

1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
3 **YEROUSHALMI & ASSOCIATES**
9100 Wilshire Boulevard, Suite 610E
4 Beverly Hills, California 90213
Telephone: 310.623.1926
5 Facsimile: 310.623.1930

6 Attorneys for Plaintiffs,
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 Plaintiff,

14 v.

15
16 STREET GLOW, INC., a New Jersey
Corporation, ROSS DRESS FOR LESS,
17 INC., a Virginia Corporation d.b.a dd's
DISCOUNTS, ROSS STORES, INC., a
18 Delaware Corporation d.b.a dd's
19 DISCOUNTS, and DOES 1-50;

20 Defendants.

CASE NO.

BC482995

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)

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

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25 ///

26 ///

27 ///

CONFIRMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

APR 18 2012

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

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 Street Glow, Inc., (“Street Glow”) is a company incorporated in the State of
8 New Jersey.
- 9 3. Defendant Ross Dress For Less, Inc. dba dd’s Discounts, (“Ross Dress”) is a company
10 incorporated in the State of Virginia qualified to do business in California.
- 11 4. Defendant Ross Stores, Inc. dba dd’s Discounts (“Ross Stores”) is a company
12 incorporated in the State of Delaware qualified to do business in California.
- 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 Street Glow, Ross Dress,
20 Ross Stores, 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 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 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 July 19, 2011, Plaintiff gave notice of alleged violations of Health and Safety
16 Code section 25249.6, concerning consumer products exposures, subject to a private
17 action to Ross Dress, identified in the notice as "Ross Dress For Less, Inc. dba dd's

18 ~~Discounts", Ross Stores, identified in the notice as "Ross Stores, Inc. dba dd's~~

19 Discounts", Street Glow, identified in the notice as "Street Glow, Inc.", and to the
20 California Attorney General, County District Attorneys, and City Attorneys for each city
21 containing a population of at least 750,000 people in whose jurisdictions the violations
22 allegedly occurred, concerning OPTX® "El Neon Pedal Electro-Luminescent Glowing
23 Pedals.

24 21. On or about September 6, 2011, Plaintiff gave notice of alleged violations of Health and
25 Safety Code section 25249.6, concerning consumer products exposures, subject to a
26 private action to Ross Dress, identified in the notice as "Ross Dress For Less, Inc.", Ross
27 Stores, identified in the notice as "Ross Stores, Inc.", Street Glow, identified in the notice
28 as "Street Glow, Inc.", and to the California Attorney General, County District Attorneys,

1 and City Attorneys for each city containing a population of at least 750,000 people in
2 whose jurisdictions the violations allegedly occurred, concerning OPTX® Radio Bar.

3 22. Before sending the notices of alleged violation, Plaintiff investigated the consumer
4 products involved, the likelihood that such products would cause users to suffer
5 significant exposures to lead, and the corporate structure of each of the Defendants.

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

16 24. Plaintiff's notice of alleged violations also included a Certificate of Service and a
17 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986

18 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d).*

19 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
20 gave notice of the alleged violations to Defendants and the public prosecutors referenced
21 in Paragraph 20-21.

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

25
26 **FIRST CAUSE OF ACTION**

27 **(By Consumer Advocacy Group, Inc. and against Ross Dress For Less, Inc. dba dd's
28 Discounts, Ross Stores, Inc. dba dd's Discounts, and Street Glow, Inc., for Violations of**

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

3 **OPTX® “El Neon Pedal” Electro-Luminescent Glowing Pedals**

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

6 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
7 distributor, promoter, or retailer of OPTX® “El Neon Pedal” Electro-Luminescent
8 Glowing Pedals (hereinafter “Pedals”), a consumer product designed for use with an
9 automobile.

10 29. Plaintiff is informed, believes, and thereon alleges that Pedals contain Lead.

11 30. Defendants knew or should have known that Lead has been identified by the State of
12 California as a chemical known to cause cancer and reproductive toxicity and therefore
13 was subject to Proposition 65 warning requirements. Defendants were also informed of
14 the presence of Lead in the Pedals within Plaintiff’s notice of alleged violations further
15 discussed above at Paragraph 20.

16 31. Plaintiff’s allegations regarding Pedals concern “consumer products exposure[s],” which
17 “is an exposure that results from a person’s acquisition, purchase, storage, consumption,
18 or other reasonably foreseeable use of a consumer good, or any exposure that results from

19 receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*. Headphones are a
20 consumer product, and, as mentioned in herein, exposures to Lead took place as a result
21 of such normal and foreseeable consumption and use.

22 32. Plaintiff is informed, believes, and thereon alleges that between July 19, 2008 and the
23 present, each of the Defendants knowingly and intentionally exposed California
24 consumers and users of Pedals, which Defendants manufactured, distributed, or sold as
25 mentioned above, to Lead, without first providing any type of clear and reasonable
26 warning of such to the exposed persons before the time of exposure. Defendants have
27 distributed and sold Pedals in California. Defendants know and intend that California
28

1 consumers will use and consume Pedals, thereby exposing them to Lead. Defendants
2 thereby violated Proposition 65.

3 33. The principal routes of exposure were through inhalation, oral ingestion, including hand
4 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling
5 the Pedals without wearing gloves or by touching bare skin or mucous membranes with
6 gloves after handling the Pedals, as well as hand to mouth contact, hand to mucous
7 membrane, or breathing in particulate matter emanating from the Pedals during
8 installation and use.

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

16 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
17 mentioned herein is ever continuing. Plaintiff further alleges and believes that the

~~18 violations alleged herein will continue to occur into the future.~~

19 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to Lead from Pedals, pursuant to Health and
21 Safety Code section 25249.7(b).

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

1 **SECOND CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against Ross Dress For Less, Inc., Ross Stores,**
3 **Inc., and Street Glow, Inc., for Violations of Proposition 65, The Safe Drinking Water and**
4 **Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

5 **OPTX® Radio Bar**

6 38. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
7 paragraphs 1 through 37 of this complaint as though fully set forth herein.

8 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of OPTX® Radio Bar (hereinafter "Bar"), a consumer
10 product designed for use with an automobile.

11 40. Plaintiff is informed, believes, and thereon alleges that Bar contains Lead.

12 41. Defendants knew or should have known that Lead has been identified by the State of
13 California as a chemical known to cause cancer and reproductive toxicity and therefore
14 was subject to Proposition 65 warning requirements. Defendants were also informed of
15 the presence of Lead in the Bar within Plaintiff's notice of alleged violations further
16 discussed above at Paragraph 21.

17 42. Plaintiff's allegations regarding Bar concern "consumer products exposure[s]," which "is
18 an exposure that results from a person's acquisition, purchase, storage, consumption, or

19 other reasonably foreseeable use of a consumer good, or any exposure that results from
20 receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. Bar is a consumer
21 product, and, as mentioned in herein, exposures to Lead took place as a result of such
22 normal and foreseeable consumption and use.

23 43. Plaintiff is informed, believes, and thereon alleges that between September 6, 2008 and
24 the present, each of the Defendants knowingly and intentionally exposed California
25 consumers and users of Bar, which Defendants manufactured, distributed, or sold as
26 mentioned above, to Lead, without first providing any type of clear and reasonable
27 warning of such to the exposed persons before the time of exposure. Defendants have
28 distributed and sold Bar in California. Defendants know and intend that California

1 consumers will use and consume Bar, thereby exposing them to Lead. Defendants
2 thereby violated Proposition 65.

3 44. The principal routes of exposure were through inhalation, oral ingestion, including hand
4 to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling
5 the Bar without wearing gloves or by touching bare skin or mucous membranes with
6 gloves after handling the Bar, as well as hand to mouth contact, hand to mucous
7 membrane, or breathing in particulate matter emanating from the Bar during installation
8 and use.

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

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

18 ~~47. 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 Bar, pursuant to Health and
20 Safety Code section 25249.7(b).

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

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

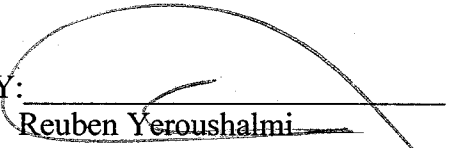
28 **PRAYER FOR RELIEF**

1 Plaintiff demands against each of the Defendants as follows:

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

7
8 Dated: April 17, 2012

YEROUSHALMI & ASSOCIATES

9
10
11 BY: 
12 Reuben Yeroushalmi
13 Attorneys for Plaintiff,
14 Consumer Advocacy Group, Inc.
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