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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAR 01 2012

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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 GOSSI, INC. an Ohio Corporation, BIG
20 LOTS STORES, INC., an Ohio Corporation,
21 and DOES 1-50;

22 Defendants.

CASE NO. **BC479969**

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)

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

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THE PARTIES

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2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG") is an organization
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 BIG LOTS STORES, INC. ("Big Lots Stores") is an Ohio corporation,
8 qualified to do business and doing business in the State of California at all relevant times
9 herein.
- 10 3. Defendant GOSSI, INC. ("Gossi") is an Ohio corporation, qualified to do business and
11 doing business in the State of California.
- 12 4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,
13 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
14 complaint to allege their true names and capacities when ascertained. Plaintiff is
15 informed, believes, and thereon alleges that each fictitiously named defendant is
16 responsible in some manner for the occurrences herein alleged and the damages caused
17 thereby.
- 18 5. At all times mentioned herein, the term "Defendants" includes BIG LOTS STORES,
19 INC., GOSSI, INC. and Does 1-50.
- 20 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
21 times mentioned herein have conducted business within the State of California.
- 22 7. At all times relevant to this action, each of the Defendants, including Does 1-50, was an
23 agent, servant, or employee of each of the other Defendants. In conducting the activities
24 alleged in this Complaint, each of the Defendants was acting within the course and scope
25 of this agency, service, or employment, and was acting with the consent, permission, and
26 authorization of each of the other Defendants. All actions of each of the Defendants
27 alleged in this Complaint were ratified and approved by every other Defendant or their
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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
26 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

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

25 16. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing
26 products of exposing, knowingly and intentionally, persons in California to the
27 Proposition 65-listed chemicals of such products without first providing clear and
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1 reasonable warnings of such to the exposed persons prior to the time of exposure.

2 Plaintiff later discerned that Defendants engaged in such practice.

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

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

16 19. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl
17 Phthalate ("DEHP")-bearing products, of exposing, knowingly and intentionally, persons
18 in California to the Proposition 65-listed chemicals of such products without first
19 providing clear and reasonable warnings of such to the exposed persons prior to the time
20 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

21 20. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
22 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
23 to the list of chemicals known to the State to cause developmental male reproductive
24 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
25 months after addition of DEHP to the list of chemicals known to the State to cause
26 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
27 requirements and discharge prohibitions.

- 1 21. Plaintiff identified certain practices of manufacturers and distributors of Dibutyl
2 Phthalate ("DBP")-bearing products of exposing, knowingly and intentionally, persons in
3 California to the Proposition 65-listed chemicals of such products without first providing
4 clear and reasonable warnings of such to the exposed persons prior to the time of
5 exposure. Plaintiff later discerned that Defendants engaged in such practice.
- 6 22. On December 2, 2005, the Governor added DBP to the list of chemicals known to the
7 State to cause developmental male reproductive toxicity. Pursuant to Health and Safety
8 Code sections 25249.9 and 25249.10, twenty (20) months after addition of DBP to the list
9 of chemicals known to the State to cause reproductive toxicity, DBP became fully subject
10 to Proposition 65 warning requirements and discharge prohibitions.

11
12 SATISFACTION OF PRIOR NOTICE

- 13 23. On or about April 29, 2011, Plaintiff gave notice of alleged violations of Health and
14 Safety Code section 25249.6, concerning consumer products exposures and occupational
15 exposures, subject to a private action to Big Lots Stores, Inc. and to the California
16 Attorney General, County District Attorneys, and City Attorneys for each city containing
17 a population of at least 750,000 people in whose jurisdictions the violations allegedly
18 occurred, concerning the consumer product Gossi, Inc., Grip-Rite, Steering Wheel Cover.
- 19 24. On or about October 6, 2011, Plaintiff gave notice of alleged violations of Health and
20 Safety Code section 25249.6, concerning consumer products exposures and occupational
21 exposures, subject to a private action to Big Lots Stores, Inc. Gossi, Inc. and to the
22 California Attorney General, County District Attorneys, and City Attorneys for each city
23 containing a population of at least 750,000 people in whose jurisdictions the violations
24 allegedly occurred, concerning the consumer product Lazer Light 3-LED Flashlight.
- 25 25. Before sending the notices of alleged violations, Plaintiff investigated the consumer
26 products involved, the likelihood that such products would cause users to suffer
27 significant exposures to lead, and the corporate structure of each of the Defendants.

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

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

14 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
15 gave notices of the alleged violations to Big Lots Stores, Inc. and Gossi, Inc. and the
16 public prosecutors referenced in Paragraphs 23 and 24.

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

20
21 FIRST CAUSE OF ACTION

22 (By Consumer Advocacy Group, Inc. and against Big Lots Stores, Inc. and Does 1-50 for
23 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986
(*Health & Safety Code*, §§ 25249.5, et seq.))

24 Gossi, Inc., Grip-Rite, Steering Wheel Cover.

25 30. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
26 paragraphs 1 through 29 of this complaint as though fully set forth herein.

27 31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of Gossi, Inc., Grip-Rite, Steering Wheel Cover

1 (hereinafter "Cover"), a consumer product designed for everyday use in a car as a
2 protective device for the actual steering wheel of the car as well as a grip assist for
3 drivers holding onto the steering wheel.

4 32. Plaintiff is informed, believes, and thereon alleges that Cover contains Lead.

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

10 34. Plaintiff's allegations regarding Cover concern "[c]onsumer products exposure[s],"
11 which "is an exposure that results from a person's acquisition, purchase, storage,
12 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
13 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

14 Cover is a consumer product, and, as mentioned herein, exposures to Lead took place as a
15 result of such normal and foreseeable consumption and use.

16 35. Plaintiff is informed, believes, and thereon alleges that between April 29, 2008 and the
17 present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of Cover, which Defendants manufactured, distributed, or sold as
19 mentioned above, to Lead, without first providing any type of clear and reasonable
20 warning of such to the exposed persons before the time of exposure. Defendants have
21 distributed and sold Covers in California. Defendants know and intend that California
22 consumers will use and consume Covers thereby exposing them to Lead. Defendants
23 thereby violated Proposition 65.

24 36. The principal routes of exposure are through dermal contact, ingestion and inhalation.
25 Persons sustain exposures by handling Cover without wearing gloves or any other
26 personal protective equipment, or by touching bare skin or mucous membranes with
27 gloves after handling Cover, as well as through hand to mouth contact, hand to mucous
28 membrane, or breathing in particulate matter dispersed from Cover. And as to

1 Defendants' employees, employees may be exposed to lead in the course of their
2 employment by handling, distributing, and selling Covers.

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

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

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

16 40. In the absence of equitable relief, the general public will continue to be involuntarily
17 exposed to Lead that is contained in the Cover, creating a substantial risk of irreparable
18 harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable
19 harm for which there is no plain, speedy, or adequate remedy at law.

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

22
23 **SECOND CAUSE OF ACTION**

24 **(By Consumer Advocacy Group, Inc. and against Big Lots Stores, Inc., Gossi, Inc. and**
25 **Does 1-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
26 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

27 **Lazer Light 3-LED Flashlight.**

28 42. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
paragraphs 1 through 41 of this complaint as though fully set forth herein.

1 43. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of Lazer Light 3-LED Flashlight (hereinafter
3 "Flashlight"), a consumer product designed for hand-held lighting of dark locations.

4 44. Plaintiff is informed, believes, and thereon alleges that Flashlight contains DEHP and
5 DBP.

6 45. Defendants knew or should have known that DEHP has been identified by the State of
7 California as a chemical known to cause cancer and reproductive toxicity and therefore
8 was subject to Proposition 65 warning requirements. Defendants were also informed of
9 the presence of DEHP in Flashlight within Plaintiff's notice of alleged violations further
10 discussed above at Paragraph 24.

11 46. Defendants knew or should have known that DBP has been identified by the State of
12 California as a chemical known to cause reproductive toxicity and therefore was subject
13 to Proposition 65 warning requirements. Defendants were also informed of the presence
14 of DBP in Flashlight within Plaintiff's notice of alleged violations further discussed
15 above at Paragraph 24.

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

22 48. Plaintiff is informed, believes, and thereon alleges that between October 6, 2008 and the
23 present, each of the Defendants knowingly and intentionally exposed California
24 consumers and users of Cover, which Defendants manufactured, distributed, or sold as
25 mentioned above, to DEHP and DBP, without first providing any type of clear and
26 reasonable warning of such to the exposed persons before the time of exposure.

27 Defendants have distributed and sold Flashlights in California. Defendants know and
28

1 intend that California consumers will use and consume Flashlights thereby exposing them
2 to DEHP and DBP. Defendants thereby violated Proposition 65.

3 49. The principal routes of exposure are through dermal contact, ingestion and inhalation.
4 Persons sustain exposures by handling Flashlight without wearing gloves or any other
5 personal protective equipment, or by touching bare skin or mucous membranes with
6 gloves after handling Flashlight, as well as through hand to mouth contact, hand to
7 mucous membrane, or breathing in particulate matter dispersed from Flashlight. And as
8 to Defendants' employees, employees may be exposed to DEHP and DBP in the course of
9 their employment by handling, distributing, and selling Covers.

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

17 51. 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 52. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to DEHP and DBP from Flashlights, pursuant
22 to Health and Safety Code section 25249.7(b).

23 53. In the absence of equitable relief, the general public will continue to be involuntarily
24 exposed to DEHP and DBP that is contained in the Flashlight, creating a substantial risk
25 of irreparable harm. Thus, by committing the acts alleged herein, Defendants have
26 caused irreparable harm for which there is no plain, speedy, or adequate remedy at law.

27 54. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
28 filing this Complaint.

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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: 2/28/12, 2012

YEROUSHALMI & ASSOCIATES

BY: 

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