

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

LIFETIME BRANDS, INC., a Delaware Corporation; Additional Parties
Attachment Attached

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CONSUMER ADVOCACY GROUP, INC., in the public interest

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 20 2012

John A. Clarke, Executive Officer/Clerk
By Moses Soto Deputy
MOSES SOTO

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Los Angeles Superior Court
Stanley Mosk Courthouse
111 N. Hill St., Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): **BC483256**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Reuben Yeroushalmi, 9100 Wilshire Blvd., #610E, Beverly Hills, CA 90212, 310.623.1926

DATE:
(Fecha)

John A. Clarke

Clerk, by
(Secretario)

MOSES SOTO

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

APR 20 2012

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

SHORT TITLE: Consumer Advocacy Group, Inc. v. Lifetime Brands, Inc. et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

Ross Dress For Less, Inc., a Virginia Corporation d.b.a. DD's Discounts, Ross Stores, Inc., a Delaware Corporation d.b.a. DD's Discounts, and Does 1-50

COPY

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

9 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc.

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Superior Court of California
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APR 20 2012
John A. Clarke, Executive Officer/Clerk
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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 LIFETIME BRANDS, INC., a Delaware
20 Corporation, ROSS DRESS FOR LESS,
21 INC., a Virginia Corporation d.b.a DD'S
22 DISCOUNTS, ROSS STORES, INC., a
23 Delaware Corporation d.b.a DD'S
24 DISCOUNTS, and DOES 1-50;

25 Defendants.

26 CASE NO. **BC483256**

27 COMPLAINT FOR PENALTY,
28 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)

29 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against Defendants as
30 follows:

31 ///
32 ///
33 ///
34 ///

THE PARTIES

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

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

- 3 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 DEHP-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 January 1, 1988, the Governor of California added DEHP to the list of chemicals
2 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
3 to the list of chemicals known to the State to cause developmental male reproductive
4 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
5 months after addition of DEHP to the list of chemicals known to the State to cause
6 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
7 requirements and discharge prohibitions.

8 **SATISFACTION OF PRIOR NOTICE**

9 19. On or about August 1, 2011, Plaintiff gave notice of alleged violations of Health and
10 Safety Code section 25249.6, concerning consumer products exposures, subject to a
11 private action to Ross Dress, identified in the notice as "Ross Dress For Less, Inc. dba
12 dd's Discounts", Ross Stores, identified in the notice as "Ross Stores, Inc. dba dd's
13 Discounts", Lifetime, identified in the notice as "Lifetime Brands, Inc.", and to the
14 California Attorney General, County District Attorneys, and City Attorneys for each city
15 containing a population of at least 750,000 people in whose jurisdictions the violations
16 allegedly occurred, concerning Vasconia® Scissor Tongs.

17 20. Before sending the notices of alleged violation, Plaintiff investigated the consumer
18 products involved, the likelihood that such products would cause users to suffer
19 significant exposures to DEHP, and the corporate structure of each of the Defendants.

20 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
21 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
22 Plaintiff who executed the certificate had consulted with at least one person with relevant
23 and appropriate expertise who reviewed data regarding the exposures to DEHP, which is
24 the subject Proposition 65-listed chemicals of this action. Based on that information, the
25 attorney for Plaintiff who executed the Certificate of Merit believed there was a
26 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
27 to the Certificate of Merit served on the Attorney General the confidential factual
28 information sufficient to establish the basis of the Certificate of Merit.

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

4 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notice of the alleged violations to Defendants and the public prosecutors referenced
6 in Paragraph 19.

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

10 **FIRST CAUSE OF ACTION**

11 **(By Consumer Advocacy Group, Inc. and against Ross Dress For Less, Inc. dba dd's**
12 **Discounts, Ross Stores, Inc. dba dd's Discounts, and Lifetime Brands, Inc., for Violations**
13 **of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &***
***Safety Code, §§ 25249.5, et seq.*)**

14 **Vasconia® Scissor Tongs**

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

17 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Vasconia® Scissor Tongs (hereinafter "Tongs"), a
19 consumer product designed for grilling, steaming, and barbequing food and as such, is in
20 close proximity to food.

21 27. Plaintiff is informed, believes, and thereon alleges that Tongs contain DEHP.

22 28. Defendants knew or should have known that DEHP has been identified by the State of
23 California as a chemical known to cause cancer and reproductive toxicity and therefore
24 was subject to Proposition 65 warning requirements. Defendants were also informed of
25 the presence of DEHP in the Tongs within Plaintiff's notice of alleged violations further
26 discussed above at Paragraph 19.

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

7 30. Plaintiff is informed, believes, and thereon alleges that between August 1, 2008 and the
8 present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Tongs, which Defendants manufactured, distributed, or sold as
10 mentioned above, to DEHP, without first providing any type of clear and reasonable
11 warning of such to the exposed persons before the time of exposure. Defendants have
12 distributed and sold Tongs in California. Defendants know and intend that California
13 consumers will use and consume Tongs, thereby exposing them to DEHP. Defendants
14 thereby violated Proposition 65.

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

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

1 33. 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 34. 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 Tongs, pursuant to Health and
6 Safety Code section 25249.7(b).

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

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

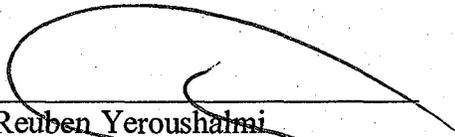
14 **PRAYER FOR RELIEF**

15 Plaintiff demands against each of the Defendants as follows:

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

21
22 Dated: April 19, 2012

YEROUSHALMI & ASSOCIATES

23
24
25 BY: 
26 Reuben Yeroushalmi
27 Attorneys for Plaintiff,
28 Consumer Advocacy Group, Inc.