

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 LOS ANGELES**

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

16 Plaintiff,

17 v.

18 **BURLINGTON COAT FACTORY**
19 **WAREHOUSE CORPORATION,** a
20 Delaware Corporation;
21 **BURLINGTON COAT FACTORY DIRECT**
22 **CORPORATION,** a New Jersey Corporation;
23 **BURLINGTON STORES, INC.,** a Delaware
24 Corporation;
25 **BURLINGTON COAT FACTORY OF**
26 **CALIFORNIA, LLC.,** a California Limited
27 Liability Corporation;
28 **LOUISE PARIS LTD.,** a business entity of
form unknown;
NEXT STEP GROUP INC., a New York
Corporation;
SANTANA TESORO, LLC., a Nevada
Limited Liability Corporation;
L & LEUNG GROUP, a Hong Kong
Corporation;
L & LEUNG HANDBAGS MFY., LTD., a
business entity of form unknown;
BURLINGTON COAT FACTORY OF SAN
BERNARDINO, LLC., a California Limited
Liability Corporation; DOES 1-20;

CASE NO. **BC 6 7 2 9 7 8**

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)

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

AUG 18 2017

Shawn R. Carter, Executive Officer/Clerk
By: Gloria Robinson, Deputy

1 Defendants.

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7 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
8 Defendants BURLINGTON COAT FACTORY WAREHOUSE CORPORATION;
9 BURLINGTON COAT FACTORY DIRECT CORPORATION; BURLINGTON STORES,
10 INC.; BURLINGTON COAT FACTORY OF CALIFORNIA, LLC.; LOUISE PARIS LTD.;
11 NEXT STEP GROUP INC.; SANTANA TESORO, LLC.; L & LEUNG GROUP; L & LEUNG
12 HANDBAGS MFY., LTD.; BURLINGTON COAT FACTORY OF SAN BERNARDINO,
13 LLC.; and DOES 1-20 as follows:

14
15 **THE PARTIES**

- 16
17 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
18 organization qualified to do business in the State of California. CAG is a person within
19 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
20 as a private attorney general, brings this action in the public interest as defined under
21 Health and Safety Code section 25249.7, subdivision (d).
- 22 2. Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION.
23 ("BURLINGTON WAREHOUSE"), is a Delaware Corporation doing business in the
24 State of California at all relevant times herein.
- 25 3. Defendant BURLINGTON COAT FACTORY DIRECT CORPORATION.
26 ("BURLINGTON DIRECT"), is a New Jersey Corporation doing business in the State
27 of California at all relevant times herein.
- 28

- 1 4. Defendant BURLINGTON STORES, INC. ("BURLINGTON STORES"), is a Delaware
2 Corporation doing business in the State of California at all relevant times herein.
- 3 5. Defendant BURLINGTON COAT FACTORY OF CALIFORNIA, LLC.
4 ("BURLINGTON CA"), is a California Limited Liability Corporation doing business in
5 the State of California at all relevant times herein.
- 6 6. Defendant LOUISE PARIS LTD. ("LOUISE PARIS"), is a business entity of form
7 unknown doing business in the State of California at all relevant times herein.
- 8 7. Defendant NEXT STEP GROUP INC. ("NEXT STEP"), is a New York Corporation
9 doing business in the State of California at all relevant times herein.
- 10 8. Defendant SANTANA TESORO, LLC. ("SANTANA TESORO"), is a Nevada Limited
11 Liability Corporation doing business in the State of California at all relevant times
12 herein.
- 13 9. Defendant L & LEUNG GROUP ("L & LEUNG"), is a Hong Kong Corporation doing
14 business in the State of California at all relevant times herein.
- 15 10. Defendant L & LEUNG HANDBAGS MFY., LTD. ("L & LEUNG HANDBAGS"), is a
16 business entity of form unknown doing business in the State of California at all relevant
17 times herein.
- 18 11. Defendant BURLINGTON COAT FACTORY OF SAN BERNARDINO, LLC.
19 ("BURLINGTON SAN BERNARDINO"), is a California Limited Liability Corporation
20 doing business in the State of California at all relevant times herein.
- 21 12. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
22 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend
23 this complaint to allege their true names and capacities when ascertained. Plaintiff is
24 informed, believes, and thereon alleges that each fictitiously named defendant is
25 responsible in some manner for the occurrences herein alleged and the damages caused
26 thereby.
- 27 13. At all times mentioned herein, the term "Defendants" includes BURLINGTON
28 WAREHOUSE; BURLINGTON DIRECT; BURLINGTON STORES; BURLINGTON

1 CA: LOUISE PARIS: NEXT STEP: SANTANA TESORO: L & LEUNG: L & LEUNG
2 HANDBAGS: BURLINGTON SAN BERNARDINO; and DOES 1-20.

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

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

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

18 JURISDICTION

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

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

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

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

8 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

7 24. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl
8 Phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons
9 in California to the Proposition 65-listed chemicals of such products without first
10 providing clear and reasonable warnings of such to the exposed persons prior to the time
11 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

19 26. Plaintiff identified certain practices of manufacturers and distributors of products
20 bearing Di Isononyl Phthalate ("DINP"), also known as diisononyl phthalate, exposing,
21 knowingly and intentionally, persons in California to said Proposition 65-listed chemical
22 without first providing clear and reasonable warnings to the exposed persons prior to the
23 time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

24 27. 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
26 25249.9 and 25249.10, twenty (20) months after addition of DINP to the list of
27 chemicals known to the State to cause cancer, DINP became fully subject to Proposition
28 65 warning requirements and discharge prohibitions.

SATISFACTION OF PRIOR NOTICE

1
2 28. On or about October 19, 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 BURLINGTON WAREHOUSE, BURLINGTON DIRECT,
5 BURLINGTON STORES, BURLINGTON CA, LOUISE PARIS, NEXT STEP, and to
6 the California Attorney General, County District Attorneys, and City Attorneys for each
7 city containing a population of at least 750,000 people in whose jurisdictions the
8 violations allegedly occurred, concerning the product Fitness Balls containing DEHP.

9 29. On or about October 19, 2016, plaintiff served notice of alleged violations of Health and
10 Safety Code section 25249.6, concerning consumer products exposures, subject to a
11 private action to SANTANA TESORO, L & LEUNG, L & LEUNG HANDBAGS,
12 BURLINGTON WAREHOUSE, BURLINGTON DIRECT, BURLINGTON CA,
13 BURLINGTON SAN BERNARDINO, BURLINGTON STORES and to the California
14 Attorney General, County District Attorneys, and City Attorneys for each city
15 containing a population of at least 750,000 people in whose jurisdictions the violations
16 allegedly occurred, concerning the product Handbags containing DINP.

17 30. Before sending the notice of alleged violations, Plaintiff investigated the consumer
18 products involved, the likelihood that such products would cause users to suffer
19 significant exposures to DEHP and/or DINP, and the corporate structure of each of the
20 Defendants.

21 31. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
22 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
23 Plaintiff who executed the certificate had consulted with at least one person with
24 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP
25 and/or DINP, the subject Proposition 65-listed chemicals of this action. Based on that
26 information, the attorney for Plaintiff who executed the Certificate of Merit believed
27 there was a reasonable and meritorious case for this private action. The attorney for
28 Plaintiff attached to the Certificate of Merit served on the Attorney General the

1 confidential factual information sufficient to establish the basis of the Certificate of
2 Merit.

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

6 33. Plaintiff is commencing this action more than sixty (60) days from the dates that
7 Plaintiff gave notices of the alleged violation to BURLINGTON WAREHOUSE;
8 BURLINGTON DIRECT; BURLINGTON STORES; BURLINGTON CA; LOUISE
9 PARIS; NEXT STEP; SANTANA TESORO; L & LEUNG; L & LEUNG
10 HANDBAGS; BURLINGTON SAN BERNARDINO, and the public prosecutors
11 referenced in Paragraph 28 through 29.

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

15 **FIRST CAUSE OF ACTION**

16 (By CONSUMER ADVOCACY GROUP, INC. and against BURLINGTON
17 WAREHOUSE, BURLINGTON DIRECT, BURLINGTON STORES, BURLINGTON CA,
18 LOUISE PARIS, NEXT STEP, and DOES 1-10 for Violations of Proposition 65, The Safe
19 Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et*
20 *seq.*))

21 **Polymer Fitness Balls**

22 35. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
23 reference paragraphs 1 through 34 of this complaint as though fully set forth herein.

24 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 producer, distributor, promoter, or retailer of Polymer Fitness Balls, which includes but
26 is not limited to, "Cover girl®"; "Active"; "65cm Core Conditioning Exercise Ball";
27 "Includes Air Pump"; "Engineered with Anti-burst Technology"; "Helps Improve Core
28 Strength and Posture"; "Provides a Total Body Workout"; "Color Black" "SEA 2 ACC
09 642 64991663 6"; "00006303040975820797"; "Superior Brands Group LLC."; "New

1 York, NY 10001”; “COVER GIRL is a trademark of Next Step Group, Inc.”; UPC:
2 630304714770” (“BALLS”).

3 36. BALLS contain DEHP.

4 37. 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 BALLS within Plaintiff's notice of alleged violations further
8 discussed above at Paragraphs 28.

9 38. Plaintiff's allegations regarding BALLS 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 BALLS are consumer products, and, as mentioned herein, exposures to DEHP took
14 place as a result of such normal and foreseeable use.

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

23 40. 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 using the BALLS, handling BALLS without wearing gloves or by touching bare skin or
26 mucus membranes with gloves after handling BALLS, or through direct and indirect
27 hand to mouth contact, hand to food to mouth, direct contact to food then to mouth, hand
28 to mucous membrane, or breathing in particulate matter emanating from BALLS, as well

1 as through environmental mediums that carry the DEHP once contained within the
2 BALLS.

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

10 42. 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 43. 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 BALLS, pursuant to Health
15 and Safety Code section 25249.7(b).

16 44. 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 SANTANA TESORO, L &**
20 **LEUNG, L & LEUNG HANDBAGS, BURLINGTON WAREHOUSE, BURLINGTON**
21 **DIRECT, BURLINGTON CA, BURLINGTON STORES, BURLINGTON SAN**
22 **BERNARDINO, and DOES 11-20 for Violations of Proposition 65, The Safe Drinking**
Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*)

23 **Handbags with Polymer Layers**

24 45. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
25 reference paragraphs 1 through 44 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 producer, distributor, promoter, or retailer of Handbags with Polymer Layers, which
28 includes but is not limited to "Carlos by Carlos Santana®"; CS056N15 YELLOW

1 ESTRELLA CLUTCH; Handbag with yellow exterior layer and green interior layer;
2 also featuring a wrist strap of the same material which can be used to zip and unzip the
3 bag; STYLE CS056N15; SEA 2 ACC 09 443 63902530 6; UPC: 844883046010”
4 (“HANDBAGS”).

5 46. HANDBAGS contain DINP.

6 47. Defendants knew or should have known that DINP has been identified by the State of
7 California as a chemical known to cause cancer and therefore was subject to Proposition
8 65 warning requirements. Defendants were also informed of the presence of DINP in
9 HANDBAGS within Plaintiff's notice of alleged violations further discussed above at
10 Paragraphs 29.

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

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

25 50. The principal routes of exposure were through ingestion, including hand to mouth
26 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by
27 using HANDBAGS, handling HANDBAGS without wearing gloves or by touching bare
28 skin or mucus membranes with gloves after handling HANDBAGS, or through direct

1 and indirect hand to mouth contact, hand to food to mouth, direct contact to food then to
2 mouth, hand to mucous membrane, or breathing in particulate matter emanating from
3 HANDBAGS, as well as through environmental mediums that carry the DINP once
4 contained within the HANDBAGS.

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

12 52. 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 53. Based on the allegations herein, Defendants are liable for civil penalties of up to
16 \$2,500.00 per day per individual exposure to DINP from HANDBAGS, pursuant to
17 Health and Safety Code section 25249.7(b).

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

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