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Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
Ben Yeroushalmi (SBN 232540)
YEROUSHALMI & ASSOCIATES
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, California 90212
Telephone: 310.623.1926
Facsimile: 310.623.1930

FILED
ALAMEDA COUNTY

MAY 08 2013

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

Plaintiff,

v.

ARGENTO SC BY SICURA, INC., a New
York Corporation; SICURA DESIGNS,
INC., a Delaware Corporation; IWAVE
SICURA MEDIA, INC., a New York
Corporation; TECHNICAL KNOCKOUT,
INC., a Delaware Corporation;
MARSHALLS OF MA, INC., a
Massachusetts Corporation; ROSS STORES,
INC., a Delaware Corporation; ROSS
DRESS FOR LESS, INC., a Virginia
Corporation; and DOES 1-20;

Defendants.

CASE NO. *15*-13-078789

COMPLAINT FOR PENALTY AND
INJUNCTION

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)

**FILE BY
FAX**

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
defendants ARGENTO SC BY SICURA, INC., SICURA DESIGNS, INC., IWAVE SICURA

1 MEDIA, INC., TECHNICAL KNOCKOUT, INC., MARSHALLS OF MA, INC., ROSS
2 STORES, INC., ROSS DRESS FOR LESS, INC., and DOES 1-20 as follows:

3 **THE PARTIES**

- 4 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
5 organization qualified to do business in the State of California. CAG is a person within
6 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
7 as a private attorney general, brings this action in the public interest as defined under
8 Health and Safety Code section 25249.7, subdivision (d).
- 9 2. Defendant ARGENTO SC BY SICURA, INC. ("ARGENTO") is a New York
10 corporation, qualified to do business and doing business in the State of California at all
11 relevant times herein.
- 12 3. Defendant SICURA DESIGNS, INC. ("SICURA") is a Delaware corporation, qualified
13 to do business and doing business in the State of California at all relevant times herein.
- 14 4. Defendant IWAVE SICURA MEDIA, INC. ("IWAVE") is a New York corporation,
15 qualified to do business and doing business in the State of California at all relevant times
16 herein.
- 17 5. Defendant TECHNICAL KNOCKOUT, INC. ("TECHNICAL") is a Delaware
18 corporation, qualified to do business and doing business in the State of California at all
19 relevant times herein.
- 20 6. Defendant MARSHALLS OF MA, INC. ("MARSHALLS") is a Massachusetts
21 corporation, qualified to do business and doing business in the State of California at all
22 relevant times herein.
- 23 7. Defendant ROSS STORES, INC. ("ROSS") is a Delaware corporation, qualified to do
24 business and doing business in the State of California at all relevant times herein.
- 25 8. Defendant ROSS DRESS FOR LESS, INC. ("DRESS FOR LESS") is a Virginia
26 corporation, qualified to do business and doing business in the State of California at all
27 relevant times herein.
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1 9. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
2 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
3 complaint to allege their true names and capacities when ascertained. Plaintiff is
4 informed, believes, and thereon alleges that each fictitiously named defendant is
5 responsible in some manner for the occurrences herein alleged and the damages caused
6 thereby.

7 10. At all times mentioned herein, the term "Defendants" includes ARGENTO, SICURA,
8 IWAVE, TECHNICAL, MARSHALLS, ROSS, DRESS FOR LESS, and DOES 1-20.

9 11. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
10 times mentioned herein have conducted business within the State of California.

11 12. At all times relevant to this action, each of the Defendants, including DOES 1-20, was an
12 agent, servant, or employee of each of the other Defendants. In conducting the activities
13 alleged in this Complaint, each of the Defendants was acting within the course and scope
14 of this agency, service, or employment, and was acting with the consent, permission, and
15 authorization of each of the other Defendants. All actions of each of the Defendants
16 alleged in this Complaint were ratified and approved by every other Defendant or their
17 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
18 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

23 JURISDICTION

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

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

11 16. Venue is proper in the County of Alameda because one or more of the instances of
12 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
13 because Defendants conducted, and continue to conduct, business in the County of
14 Alameda with respect to the consumer product that is the subject of this action.

15 **BACKGROUND AND PRELIMINARY FACTS**

16 17. In 1986, California voters approved an initiative to address growing concerns about
17 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
18 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
19 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
20 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
21 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
22 from contamination, to allow consumers to make informed choices about the products
23 they buy, and to enable persons to protect themselves from toxic chemicals as they see
24 fit.

25 18. Proposition 65 requires the Governor of California to publish a list of chemicals known to
26 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
27 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
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- 1 chemicals and chemical families. Proposition 65 imposes warning requirements and
2 other controls that apply to Proposition 65-listed chemicals.
- 3 19. All businesses with ten (10) or more employees that operate or sell products in California
4 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
5 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
6 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
7 reasonable" warnings before exposing a person, knowingly and intentionally, to a
8 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 9 20. Proposition 65 provides that any person "violating or threatening to violate" the statute
10 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
11 "Threaten to violate" means "to create a condition in which there is a substantial
12 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
13 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
14 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 15 21. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl
16 Phthalate ("DEHP") and lead-bearing products of exposing, knowingly and intentionally,
17 persons in California to the Proposition 65-listed chemicals of such products without first
18 providing clear and reasonable warnings of such to the exposed persons prior to the time
19 of exposure. Plaintiff later discerned that Defendants engaged in such practice.
- 20 22. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
21 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
22 to the list of chemicals known to the State to cause developmental male reproductive
23 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
24 months after addition of DEHP to the list of chemicals known to the State to cause
25 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
26 requirements and discharge prohibitions.

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1 23. On February 27, 1987, the Governor of California added lead to the list of chemicals
2 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).
3 lead is known to the State to cause developmental, female, and male reproductive
4 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
5 months after addition of lead to the list of chemicals known to the State to cause
6 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements
7 and discharge prohibitions.

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

14 **SATISFACTION OF PRIOR NOTICE**

15 25. On or about July 25, 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 ARGENTO, ROSS, DRESS FOR LESS, and to the California Attorney
18 General, County District Attorneys, and City Attorneys for each city containing a
19 population of at least 750,000 people in whose jurisdictions the violations allegedly
20 occurred, concerning the product Iwave™ Neptune 2.0 Speaker System.

21 26. On or about September 6, 2011, Plaintiff gave notice of alleged violations of Health and
22 Safety Code section 25249.6, concerning consumer products exposures, subject to a
23 private action to ARGENTO, MARSHALLS, and to the California Attorney General,
24 County District Attorneys, and City Attorneys for each city containing a population of at
25 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
26 the product iWAVE™ OHM + Stereo Headphone.

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27. On or about December 5, 2011, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to ARGENTO, SICURA, ROSS, DRESS FOR LESS, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product "Portable Design" "Air compressor 12 V 300 PSI" "Mammoth™ Precision Tools".

28. On or about March 20, 2012, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to TECHNICAL, ROSS, DRESS FOR LESS, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Jump Ropes.

29. On or about April 23, 2012, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to ARGENTO, TECHNICAL, ROSS, DRESS FOR LESS, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Jump Ropes.

30. On or about November 2, 2012, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to ARGENTO, IWAVE, ROSS, DRESS FOR LESS, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Computer Speakers.

31. On or about November 14, 2012, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a

1 private action to ARGENTO, ROSS, DRESS FOR LESS, and to the California Attorney
2 General, County District Attorneys, and City Attorneys for each city containing a
3 population of at least 750,000 people in whose jurisdictions the violations allegedly
4 occurred, concerning the product Laptop Locks.

5 32. Before sending the notices of alleged violation, Plaintiff investigated the consumer
6 products involved, the likelihood that such products would cause users to suffer
7 significant exposures to DEHP and lead, and the corporate structure of each of the
8 Defendants.

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

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

21 35. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
22 gave notices of the alleged violations to ARGENTO, SICURA, IWAVE, TECHNICAL,
23 MARSHALLS, ROSS, DRESS FOR LESS, and the public prosecutors referenced in
24 Paragraphs 25 through 29.

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

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against ARGENTO, ROSS,
3 DRESS FOR LESS, and DOES 1-20 for Violations of Proposition 65, The Safe
4 Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§*
5 *25249.5, et seq.*))

6 **Iwave™ Neptune 2.0 Speaker System**

- 7 37. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
8 reference paragraphs 1 through 36 of this complaint as though fully set forth herein.
- 9 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Iwave™ Neptune 2.0 Speaker System (“Speaker
11 System”).
- 12 39. Plaintiff is informed, believes, and thereon alleges that Speaker System contains DEHP.
- 13 40. Defendants knew or should have known that DEHP has been identified by the State of
14 California as a chemical known to cause cancer and reproductive toxicity and therefore
15 was subject to Proposition 65 warning requirements. Defendants were also informed of
16 the presence of DEHP in Speaker Systems within Plaintiff’s notice of alleged violations
17 further discussed above at Paragraph 25.
- 18 41. Plaintiff’s allegations regarding Speaker System concerns “[c]onsumer products
19 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
20 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
21 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
22 *25602(b)*. Speaker System is a consumer product, and, as mentioned herein, exposures to
23 DEHP took place as a result of such normal and foreseeable consumption and use.
- 24 42. Plaintiff is informed, believes, and thereon alleges that between July 25, 2008 and the
25 present, each of the Defendants knowingly and intentionally exposed California
26 consumers and users of Speaker System, which Defendants manufactured, distributed, or
27 sold as mentioned above, to DEHP, without first providing any type of clear and
28 reasonable warning of such to the exposed persons before the time of exposure.
Defendants have distributed and sold Speaker System in California. Defendants know

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and intend that California consumers will use and consume Speaker System, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

43. The principal routes of exposure are through dermal contact, ingestion and inhalation. Persons sustain exposures by handling Speaker System without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling Speaker System, as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from Speaker System.

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

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

46. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00 per day per individual exposure to DEHP from Speaker System, pursuant to Health and Safety Code section 25249.7(b).

47. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to filing this Complaint. Plaintiff has on numerous occasions contacted Defendants' counsel in attempts to settle, and has entered into tolling agreements in order to facilitate such good faith attempts to resolve this matter prior to filing this Complaint.

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SECOND CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against ARGENTO, MARSHALLS, and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, et seq.))

iWave™ OHM + Stereo Headphone

48. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 47 of this complaint as though fully set forth herein.
49. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of iWave™ OHM + Stereo Headphone (“Headphone”).
50. Plaintiff is informed, believes, and thereon alleges that Headphone contains lead.
51. Defendants knew or should have known that lead has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of lead in Headphone within Plaintiff’s notice of alleged violations further discussed above at Paragraph 26.
52. Plaintiff’s allegations regarding Headphone concern “[c]onsumer products exposure[s],” which “is an exposure that results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*. Headphone is a consumer product, and, as mentioned herein, exposures to lead took place as a result of such normal and foreseeable consumption and use.
53. Plaintiff is informed, believes, and thereon alleges that between September 6, 2008 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Headphone, which Defendants manufactured, distributed, or sold as mentioned above, to lead, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Headphone in California. Defendants know and intend that

1 California consumers will use and consume Headphone, thereby exposing them to lead.
2 Defendants thereby violated Proposition 65.

3 54. The principal routes of exposure are through dermal contact, ingestion and inhalation.
4 Persons sustain exposures by handling Headphone without wearing gloves or any other
5 personal protective equipment, or by touching bare skin or mucous membranes with
6 gloves after handling Headphone, as well as through direct and indirect hand to mouth
7 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
8 Headphone.

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

16 56. 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 57. 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 Headphone, pursuant to Health
21 and Safety Code section 25249.7(b).

22 58. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
23 filing this Complaint. Plaintiff has on numerous occasions contacted Defendants' counsel
24 in attempts to settle, and has entered into tolling agreements in order to facilitate such
25 good faith attempts to resolve this matter prior to filing this Complaint.

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THIRD CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against ARGENTO, SICURA, ROSS, DRESS FOR LESS, and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

“Portable Design” “Air compressor 12 V 300 PSI” “Mammoth™ Precision Tools”

59. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 58 of this complaint as though fully set forth herein.
60. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of “Portable Design” “Air compressor 12 V 300 PSI” “Mammoth™ Precision Tools” (“Compressor”).
61. Plaintiff is informed, believes, and thereon alleges that Compressor contains lead.
62. Defendants knew or should have known that lead has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of lead in Compressor within Plaintiff's notice of alleged violations further discussed above at Paragraph 27.
63. Plaintiff's allegations regarding Compressor concern “[c]onsumer products exposure[s],” which “is an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b). Compressor is a consumer product, and, as mentioned herein, exposures to lead took place as a result of such normal and foreseeable consumption and use.
64. Plaintiff is informed, believes, and thereon alleges that between December 5, 2008 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Compressor, which Defendants manufactured, distributed, or sold as mentioned above, to lead, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Compressor in California. Defendants know and intend that

1 California consumers will use and consume Compressor, thereby exposing them to lead.
2 Defendants thereby violated Proposition 65.

3 65. The principal routes of exposure are through dermal contact, ingestion and inhalation.
4 Persons sustain exposures by handling Compressor without wearing gloves or any other
5 personal protective equipment, or by touching bare skin or mucous membranes with
6 gloves after handling Compressor, as well as through direct and indirect hand to mouth
7 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
8 Compressor.

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

16 67. 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 68. 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 Compressor, pursuant to Health
21 and Safety Code section 25249.7(b).

22 69. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
23 filing this Complaint. Plaintiff has on numerous occasions contacted Defendants' counsel
24 in attempts to settle, and has entered into tolling agreements in order to facilitate such
25 good faith attempts to resolve this matter prior to filing this Complaint.
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FOURTH CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against ARGENTO,
TECHNICAL, ROSS, DRESS FOR LESS, and DOES 1-20 for Violations of
Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986
(Health & Safety Code, §§ 25249.5, et seq.))

Jump Ropes

70. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 69 of this complaint as though fully set forth herein.

71. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Jump Ropes, including but not limited to TKO® Whatever It Takes Jump Rope With Soft Grip Handles 9 Ft Length, TKO-JUR002 ("Jump Ropes").

72. Plaintiff is informed, believes, and thereon alleges that Jump Ropes contain DEHP.

73. Defendants knew or should have known that DEHP has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in Jump Ropes within Plaintiff's notice of alleged violations further discussed above at Paragraphs 28 and 29.

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

75. Plaintiff is informed, believes, and thereon alleges that between March 20, 2009 and the present, Defendants ROSS, DRESS FOR LESS, and TECHNICAL knowingly and intentionally exposed California consumers and users of Jump Ropes, which Defendants ROSS, DRESS FOR LESS, and TECHNICAL manufactured, distributed, or sold as mentioned above, to DEHP, without first providing any type of clear and reasonable

1 warning of such to the exposed persons before the time of exposure. Defendants ROSS,
2 DRESS FOR LESS, and TECHNICAL have distributed and sold Jump Ropes in
3 California. Defendants ROSS, DRESS FOR LESS, and TECHNICAL know and intend
4 that California consumers will use and consumer Jump Ropes, thereby exposing them to
5 DEHP. Defendants thereby violated Proposition 65.

6 76. Plaintiff is informed, believes, and thereon alleges that between April 23, 2009 and the
7 present, each of the Defendants knowingly and intentionally exposed California
8 consumers and users of Jump Ropes, which Defendants manufactured, distributed, or
9 sold as mentioned above, to DEHP, without first providing any type of clear and
10 reasonable warning of such to the exposed persons before the time of exposure.

11 Defendants have distributed and sold Jump Ropes in California. Defendants know and
12 intend that California consumers will use and consume Jump Ropes, thereby exposing
13 them to DEHP. Defendants thereby violated Proposition 65.

14 77. The principal routes of exposure are through dermal contact, ingestion and inhalation.
15 Persons sustain exposures by handling Jump Ropes without wearing gloves or any other
16 personal protective equipment, or by touching bare skin or mucous membranes with
17 gloves after handling Jump Ropes, as well as through direct and indirect hand to mouth
18 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
19 Jump Ropes.

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

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1 79. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 80. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DEHP from Jump Ropes, pursuant to
6 Health and Safety Code section 25249.7(b).

7 81. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint. Plaintiff has on numerous occasions contacted Defendants' counsel
9 in attempts to settle, and has entered into tolling agreements in order to facilitate such
10 good faith attempts to resolve this matter prior to filing this Complaint.

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12 **FIFTH CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against ARGENTO, IWAVE,**
14 **ROSS, DRESS FOR LESS, and DOES 1-20 for Violations of Proposition 65, The**
15 **Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**
16 **25249.5, et seq.))**

17 **Computer Speakers**

18 82. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
19 reference paragraphs 1 through 81 of this complaint as though fully set forth herein.

20 83. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
21 distributor, promoter, or retailer of Computer Speakers including but not limited to
22 IWAVE™ Titan USB Powered Speaker System SP3021-BK, SKU# 4681602001
23 (“Computer Speakers”).

24 84. Plaintiff is informed, believes, and thereon alleges that Computer Speakers contain lead.

25 85. Defendants knew or should have known that lead has been identified by the State of
26 California as a chemical known to cause cancer and reproductive toxicity and therefore
27 was subject to Proposition 65 warning requirements. Defendants were also informed of
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1 the presence of lead in Computer Speakers within Plaintiff's notice of alleged violations
2 further discussed above at Paragraph 30.

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

10 87. Plaintiff is informed, believes, and thereon alleges that between November 2, 2009 and
11 the present, Defendants knowingly and intentionally exposed California consumers and
12 users of Computer Speakers, which Defendants manufactured, distributed, or sold as
13 mentioned above, to lead, without first providing any type of clear and reasonable
14 warning of such to the exposed persons before the time of exposure. Defendants have
15 distributed and sold Computer Speakers in California. Defendants know and intend that
16 California consumers will use and consume Computer Speakers, thereby exposing them
17 to lead. Defendants thereby violated Proposition 65.

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

24 89. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to Computer Speakers has been ongoing and continuous to the date of
26 the signing of this complaint, as Defendants engaged and continue to engage in conduct
27 which violates Health and Safety Code section 25249.6, including the manufacture,
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1 distribution, promotion, and sale of Computer Speakers, so that a separate and distinct
2 violation of Proposition 65 occurred each and every time a person was exposed to lead by
3 Computer Speakers as mentioned herein.

4 90. 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 91. 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 Computer Speakers, pursuant to
9 Health and Safety Code section 25249.7(b).

10 92. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
11 filing this Complaint. Plaintiff has on numerous occasions contacted Defendants' counsel
12 in attempts to settle, and has entered into tolling agreements in order to facilitate such
13 good faith attempts to resolve this matter prior to filing this Complaint.

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15
SIXTH CAUSE OF ACTION

16 **(By CONSUMER ADVOCACY GROUP, INC. and against ARGENTO, ROSS,**
17 **DRESS FOR LESS, and DOES 1-20 for Violations of Proposition 65, The Safe**
18 **Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**
19 **25249.5, et seq.))**

20 **Laptop Locks**

21 93. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
22 reference paragraphs 1 through 92 of this complaint as though fully set forth herein.

23 94. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of Laptop Locks including but not limited to iWAVE®
25 Laptop Combination Lock, Resettable Four-Digit, Coil Cable Lock, CLO 003 ("Laptop
26 Locks").

27 95. Plaintiff is informed, believes, and thereon alleges that Laptop Locks contain DEHP.

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1 96. Defendants knew or should have known that DEHP 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 DEHP in Laptop Locks within Plaintiff's notice of alleged violations
5 further discussed above at Paragraph 31.

6 97. Plaintiff's allegations regarding Laptop Locks 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)*. Laptop Locks are consumer products, and, as mentioned herein, exposures to
11 DEHP took place as a result of such normal and foreseeable consumption and use.

12 98. Plaintiff is informed, believes, and thereon alleges that between November 14, 2009 and
13 the present, Defendants knowingly and intentionally exposed California consumers and
14 users of Laptop Locks, which Defendants manufactured, distributed, or sold as mentioned
15 above, to DEHP, without first providing any type of clear and reasonable warning of such
16 to the exposed persons before the time of exposure. Defendants have distributed and sold
17 Laptop Locks in California. Defendants know and intend that California consumers will
18 use and consume Laptop Locks, thereby exposing them to DEHP. Defendants thereby
19 violated Proposition 65.

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

26 100. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to Laptop Locks has been ongoing and continuous to the date of the
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1 signing of this complaint, as Defendants engaged and continue to engage in conduct
2 which violates Health and Safety Code section 25249.6, including the manufacture,
3 distribution, promotion, and sale of Laptop Locks, so that a separate and distinct violation
4 of Proposition 65 occurred each and every time a person was exposed to DEHP by
5 Laptop Locks as mentioned herein.

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

9 102. Based on the allegations herein, Defendants are liable for civil penalties of up to
10 \$2,500.00 per day per individual exposure to DEHP from Laptop Locks, pursuant to
11 Health and Safety Code section 25249.7(b).

12 103. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
13 filing this Complaint. Plaintiff has on numerous occasions contacted Defendants'
14 counsel in attempts to settle, and has entered into tolling agreements in order to
15 facilitate such good faith attempts to resolve this matter prior to filing this Complaint.
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18 **PRAYER FOR RELIEF**

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20 Plaintiff demands against each of the Defendants as follows:

- 21 1. A permanent injunction mandating Proposition 65-compliant warnings;
 - 22 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
 - 23 3. Costs of suit;
 - 24 4. Reasonable attorney fees and costs; and
 - 25 5. Any further relief that the court may deem just and equitable.
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1 Dated: May 8, 2013

YEROUSHALMI & ASSOCIATES



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

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