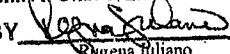


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10 Consumer Advocacy Group, Inc.

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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 20 2011

John A. Clarke, Executive Officer/Clerk
BY  Deputy
Regina Juliano

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

15 CONSUMER ADVOCACY GROUP, INC.,
16 in the public interest,

17 Plaintiff,

18 v.

19 Sentry Industries, Inc., a New York
20 Corporation; GTM Wholesale Liquidators, a
21 business entity form unknown; Big Lots, Inc.,
22 a Ohio Corporation; Big Lots Stores, Inc., a
23 Ohio Corporation; Ross Dress For Less, Inc.,
24 a Virginia Corporation; Ross Stores, Inc., a
25 Delaware Corporation and DOES 1-50;

26 Defendants.

CASE NO. BC463718

FIRST AMENDED COMPLAINT FOR
PENALTY, INJUNCTION, AND
RESTITUTION

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)

27 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against Defendants as
28 follows:

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COPY

THE PARTIES

- 1
2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a corporation
3 qualified to do business in the State of California. CAG is a person within the meaning
4 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private
5 attorney general, brings this action in the public interest as defined under Health and
6 Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant Sentry Industries, Inc. ("Sentry") is a company incorporated in the State of
8 New York.
- 9 3. Defendant GTM Wholesale Liquidators ("GTM") is a business entity, form unknown,
10 qualified to do business and doing business in the State of California at all relevant times
11 herein.
- 12 4. Defendant Big Lots, Inc. ("Big Lots") is a company incorporated in the State of Ohio.
- 13 5. Defendant Big Lots Stores, Inc. ("Big Lots Stores") is a company incorporated in the
14 State of Ohio
- 15 6. Defendant Ross Dress For Less, Inc. ("Ross Dress For Less") is a company incorporated
16 in the State of Virginia.
- 17 7. Defendant Ross Stores, Inc. ("Ross Stores") is a company incorporated in the State of
18 Delaware.
- 19 8. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,
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 9. At all times mentioned herein, the term "Defendants" includes Sentry Industries, Inc.,
26 GTM Wholesale Liquidators, Big Lots, Inc., Big Lots Stores, Inc., Ross Dress For Less,
27 Inc., Ross Stores, Inc., and Does 1-50.

1 10. 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 11. At all times relevant to this action, each of the Defendants, including Does 1-50, was an
4 agent, servant, or employee of each of the other Defendants. In conducting the activities
5 alleged in this Complaint, each of the Defendants was acting within the course and scope
6 of this agency, service, or employment, and was acting with the consent, permission, and
7 authorization of each of the other Defendants. All actions of each of the Defendants
8 alleged in this Complaint were ratified and approved by every other Defendant or their
9 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
10 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

15 JURISDICTION

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

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

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

5 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

26 19. Proposition 65 provides that any person "violating or threatening to violate" the statute
27 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

28 "Threaten to violate" means "to create a condition in which there is a substantial

1 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

4 20. Plaintiff identified certain practices of manufacturers and distributors of lead- and
5 phthalate-bearing products of exposing, knowingly and intentionally, persons in
6 California to the Proposition 65-listed chemicals of such products without first providing
7 clear and reasonable warnings of such to the exposed persons prior to the time of
8 exposure. Plaintiff later discerned that Defendants engaged in such practice.

9 21. On October 1, 1992, the Governor of California added Lead and Lead Compounds to the
10 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).
11 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
12 after addition of Lead and lead compounds to the list of chemicals known to the State to
13 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
14 requirements and discharge prohibitions.

15 22. On February 27, 1987, the Governor of California added Lead to the list of chemicals
16 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).
17 Lead is known to the State to cause developmental, female, and male reproductive
18 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
19 months after addition of Lead to the list of chemicals known to the State to cause
20 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements
21 and discharge prohibitions.

22 23. On January 1, 1988, the Governor of California added Di (2-ethylhexyl) phthalate
23 (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, to the
24 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).
25 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
26 after addition of Di (2-ethylhexyl) phthalate (DEHP) to the list of chemicals known to the
27 State to cause cancer, Di (2-ethylhexyl) phthalate (DEHP) became fully subject to
28 Proposition 65 warning requirements and discharge prohibitions.

1 24. On October 24, 2003, the Governor of California added Di (2-ethylhexyl) phthalate
2 (DEHP) to the list of chemicals known to the State to cause reproductive toxicity (*Cal.*
3 *Code Regs.* tit. 27, § 27001(c)). Di (2-ethylhexyl) phthalate (DEHP) is known to the
4 State to cause developmental and male reproductive toxicity. Pursuant to Health and
5 Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of Di (2-
6 ethylhexyl) phthalate (DEHP) to the list of chemicals known to the State to cause
7 reproductive toxicity, Di (2-ethylhexyl) phthalate (DEHP) became fully subject to
8 Proposition 65 warning requirements and discharge prohibitions.

9 **SATISFACTION OF PRIOR NOTICE**

10 25. On or about October 18, 2010 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 Sentry, identified in the notice as “Sentry Industries, Inc.” 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 Light-Weight Digital Stereo Headphones, Model HO415.

16 26. On or about December 27, 2010 Plaintiff gave notice of alleged violations of Health and
17 Safety Code section 25249.6, concerning consumer products exposures, subject to a
18 private action to Sentry, identified in the notice as “Sentry Industries, Inc.,” GTM,
19 identified in the notice as “GTM Wholesale Liquidators,” and to the California Attorney
20 General, County District Attorneys, and City Attorneys for each city containing a
21 population of at least 750,000 people in whose jurisdictions the violations allegedly
22 occurred, concerning Grip-Tite Lantern with 2 “AA” Batteries (Model:LTB1P).

23 27. On or about May 26, 2011 Plaintiff gave notice of alleged violations of Health and Safety
24 Code section 25249.6, concerning consumer products exposures, subject to a private
25 action to Sentry, identified in the notice as “Sentry Industries, Inc.,” Ross Dress For Less,
26 Inc., identified in the notice as “Ross Dress For Less, Inc. dba dd’s DISCOUNTS®,”
27 Ross Stores, Inc., identified in the notice as “Ross Stores, Inc. dba dd’s DISCOUNTS®,”
28 and to the California Attorney General, County District Attorneys, and City Attorneys for

1 each city containing a population of at least 750,000 people in whose jurisdictions the
2 violations allegedly occurred, concerning AM/FM Radios, including but not limited to
3 Sentry® AM/FM Pocket Radio (PR799).

4 28. On or about June 7, 2011 Plaintiff gave notice of alleged violations of Health and Safety
5 Code section 25249.6, concerning consumer products exposures, subject to a private
6 action to Sentry, identified in the notice as "Sentry Industries, Inc.," and to the California
7 Attorney General, County District Attorneys, and City Attorneys for each city containing
8 a population of at least 750,000 people in whose jurisdictions the violations allegedly
9 occurred, concerning Flashlights, including but not limited to Bendy Light, Model
10 LEDBB.

11 29. On or about July 17, 2011 Plaintiff gave notice of alleged violations of Health and Safety
12 Code section 25249.6, concerning consumer products exposures, subject to a private
13 action to Sentry, identified in the notice as "Sentry Industries, Inc.," Big Lots, Inc.,
14 identified in the notice as "Big Lots, Inc.," Big Lots Stores, Inc., identified in the notice
15 as "Big Lots Stores, Inc.," and to the California Attorney General, County District
16 Attorneys, and City Attorneys for each city containing a population of at least 750,000
17 people in whose jurisdictions the violations allegedly occurred, concerning "Sentry" ®
18 "HO240" "Ipod™ / MP3 Earbuds" "microbuds."

19 30. Before sending the notice of alleged violation, Plaintiff investigated the consumer
20 products involved, the likelihood that such products would cause users to suffer
21 significant exposures to Lead and Di (2-ethylhexyl) phthalate (DEHP), and the corporate
22 structure of each of the Defendants.

23 31. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
24 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
25 Plaintiff who executed the certificate had consulted with at least one person with relevant
26 and appropriate expertise who reviewed data regarding the exposures to Lead and Di (2-
27 ethylhexyl) phthalate (DEHP), respectively, which are the subject Proposition 65-listed
28 chemicals of this action. Based on that information, the attorney for Plaintiff who

1 executed the Certificate of Merit believed there was a reasonable and meritorious case for
2 this private action. The attorney for Plaintiff attached to the Certificate of Merit served
3 on the Attorney General the confidential factual information sufficient to establish the
4 basis of the Certificate of Merit.

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

8 33. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
9 gave notice of the alleged violations to Sentry, GTM, Big Lots, Inc., Big Lots Stores,
10 Inc., Ross Dress For Less, Inc., Ross Stores, Inc., and the public prosecutors referenced in
11 Paragraphs 25, 26, 27, 28, and 29.

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

15 FIRST CAUSE OF ACTION

16 **(By Consumer Advocacy Group, Inc. and against Sentry and DOES 1-10 for Violations of**
17 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &***
18 ***Safety Code*, §§ 25249.5, *et seq.*))**

19 **Light-Weight Digital Stereo Headphones, Model HO415**

20 35. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
21 paragraphs 1 through 34 of this complaint as though fully set forth herein.

22 36. Each of the defendants, Sentry and Does 1-10, is, and at all times mentioned herein was,
23 a manufacturer, distributor, promoter, or retailer of Light-Weight Digital Stereo
24 Headphones, Model HO415 ("Headphones"), a consumer product designed for personal
25 use as a listening device.

26 37. Plaintiff is informed, believes, and thereon alleges that Headphones contain Lead.

27 38. Defendants knew or should have known that Lead has been identified by the State of
28 California as a chemical known to cause cancer and reproductive toxicity and therefore

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of Lead in the Headphones within Plaintiff's notice of alleged violations
3 further discussed above at Paragraph 25.

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

10 40. Plaintiff is informed, believes, and thereon alleges that between June 28, 2007 and the
11 present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Headphones, which Defendants manufactured, distributed, or
13 sold as mentioned above, to Lead, without first providing any type of clear and
14 reasonable warning of such to the exposed persons before the time of exposure.
15 Defendants have distributed and sold Headphones in California. Defendants know and
16 intend that California consumers will use and consume Headphones thereby exposing
17 them to Lead. Defendants thereby violated Proposition 65

18 41. The principal routes of exposure are through dermal contact, ingestion and inhalation.
19 Persons sustain exposures by handling Headphones without wearing gloves or by
20 touching bare skin or mucous membranes with gloves after handling Headphones as well
21 as hand to mouth contact (e.g., by inserting surfaces, such as hands, that have contacted
22 Headphones into their mouths); hand to mucous membrane, or breathing in particulate
23 matter released or emanating from Headphones.

24 42. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to Headphones have been ongoing and continuous to the date of the
26 signing of this complaint, as Defendants engaged and continue to engage in conduct
27 which violates Health and Safety Code section 25249.6, including the manufacture,
28 distribution, promotion, and sale of Headphones, so that a separate and distinct violation

1 of Proposition 65 occurred each and every time a person was exposed to Lead by
2 Headphones as mentioned herein.

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

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

9 45. In the absence of equitable relief, the general public will continue to be involuntarily
10 exposed to Lead that is contained in Headphones, creating a substantial risk of irreparable
11 harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable
12 harm for which there is no plain, speedy, or adequate remedy at law.

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

15 **SECOND CAUSE OF ACTION**

16 **(By Consumer Advocacy Group, Inc. and against Sentry, GTM, and Does 11-20 for**
17 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
18 **(Health & Safety Code, §§ 25249.5, et seq.))**

19 **Grip-Tite Lantern with 2 "AA" Batteries (Model: LTB1P)**

20 47. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
21 paragraphs 1 through 46 of this complaint as though fully set forth herein.

22 48. Each of the defendants, Sentry, GTM, and Does 11-20, is, and at all times mentioned
23 herein was, a manufacturer, distributor, promoter, or retailer of Grip-Tite Lantern with 2
24 "AA" Batteries (Model: LTB1P) ("Lantern"), a consumer product designed for personal
25 use as an illuminating device.

26 49. Plaintiff is informed, believes, and thereon alleges that Lantern contains Lead.

27 50. Defendants knew or should have known that Lead has been identified by the State of
28 California as a chemical known to cause cancer and reproductive toxicity and therefore

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of Lead in the Lantern within Plaintiff's notice of alleged violations further
3 discussed above at Paragraph 26.

4 51. Plaintiff's allegations regarding Lantern concerns "[c]onsumer products exposure[s],"
5 which "is an exposure that results from a person's acquisition, purchase, storage,
6 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
7 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

8 Lantern is a consumer product, and, as mentioned herein, exposures to Lead took place as
9 a result of such normal and foreseeable consumption and use.

10 52. Plaintiff is informed, believes, and thereon alleges that between November 10, 2007 and
11 the present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Lantern, which Defendants manufactured, distributed, or sold as
13 mentioned above, to Lead, without first providing any type of clear and reasonable
14 warning of such to the exposed persons before the time of exposure. Defendants have
15 distributed and sold Lantern in California. Defendants know and intend that California
16 consumers will use and consume Lantern thereby exposing them to Lead. Defendants
17 thereby violated Proposition 65

18 53. The principal routes of exposure are through dermal contact, ingestion and inhalation.
19 Persons sustain exposures by handling Lantern without wearing gloves or by touching
20 bare skin or mucous membranes with gloves after handling Lantern as well as hand to
21 mouth contact (*e.g.*, by inserting surfaces, such as hands, that have contacted Lantern into
22 their mouths), hand to mucous membrane, or breathing in particulate matter released or
23 emanating from Lantern.

24 54. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to Lantern have been ongoing and continuous to the date of the signing
26 of this complaint, as Defendants engaged and continue to engage in conduct which
27 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
28 promotion, and sale of Lantern, so that a separate and distinct violation of Proposition 65

1 occurred each and every time a person was exposed to Lead by Lantern as mentioned
2 herein.

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

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

9 57. In the absence of equitable relief, the general public will continue to be involuntarily
10 exposed to Lead that is contained in Lantern, creating a substantial risk of irreparable
11 harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable
12 harm for which there is no plain, speedy, or adequate remedy at law.

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

15
16 **THIRD CAUSE OF ACTION**

17 **(By Consumer Advocacy Group, Inc. and against Sentry, Ross Dress For Less, Ross Stores,
18 and Does 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic
19 Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

20 **AM/FM Radios, including but not limited to Sentry® AM/FM Pocket Radio (PR799)**

21 59. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
22 paragraphs 1 through 58 of this complaint as though fully set forth herein.

23 60. Each of the defendants, Sentry, Ross Dress For Less, Ross Stores, and Does 21-30, is,
24 and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of
25 AM/FM Radios, including but not limited to Sentry® AM/FM Pocket Radio (PR799),
26 (“Radios”), consumer products designed for personal use as audio devices.

27 61. Plaintiff is informed, believes, and thereon alleges that Radios contain Lead.

28 62. Defendants knew or should have known that Lead has been identified by the State of
California as a chemical known to cause cancer and reproductive toxicity and therefore

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of Lead in the Radios within Plaintiff's notice of alleged violations further
3 discussed above at Paragraph 27.

4 63. Plaintiff's allegations regarding Radios concerns "[c]onsumer products exposure[s],"
5 which "is an exposure that results from a person's acquisition, purchase, storage,
6 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
7 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

8 Radios are consumer products, and, as mentioned herein, exposures to Lead took place as
9 a result of such normal and foreseeable consumption and use.

10 64. Plaintiff is informed, believes, and thereon alleges that between May 24, 2008 and the
11 present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Radios, which Defendants manufactured, distributed, or sold as
13 mentioned above, to Lead, without first providing any type of clear and reasonable
14 warning of such to the exposed persons before the time of exposure. Defendants have
15 distributed and sold Radios in California. Defendants know and intend that California
16 consumers will use and consume Radios thereby exposing them to Lead. Defendants
17 thereby violated Proposition 65

18 65. The principal routes of exposure are through dermal contact, ingestion and inhalation.
19 Persons sustain exposures by handling Radios without wearing gloves or by touching
20 bare skin or mucous membranes with gloves after handling Radios as well as hand to
21 mouth contact (*e.g.*, by inserting surfaces, such as hands, that have contacted Radios into
22 their mouths), hand to mucous membrane, or breathing in particulate matter released or
23 emanating from Radios.

24 66. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to Radios have been ongoing and continuous to the date of the signing
26 of this complaint, as Defendants engaged and continue to engage in conduct which
27 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
28 promotion, and sale of Radios, so that a separate and distinct violation of Proposition 65

1 occurred each and every time a person was exposed to Lead by Radios as mentioned
2 herein.

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

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

9 69. In the absence of equitable relief, the general public will continue to be involuntarily
10 exposed to Lead that is contained in Radios, creating a substantial risk of irreparable
11 harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable
12 harm for which there is no plain, speedy, or adequate remedy at law.

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

15 **FOURTH CAUSE OF ACTION**

16 **(By Consumer Advocacy Group, Inc. and against Sentry and Does 31-40 for Violations of**
17 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &***
18 ***Safety Code*, §§ 25249.5, *et seq.*))**

19 **Flashlights, including but not limited to Bendy Light, Model LEDBB**

20 71. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
21 paragraphs 1 through 70 of this complaint as though fully set forth herein.

22 72. Each of the defendants, Sentry and Does 31-40, is, and at all times mentioned herein was,
23 a manufacturer, distributor, promoter, or retailer of Flashlights, including but not limited
24 to Bendy Light, Model LEDBB, ("Flashlights"), consumer products designed for
25 personal use as illuminating devices.

26 73. Plaintiff is informed, believes, and thereon alleges that Flashlights contain Di (2-
27 ethylhexyl) phthalate (DEHP).

1 74. Defendants knew or should have known that Di (2-ethylhexyl) phthalate (DEHP) has
2 been identified by the State of California as a chemical known to cause cancer and
3 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
4 Defendants were also informed of the presence of Di (2-ethylhexyl) phthalate (DEHP) in
5 the Flashlights within Plaintiff's notice of alleged violations further discussed above at
6 Paragraph 28.

7 75. Plaintiff's allegations regarding Flashlights concerns "[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 Flashlights are consumer products, and, as mentioned herein, exposures to Di (2-
12 ethylhexyl) phthalate (DEHP) took place as a result of such normal and foreseeable
13 consumption and use.

14 76. Plaintiff is informed, believes, and thereon alleges that between June 7, 2008 and the
15 present, each of the Defendants knowingly and intentionally exposed California
16 consumers and users of Flashlights, which Defendants manufactured, distributed, or sold
17 as mentioned above, to Di (2-ethylhexyl) phthalate (DEHP), without first providing any
18 type of clear and reasonable warning of such to the exposed persons before the time of
19 exposure. Defendants have distributed and sold Flashlights in California. Defendants
20 know and intend that California consumers will use and consume Flashlights thereby
21 exposing them to Di (2-ethylhexyl) phthalate (DEHP). Defendants thereby violated
22 Proposition 65

23 77. The principal routes of exposure are and were through dermal contact, ingestion, and
24 inhalation. Persons sustain exposures by handling Flashlights without wearing gloves or
25 any other personal protective equipment, or by touching bare skin or mucous membranes
26 with gloves after handling Flashlights, as well as through hand to mouth contact (*e.g.*, by
27 inserting surfaces, such as hands, that have contacted Flashlights into their mouths), hand
28

1 to mucous membrane, or breathing in particulate matter released or emanating from
2 Flashlights.

3 78. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
4 Proposition 65 as to Flashlights 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 Flashlights, so that a separate and distinct violation of
8 Proposition 65 occurred each and every time a person was exposed to Di (2-ethylhexyl)
9 phthalate (DEHP) by Flashlights as mentioned herein.

10 79. 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 80. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to Di (2-ethylhexyl) phthalate (DEHP) from
15 Flashlights, pursuant to Health and Safety Code section 25249.7(b).

16 81. In the absence of equitable relief, the general public will continue to be involuntarily
17 exposed to Di (2-ethylhexyl) phthalate (DEHP) that is contained in Flashlights, creating a
18 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
19 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
20 remedy at law.

21 82. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
22 filing this Complaint.

23
24 **FIFTH CAUSE OF ACTION**

25 **(By Consumer Advocacy Group, Inc. and against Sentry, Big Lots, Big Lots Stores, and**
26 **Does 41-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
27 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

28 **"Sentry" ® "HO240" "Ipod™ / MP3 Earbuds" "microbuds"**

1 83. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
2 paragraphs 1 through 82 of this complaint as though fully set forth herein.

3 84. Each of the defendants, Sentry, Big Lots, Big Lots Stores, and Does 41-50, is, and at all
4 times mentioned herein was, a manufacturer, distributor, promoter, or retailer of "Sentry"
5 ® "HO240" "Ipod™ / MP3 Earbuds" "microbuds," ("Earbuds"), consumer products
6 designed for personal use as listening devices.

7 85. Plaintiff is informed, believes, and thereon alleges that Earbuds contain Di (2-ethylhexyl)
8 phthalate (DEHP).

9 86. Defendants knew or should have known that Di (2-ethylhexyl) phthalate (DEHP) has
10 been identified by the State of California as a chemical known to cause cancer and
11 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
12 Defendants were also informed of the presence of Di (2-ethylhexyl) phthalate (DEHP) in
13 the Earbuds within Plaintiff's notice of alleged violations further discussed above at
14 Paragraph 29.

15 87. Plaintiff's allegations regarding Earbuds concerns "[c]onsumer products exposure[s],"
16 which "is an exposure that results from a person's acquisition, purchase, storage,
17 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
18 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.
19 Earbuds are consumer products, and, as mentioned herein, exposures to Di (2-ethylhexyl)
20 phthalate (DEHP) took place as a result of such normal and foreseeable consumption and
21 use.

22 88. Plaintiff is informed, believes, and thereon alleges that between July 15, 2008 and the
23 present, each of the Defendants knowingly and intentionally exposed California
24 consumers and users of Earbuds, which Defendants manufactured, distributed, or sold as
25 mentioned above, to Di (2-ethylhexyl) phthalate (DEHP), without first providing any
26 type of clear and reasonable warning of such to the exposed persons before the time of
27 exposure. Defendants have distributed and sold Earbuds in California. Defendants know
28

1 and intend that California consumers will use and consume Earbuds thereby exposing
2 them to Di (2-ethylhexyl) phthalate (DEHP). Defendants thereby violated Proposition 65
3 89. The principal routes of exposure are and were through dermal contact, ingestion, and
4 inhalation. Persons sustain exposures by handling Earbuds without wearing gloves or
5 any other personal protective equipment, or by touching bare skin or mucous membranes
6 with gloves after handling Earbuds, as well as through hand to mouth contact (e.g., by
7 inserting surfaces, such as hands, that have contacted Earbuds into their mouths), hand to
8 mucous membrane, or breathing in particulate matter released or emanating from
9 Earbuds.

10 90. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
11 Proposition 65 as to Earbuds have been ongoing and continuous to the date of the signing
12 of this complaint, as Defendants engaged and continue to engage in conduct which
13 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
14 promotion, and sale of Earbuds, so that a separate and distinct violation of Proposition 65
15 occurred each and every time a person was exposed to Di (2-ethylhexyl) phthalate
16 (DEHP) by Earbuds as mentioned herein.

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

20 92. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to Di (2-ethylhexyl) phthalate (DEHP) from
22 Earbuds, pursuant to Health and Safety Code section 25249.7(b).

23 93. In the absence of equitable relief, the general public will continue to be involuntarily
24 exposed to Di (2-ethylhexyl) phthalate (DEHP) that is contained in Earbuds, creating a
25 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
26 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
27 remedy at law.

1 94. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3
4 **PRAYER FOR RELIEF**

5 Plaintiff demands against each of the Defendants as follows:

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

11
12 Dated: 12/15, 2011

YEROUSHALMI & ASSOCIATES

13
14
15 BY: 

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