

1 Reuben Yeroushalmi (SBN 193981)  
2 Daniel D. Cho (SBN 105409)  
3 Ben Yeroushalmi (SBN 232540)  
4 **YEROUSHALMI & ASSOCIATES**  
5 9100 Wilshire Boulevard, Suite 610E  
6 Beverly Hills, California 90212  
7 Telephone: 310.623.1926  
8 Facsimile: 310.623.1930

9 Attorneys for Plaintiffs,  
10 CONSUMER ADVOCACY GROUP, Inc.

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

MAR 09 2011

John A. Clarke, Executive Officer/Clerk  
By  Deputy  
RUGENA LOESZ

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

13 CONSUMER ADVOCACY GROUP, INC.,  
14 in the public interest,

15 Plaintiff,

16 v.

17 CLOSEOUT GROUP, INC., a Pennsylvania  
18 Corporation; ROSS DRESS FOR LESS,  
19 INC., dba DD'S DISCOUNTS®, a  
20 California Corporation; ROSS STORES,  
21 INC., dba DD'S DISCOUNTS®, a California  
22 Corporation; and DOES 1-50,

23 Defendants.

CASE NO.

BC456853

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

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

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

24 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as  
25 follows:

26 **THE PARTIES**

- 27 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" OR "CAG") is a non-  
28 profit corporation 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,

COPY

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

- 3  
4 2. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,  
5 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
6 Complaint to allege their true names and capacities when ascertained. Plaintiff is  
7 informed, believes, and thereon alleges that each fictitiously named defendant is  
8 responsible in some manner for the occurrences herein alleged and the damages caused  
9 thereby.
- 10  
11 3. At all times mentioned herein, the term "Defendants" includes CLOSEOUT GROUP,  
12 INC., ROSS DRESS FOR LESS, INC. dba DD'S DISCOUNTS®, ROSS STORES, INC.  
13 dba DD'S DISCOUNTS®, and DOES 1-50.
- 14  
15 4. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
16 times mentioned herein has conducted business within the State of California.
- 17  
18 5. At all times relevant to this action, each of the Defendants, including Does 1-50, was an  
19 agent, servant, or employee of each of the other Defendants. In conducting the activities  
20 alleged in this Complaint, each of the Defendants was acting within the course and scope  
21 of this agency, service, or employment, and was acting with the consent, permission, and  
22 authorization of each of the other Defendants. All actions of each of the Defendants  
23 alleged in this Complaint were ratified and approved by every other Defendant or their  
24 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
25 and/or facilitated the alleged wrongful conduct of each of the other Defendants.
- 26  
27 6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
28 Defendants was a person doing business within the meaning of Health and Safety Code

1 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
2 employees at all relevant times.

### 3 JURISDICTION

- 4
- 5 7. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
6 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
7 those given by statute to other trial courts. This Court has jurisdiction over this action  
8 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
9 violations of Proposition 65 in any Court of competent jurisdiction.
- 10
- 11 8. This Court has jurisdiction over Defendants named herein because Defendants either  
12 reside or are located in this State or are foreign corporations authorized to do business in  
13 California, are registered with the California Secretary of State, or who do sufficient  
14 business in California, have sufficient minimum contacts with California, or otherwise  
15 intentionally avail themselves of the markets within California through their manufacture,  
16 distribution, promotion, marketing, or sale of their products within California to render  
17 the exercise of jurisdiction by the California courts permissible under traditional notions  
18 of fair play and substantial justice.
- 19
- 20 9. Venue is proper in the County of Los Angeles because one or more of the instances of  
21 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
22 because Defendants conducted, and continue to conduct, business in the County of Los  
23 Angeles with respect to the consumer product that is the subject of this action.

### 24 BACKGROUND AND PRELIMINARY FACTS

- 25
- 26 10. In 1986, California voters approved an initiative to address growing concerns about  
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
28

1 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
2 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
3 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
4 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
5 from contamination, to allow consumers to make informed choices about the products  
6 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
7 fit.  
8

9  
10 11. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
11 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
12 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
13 chemicals and chemical families. Proposition 65 imposes warning requirements and  
14 other controls that apply to Proposition 65-listed chemicals.

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

22  
23 13. Proposition 65 provides that any person "violating or threatening to violate" the statute  
24 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
25 "Threaten to violate" means "to create a condition in which there is a substantial  
26 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
27  
28

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

- 3  
4 14. Through research and investigation, Plaintiff identified certain practices of Defendants of  
5 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed  
6 chemicals of the consumer products discussed below without first providing clear and  
7 reasonable warnings of such to the exposed persons prior to the time of exposure.

8 **SATISFACTION OF PRIOR NOTICE**

- 9  
10 15. On or about July 22, 2010, Plaintiff gave notice of alleged violations of Health and Safety  
11 Code section 25249.6, concerning consumer products exposures, subject to a private  
12 action to ROSS DRESS FOR LESS, INC. dba DD'S DISCOUNTS ®, ROSS STORES,  
13 INC. dba DD'S DISCOUNTS ®, and to the California Attorney General, County District  
14 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
15 people in whose jurisdictions the violations allegedly occurred, concerning the consumer  
16 product Axis® auto expressions™ Steering Wheel Cover Massage Grip Part #3790804-  
17 Grey.  
18  
19 16. On or about December 23, 2010, Plaintiff gave notice of alleged violations of Health and  
20 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
21 private action to CLOSEOUT GROUP!, INC., ROSS DRESS FOR LESS, INC. dba  
22 DD'S DISCOUNTS®, ROSS STORES, INC. dba DD'S DISCOUNTS ®, and to the  
23 California Attorney General, County District Attorneys, and City Attorneys for each city  
24 containing a population of at least 750,000 people in whose jurisdictions the violations  
25 allegedly occurred, concerning the consumer product Axis® auto expressions™  
26 Steering Wheel Cover Massage Grip Part #3790804-Grey.  
27  
28

1 17. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
2 product involved, and the likelihood that such product would cause users to suffer  
3 significant exposures to the relevant Proposition 65-listed chemical at issue.  
4

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

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

19 20. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
20 gave notice of the alleged violations to CLOSEOUT GROUP!, INC., ROSS DRESS FOR  
21 LESS, INC. dba DD'S DISCOUNTS®, ROSS STORES, INC. dba DD'S DISCOUNTS  
22 ®, and the public prosecutors referenced in Paragraphs 15 and 16.  
23

24 21. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
25 any applicable district attorney or city attorney has commenced and is diligently  
26 prosecuting an action against the Defendants.  
27

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIRST CAUSE OF ACTION**

(By Consumer Advocacy Group, Inc. and against Closeout Group!, Inc., Ross Dress for Less, Inc. dba dd's Discounts®, Ross Stores, Inc. dba dd's Discounts®, and Does 1-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))

**Axius® auto expressions™ Steering Wheel Cover Massage Grip Part #3790804-Grey**

22. Plaintiff CONSUMER ADVOCACY GROUP, INC. restates and incorporates by reference paragraphs 1 through 21 of this Complaint as though fully set forth herein.

23. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Axius® auto expressions™ Steering Wheel Cover Massage Grip Part #3790804-Grey (hereinafter "Steering Wheel Cover"), a consumer product designed for use to cover the steering wheel in an automobile.

24. Plaintiff is informed, believes, and thereon alleges that Steering Wheel Cover contains lead.

25. On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).

On October 1, 1992 the Governor added lead and lead components to the list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).

Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of lead to the list of chemicals known to the State to cause cancer, lead became fully subject to Proposition 65 warning requirements and discharge prohibitions.

26. Defendants knew or should have known that Steering Wheel Cover contained lead.

Defendants knew or should have known that lead has been identified by the State of California as a chemical known to cause cancer and therefore were subject to Proposition

1 65 warning requirements. Defendants were also informed of the presence of lead in the  
2 Steering Wheel Cover within Plaintiff's notice of alleged violation further discussed  
3 above at Paragraph 15 and 16.  
4

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

13 28. Plaintiff is informed, believes, and thereon alleges that between July 22, 2007 and the  
14 present and thereafter ongoing and continuous, each of the Defendants knowingly and  
15 intentionally exposed California consumers and users of Steering Wheel Cover, which  
16 Defendants manufactured, distributed, or sold as mentioned above, to lead, without first  
17 providing any type of clear and reasonable warning of such to the exposed persons before  
18 the time of exposure. Defendants have manufactured, distributed or sold Steering Wheel  
19 Cover in California. Defendants know and intend that California consumers will use and  
20 consume Steering Wheel Cover thereby exposing them to lead. Defendants thereby  
21 violated Proposition 65.  
22

23  
24 29. The principal routes of exposure are through dermal contact, ingestion, and inhalation.  
25 Persons sustain exposures by handling the Steering Wheel Cover without wearing gloves  
26 or by touching bare skin or mucous membranes with gloves after handling Steering  
27 Wheel Cover, as well as hand to mouth contact, hand to mucous membrane, or breathing  
28



1 in particulate matter emanating from the Steering Wheel Cover during use and  
2 installation, as well as through environmental mediums that carry the lead and lead  
3 compounds once contained within the Steering Wheel Cover. The foregoing routes of  
4 exposure assume use of the product in accordance with its instructions.  
5

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

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

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 lead from Steering Wheel Cover, pursuant  
20 to Health and Safety Code section 25249.7(b).  
21

22 33. In the absence of equitable relief, California consumers, the general public, and others  
23 will continue to be involuntarily exposed to lead that is contained in Steering Wheel  
24 Cover, creating a substantial risk of irreparable harm. Thus, by committing the acts  
25 alleged herein, Defendants have caused irreparable harm for which there is no plain,  
26 speedy, or adequate remedy at law.  
27  
28

1 34. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to  
2 filing this Complaint.  
3

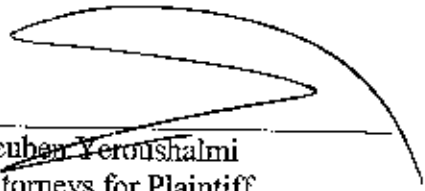
4  
5 **PRAYER FOR RELIEF**

6 Plaintiff demands against each of the Defendants as follows:

- 7 1. A permanent injunction mandating Proposition 65-compliant warnings;  
8 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
9 3. Costs of suit;  
10 4. Reasonable attorney fees and costs; and  
11 5. Any further relief that the court may deem just and equitable.  
12

13 \\  
14 \\  
15 \\  
16 Dated: March 7/11

YEROUSHALMI & ASSOCIATES

18  
19  
20 BY:   
21 Reuben Yeroushalmi  
22 Attorneys for Plaintiff,  
23 Consumer Advocacy Group, Inc.  
24  
25  
26  
27  
28