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 Consumer Advocacy Group, Inc.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11 CONSUMER ADVOCACY GROUP, INC.,
 12 in the public interest,

13 Plaintiff,

14 v.

15 AMAZON.COM, INC., a Delaware
 16 Corporation;
 17 AMAZON.COM SERVICES, INC., a
 Delaware Corporation;
 18 AMAZON TECHNOLOGIES, INC., a
 Nevada Corporation;
 19 PLANET ONE PRODUCTS, INC., a
 20 California Corporation;
 and DOES 1-30,

21 Defendants.

CASE NO.

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)

23
 24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges causes of action against
 25 defendants AMAZON.COM, INC., AMAZON.COM SERVICES, INC., AMAZON
 26 TECHONOLOGIES, INC., PLANET ONE PRODUCTS, INC., and DOES 1-30 as follows:

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THE PARTIES

- 1
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
3 organization qualified to do business in the State of California. CAG is a person within
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
5 as a private attorney general, brings this action in the public interest as defined under
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant AMAZON.COM, INC. (“AMAZON”) is a Delaware Corporation, qualified to
8 do business in Delaware, and doing business in the State of California at all relevant
9 times herein.
- 10 3. Defendant AMAZON.COM SERVICES, INC. (“AMAZON SERVICES”) is a Delaware
11 Corporation, qualified to do business in Delaware, and doing business in the State of
12 California at all relevant times herein.
- 13 4. Defendant AMAZON TECHNOLOGIES, INC. (“AMAZON TECH”) is a Nevada
14 Corporation, qualified to do business in Nevada, and doing business in the State of
15 California at all relevant times herein.
- 16 5. Defendant PLANET ONE PRODUCTS, INC. (“PLANET ONE”) is a California
17 Corporation, qualified to do business in California, and doing business in the State of
18 California at all relevant times herein.
- 19 6. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-30,
20 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
21 complaint to allege their true names and capacities when ascertained. Plaintiff is
22 informed, believes, and thereon alleges that each fictitiously named defendant is
23 responsible in some manner for the occurrences herein alleged and the damages caused
24 thereby.
- 25 7. At all times mentioned herein, the term “Defendants” includes AMAZON, AMAZON
26 SERVICES, AMAZON TECH, PLANET ONE, and DOES 1-30.

- 1 8. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
2 times mentioned herein have conducted business within the State of California.
- 3 9. Upon information and belief, at all times relevant to this action, each of the Defendants,
4 including DOES 1-30, was an agent, servant, or employee of each of the other
5 Defendants. In conducting the activities alleged in this Complaint, each of the
6 Defendants was acting within the course and scope of this agency, service, or
7 employment, and was acting with the consent, permission, and authorization of each of
8 the other Defendants. All actions of each of the Defendants alleged in this Complaint
9 were ratified and approved by every other Defendant or their officers or managing agents.
10 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
11 wrongful conduct of each of the other Defendants.
- 12 10. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
13 Defendants was a person doing business within the meaning of Health and Safety Code
14 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
15 employees at all relevant times.

16 **JURISDICTION**

- 17 11. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
18 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
19 those given by statute to other trial courts. This Court has jurisdiction over this action
20 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
21 violations of Proposition 65 in any Court of competent jurisdiction.
- 22 12. This Court has jurisdiction over Defendants named herein because Defendants either
23 reside or are located in this State or are foreign corporations authorized to do business in
24 California, are registered with the California Secretary of State, or who do sufficient
25 business in California, have sufficient minimum contacts with California, or otherwise
26 intentionally avail themselves of the markets within California through their manufacture,
27 distribution, promotion, marketing, or sale of their products within California to render
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1 the exercise of jurisdiction by the California courts permissible under traditional notions
2 of fair play and substantial justice.

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

7 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

1 17. 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* § 25249.7.
3 "Threaten to violate" means "to create a condition in which there is a substantial
4 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 18. Plaintiff identified certain practices of manufacturers and distributors of exposing,
8 knowingly and intentionally, persons in California to the Proposition 65-listed chemicals
9 to products without first providing clear and reasonable warnings of such to the exposed
10 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged
11 in such practice.

12 19. On January 1, 1988, the Governor of California added Di(2-ethylhexyl)phthalate
13 ("DEHP") to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
14 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
15 twenty (20) months after addition of DEHP to the list of chemicals known to the State to
16 cause cancer, DEHP became fully subject to Proposition 65 warning requirements and
17 discharge prohibitions.

18 20. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
19 known to the State to cause reproductive and developmental toxicity (*Cal. Code Regs.* tit.
20 27, § 27001(c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
21 twenty (20) months after addition of DEHP to the list of chemicals known to the State to
22 cause reproductive and developmental toxicity, DEHP became fully subject to
23 Proposition 65 warning requirements and discharge prohibitions.

24 21. On December 20, 2013, the Governor of California added Diisononyl Phthalate ("DINP")
25 to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, §
26 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty
27 (20) months after addition of DINP to the list of chemicals known to the State to cause
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1 cancer, DINP became fully subject to Proposition 65 warning requirements and discharge
2 prohibitions.

3 **SATISFACTION OF PRIOR NOTICE**

4 22. On or about February 12, 2019 Plaintiff gave notice of alleged violations of Health and
5 Safety Code section 25249.6, concerning consumer products exposures, subject to a
6 private action to AMAZON SERVICES, PLANET ONE, and to the California Attorney
7 General, County District Attorneys, and City Attorneys for each city containing a
8 population of at least 750,000 people in whose jurisdictions the violations allegedly
9 occurred, concerning the product Ice Buckets.

10 23. On or about March 21, 2019 Plaintiff gave notice of alleged violations of Health and
11 Safety Code section 25249.6, concerning consumer products exposures, subject to a
12 private action to AMAZON, AMAZON SERVICES, AMAZON TECH, and to the
13 California Attorney General, County District Attorneys, and City Attorneys for each city
14 containing a population of at least 750,000 people in whose jurisdictions the violations
15 allegedly occurred, concerning the product Storage Ottomans.

16 24. On or about April 5, 2019 Plaintiff gave notice of alleged violations of Health and Safety
17 Code section 25249.6, concerning consumer products exposures, subject to a private
18 action to AMAZON SERVICES and to the California Attorney General, County District
19 Attorneys, and City Attorneys for each city containing a population of at least 750,000
20 people in whose jurisdictions the violations allegedly occurred, concerning the product
21 Storage Ottomans.

22 25. Before sending the notices of alleged violation, Plaintiff investigated the consumer
23 products involved, the likelihood that such products would cause users to suffer
24 significant exposures to DEHP and/or DINP, and the corporate structure of each of the
25 Defendants.

26 26. Plaintiff's notices of alleged violation included Certificates of Merit executed by the
27 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
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1 Plaintiff who executed the certificate had consulted with at least one person with relevant
2 and appropriate expertise who reviewed data regarding the exposures to DEHP and/or
3 DINP, the subject Proposition 65-listed chemical of this action. Based on that
4 information, the attorney for Plaintiff who executed the Certificate of Merit believed
5 there was a reasonable and meritorious case for this private action. The attorney for
6 Plaintiff attached to the Certificates of Merit served on the Attorney General the
7 confidential factual information sufficient to establish the basis of the Certificates of
8 Merit.

9 27. Plaintiff's notices of alleged violations also included Certificates of Service and a
10 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
11 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

12 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
13 gave notices of the alleged violations to AMAZON, AMAZON SERVICES, AMAZON
14 TECH, PLANET ONE, and the public prosecutors referenced in Paragraphs 22-24.

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

18 **FIRST CAUSE OF ACTION**

19 **(By CONSUMER ADVOCACY GROUP, INC. and against AMAZON SERVICES,**
20 **PLANET ONE, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking**
21 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et***
***seq.*))**

22 **Bar and Wine Accessories**

23 30. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
24 reference paragraphs 1 through 29 of this Complaint as though fully set forth herein.

25 31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
26 distributor, promoter, or retailer of Plastic Inflatable Ice Buckets, including but not
27 limited to Clear inflatable, portable ice bucket; "Epic Inflatable Ice Bucket"; "Drink,
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1 Porta Cool”; “Celebrate the good life! ®”; “handy for holding ice in locations where no
2 freezers are available”; “epicstyle.com”; “UPC 0 77757 82250 6”; “Made in Taiwan”
3 (“Ice Buckets”).

4 32. Ice Buckets contain DINP.

5 33. Defendants knew or should have known that DINP has been identified by the State of
6 California as a chemical known to cause cancer and therefore was subject to Proposition
7 65 warning requirements. Defendants were also informed of the presence of DINP in Ice
8 Buckets within Plaintiff's notice of alleged violations further discussed above at
9 Paragraph 22.

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

16 35. Plaintiff is informed, believes, and thereon alleges that between February 12, 2016 and
17 the present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of Ice Buckets, which Defendants manufactured, distributed, or sold
19 as mentioned above, to DINP, without first providing any type of clear and reasonable
20 warning of such to the exposed persons before the time of exposure. Defendants have
21 distributed and sold Ice Buckets in California. Defendants know and intend that
22 California consumers will use Ice Buckets, thereby exposing them to DINP. Defendants
23 thereby violated Proposition 65.

24 36. The principal routes of exposure are through dermal contact and ingestion. Persons
25 sustain exposures by using or handling Ice Buckets without wearing gloves or by
26 touching bare skin or mucous membranes with or without gloves after handling Ice
27 Buckets, as well as through direct and indirect hand to mouth contact, hand to mucous
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1 membrane, or breathing in particulate matter emanating from Ice Buckets during set up
2 and use, as well as through environmental mediums that carry the DINP once contained
3 within the Ice Buckets.

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

10 38. 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 39. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to DINP from Ice Buckets, pursuant to Health
15 and Safety Code section 25249.7(b).

16 40. 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 AMAZON, AMAZON**
20 **SERVICES, AMAZON TECH, and DOES 11-20 for Violations of Proposition 65,**
21 **The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety***
***Code, §§ 25249.5, et seq.*))**

22 **Home Accessories**

23 41. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
24 reference paragraphs 1 through 40 of this complaint as though fully set forth herein.

25 42. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
26 distributor, promoter, or retailer of White Pleather/Vinyl Storage Ottomans, including but
27 not limited to "THE FHE GROUP INC;" "15" TUFTED FOLDING OTTOMAN –
28

1 WHITE PU;” “SKU NUMBER: 250054-004;” “MADE IN CHINA;” “THE FHE
2 GROUP INC.,” “07/2018;” “REG. NO: UT-4663 (CN);” “MADE BY FHE GROUP
3 INC. 260 SPINNAKER WAY, UNITS 2-5 CONCORD, ON, CANADA, L4K 4P9”
4 “UPC: 696870005186;” (“White Ottomans”).

5 43. White Ottomans contain DEHP.

6 44. Defendants knew or should have known that DEHP has been identified by the State of
7 California as a chemical known to cause cancer and toxicity and therefore was subject to
8 Proposition 65 warning requirements. Defendants were also informed of the presence of
9 DEHP in White Ottomans within Plaintiff’s notice of alleged violations further discussed
10 above at Paragraph 23.

11 45. Plaintiff’s allegations regarding White Ottomans 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)*. White Ottomans are consumer products, and, as mentioned herein, exposures
16 to DEHP took place as a result of such normal and foreseeable use.

17 46. Plaintiff is informed, believes, and thereon alleges that between March 21, 2016 and the
18 present, each of the Defendants knowingly and intentionally exposed California
19 consumers and users of White Ottomans, which Defendants manufactured, distributed, or
20 sold as mentioned above, to DEHP, 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 White Ottomans in California. Defendants know
23 and intend that California consumers will use White Ottomans, thereby exposing them to
24 DEHP. Defendants thereby violated Proposition 65.

25 47. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
26 Persons sustain exposures by using or handling White Ottomans without wearing gloves
27 or by touching bare skin or mucous membranes with or without gloves after handling
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1 White Ottomans, as well as through direct and indirect hand to mouth contact, hand to
2 mucous membrane, trans-dermal absorption, or breathing in particulate matter emanating
3 from White Ottomans during use, as well as through environmental mediums that carry
4 the DEHP once contained within the White Ottomans.

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

11 49. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
13 violations alleged herein will continue to occur into the future.

14 50. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to DEHP from White Ottomans, pursuant to
16 Health and Safety Code section 25249.7(b).

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

19 **THIRD CAUSE OF ACTION**

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

23 **Home Accessories**

24 52. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
25 reference paragraphs 1 through 51 of this complaint as though fully set forth herein.

26 53. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
27 distributor, promoter, or retailer of Black Pleather/Vinyl Storage Ottomans, including but
28 not limited to "f.h.e"; "fresh home elements"; "Foldable Storage Ottoman"; "12 x 12 x 12

1 in”; “12in/po Ottoman/Tabouret Black/ Noir”; “UPC 6 96870 00240 6”; “Made in China”
2 (“Black Ottomans”).

3 54. Black Ottomans contain DEHP.

4 55. 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 toxicity and therefore was subject to
6 Proposition 65 warning requirements. Defendants were also informed of the presence of
7 DEHP in Black Ottomans within Plaintiff’s notice of alleged violations further discussed
8 above at Paragraph 24.

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

15 57. Plaintiff is informed, believes, and thereon alleges that between April 5, 2016 and the
16 present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of Black Ottomans, which Defendants manufactured, distributed, or
18 sold as mentioned above, to DEHP, without first providing any type of clear and
19 reasonable warning of such to the exposed persons before the time of exposure.
20 Defendants have distributed and sold Black Ottomans in California. Defendants know
21 and intend that California consumers will use Black Ottomans, thereby exposing them to
22 DEHP. Defendants thereby violated Proposition 65.

23 58. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
24 Persons sustain exposures by using or handling Black Ottomans without wearing gloves
25 or by touching bare skin or mucous membranes with or without gloves after handling
26 Black Ottomans, as well as through direct and indirect hand to mouth contact, hand to
27 mucous membrane, trans-dermal absorption, or breathing in particulate matter emanating
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1 from Black Ottomans during use, as well as through environmental mediums that carry
2 the DEHP once contained within the Black Ottomans.

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

9 60. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
10 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
11 violations alleged herein will continue to occur into the future.

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

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

17 **PRAYER FOR RELIEF**

18 Plaintiff demands against each of the Defendants as follows:

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

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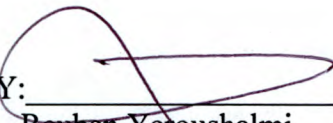
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1 Dated: 8/6, 2019

YEROUSHALMI & YEROUSHALMI

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4 BY: 
5 Reuben Yeroushalmi
6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.
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