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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 6 - 2011

John A. Clarke, Executive Officer/Clerk
BY M. Flores, Deputy
Mary Flores

6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.

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

11
12 CONSUMER ADVOCACY GROUP, INC.,
in the public interest,
13
14 Plaintiff,
15
16 v.
17 THE ASHLEY COLLECTION, INC., a New
York Corporation, ROSS STORES, INC., a
Delaware Corporation and DOES 1-50;
18
19 Defendants.

CASE NO. **BC 474603**

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)

20
21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants, as
22 follows:

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THE PARTIES

1. Plaintiff Consumer Advocacy Group, Inc. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant THE ASHLEY COLLECTION, INC. (“Ashley”) is a New York corporation, qualified to do business and doing business in the State of California at all relevant times herein.
3. Defendant ROSS STORES, INC. (“ROSS”) is a Delaware corporation, qualified to do business and doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
5. At all times mentioned herein, the term “Defendants” includes THE ASHLEY COLLECTION, INC., ROSS STORES, INC. and Does 1-50.
6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
7. At all times relevant to this action, each of the Defendants, including Does 1-50, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their

1 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
2 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

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

21 11. Venue is proper in the County of Los Angeles because one or more of the instances of
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
23 because Defendants conducted, and continue to conduct, business in the County of Los
24 Angeles with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

26 12. 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 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

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

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

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

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

20 "Threaten to violate" means "to create a condition in which there is a substantial
21 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

24 16. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing
25 products of exposing, knowingly and intentionally, persons in California to the

26 Proposition 65-listed chemicals of such products without first providing clear and
27 reasonable warnings of such to the exposed persons prior to the time of exposure.

28 Plaintiff later discerned that Defendants engaged in such practice.

1 17. On October 1, 1992, the Governor of California added Lead and Lead compounds to the
2 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).
3 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
4 after addition of Lead and lead compounds to the list of chemicals known to the State to
5 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
6 requirements and discharge prohibitions.

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

14 **SATISFACTION OF PRIOR NOTICE**

15 19. On or about December 31, 2010, Plaintiff gave notice of alleged violations of Health and
16 Safety Code section 25249.6, concerning consumer products exposures, subject to a
17 private action to The Ashley Collection, Inc., Ross Stores, Inc., and to the California
18 Attorney General, County District Attorneys, and City Attorneys for each city containing
19 a population of at least 750,000 people in whose jurisdictions the violations allegedly
20 occurred, concerning the consumer product PROTOCOL® 250 PSI Compact Air
21 Compressor (No. 879-02).

22 20. 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 lead, and the corporate structure of each of the Defendants.

25 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
26 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
27 Plaintiff who executed the certificate had consulted with at least one person with relevant
28 and appropriate expertise who reviewed data regarding the exposures to lead,

1 respectively, which are the subject Proposition 65-listed chemicals of this action. Based
2 on that information, the attorney for Plaintiff who executed the Certificate of Merit
3 believed there was a reasonable and meritorious case for this private action. The attorney
4 for Plaintiff attached to the Certificate of Merit served on the Attorney General the
5 confidential factual information sufficient to establish the basis of the Certificate of
6 Merit.

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

10 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
11 gave notices of the alleged violations to The Ashley Collection, Inc., Ross Stores, Inc.,
12 and the public prosecutors referenced in Paragraph 19.

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

16 **FIRST CAUSE OF ACTION**

17 **(By Consumer Advocacy Group, Inc. and against The Ashley Collection, Inc., Ross Stores,
18 Inc., and Does 1-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic
19 Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

20 **PROTOCOL® 250 PSI Compact Air Compressor (No. 879-02)**

21 25. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
22 paragraphs 1 through 24 of this complaint as though fully set forth herein.

23 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of PROTOCOL® 250 PSI Compact Air Compressor
25 (No. 879-02) (hereinafter "Air Compressor"), a consumer product designed for personal
26 use for the automobile.

27 27. Plaintiff is informed, believes, and thereon alleges that Air Compressor contains Lead.
28

1 28. Defendants knew or should have known that Lead has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of Lead in Air Compressor within Plaintiff's notice of alleged violations
5 further discussed above at Paragraph 19.

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

12 30. Plaintiff is informed, believes, and thereon alleges that between December 31, 2008 and
13 the present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of Air Compressor, which Defendants manufactured, distributed, or
15 sold as mentioned above, to Lead, without first providing any type of clear and
16 reasonable warning of such to the exposed persons before the time of exposure.
17 Defendants have distributed and sold Air Compressor in California. Defendants know
18 and intend that California consumers will use and consume Air Compressor thereby
19 exposing them to Lead. Defendants thereby violated Proposition 65.

20 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.
21 Persons sustain exposures by handling Air Compressor without wearing gloves or any
22 other personal protective equipment, or by touching bare skin or mucous membranes with
23 gloves after handling Air Compressor, as well as through hand to mouth contact, hand to
24 mucous membrane, or breathing in particulate matter dispersed from Air Compressor.

25 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
26 Proposition 65 as to Air Compressor have been ongoing and continuous to the date of the
27 signing of this complaint, as Defendants engaged and continue to engage in conduct
28 which violates Health and Safety Code section 25249.6, including the manufacture,

1 distribution, promotion, and sale of Air Compressor, so that a separate and distinct
2 violation of Proposition 65 occurred each and every time a person was exposed to Lead
3 by Air Compressor as mentioned herein.

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

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

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

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

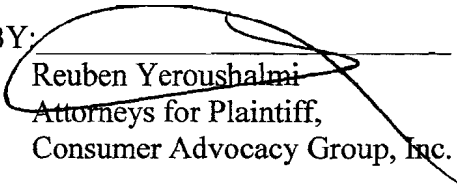
PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

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

Dated: 12/5, 2011

YEROUSHALMI & ASSOCIATES

BY: 
Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.