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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 17 2017

Sherri R. Carter, Executive Officer/Clerk
By: M. Sato, 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 DOLLAR BOYS INC., a California
19 Corporation; BASA, LLC DBA DOLLAR
20 KINGS LLC, a California Limited Liability
21 Company; LA DOUBLE 7 INC., a California
22 Corporation; DOLLAR KING, a business
23 entity form unknown; SUPER 1 DOLLAR
24 KING INC., a California Corporation;
25 DOLLAR KINGS INC., a California
26 Corporation; and DOES 1-20;

27 Defendants.

CASE NO. **BC 654386**

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)

28 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
29 Defendants DOLLAR BOYS INC., BASA, LLC DBA DOLLAR KINGS LLC, LA DOUBLE 7
30 INC., DOLLAR KING, SUPER 1 DOLLAR KING INC., DOLLAR KINGS INC., and DOES 1-
31 20 as 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 DOLLAR BOYS INC. (“DOLLAR BOYS”) is a California Corporation, doing business in the State of California at all relevant times herein.
3. Defendant BASA, LLC DBA DOLLAR KINGS LLC (“BASA”) is a California Limited Liability Company, doing business in the State of California at all relevant times herein.
4. Defendant LA DOUBLE 7 INC. (“LA DOUBLE”) is a California Corporation, doing business in the State of California at all relevant times herein.
5. Defendant DOLLAR KING (“DOLLAR KING”) is a business entity form unknown, doing business in the State of California at all relevant times herein.
6. Defendant SUPER 1 DOLLAR KING INC. (“SUPER 1”) is a California Corporation, doing business in the State of California at all relevant times herein.
7. Defendant DOLLAR KINGS INC. (“DOLLAR KINGS INC”) is a California Corporation, doing business in the State of California at all relevant times herein.
8. 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.
9. At all times mentioned herein, the term “Defendants” includes DOLLAR BOYS, BASA, LA DOUBLE, DOLLAR KING, SUPER 1, DOLLAR KINGS INC, and DOES 1-20.
10. 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.

1 11. Upon information and belief, at all times relevant to this action, each of the Defendants,
2 including DOES 1-20, was an agent, servant, or employee of each of the other
3 Defendants. In conducting the activities alleged in this Complaint, each of the
4 Defendants was acting within the course and scope of this agency, service, or
5 employment, and was acting with the consent, permission, and authorization of each of
6 the other Defendants. All actions of each of the Defendants alleged in this Complaint
7 were ratified and approved by every other Defendant or their officers or managing
8 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
9 the alleged wrongful conduct of each of the other Defendants.

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

14 JURISDICTION

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

20 14. This Court has jurisdiction over Defendants named herein because Defendants either
21 reside or are located in this State or are foreign corporations authorized to do business in
22 California, are registered with the California Secretary of State, or who do sufficient
23 business in California, have sufficient minimum contacts with California, or otherwise
24 intentionally avail themselves of the markets within California through their
25 manufacture, distribution, promotion, marketing, or sale of their products within
26 California to render the exercise of jurisdiction by the California courts permissible
27 under traditional notions of fair play and substantial justice.

1 15. Venue is proper in the County of Los Angeles because one or more of the instances of
2 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
3 because Defendants conducted, and continue to conduct, business in the County of Los
4 Angeles with respect to the consumer product that is the subject of this action.

5 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

26 19. Proposition 65 provides that any person “violating or threatening to violate” the statute
27 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
28 25249.7. “Threaten to violate” means “to create a condition in which there is a

1 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
2 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
3 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

4 20. Plaintiff identified certain practices of manufacturers and distributors of products
5 bearing Di-n-butyl Phthalate ("DBP") of exposing, knowingly and intentionally, persons
6 in California to the Proposition 65-listed chemicals of such products without first
7 providing clear and reasonable warnings of such to the exposed persons prior to the time
8 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

9 21. On December 2, 2005, the Governor of California added DBP to the list of chemicals
10 known to the State to cause developmental toxicity, male reproductive toxicity, and
11 female reproductive toxicity. DBP is known to the State to cause reproductive toxicity.
12 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
13 after addition of DBP to the list of chemicals known to the State to cause cancer, DBP
14 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

15 **SATISFACTION OF PRIOR NOTICE**

16 22. On or about August 19, 2016, Plaintiff served notice of alleged violations of Health and
17 Safety Code section 25249.6, concerning consumer products exposures, subject to a
18 private action to DOLLAR BOYS, BASA, LA DOUBLE, DOLLAR KING, SUPER 1,
19 DOLLAR KINGS INC, and to the California Attorney General, County District
20 Attorneys, and City Attorneys for each city containing a population of at least 750,000
21 people in whose jurisdictions the violations allegedly occurred, concerning the product
22 Flip Flops with Polymer Components containing DBP.

23 23. 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 DBP, and the corporate structure of each of the Defendants.

26 24. 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 25. 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 26. Plaintiff is commencing this action more than sixty (60) days from the dates that
11 Plaintiff gave notices of the alleged violation to DOLLAR BOYS, BASA, LA
12 DOUBLE, DOLLAR KING, SUPER 1, DOLLAR KINGS INC, and the public
13 prosecutors referenced in Paragraph 22.

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

17
18 **FIRST CAUSE OF ACTION**

19 **(By CONSUMER ADVOCACY GROUP, INC. and against DOLLAR BOYS, BASA, LA**
20 **DOUBLE, DOLLAR KING, SUPER 1, DOLLAR KINGS INC, and DOES 1-20 for**
21 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
22 **(*Health & Safety Code, §§ 25249.5, et seq.*)**

23
24 **Flip Flops with Polymer Components**

25 28. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
26 reference paragraphs 1 through 27 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 with Polymer Components, which
includes but is not limited to, "Flip Flops"; "GIRLS SIZE -M (1-2);
ITEM#TX1008005; Blue with heart print design and opaque blue polymer strap; RN:
125230; "MADE IN CHINA"; UPC:812226010882" ("FLIP FLOPS").

1 29. FLIP FLOPS contain DBP.

2 30. 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 FLIP FLOPS within Plaintiff's notice of alleged violations further discussed
6 above at Paragraph 22.

7 31. Plaintiff's allegations regarding FLIP FLOPS 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)*. FLIP FLOPS are consumer products, and, as mentioned herein, exposures to
12 DBP took place as a result of such normal and foreseeable use.

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

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

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

8 35. 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 36. 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 FLIP FLOPS, pursuant to
13 Health and Safety Code section 25249.7(b).

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

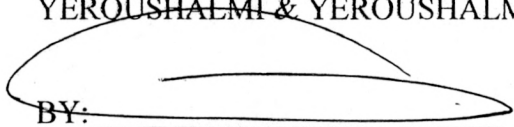
16 **PRAYER FOR RELIEF**

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
24 Dated: March 16, 2017

YEROUSHALMI & YEROUSHALMI

25 
26 BY: _____

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