

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 FAMILY DOLLAR, INC., a North Carolina
19 Corporation
20 FAMILY DOLLAR OPERATIONS, INC., a
21 North Carolina Corporation; and
22 DOES 1-10.

23 Defendants.

24 CASE NO. *Rg18928116*

25 PLAINTIFF CONSUMER ADVOCACY
26 GROUP INC'S COMPLAINT FOR
27 PENALTY AND INJUNCTION

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

UNLIMITED CIVIL
(Demand exceeds \$25,000)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
Defendants FAMILY DOLLAR, INC., FAMILY DOLLAR OPERATIONS, INC., and DOES 1-
10 as follows:

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

ENDORSED
FILED
ALAMEDA COUNTY
NOV 09 2018
CLERK OF SUPERIOR COURT
By TANIA PIERCE Deputy

EX FAX

1 attorney general, brings this action in the public interest as defined under Health and Safety Code
2 section 25249.7, subdivision (d).

3 2. Defendant, FAMILY DOLLAR, INC (“FAMILY DOLLAR”), is a North
4 Carolina Corporation, doing business in the State of California at all relative times herein.

5 3. Defendant, FAMILY DOLLAR OPERATIONS, INC. (“FAMILY
6 OPERATIONS”), is a North Carolina Corporation, doing business in the State of California at all
7 relevant times herein.

8 4. Plaintiff is presently unaware of the true names and capacities of defendants
9 DOES 1-10, and therefore sues these defendants by such fictitious names. Plaintiff will amend
10 this complaint to allege their true names and capacities when ascertained. Plaintiff is informed,
11 believes, and thereon alleges that each fictitiously named defendant is responsible in some
12 manner for the occurrences herein alleged and the damages caused thereby.

13 5. At all times mentioned herein, the term “Defendants” includes FAMILY
14 DOLLAR, FAMILY OPERATIONS and DOES 1-10.

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

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

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

1 JURISDICTION

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

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

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

18 BACKGROUND AND PRELIMINARY FACTS

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

27 13. Proposition 65 requires the Governor of California to publish a list of chemicals
28 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*

1 Code § 25249.8. The list, which the Governor updates at least once a year, contains over 700
2 chemicals and chemical families. Proposition 65 imposes warning requirements and other
3 controls that apply to Proposition 65-listed chemicals.

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

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

16 16. On December 2, 2005, the Governor of California added DBP to the list of
17 chemicals known to the state to cause developmental toxicity, female reproductive toxicity, and
18 male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
19 twenty (20) months after addition of DBP to the list of chemicals known to the State to cause
20 reproductive toxicity, DBP became fully subject to Proposition 65 warning requirements and
21 discharge prohibitions.

22 17. Plaintiff identified certain practices of manufacturers and distributors of products
23 bearing DBP, exposing, knowingly, and intentionally, persons in California to said Proposition
24 65-listed chemical without first providing clear and reasonable warnings to the exposed persons
25 prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

26 SATISFACTION OF PRIOR NOTICE

27 18. On or about July 16, 2018, Plaintiff gave notice of alleged violations of Health
28 and Safety Code section 25249.6, concern consumer product exposures, subject to a private

1 action to FAMILY DOLLAR, FAMILY OPERATIONS, and to the California Attorney General,
2 County District Attorneys, and City Attorneys for each containing a population of at least
3 750,000 people in whose jurisdiction the violations allegedly occurred, concerning Decorative
4 LED Lights containing DBP.

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

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

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

20 22. Plaintiff is commencing this action more than sixty (60) days from the dates that
21 Plaintiff gave notices of the alleged violation to FAMILY DOLLAR, FAMILY OPERATIONS,
22 and the public prosecutors referenced in Paragraph 18.

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

26 ///

27 ///

28 ///

1 FIRST CAUSE OF ACTION

2 (By CONSUMER ADVOCACY GROUP, INC. against FAMILY DOLLAR, FAMILY
3 OPERATIONS, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and
4 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

5 Decorative LED Lights

6 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this
7 complaint as though fully set forth herein. Each of the Defendants is, and at all times mentioned
8 herein was, a manufacturer, distributor, promoter, or retailer of Decorative LED Lights including
9 but not limited to: ““LED M5 Warm White”; “50 COUNT LIGHTS”; “Indoor/Outdoor Use”;
10 “25,000 hour average bulb life”; “lighted length: 9.5 ft (2.8m)”; “total length: 10.5 ft (3.2m)”;
11 “Distributed by Midwood Brands, LLC”; “Printed in China/Made in Cambodia”;
12 “SKU#2200733”; UPC 0 32251 22815 5 (“LIGHTS”).

13 25. Plaintiff is informed, believes, and thereon alleges that LIGHTS contain DBP.

14 26. Defendants knew or should have known that DBP have been identified by the
15 State of California as a chemical known to cause developmental toxicity, female reproductive
16 toxicity, and male reproductive toxicity and therefore was subject to Proposition 65 warning
17 requirements. Defendants were also informed of the presence of DBP in LIGHTS within
18 Plaintiff’s notice of alleged violations further discussed above at Paragraph 18.

19 27. Plaintiff’s allegations regarding LIGHTS concern “[c]onsumer products
20 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase, storage,
21 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that
22 results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b). LIGHTS are
23 consumer products, and, as mentioned herein, exposures to DBP took place as a result of such
24 normal and foreseeable consumption and use.

25 28. Plaintiff is informed, believes, and thereon alleges that between July 16, 2015 and
26 the present, each of the Defendants knowingly and intentionally exposed California consumers
27 and users of LIGHTS, which Defendants manufactured, distributed, or sold as mentioned above,
28 to DBP, without first providing any type of clear and reasonable warning of such to the exposed
persons before the time of exposure. Defendants have distributed and sold LIGHTS in

1 California. Defendants know and intend that California consumers will use and consume
2 LIGHTS, thereby exposing them to DBP. Defendants thereby violated Proposition 65.

3 29. The principal routes of exposure with regard to LIGHTS are and were through
4 dermal contact and ingestion. Persons sustain exposures by handling or otherwise using the
5 LIGHTS with bare skin, without wearing gloves, or by touching bare skin or mucous membranes
6 with the LIGHTS after handling the LIGHTS as well as through direct and indirect hand to
7 mouth contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous
8 membrane, or breathing in particulate matter dispersed from the LIGHTS.

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

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

18 32. Based on the allegations herein, Defendants are liable for civil penalties of up to
19 \$2,500.00 per day per individual exposure to DBP from LIGHTS pursuant to Health and Safety
20 Code section 25249.7(b).

21 33. In the absence of equitable relief, the general public will continue to be
22 involuntarily exposed to DBP that is contained in LIGHTS, creating a substantial risk of
23 irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused
24 irreparable harm for which there is no plain, speedy, or adequate remedy at law.

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

27 ///

28 ///

1 PRAYER FOR RELIEF

2 Plaintiff demands against each of the Defendants as follows:

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


8

9

10 Dated: November 8, 2018

YEROUSHALMI & YEROUSHALMI

11

12 

13 BY: _____

14 Reuben Yeroushalmi

15 Attorneys for Plaintiff,

16 Consumer Advocacy Group, Inc.

17

18

19

20

21

22

23

24

25

26

27

28