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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 BURLINGTON COAT FACTORY  
19 WAREHOUSE CORPORATION, a  
20 Delaware corporation; BURLINGTON  
21 STORES, INC., a Delaware Corporation; and  
22 DOES 1-20;

23 Defendants.

24 CASE NO. **BC 662620**

25 COMPLAINT FOR PENALTY AND  
26 INJUNCTION

27 Violation of Proposition 65, the Safe  
28 Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

29 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
30 Defendants BURLINGTON, BURLINGTON COAT FACTORY WAREHOUSE  
31 CORPORATION, BURLINGTON STORES, INC., and DOES 1-20 as follows:

32 //

33 **THE PARTIES**

- 34 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
35 organization qualified to do business in the State of California. CAG is a person within

36 **CONFORMED COPY**  
37 OF ORIGINAL FILED  
38 Los Angeles Superior Court

**MAY 24 2017**

Sherri R. Carter, Executive Officer/clerk

By Shaunya Bolden, Deputy

COPY

1 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
2 as a private attorney general, brings this action in the public interest as defined under  
3 Health and Safety Code section 25249.7, subdivision (d).

- 4
- 5 2. Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION  
6 (“BURLINGTON WAREHOUSE”) is a Delaware Corporation, doing business in the  
7 State of California at all relevant times herein.
- 8 3. Defendant BURLINGTON STORES, INC., (“BURLINGTON STORES”) is a Delaware  
9 corporation, doing business in the State of California at all relevant times herein.
- 10 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-  
11 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend  
12 this complaint to allege their true names and capacities when ascertained. Plaintiff is  
13 informed, believes, and thereon alleges that each fictitiously named defendant is  
14 responsible in some manner for the occurrences herein alleged and the damages caused  
15 thereby.
- 16 5. At all times mentioned herein, the term “Defendants” includes BURLINGTON  
17 WAREHOUSE, BURLINGTON STORES, and DOES 1-20.
- 18 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
19 times mentioned herein have conducted business within the State of California.
- 20 7. Upon information and belief, at all times relevant to this action, each of the Defendants,  
21 including DOES 1-20, was an agent, servant, or employee of each of the other  
22 Defendants. In conducting the activities alleged in this Complaint, each of the  
23 Defendants was acting within the course and scope of this agency, service, or  
24 employment, and was acting with the consent, permission, and authorization of each of  
25 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
26 were ratified and approved by every other Defendant or their officers or managing  
27 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated  
28 the alleged wrongful conduct of each of the other Defendants.

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

5 **JURISDICTION**

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

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

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

23 **BACKGROUND AND PRELIMINARY FACTS**

24 12. In 1986, California voters approved an initiative to address growing concerns about  
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures  
26 to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
2 from contamination, to allow consumers to make informed choices about the products  
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
4 fit.

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

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

16 15. Proposition 65 provides that any person "violating or threatening to violate" the statute  
17 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
18 25249.7. "Threaten to violate" means "to create a condition in which there is a  
19 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
20 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
21 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

27 17. On December 2, 2005, the Governor of California added DBP to the list of chemicals  
28 known to the State to cause developmental toxicity, male reproductive toxicity, and

1 female reproductive toxicity. DBP is known to the State to cause reproductive toxicity.  
2 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
3 after addition of DBP to the list of chemicals known to the State to cause reproductive  
4 toxicity, DBP became fully subject to Proposition 65 warning requirements and  
5 discharge prohibitions.

6 **SATISFACTION OF PRIOR NOTICE**

7 18. On or about October 21, 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 BURLINGTON WAREHOUSE, BURLINGTON STORES, and to the  
10 California Attorney General, County District Attorneys, and City Attorneys for each city  
11 containing a population of at least 750,000 people in whose jurisdictions the violations  
12 allegedly occurred, concerning the product Sandals with Polymer Straps containing  
13 DBP.

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

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

26 21. 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 22. Plaintiff is commencing this action more than sixty (60) days from the dates that  
2 Plaintiff gave notices of the alleged violation to BURLINGTON WAREHOUSE,  
3 BURLINGTON STORES, and the public prosecutors referenced in Paragraph 18.

4 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
5 any applicable district attorney or city attorney has commenced and is diligently  
6 prosecuting an action against the Defendants.

7 **FIRST CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against BURLINGTON**  
9 **WAREHOUSE, BURLINGTON STORES, and DOES 1-20, for Violations of Proposition**  
10 **65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***  
11 ***25249.5, et seq.*))**

12 **Sandals with Polymer Straps**

13 24. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
14 reference paragraphs 1 through 23 of this complaint as though fully set forth herein.  
15 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
16 distributor, promoter, or retailer of Sandals with Polymer Straps, which includes but is  
17 not limited to: “385 FIFTH”; “Style: RF19004B” ; black sandals with white straps;  
18 “Distributed by Royal Footwear & Accessories”; Made in China; “All Man Made  
19 Materials”; Size:7; RF19004BST0; UPC: 847405093059” (“SANDALS”).

20 25. SANDALS contain DBP.

21 26. Defendants knew or should have known that DBP has been identified by the State of  
22 California as a chemical known to cause reproductive toxicity and therefore was subject  
23 to Proposition 65 warning requirements. Defendants were also informed of the presence  
24 of DBP in SANDALS within Plaintiff's notice of alleged violations further discussed  
25 above at Paragraph 18.

26 27. Plaintiff's allegations regarding SANDALS concerns “[c]onsumer products  
27 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,  
28 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*

1 25602(b). SANDALS are consumer products, and, as mentioned herein, exposures to  
2 DBP took place as a result of such normal and foreseeable use.

3 28. Plaintiff is informed, believes, and thereon alleges that between October 21, 2013 and  
4 the present, each of the Defendants knowingly and intentionally exposed California  
5 consumers and users of SANDALS, which Defendants manufactured, distributed, or  
6 sold as mentioned above, to DBP, without first providing any type of clear and  
7 reasonable warning of such to the exposed persons before the time of exposure.

8 Defendants have distributed and sold SANDALS in California. Defendants know and  
9 intend that California consumers will use SANDALS, thereby exposing them to DBP.  
10 Defendants thereby violated Proposition 65.

11 29. The principal routes of exposure were through trans-dermal absorption, dermal contact,  
12 and ingestion, including hand to mouth pathways. Persons sustained exposures by  
13 wearing and handling SANDALS without wearing gloves or by touching bare skin or  
14 mucus membranes with gloves after handling SANDALS, or through direct and indirect  
15 hand to mouth contact, hand to food to mouth, hand to mucous membrane, as well as  
16 through environmental mediums that carry the DBP once contained within the  
17 SANDALS.

18 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
19 Proposition 65 as to SANDALS have been ongoing and continuous to the date of the  
20 signing of this complaint, as Defendants engaged and continue to engage in conduct  
21 which violates Health and Safety Code section 25249.6, including the manufacture,  
22 distribution, promotion, and sale of SANDALS, so that a separate and distinct violation  
23 of Proposition 65 occurred each and every time a person was exposed to DBP by  
24 SANDALS as mentioned herein.

25 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
26 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
27 violations alleged herein will continue to occur into the future.  
28

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

4 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.

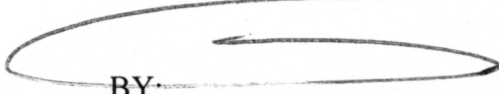
6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

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

13  
14 Dated: 5-24-17

YEROUSHALMI & YEROUSHALMI

15   
16 BY: \_\_\_\_\_

17 Reuben Yeroushalmi  
18 Attorneys for Plaintiff,  
19 Consumer Advocacy Group, Inc.  
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