SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(*Cal. Health & Safety Code* § 25249.5, *et seq.*) ("Proposition 65")

October 21, 2011

John H. Flynn, Jr., President or
Current President/CEO
FGX International Inc.
500 George Washington Hwy
Smithfield, RI 02917

Alec Taylor, CEO or
Current President/CEO
FGX International Inc.
500 George Washington Hwy
Smithfield, RI 02917

Eric Shiffer, CEO or
Current President/CEO
99 Cents Only Stores
4000 Union Pacific Ave.
Commerce, CA 90023

Eric Shiffer, CEO or
Current President/CEO
99 Cents Only Stores
1266 E. Valley Parkway
Escondido, CA 92027

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Nosepiece of Magnivision® Folding Reading Glasses With Case & Hook containing DEHP**

Dear Messrs. Flynn, Taylor, and Shiffer, and to whom else this may concern:

**Consumer Advocacy Group, Inc.** ("CAG"), the noticing entity located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation ("Notice") on FGX International Inc. and 99 Cents Only Stores ("Violators") pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi, Esq., 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65.

- This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical

known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." *Cal. Health & Safety Code* § 25249.6.

- **Nosepiece of Magnivision® Folding Reading Glasses With Case & Hook ("Nosepiece")** contains **Di (2-ethylhexyl) phthalate (DEHP)**, also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, which is known to the State of California to cause both cancer and reproductive toxicity, developmental, male. On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before CAG served this Notice.

- This Notice addresses consumer products exposures. A "[c]onsumer products exposure' is an exposure which results from a person's acquisition, purchase, 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 § 25602(b).

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers **Nosepiece**. The packaging for the **Nosepiece** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violators, with regard to the **Nosepiece**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violators, with regard to the **Nosepiece**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

- This Notice also concerns occupational exposures. An "[o]ccupational exposure' means an exposure to any employee in his or her employer's workplace." *Cal. Code Regs.* tit. 27, § 25602(f).

Violators, FGX International, Inc, Ross Stores, Inc., and Ross Dress for Less., caused occupational exposures in violation of Proposition 65 by allowing employees to handle the **Nosepiece** in the course of packaging, shipping, distributing, promoting, and selling **Nosepiece** without having first given clear and reasonable warnings to such employees that by handling the **Nosepiece** such employees would suffer exposures to **DEHP**. Violators' employees were exposed to **DEHP** by touching **Nosepiece** with their bare skin at Violators' premises located at 1266 E. Valley Parkway, Escondido, CA 92027, among other locations where these activities take place including but not limited to other distributing, shipping, warehousing, packaging and retail centers. Violators did not provide any Proposition 65-compliant warnings on either the products or any substance present or any sign or system of signs within the workplace.

***This notice alleges the violation of Proposition 65*** with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997.

This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a) the conduct of manufacturers occurring outside the State of California; and (b) employers with less than ten (10) employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the

California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

- This Notice also addresses environmental exposures. An "[e]nvironmental exposure' is an exposure which may foreseeably occur as the result of contact with an environmental medium, including, but not limited to, ambient air, indoor air, drinking water, standing water, running water, soil vegetation, or manmade or natural substances, either through inhalation, ingestion, skin contact or otherwise. Environmental exposures include all exposures which are not consumer products exposures, or occupational exposures." *Cal. Code Regs.* tit. 27 § 25602(c).

Violators, FGX International, Inc, Ross Stores, Inc., and Ross Dress for Less, caused environmental exposures by not providing any Proposition 65-compliant warnings at their distributing, shipping, warehousing, and retail facilities located at 1266 E. Valley Parkway, Escondido, CA 92027, among other locations where such exposures could foreseeably occur, to persons who could foreseeably come into contact with **Nosepiece**. Such exposures also occurred beyond the property owned or controlled by Violators.

These violations occurred each day between October 21, 2008, and October 21, 2011, and are ever continuing thereafter.

The principal routes of exposure were through dermal contact, ingestion, and inhalation. Persons sustain exposures by handling the **Nosepiece** without wearing gloves or by touching bare skin or mucous membranes with gloves after handling **Nosepiece**, as well as hand to mouth contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane, or breathing in particulate matter emanating from the **Nosepiece** during installation and use, as well as through environmental mediums that carry the **DEHP** once contained within the **Nosepiece**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is within the United States but beyond the State of California), CAG may file suit. *See Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27 § 25903(d)(1). CAG is ready and willing to discuss the possibility of resolving its grievances in the public interest short of formal litigation.

Dated: 11-8-11

Ben Yeroushalmi
Yeroushalmi & Associates
Attorneys for Consumer Advocacy Group, Inc.

**Nosepiece of Magnivision® Folding Reading Glasses With Case & Hook containing DEHP**

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party.

3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: 11-8-11

By: Ben Yeroushalmi

## CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

**Name and address of each party to whom documents were mailed:**

John H. Flynn, Jr., President or
Current President/CEO
FGX International Inc.
500 George Washington Hwy
Smithfield, RI 02917

Alec Taylor, CEO or
Current President/CEO
FGX International Inc.
500 George Washington Hwy
Smithfield, RI 02917

Eric Shiffer, CEO or
Current President/CEO
99 Cents Only Stores
4000 Union Pacific Ave.
Commerce, CA 90023

Eric Shiffer, CEO or
Current President/CEO
99 Cents Only Stores
1266 E. Valley Parkway
Escondido, CA 92027

**Name and address of each public prosecutor to whom documents were mailed:**

See Distribution List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: 11-09-2011

Fereshte Shakib

# Distribution List

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|---|---|---|
| Alameda County District Attorney<br>1225 Fallon St, Room 900<br>Oakland, CA 94612 | Los Angeles County District Attorney<br>210 W Temple St, 18th Floor<br>Los Angeles, CA 90012 | Mono County District Attorney<br>PO Box 617<br>Bridgeport, CA 93517 |
| Alpine County District Attorney<br>PO Box 248<br>Markleeville, CA 96120 | Madera County District Attorney<br>209 W Yosemite Ave<br>Madera, CA 93637 | San Joaquin County District Attorney<br>PO Box 990<br>Stockton, CA 95201 -0990 |
| Amador County District Attorney<br>708 Court, Suite 202<br>Jackson, CA 95642 | Mariposa County District Attorney<br>P.O. Box 730<br>Mariposa, CA 95338 | San Francisco County District Attorney<br>850 Bryant St, Rm 322<br>San Francisco, CA 94103 |
| Butte County District Attorney<br>25 County Center Dr.<br>Oroville, CA 95965-3385 | Marin County District Attorney<br>3501 Civic Center Drive, #130<br>San Rafael, CA 94903 | San Diego County District Attorney<br>330 W. Broadway, Ste 1300<br>San Diego, CA 92101-3803 |
| Calaveras County District Attorney<br>891 Mountain Ranch Road<br>San Andreas, CA 95249 | Mendocino County District Attorney<br>P.O. Box 1000<br>Ukiah, CA 95482 | San Bernardino County District Attorney<br>316 N Mountain View Ave<br>San Bernardino, CA 92415-0004 |
| Office of the Attorney General<br>P.O. Box 70550<br>Oakland, CA 94612-0550 | Los Angeles City Attorney<br>200 N Main St Ste 1800<br>Los Angeles CA 90012 | San Francisco City Attorney<br># 1 Dr. Carlton B. Goodlett Place, Suite 234<br>San Francisco, CA 94102 |
| Colusa County District Attorney<br>Courthouse, 547 Market St.<br>Colusa, CA 95932 | Inyo County District Attorney<br>P.O. Drawer D<br>Independence, CA 93526 | Placer County District Attorney<br>10810 Justice Center Drive<br>Suite 240<br>Roseville, CA 95678-6231 |
| Contra Costa County District Attorney<br>725 Court St., Room 402<br>Martinez, CA 94553 | Orange County District Attorney<br>PO Box 808<br>Santa Ana, CA 92702 | Merced County District Attorney<br>650 W. 20th Street<br>Merced, CA 95340 |
| Del Norte County District Attorney<br>450 "H" St.<br>Crescent City, CA 95531 | Nevada County District Attorney<br>201 Church St, Suite 8<br>Nevada City, CA 95959-2504 | Napa County District Attorney<br>PO Box 720<br>Napa, CA 94559-0720 |
| El Dorado County District Attorney<br>515 Main St.<br>Placerville, CA 95667-5697 | Plumas County District Attorney<br>520 Main Street, Rm 404<br>Quincy, CA 95971 | Riverside County District Attorney<br>3960 Orange St. Ste. 5<br>Riverside, CA 92501 |
| Fresno County District Attorney<br>2220 Tulare St, Ste. 1000<br>Fresno, CA 93721 | Sacramento County District Attorney<br>901 G Street<br>Sacramento, CA 95814 | San Benito County District Attorney<br>419 4th St<br>Hollister, CA 95023 |
| Glenn County District Attorney<br>PO Box 430<br>Willows, CA 95988 | San Luis Obispo County District Attorney<br>County Government Center, Rm 450<br>San Luis Obispo, CA 93408 | Siskiyou County District Attorney<br>PO Box 986<br>Yreka, CA 96097 |
| Humboldt County District Attorney<br>825 5th St., 4th Floor<br>Eureka, CA 95501 | San Mateo County District Attorney<br>400 County Center<br>Redwood City, CA 94063 | Solano County District Attorney<br>600 Union Ave<br>Fairfield, CA 94533 |
| Imperial County District Attorney<br>939 W. Main St., 2nd Floor<br>El Centro, CA 92243-2860 | Santa Barbara County District Attorney<br>1112 Santa Barbara St.<br>Santa Barbara, CA 93101 | Sonoma County District Attorney<br>600 Administration Dr.,<br>Rm 212-J<br>Santa Rosa, CA 95403 |
| Kern County District Attorney<br>1215 Truxtun Ave.<br>Bakersfield, CA 93301 | Santa Clara County District Attorney<br>70 W Hedding St.<br>San Jose, CA 95110 | Shasta County District Attorney<br>1525 Court St, 3rd Floor<br>Redding, CA 96001-1632 |
| Kings County District Attorney<br>Gov't Ctr, 1400 W Lacey Blvd<br>Hanford, CA 93230 | Santa Cruz County District Attorney<br>PO Box 1159<br>Santa Cruz, CA 95061 | Sierra County District Attorney<br>PO Box 457<br>Downieville, CA 95936-0457 |
| Lake County District Attorney<br>255 N Forbes St<br>Lakeport, CA 95453-4790 | Stanislaus County District Attorney<br>PO Box 442<br>Modesto, CA 95353 | Trinity County District Attorney<br>PO Box 310<br>Weaverville, CA 96093 |
| Modoc County District Attorney<br>204 S. Court Street<br>Alturas, CA 96101-4020 | Sutter County District Attorney<br>446 Second Street<br>Yuba City, CA 95991 | Yuba County District Attorney<br>215 5th St<br>Marysville, CA 95901 |
| San Diego City Attorney<br>City Center Plaza<br>1200 3rd Ave # 1100<br>San Diego, CA 92101 | Lassen County District Attorney<br>200 S Lassen St, Suite 8<br>Susanville, CA 96130 | Monterey County District Attorney<br>PO Box 1131<br>Salinas, CA 93902 |
| Tuolumne County District Attorney<br>2 S Green St<br>Sonora, CA 95370 | Tulare County District Attorney<br>County Civic Center, Rm 224<br>Visalia, CA 93291 | Yolo County District Attorney<br>310 Second St<br>Woodland, CA 95695 |
| Ventura County District Attorney<br>800 S Victoria Ave<br>Ventura, CA 93009 | Tehama County District Attorney<br>P.O. Box 519<br>Red Bluff, CA 96080 | San Jose City Attorney<br>151 W. Mission St.<br>San Jose, CA 95110 |