the Certificate of Merit served on the Attorney General the confidential  
6 factual information sufficient to establish the basis of the Certificate of Merit.

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

10 23. Plaintiff is commencing this action more than sixty (60) days from the dates that  
11 Plaintiff gave notices of the alleged violation to NATIONAL STORES, MET RX, and  
12 the public prosecutors referenced in Paragraphs 18-19.

13 24. 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 NATIONAL STORES, MET**  
18 **RX, and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
19 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

#### 20 **Polymer Exercise Balls**

21 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
22 reference paragraphs 1 through 24 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 Polymer Exercise Balls, which includes but is not  
25 limited to, "Gym in a Box"; "Includes: Exercise Ball & Resistance Band [With Pump]";  
26 "Starter Kit"; 21" Exercise Ball with Pump; Item# 12569 MRL Columbus Ohio; UPC:  
27 847561025697; "Made in China"; 082-910-140125 37/5 BAS G 867269" ("EXERCISE  
28 BALLS").

1 26. EXERCISE BALLS contain DBP.

2 27. Defendants knew or should have known that DBP has been identified by the State of  
3 California as a chemical known to cause reproductive toxicity and therefore was subject  
4 to Proposition 65 warning requirements. Defendants were also informed of the presence  
5 of DBP in EXERCISE BALLS within Plaintiff's notice of alleged violations further  
6 discussed above at Paragraphs 18-19.

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

13 29. Plaintiff is informed, believes, and thereon alleges that between August 9, 2013 and the  
14 present, each of the Defendants knowingly and intentionally exposed California  
15 consumers and users of EXERCISE BALLS, which Defendants manufactured,  
16 distributed, or sold as mentioned above, to DBP, without first providing any type of  
17 clear and reasonable warning of such to the exposed persons before the time of  
18 exposure. Defendants have distributed and sold EXERCISE BALLS in California.  
19 Defendants know and intend that California consumers will use EXERCISE BALLS,  
20 thereby exposing them to DBP. Defendants thereby violated Proposition 65.

21 30. The principal routes of exposure were through trans-dermal absorption, ingestion,  
22 including hand to mouth pathways, and inhalation. Persons sustained exposures by  
23 using EXERCISE BALLS, handling EXERCISE BALLS without wearing gloves or by  
24 touching bare skin or mucus membranes with gloves after handling EXERCISE BALLS,  
25 or through direct and indirect hand to mouth contact, hand to mucous membrane, or  
26 breathing in particulate matter emanating from EXERCISE BALLS, as well as through  
27 environmental mediums that carry the DBP once contained within the EXERCISE  
28 BALLS.

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

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

11 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
12 \$2,500.00 per day per individual exposure to DBP from EXERCISE BALLS, pursuant  
13 to Health and Safety Code section 25249.7(b).

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

16 **PRAYER FOR RELIEF**

17 Plaintiff demands against each of the Defendants as follows:

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

23 Dated: April 18, 2017

YEROUSHALMI & YEROUSHALMI

24  
25   
26 BY: \_\_\_\_\_

27 Reuben Yeroushalmi  
28 Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.