

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 ALAMEDA**

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

16 Plaintiff,

17 v.

18 **BURLINGTON COAT FACTORY**  
19 **INVESTMENTS HOLDINGS, INC., dba**  
20 **BURLINGTON COAT FACTORY DIRECT**  
21 **CORPORATION, BURLINGTON STORES,**  
22 **INC., a Delaware Corporation;**  
23 **BURLINGTON COAT FACTORY**  
24 **WAREHOUSE CORPORATION, a New**  
25 **Jersey Corporation;**  
26 **BURLINGTON STORE #00316, Business**  
27 **Entity Form Unknown;**  
28 **BURLINGTON STORE #00772, Business**  
**Entity Form Unknown;**  
**BURLINGTON COAT FACTORY,**  
**Business Entity Form Unknown and**  
**BURLINGTON STORE 780, Business**  
**Entity Form Unknown; and**  
**DOES 1-60**

Defendants.

CASE NO. RG18916514

FIRST AMENDED 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)

ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 30 2003

CLERK OF THE SUPERIOR COURT

By TANIA PIERCE

BY FAX

ORIGINAL

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against Defendants  
2 BURLINGTON COAT FACTORY INVESTMENTS HOLDINGS, INC., dba BURLINGTON  
3 COAT FACTORY DIRECT CORPORATION, BURLINGTON STORES, INC.;  
4 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION; BURLINGTON STORE  
5 #00316; BURLINGTON STORE #00772; BURLINGTON COAT FACTORY; BURLINGTON  
6 STORE 780 and DOES 1-60; as follows:

7  
8 **THE PARTIES**

- 9 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
10 organization qualified to do business in the State of California. CAG is a person within  
11 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
12 as a private attorney general, brings this action in the public interest as defined under  
13 Health and Safety Code section 25249.7, subdivision (d).
- 14 2. Defendant BURLINGTON COAT FACTORY INVESTMENTS HOLDINGS, INC.,  
15 dba BURLINGTON COAT FACTORY DIRECT CORPORATION, BURLINGTON  
16 STORES, INC., a Delaware Corporation ("BURLINGTON") doing business in the State  
17 of California at all relative times herein.
- 18 3. Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION, a New  
19 Jersey Corporation ("BURLINGTON WAREHOUSE") doing business in the State of  
20 California at all relative times herein.
- 21 4. Defendant BURLINGTON STORE #00316, Business Entity Form Unknown  
22 ("BURLINGTON STORE 1") doing business in the State of California at all relative  
23 times herein.
- 24 5. Defendant BURLINGTON STORE #00772, Business Entity Form Unknown  
25 ("BURLINGTON STORE 2") doing business in the State of California at all relative  
26 times herein.
- 27  
28

- 1 6. Defendant BURLINGTON COAT FACTORY, Business Entity Form Unknown  
2 ("BURLINGTON STORE 3") doing business in the State of California at all relative  
3 times herein.
- 4 7. Defendant BURLINGTON STORE 780, Business Entity Form Unknown  
5 ("BURLINGTON STORE 4") doing business in the State of California at all relative  
6 times herein.
- 7 8. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-60,  
8 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
9 complaint to allege their true names and capacities when ascertained. Plaintiff is  
10 informed, believes, and thereon alleges that each fictitiously named defendant is  
11 responsible in some manner for the occurrences herein alleged and the damages caused  
12 thereby.
- 13 9. At all times mentioned herein, the term "Defendants" includes BURLINGTON COAT  
14 FACTORY INVESTMENTS HOLDINGS, INC., dba BURLINGTON COAT  
15 FACTORY DIRECT CORPORATION, BURLINGTON STORES, INC.;  
16 BURLINGTON COAT FACTORY WAREHOUSE CORPORATION; BURLINGTON  
17 STORE #00316; BURLINGTON STORE #00772; BURLINGTON COAT FACTORY;  
18 BURLINGTON STORE 780; and DOES 1-60.
- 19 10. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
20 times mentioned herein have conducted business within the State of California.
- 21 11. Upon information and belief, at all times relevant to this action, each of the Defendants,  
22 including DOES 1-60, was an agent, servant, or employee of each of the other  
23 Defendants. In conducting the activities alleged in this Complaint, each of the  
24 Defendants was acting within the course and scope of this agency, service, or  
25 employment, and was acting with the consent, permission, and authorization of each of  
26 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
27 were ratified and approved by every other Defendant or their officers or managing agents.  
28

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

3 12. 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 13. 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 14. 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 manufacture,  
18 distribution, promotion, marketing, or sale of their products within California to render  
19 the exercise of jurisdiction by the California courts permissible under traditional notions  
20 of fair play and substantial justice.

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

25 **BACKGROUND AND PRELIMINARY FACTS**

26 16. In 1986, California voters approved an initiative to address growing concerns about  
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
28 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,



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

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

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

18 19. Proposition 65 provides that any person "violating or threatening to violate" the statute  
19 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
20 "Threaten to violate" means "to create a condition in which there is a substantial  
21 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

22 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
23 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

24 20. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate, also  
25 known as Bis (2-ethylhexyl) phthalate ("DEHP") to the list of chemicals known to the  
26 State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of  
27 chemicals known to the State to cause developmental male reproductive toxicity.

28 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months

1 after addition of DEHP to the list of chemicals known to the State to cause reproductive  
2 toxicity, DEHP became fully subject to Proposition 65 warning requirements and  
3 discharge prohibitions.

4 21. On December 20, 2013, the Governor of California added Di Isononyl Phthalate  
5 (“DINP”), also known as diisononyl phthalate to the list of chemicals known to the State  
6 to cause cancer. Pursuant to Health and Safety Code sections 25249.9 and 25249.10,  
7 twenty (20) months after addition of DINP to the list of chemicals known to the State to  
8 cause cancer, DINP became fully subject to Proposition 65 warning requirements and  
9 discharge prohibitions.

10 22. On December 2, 2005, the Governor of California added Di-n-Butyl Phthalate, also  
11 known as Dibutyl Phthalate (“DBP”) to the list of chemicals known to the State to cause  
12 developmental, female, and male reproductive toxicity. Pursuant to Health and Safety  
13 Code sections 25249.9 and 25249.10, twenty (20) months after addition of DBP to the list  
14 of chemicals known to the State to cause reproductive toxicity, DBP became fully subject  
15 to Proposition 65 warning requirements and discharge prohibitions.

16 23. Plaintiff identified certain practices of manufacturers and distributors products bearing  
17 DEHP, DBP and DINP exposing, knowingly and intentionally, persons in California to  
18 the Proposition 65-listed chemicals of such products without first providing clear and  
19 reasonable warnings of such to the exposed persons prior to the time of exposure.  
20 Plaintiff later discerned that Defendants engaged in such practice.

#### 21 SATISFACTION OF PRIOR NOTICE

22 24. On or about January 29, 2018, Plaintiff gave notice of alleged violations of Health and  
23 Safety Code section 25249.6, concerning consumer products exposures subject to a  
24 private action to BURLINGTON, BURLINGTON WAREHOUSE, BURLINGTON  
25 STORE 3 and to the California Attorney General, County District Attorneys, and City  
26 Attorneys for each city containing a population of at least 750,000 people in whose  
27 jurisdictions the violations allegedly occurred, concerning the product Exercise Balls  
28 containing DINP.

1 25. On or about April 18, 2018, Plaintiff gave notice of alleged violations of Health and  
2 Safety Code section 25249.6, concerning consumer products exposures subject to a  
3 private action to BURLINGTON, BURLINGTON WAREHOUSE, BURLINGTON  
4 STORE 1 and to the California Attorney General, County District Attorneys, and City  
5 Attorneys for each city containing a population of at least 750,000 people in whose  
6 jurisdictions the violations allegedly occurred, concerning the product Bathroom  
7 Accessories, containing DEHP and DINP.

8 26. On or about May 7, 2018, Plaintiff gave notice of alleged violations of Health and Safety  
9 Code section 25249.6, concerning consumer products exposures subject to a private  
10 action to BURLINGTON, BURLINGTON WAREHOUSE, BURLINGTON STORE 2  
11 and to the California Attorney General, County District Attorneys, and City Attorneys for  
12 each city containing a population of at least 750,000 people in whose jurisdictions the  
13 violations allegedly occurred, concerning the product Footwear, containing DBP and  
14 DEHP.

15 27. On or about May 7, 2018, Plaintiff gave notice of alleged violations of Health and Safety  
16 Code section 25249.6, concerning consumer products exposures subject to a private  
17 action to BURLINGTON, BURLINGTON STORE 1, BURLINGTON WAREHOUSE  
18 and to the California Attorney General, County District Attorneys, and City Attorneys for  
19 each city containing a population of at least 750,000 people in whose jurisdictions the  
20 violations allegedly occurred, concerning the product Pillow, containing DEHP.

21 28. On or about March 16, 2018, Plaintiff gave notice of alleged violations of Health and  
22 Safety Code section 25249.6, concerning consumer products exposures subject to a  
23 private action to BURLINGTON, BURLINGTON STORE 3, BURLINGTON  
24 WAREHOUSE, BURLINGTON STORE 4 and to the California Attorney General,  
25 County District Attorneys, and City Attorneys for each city containing a population of at  
26 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
27 the product Bath Stool, containing DBP and DEHP.  
28

1 29. On or about July 16, 2018, Plaintiff gave notice of alleged violations of Health and Safety  
2 Code section 25249.6, concerning consumer products exposures subject to a private  
3 action to BURLINGTON, BURLINGTON WAREHOUSE, BURLINGTON STORE 1,  
4 BURLINGTON COAT FACTORY, and to the California Attorney General, County  
5 District Attorneys, and City Attorneys for each city containing a population of at least  
6 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the  
7 product Bath Pillow, containing DINP.

8 30. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
9 products involved, the likelihood that such products would cause users to suffer  
10 significant exposures to DEHP, DBP and DINP, and the corporate structure of each of the  
11 Defendants.

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

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

25 33. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
26 gave notices of the alleged violation to BURLINGTON COAT FACTORY  
27 INVESTMENTS HOLDINGS, INC., dba BURLINGTON COAT FACTORY DIRECT  
28 CORPORATION, BURLINGTON STORES, INC.; BURLINGTON COAT FACTORY

1 WAREHOUSE CORPORATION; BURLINGTON STORE #00316; BURLINGTON  
2 STORE #00772; BURLINGTON COAT FACTORY STORE, BURLINGTON STORE  
3 780; and DOES 1-60 and the public prosecutors referenced in Paragraph 24-29.

4 34. 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 BURLINGTON WAREHOUSE, BURLINGTON STORE 3 and DOES 1-10 for Violations  
10 of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &*  
11 *Safety Code*, §§ 25249.5, *et seq.*))

12 **EXERCISE EQUIPMENT**

13 35. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
14 reference paragraphs 1 through 34 of this complaint as though fully set forth herein. Each  
15 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
16 promoter, or retailer of Booster Cables, which includes but is not limited to: **“Cover**  
17 **Girl” brand “Active” “Ergonomic Massage Roller Fitness Ball” “Air pump**  
18 **included” “Made in China” “CGSDE-1017” “Lime (307). UPC 885998957723**  
19 **(“EXERCISE BALLS”).**

20 36. EXERCISE BALLS contains DINP.

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

26 38. Plaintiff's allegations regarding EXERCISE BALLS concern “[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). EXERCISE BALLS is a consumer product, and, as mentioned herein,  
2 exposures to DINP took place as a result of such normal and foreseeable consumption  
3 and use.

4 39. Plaintiff is informed, believes, and thereon alleges that between January 29, 2015, and the  
5 present, each of the Defendants knowingly and intentionally exposed California  
6 consumers of EXERCISE BALLS, which Defendants manufactured, distributed, or sold  
7 as mentioned above, to DINP without first providing any type of clear and reasonable  
8 warning of such to the exposed persons before the time of exposure. Defendants have  
9 distributed and sold EXERCISE BALLS in California. Defendants know and intend that  
10 California consumers will use and consume EXERCISE BALLS, thereby exposing them  
11 to DINP. Defendants thereby violated Proposition 65.

12 40. The principal routes of exposure with regard to the EXERCISE BALLS are and were  
13 through dermal contact and ingestion. Persons sustain exposures by using and exercising  
14 on the EXERCISE BALLS without wearing gloves, socks, or any other personal  
15 protective equipment, or by touching bare skin or mucous membranes after handling the  
16 EXERCISE BALLS as well as through direct and indirect hand to mouth contact, hand to  
17 mucous membrane, or breathing in particulate matter dispersed from the EXERCISE  
18 BALLS.

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

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

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

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

6 **SECOND CAUSE OF ACTION**

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

10 **BATHROOM ACCESSORIES**

11 45. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
12 reference paragraphs 1 through 44 of this complaint as though fully set forth herein. Each  
13 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
14 promoter, or retailer of Footwear, which includes but is not limited to: **Pink cushioned**  
15 **bath pillow, "edma luxe," "Cushioned texture," "Machine washable," "Slide**  
16 **resitant suction cup," "8"\*11"\*2" (20\*29\*5cm)," "RN# 125311," "Made in China,"**  
17 **"Style BP-020," "Sea 4 LIN 16 660 18375303 5 2 1/1" ("BATH PILLOW")**

18 46. BATH PILLOW contains DEHP and DINP.

19 47. Defendants knew or should have known that DEHP and DINP have been identified by  
20 the State of California as a chemical known to cause cancer and reproductive toxicity and  
21 therefore was subject to Proposition 65 warning requirements. Defendants were also  
22 informed of the presence of DEHP and DINP in BATH PILLOW within Plaintiff's notice  
23 of alleged violations further discussed above at Paragraph 25.

24 48. Plaintiff's allegations regarding BATH PILLOW concern "[c]onsumer products  
25 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
26 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
27 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §  
28 25602(b). BATH PILLOW is a consumer product, and, as mentioned herein, exposures to



1 DEHP and DINP took place as a result of such normal and foreseeable consumption and  
2 use.

3 49. Plaintiff is informed, believes, and thereon alleges that between April 18, 2015, and the  
4 present, each of the Defendants knowingly and intentionally exposed its employees,  
5 California consumers and users of BATH PILLOW, which Defendants manufactured,  
6 distributed, or sold as mentioned above, to DEHP and DINP without first providing any  
7 type of clear and reasonable warning of such to the exposed persons before the time of  
8 exposure. Defendants have distributed and sold BATH PILLOW in California.

9 Defendants know and intend that California consumers will use and consume BATH  
10 PILLOW, thereby exposing them to DEHP and DINP. Defendants thereby violated  
11 Proposition 65.

12 50. The principal routes of exposure were through dermal contact, ingestion, including hand  
13 to mouth pathways, and inhalation. Persons sustain exposures by using or handling the  
14 BATH PILLOW without wearing gloves or by touching bare skin or mucous membranes  
15 with or without gloves after handling BATH PILLOW, as well as direct and indirect hand  
16 to mouth contact, direct contact to food then to mouth, hand to mucous membrane, trans-  
17 dermal absorption, or breathing in particulate matter emanating from the BATH PILLOW  
18 during handling and use, as well as through environmental mediums that carry the DEHP  
19 and DINP once contained within the BATH PILLOW.

20 51. Violators caused occupational exposures, to their respective product, in violation of  
21 Proposition 65 by allowing employees to handle the BATH PILLOW in the course of  
22 packaging, shipping, distributing, promoting, and selling the BATH PILLOW without  
23 having first given clear and reasonable warnings to such employees that, by handling the  
24 BATH PILLOW such employees would suffer exposures to DEHP and DINP. Violators'  
25 employees were exposed to DEHP and DINP by touching the BATH PILLOW with their  
26 bare skin at Violators' premises located at Burlington Store #00316, 13550 Whittier  
27 Suite A, Whittier, CA 90605 among other locations where these activities take place  
28 including but not limited to other distributing, shipping, warehousing, packaging, and



1 retail centers. Violators did not provide any Proposition 65-compliant warning on the  
2 product, signs, or system of signs within the workplace to warn of the danger.

3 52. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to BATH PILLOW have been ongoing and continuous to the date of  
5 the 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 BATH PILLOW, so that a separate and distinct  
8 violation of Proposition 65 occurred each and every time a person was exposed to DEHP  
9 and DINP by BATH PILLOW as mentioned herein.

10 53. 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 54. 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 and DINP from BATH PILLOW,  
15 pursuant to Health and Safety Code section 25249.7(b).

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

### 18 THIRD CAUSE OF ACTION

19 (By CONSUMER ADVOCACY GROUP, INC. and against BURLINGTON,  
20 BURLINGTON WAREHOUSE, BURLINGTON STORE 2 and DOES 21-30 for Violations  
21 of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &*  
22 *Safety Code, §§ 25249.5, et seq.*))

### 23 **FOOTWEAR**

24 56. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
25 reference paragraphs 1 through 55 of this complaint as though fully set forth herein. Each  
26 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
27 promoter, or retailer of Car Accessories, which includes but is not limited to **Black**  
28 **polymer sandals with large across the foot straps; "Henry Ferrera Collection;"**  
**"6/39;" UPC 00208863321933644040 ("SANDALS").**

1 57. SANDALS contains DEHP and DBP.

2 58. Defendants knew or should have known that DEHP and DBP has been identified by the  
3 State of California as a chemical known to cause cancer and reproductive toxicity and  
4 therefore was subject to Proposition 65 warning requirements. Defendants were also  
5 informed of the presence of DEHP and DBP in SANDALS within Plaintiff's notice of  
6 alleged violations further discussed above at Paragraph 26.

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

13 60. Plaintiff is informed, believes, and thereon alleges that between May 7, 2015, and the  
14 present, each of the Defendants knowingly and intentionally exposed California  
15 consumers of SANDALS, which Defendants manufactured, distributed, or sold as  
16 mentioned above, to DEHP and 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 SANDALS in California. Defendants know and  
19 intend that California consumers will use and consume SANDALS, thereby exposing  
20 them to DEHP and DBP. Defendants thereby violated Proposition 65.

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

1 62. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
2 Proposition 65 as to SANDALS 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 SANDALS, so that a separate and distinct violation  
6 of Proposition 65 occurred each and every time a person was exposed to DEHP and DBP  
7 by SANDALS as mentioned herein.

8 63. 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 64. Based on the allegations herein, Defendants are liable for civil penalties of up to  
12 \$2,500.00 per day per individual exposure to DEHP and DBP from SANDALS, pursuant  
13 to Health and Safety Code section 25249.7(b).

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

16 **FOURTH CAUSE OF ACTION**

17 **(By CONSUMER ADVOCACY GROUP, INC. and against BURLINGTON,**  
18 **BURLINGTON WAREHOUSE, BURLINGTON STORE 1 and DOES 31-40 for Violations**  
19 **of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &***  
20 ***Safety Code*, §§ 25249.5, *et seq.*))**

21 **PILLOW**

22 66. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
23 reference paragraphs 1 through 65 of this complaint as though fully set forth herein. Each  
24 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
25 promoter, or retailer of Pillow, which includes but is not limited to: **"EARTH**  
26 **THERAPEUTICS", "RELAXING MICROWAVEABLE neck pillow", "For the**  
27 **HOT and COLD relief of tension and stress", "V 29345", "SEA 6 ACC 09 203**  
28 **20006932 0 1/1", "S ET40778 C BLUE", "TRUE TO LIFE", "EARTH**

1 THERAPEUTICS LTD. P.O. BOX 1009 PLAINVIEW, NY 11803", "PRODUCT  
2 OF CHINA", UPC: 073377407789 ("PILLOW").

3 67. PILLOW contains DEHP.

4 68. 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 PILLOW within Plaintiff's notice of alleged violations further  
8 discussed above at Paragraph 27.

9 69. Plaintiff's allegations regarding PILLOW concern "[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 PILLOW is a consumer product, and, as mentioned herein, exposures to DEHP took  
14 place as a result of such normal and foreseeable consumption and use.

15 70. Plaintiff is informed, believes, and thereon alleges that between May 30, 2015, and the  
16 present, each of the Defendants knowingly and intentionally exposed California  
17 consumers of PILLOW, 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 PILLOW in California. Defendants know and intend that California  
21 consumers will use and consume PILLOW, thereby exposing them to DEHP. Defendants  
22 thereby violated Proposition 65.

23 71. The principal routes of exposure were through dermal contact and ingestion. Persons  
24 sustain exposures by using and/or handling the PILLOW without wearing gloves or by  
25 touching bare skin or mucous membranes with or without gloves after handling  
26 PILLOW, as well as direct and indirect hand to mouth contact, hand to mucous  
27 membrane, trans-dermal absorption, or breathing in particulate matter emanating from the  
28

1 PILLOW during use, as well as through environmental mediums that carry the DEHP  
2 once contained within the PILLOW.

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

10 73. 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 74. 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 PILLOW 2, pursuant to Health  
15 and Safety Code section 25249.7(b).

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

18 **FIFTH CAUSE OF ACTION**

19 (By CONSUMER ADVOCACY GROUP, INC. and against BURLINGTON,  
20 BURLINGTON STORE 3, BURLINGTON WAREHOUSE, BURLINGTON STORE 4  
21 and DOES 41-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic  
22 Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

23 **BATH STOOL**

24 76. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
25 reference paragraphs 1 through 75 of this complaint as though fully set forth herein. Each  
26 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
27 promoter, or retailer of Footwear, which includes but is not limited to **White bath stool**  
28 **with silver legs, "ALL NEW MATERIAL", "consisting of 70% POLYURETHANE**  
**FOAM 30% POLYESTER FIBRES", "REG.NO. PA 40894(CN)", "MADE BY:**

1       **JIANGMEN HELI HARDWARE CO., LTD NO. 102, DONGSHENG ROAD,**  
2       **JIANGHAI ZONE, JIANGMEN, GUANGDONG, CHINA”, “MADE IN CHINA”,**  
3       **“Ven 13281”, “Style 0406CH”, “FLTHK 6434890”, “Color WHITE/CHRF71 H**  
4       **BATH FURN”, “Our Low Price \$36.99”, “Sea 4”, “LIN 16 620 17806569 0”, “1/1”**  
5       **(“BATH STOOL”)**

6       77. BATH STOOL contains DEHP and DBP.

7       78. Defendants knew or should have known that DEHP and DBP have 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 DBP in BATH STOOL within Plaintiff's notice of  
11      alleged violations further discussed above at Paragraph 28.

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

19      80. Plaintiff is informed, believes, and thereon alleges that between March 16, 2015, and the  
20      present, each of the Defendants knowingly and intentionally exposed its employees,  
21      California consumers and users of BATH STOOL, which Defendants manufactured,  
22      distributed, or sold as mentioned above, to DEHP and DBP 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 BATH STOOL in California.  
25      Defendants know and intend that California consumers will use and consume BATH  
26      STOOL, thereby exposing them to DEHP and DBP. Defendants thereby violated  
27      Proposition 65.

1 81. The principal routes of exposure were through dermal contact, ingestion, including hand  
2 to mouth pathways, and inhalation. Persons sustain exposures by using or handling the  
3 BATH STOOL without wearing gloves or by touching bare skin or mucous membranes  
4 with or without gloves after handling BATH STOOL, as well as direct and indirect hand  
5 to mouth contact, direct contact to food then to mouth, hand to mucous membrane, trans-  
6 dermal absorption, or breathing in particulate matter emanating from the BATH STOOL  
7 during handling and use, as well as through environmental mediums that carry the DEHP  
8 and DBP once contained within the BATH STOOL.

9 82. Defendants caused occupational exposures, to their respective product, in violation of  
10 Proposition 65 by allowing employees to handle the BATH STOOL in the course of  
11 packaging, shipping, distributing, promoting, and selling the BATH STOOL without  
12 having first given clear and reasonable warnings to such employees that, by handling the  
13 BATH STOOL such employees would suffer exposures to DEHP and DBP. Defendants'  
14 employees were exposed to DEHP and DBP by touching the BATH STOOL with their  
15 bare skin at Defendants' premises located at Burlington Store 780, 245 E. Magnolia  
16 Blvd., Burbank, CA 91502 among other locations where these activities take place  
17 including but not limited to other distributing, shipping, warehousing, packaging, and  
18 retail centers. Defendants did not provide any Proposition 65-compliant warning on the  
19 product, signs, or system of signs within the workplace to warn of the danger.

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



1 84. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
3 violations alleged herein will continue to occur into the future.

4 85. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to DEHP and DBP from BATH STOOL,  
6 pursuant to Health and Safety Code section 25249.7(b).

7 86. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
8 filing this Complaint.

9 **SIXTH CAUSE OF ACTION**

10 (By CONSUMER ADVOCACY GROUP, INC. and against BURLINGTON,  
11 BURLINGTON WAREHOUSE, BURLINGTON STORE 1, BURLINGTON COAT  
12 FACTORY and DOES 51-60 for Violations of Proposition 65, The Safe Drinking Water  
and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

13 **BATH PILLOW**

14 87. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
15 reference paragraphs 1 through 86 of this complaint as though fully set forth herein. Each  
16 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
17 promoter, or retailer of Footwear, which includes but is not limited to:

18 **“EDMA LUXE” CUSHIONED PILLOW” 8”\*11”\*2”(20\*29\*5cm) “Style**  
19 **BP-020” “V 683692 WHITEF7 FLTHK 6442279” “Comparable Value \$10.00**  
20 **\$3.99” “SEA 4 LIN 16 660 18375264 9 1/1” “MADE IN CHINA RN#125311”**

21 **“EDMA LUXE” CUSHIONED PILLOW” 8”\*11”\*2”(20\*29\*5cm) “Style**  
22 **BP-020” “V 683692 GRAYF7 FLTHK 6442279” “Comparable Value \$10.00 \$3.99”**  
23 **“SEA 4 LIN 16 660 18375280 7 1/1” “MADE IN CHINA RN#125311” (collectively**  
24 **“BATH PILLOW 2”)**

25 88. BATH PILLOW 2 contains DINP.

26 89. Defendants knew or should have known that DINP have been identified by the State of  
27 California as a chemical known to cause cancer and reproductive toxicity and therefore  
28 was subject to Proposition 65 warning requirements. Defendants were also informed of



1 the presence of DINP in BATH PILLOW 2 within Plaintiff's notice of alleged violations  
2 further discussed above at Paragraph 29.

3 90. Plaintiff's allegations regarding BATH PILLOW 2 concern "[c]onsumer products  
4 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
5 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
6 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §  
7 25602(b). BATH PILLOW 2 is a consumer product, and, as mentioned herein, exposures  
8 to DINP took place as a result of such normal and foreseeable consumption and use.

9 91. Plaintiff is informed, believes, and thereon alleges that between July 16, 2015, and the  
10 present, each of the Defendants knowingly and intentionally exposed California  
11 consumers and users of BATH PILLOW 2, which Defendants manufactured, distributed,  
12 or sold as mentioned above, to DINP without first providing any type of clear and  
13 reasonable warning of such to the exposed persons before the time of exposure.  
14 Defendants have distributed and sold BATH PILLOW 2 in California. Defendants know  
15 and intend that California consumers will use and consume BATH PILLOW 2, thereby  
16 exposing them to DINP. Defendants thereby violated Proposition 65.

17 92. The principal routes of exposure were through dermal contact, ingestion, including hand  
18 to mouth pathways, and inhalation. Persons sustain exposures by using or handling the  
19 BATH PILLOW 2 without wearing gloves or by touching bare skin or mucous  
20 membranes with or without gloves after handling BATH PILLOW 2, as well as direct  
21 and indirect hand to mouth contact, direct contact to food then to mouth, hand to mucous  
22 membrane, trans-dermal absorption, or breathing in particulate matter emanating from the  
23 BATH PILLOW 2 during handling and use, as well as through environmental mediums  
24 that carry the DINP once contained within the BATH PILLOW 2.

25 93. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
26 Proposition 65 as to BATH PILLOW 2 have been ongoing and continuous to the date of  
27 the signing of this complaint, as Defendants engaged and continue to engage in conduct  
28 which violates Health and Safety Code section 25249.6, including the manufacture,

1 distribution, promotion, and sale of BATH PILLOW 2, so that a separate and distinct  
2 violation of Proposition 65 occurred each and every time a person was exposed to DINP  
3 by BATH PILLOW 2 as mentioned herein.

4 94. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
5 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
6 violations alleged herein will continue to occur into the future.

7 95. Based on the allegations herein, Defendants are liable for civil penalties of up to  
8 \$2,500.00 per day per individual exposure to DINP from BATH PILLOW 2, pursuant to  
9 Health and Safety Code section 25249.7(b).

10 96. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
11 filing this Complaint.

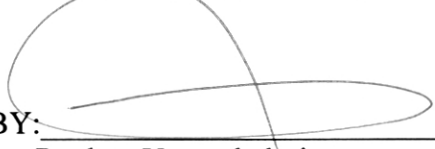
12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

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

19  
20 Dated: October 29, 2018

YEROUSHALMI & YEROUSHALMI

21  
22 BY:   
23 Reuben Yeroushalmi  
24 Attorney for Plaintiff,  
25 Consumer Advocacy Group, Inc.  
26  
27  
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