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SAN FRANCISCO COUNTY  
SUPERIOR COURT

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D. STEPPE

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7 Consumer Advocacy Group, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

11 CGC-11-516777

12 CONSUMER ADVOCACY GROUP, INC.,  
in the public interest,

CASE NO.

13 Plaintiff,

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

14 v.

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

16 ROSS DRESS FOR LESS, INC., a Virginia  
Corporation, d.b.a. dd's DISCOUNT; ROSS  
17 STORES INC., d.b.a. dd's DISCOUNT, a  
18 Delaware Corporation; ALLISON  
CORPORATION., a New Jersey  
19 Corporation; and DOES 1-50;

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

20 Defendants.

21  
22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against

23 Defendants as follows:

24 ///  
25 ///  
26 ///  
27 ///

**BY FAX**

**THE PARTIES**

- 1  
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” OR “CAG”) is a  
3 corporation qualified to do business in the State of California. CAG is a person within  
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
5 as a private attorney general, brings this action in the public interest as defined under  
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant ROSS DRESS FOR LESS, INC. (“ROSS DRESS FOR LESS”), doing  
8 business as dd’s Discounts, is a company incorporated in the State of Virginia.
- 9 3. Defendant ROSS STORES, INC. (“ROSS STORES”), doing business as dd’s Discounts,  
10 is a company incorporated in the State of Delaware.
- 11 4. Defendant ALLISON CORP. (“ALLISON”) is a company incorporated in the State of  
12 New Jersey.
- 13 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-50,  
14 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
15 complaint to allege their true names and capacities when ascertained. Plaintiff is  
16 informed, believes, and thereon alleges that each fictitiously named defendant is  
17 responsible in some manner for the occurrences herein alleged and the damages caused  
18 thereby.
- 19 6. At all times mentioned herein, the term “Defendants” includes ROSS DRESS FOR  
20 LESS, INC., ROSS STORES, INC., ALLISON CORPORATION., and DOES 1-50.
- 21 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
22 times mentioned herein have conducted business within the State of California.
- 23 8. At all times relevant to this action, each of the Defendants, including DOES 1-50, was an  
24 agent, servant, or employee of each of the other Defendants. In conducting the activities  
25 alleged in this Complaint, each of the Defendants was acting within the course and scope  
26 of this agency, service, or employment, and was acting with the consent, permission, and  
27 authorization of each of the other Defendants. All actions of each of the Defendants  
28 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 9. 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 10. 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 11. 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 12. Venue is proper in the County of San Francisco because one or more of the instances of  
22 wrongful conduct occurred, and continues to occur, in the County of San Francisco  
23 and/or because Defendants conducted, and continue to conduct, business in the County of  
24 San Francisco with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

- 26 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. On or about May 26, 2011, 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 ROSS DRESS FOR LESS, INC., identified in the notice as "ROSS  
18 DRESS FOR LESS, INC. dba dd's Discounts", ROSS STORES, INC., identified in the  
19 notice as "ROSS STORES, INC. dba dd's Discounts," ALLISON CORPORATION,  
20 identified in the notice as "ALLISON CORPORATION" and to the California Attorney  
21 General, County District Attorneys, and City Attorneys for each city containing a  
22 population of at least 750,000 people in whose jurisdictions the violations allegedly  
23 occurred, concerning a Steering Wheel Cover.

24 21. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
25 product involved, the likelihood that such product would cause users to suffer significant  
26 exposures to lead, and the corporate structure of each of the Defendants.

27 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
28 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for

1 Plaintiff who executed the certificate had consulted with at least one person with relevant  
2 and appropriate expertise who reviewed data regarding the exposures to lead,  
3 respectively, which are the subject Proposition 65-listed chemicals of this action. Based  
4 on that information, the attorney for Plaintiff who executed the Certificate of Merit  
5 believed there was a reasonable and meritorious case for this private action. The attorney  
6 for Plaintiff attached to the Certificate of Merit served on the Attorney General the  
7 confidential factual information sufficient to establish the basis of the Certificate of  
8 Merit.

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

12 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
13 gave notice of the alleged violations to ROSS DRESS FOR LESS, ROSS STORES, and  
14 ALLISON, and the public prosecutors referenced in Paragraph 20.

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

18  
19 **FIRST CAUSE OF ACTION**

20 **(By CONSUMER ADVOCACY GROUP, INC. and against ROSS DRESS FOR LESS,**  
21 **INC., ROSS STORES, INC., and ALLISON CORPORATION for Violations of**  
22 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &***  
23 ***Safety Code*, §§ 25249.5, *et seq.*))**

24 **“Steering Wheel Covers”**

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

27 27. Each of the Defendants are, and at all times mentioned herein were, a manufacturer,  
28 distributor, promoter, or retailer of “**Steering Wheel Covers**” (“Covers”), an exemplar of

1 this product is AutoLogix™ Racing Massage™ Steering Wheel Cover, Item #54-6167 a  
2 consumer product designed for use in cars.

3 28. Plaintiff is informed, believes, and thereon alleges that Covers contain Lead.

4 29. Defendants knew or should have known that Lead has been identified by the State of  
5 California as a chemical known to cause cancer and reproductive toxicity and therefore  
6 was subject to Proposition 65 warning requirements. Defendants were also informed of  
7 the presence of Lead in the Cover within Plaintiff's notice of alleged violations further  
8 discussed above at Paragraph 20.

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

15 31. Plaintiff's allegations regarding the Covers also concern "[o]ccupational exposure[s],"  
16 which are exposures "to any employees in his or her employer's workplace." *Cal. Code*  
17 *Reg. tit. 27, § 25602(f)*. As mentioned herein, employees were exposed to Lead in their  
18 employer's workplace as a result of handling Covers, in conjunction with packaging,  
19 shipping, distributing and/or selling Covers, among other activities, without having first  
20 been given clear and reasonable warnings that such handling would cause exposures to  
21 Lead.

22 32. Plaintiff's allegations regarding the Covers also concern "[e]nvironmental exposure[s]",  
23 which is an exposure which may foreseeably occur as the result of contact with an  
24 environmental medium, including, but not limited to, ambient air, indoor air, drinking  
25 water, standing water, running water, soil, vegetation, or manmade or natural substances,  
26 either through inhalation, ingestion, skin contact or otherwise. Environmental exposures  
27 include all exposures which are not consumer products exposures, or occupational  
28 exposure." *Cal. Code Regs. tit. 27, § 25602(c)*. Defendants failed to provide clear and

1 reasonable Proposition 65-compliant warnings to exposed persons prior to the knowing  
2 and intentional exposures described herein, and thereby violated Proposition 65.

3 33. Plaintiff is informed, believes, and thereon alleges that between May 26, 2008 and the  
4 present, each of the Defendants knowingly and intentionally exposed their employees and  
5 California consumers and users of Covers, which Defendants manufactured, distributed,  
6 or sold as mentioned above, to Lead, without first providing any type of clear and  
7 reasonable warning of such to the exposed persons before the time of exposure.

8 Defendants have distributed and sold Cover in California. Defendants know and intend  
9 that California consumers will use and consume Covers thereby exposing them to Lead.  
10 Defendants thereby violated Proposition 65.

11 34. The principal routes of exposure were through inhalation, oral ingestion, including hand  
12 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling  
13 the Covers without wearing gloves or by touching bare skin or mucous membranes with  
14 gloves after handling the Covers, as well as hand to mouth contact, hand to mucous  
15 membrane, or breathing in particulate matter emanating from the Covers during  
16 installation and use.

17 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
18 Proposition 65 as to Covers have been ongoing and continuous to the date of the signing  
19 of this complaint, as Defendants engaged and continue to engage in conduct which  
20 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
21 promotion, and sale of Covers, so that a separate and distinct violation of Proposition 65  
22 occurred each and every time a person was exposed to Lead by Covers as mentioned  
23 herein.

24 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
25 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
26 violations alleged herein will continue to occur into the future.  
27  
28



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

4 38. In the absence of equitable relief, the general public and Defendants' employees will  
5 continue to be involuntarily exposed to Lead that is contained in Covers, creating a  
6 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
7 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
8 remedy at law.

9 39. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
10 filing this Complaint.

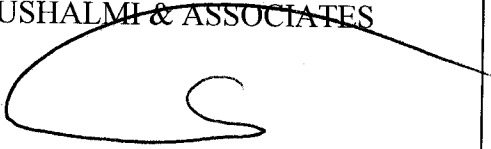
11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each of the Defendants as follows:

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

18  
19 Dated: 12, 16, 2011

YEROUSHALMI & ASSOCIATES

20  
21 BY:   
22 Reuben Yeroushalmi  
23 Attorneys for Plaintiff,  
24 Consumer Advocacy Group, Inc.  
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