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ALAMEDA COUNTY**

AUG 20 2012

CLERK OF THE SUPERIOR COURT
By **Barbara LaMotte** Deputy

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ALAMEDA**

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11
12 CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

13
14 Plaintiff,

15 v.

16 THE NORTHWEST COMPANY, LLC., a
North Carolina Corporation, ROSS STORES,
17 INC., a Delaware Corporation, ROSS
DRESS FOR LESS, INC., a Virginia
18 Corporation, and DOES 1-20;

19
20 Defendants.

CASE NO. **RG12644391**

COMPLAINT FOR PENALTY,
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)

21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendant
22 THE NORTHWEST COMPANY, LLC, ROSS STORES, INC., ROSS DRESS FOR LESS,
23 INC., and Does 1-20 as follows:

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26 ///

27 ///

28 ///

ORIGINAL

THE PARTIES

- 1
2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG") is an organization
3 qualified to do business in the State of California. CAG is a person within the meaning
4 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private
5 attorney general, brings this action in the public interest as defined under Health and
6 Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant The Northwest Company, LLC. ("Northwest") is a North Carolina limited
8 liability corporation who has been doing business in the State of California at all relevant
9 times herein.
- 10 3. Defendant Ross Stores, Inc. ("Ross Stores") is a Delaware corporation, qualified to do
11 business and doing business in the State of California at all relevant times herein.
- 12 4. Defendant Ross Dress for Less, Inc. ("Ross Dress") is a Virginia corporation, qualified to
13 do business and doing business in the State of California at all relevant times herein.
- 14 5. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,
15 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
16 complaint to allege their true names and capacities when ascertained. Plaintiff is
17 informed, believes, and thereon alleges that each fictitiously named defendant is
18 responsible in some manner for the occurrences herein alleged and the damages caused
19 thereby.
- 20 6. At all times mentioned herein, the term "Defendants" includes Northwest, Ross Stores,
21 Ross Dress, and Does 1-20.
- 22 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
23 times mentioned herein have conducted business within the State of California.
- 24 8. At all times relevant to this action, each of the Defendants, including Does 1-20, was an
25 agent, servant, or employee of each of the other Defendants. In conducting the activities
26 alleged in this Complaint, each of the Defendants was acting within the course and scope
27 of this agency, service, or employment, and was acting with the consent, permission, and
28 authorization of each of the other Defendants. All actions of each of the Defendants

1 alleged in this Complaint were ratified and approved by every other Defendant or their
2 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
3 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

8 **JURISDICTION**

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

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

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

26 **BACKGROUND AND PRELIMINARY FACTS**

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

1 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
2 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
3 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
4 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
5 from contamination, to allow consumers to make informed choices about the products
6 they buy, and to enable persons to protect themselves from toxic chemicals as they see
7 fit.

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

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

19 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
20 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
21 "Threaten to violate" means "to create a condition in which there is a substantial
22 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
23 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
24 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

25 17. Plaintiff identified certain practices of manufacturers and distributors of DEHP-bearing
26 products of exposing, knowingly and intentionally, persons in California to the
27 Proposition 65-listed chemicals of such products without first providing clear and
28

1 reasonable warnings of such to the exposed persons prior to the time of exposure.

2 Plaintiff later discerned that Defendants engaged in such practice.

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

10 **SATISFACTION OF PRIOR NOTICE**

11 19. On or about February 22, 2012, Plaintiff gave notice of alleged violations of Health and
12 Safety Code section 25249.6, concerning consumer products exposures and occupational
13 exposures, subject to a private action to The Northwest Company, LLC., Ross Stores,
14 Inc., and Ross Dress for Less, Inc., and to the California Attorney General, County
15 District Attorneys, and City Attorneys for each city containing a population of at least
16 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
17 product Steering Wheel Covers.

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

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

1 to the Certificate of Merit served on the Attorney General the confidential factual
2 information sufficient to establish the basis of the Certificate of Merit.

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

6 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
7 gave notices of the alleged violations to Franco, and the public prosecutors referenced in
8 Paragraph 19.

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

12 FIRST CAUSE OF ACTION

13 **(By Consumer Advocacy Group, Inc. and against THE NORTHWEST
14 COMPANY, LLC., ROSS STORES, INC., ROSS DRESS FOR LESS, INC., and
15 Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic
16 Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

17 **Steering Wheel Covers**

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

20 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
21 distributor, promoter, or retailer of Steering Wheel Covers ("Wheel Covers"), including
22 but not limited to NFL Steering Wheel Cover "Pittsburgh Steelers" RN 79925 "Secure
23 Comfortable Grip, Prevents Damage, Slides Over Steering Wheel, Fits Most Standard
24 Size Steering Wheels."

25 27. Plaintiff is informed, believes, and thereon alleges that Wheel Covers contains DEHP.

26 28. Defendants knew or should have known that DEHP and has been identified by the State
27 of California as chemicals known to cause cancer and reproductive toxicity and therefore
28 was subject to Proposition 65 warning requirements. Defendants were also informed of

1 the presence of DEHP in Wheel Covers within Plaintiff's notice of alleged violations
2 further discussed above at Paragraph 19.

3 29. Plaintiff's allegations regarding Wheel Covers concerns "[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)*. Wheel Covers are consumer products, and, as mentioned herein, exposures to
8 DEHP took place as a result of such normal and foreseeable consumption and use.

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

16 31. Plaintiff is informed, believes, and thereon alleges that between February 22, 2009 and
17 the present, each of the Defendants knowingly and intentionally exposed their employees
18 and California consumers and users of Wheel Covers, which Defendants manufactured,
19 distributed, or sold as mentioned above, to DEHP, without first providing any type of
20 clear and reasonable warning of such to the exposed persons before the time of exposure.
21 Defendants have distributed and sold Wheel Covers in California. Defendants know and
22 intend that California consumers will use and consume Wheel Covers, thereby exposing
23 them to DEHP. Defendants thereby violated Proposition 65.

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

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

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

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

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

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

18 **PRAYER FOR RELIEF**

19 Plaintiff demands against each of the Defendants as follows:

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

25 Dated: August 17, 2012

26 YEROUSHALMI & ASSOCIATES
27 BY: Reuben Yeroushalmi
28 Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.