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THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization 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 ROSS STORES, INC. dba DD'S DISCOUNTS ("ROSS STORES") is a Delaware corporation, doing business in the State of California at all relevant times herein.
3. Defendant ROSS DRESS FOR LESS, INC. dba DD'S DISCOUNTS ("ROSS DRESS") is a Virginia corporation, doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, 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.
5. At all times mentioned herein, the term "Defendants" includes ROSS STORES, ROSS DRESS and DOES 1-20.
6. 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.
7. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, 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

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

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

9 **JURISDICTION**

- 10 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
12 those given by statute to other trial courts. This Court has jurisdiction over this action
13 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 10. This Court has jurisdiction over Defendants named herein because Defendants either
16 reside or are located in this State or are foreign corporations authorized to do business in
17 California, are registered with the California Secretary of State, or who do sufficient
18 business in California, have sufficient minimum contacts with California, or otherwise
19 intentionally avail themselves of the markets within California through their manufacture,
20 distribution, promotion, marketing, or sale of their products within California to render
21 the exercise of jurisdiction by the California courts permissible under traditional notions
22 of fair play and substantial justice.
- 23 11. Venue is proper in the County of Alameda because one or more of the instances of
24 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
25 because Defendants conducted, and continue to conduct, business in the County of
26 Alameda with respect to the consumer product that is the subject of this action.

1 16. Plaintiff identified certain practices of manufacturers and distributors of Butyl Benzyl
2 Phthalate ("BBP")-bearing products of exposing, knowingly and intentionally, persons in
3 California to the Proposition 65-listed chemicals of such products without first providing
4 clear and reasonable warnings of such to the exposed persons prior to the time of
5 exposure. Plaintiff later discerned that Defendants engaged in such practice.

6 17. On December 2, 2005, the Governor of California added BBP to the list of chemicals
7 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).
8 BBP is known to the State to cause developmental reproductive toxicity. Pursuant to
9 Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after
10 addition of BBP to the list of chemicals known to the State to cause reproductive toxicity,
11 BBP became fully subject to Proposition 65 warning requirements and discharge
12 prohibitions.

13 **SATISFACTION OF PRIOR NOTICE**

14 18. On or about September 14, 2012, Plaintiff gave notice of alleged violations of Health and
15 Safety Code section 25249.6, concerning consumer products exposures, subject to a
16 private action to ROSS STORES, ROSS DRESS, Artistic Linen, Inc. and to the California
17 Attorney General, County District Attorneys, and City Attorneys for each city containing
18 a population of at least 750,000 people in whose jurisdictions the violations allegedly
19 occurred, concerning the products Shower Curtains.

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

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

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

8 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
9 gave notices of the alleged violations to ROSS STORES, ROSS DRESS, and the public
10 prosecutors referenced in Paragraph 18.

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

14
15 **FIRST CAUSE OF ACTION**

16 (By CONSUMER ADVOCACY GROUP, INC. and against ROSS STORES, ROSS
17 DRESS, 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.*))

18 **Shower Curtains**

19 24. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
20 reference paragraphs 1 through 23 of this complaint as though fully set forth herein.

21 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of Shower Curtains, which includes but is not limited to
23 "ARTISTIC LINEN INC, Eco Friendly Shower Curtain Liner with Metal Grommets, L-
24 2000 - CL, SIZE: 72" x 72", RN # 132339" ("CURTAIN").

25 26. CURTAINS contain BBP.

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

1 of BBP in CURTAINS within Plaintiff's notice of alleged violations further discussed
2 above at Paragraph 18.

3 28. Plaintiff's allegations regarding CURTAINS 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)*. CURTAINS is a consumer product, and, as mentioned herein, exposures to
8 BBP took place as a result of such normal and foreseeable consumption and use.

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

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

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

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

6 33. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to BBP from CURTAINS, pursuant to Health
8 and Safety Code section 25249.7(b).

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

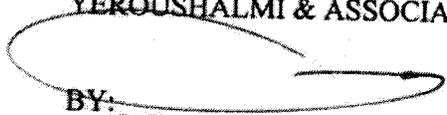
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12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

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

19
20 Dated: July 18, 2013

21 **YEROUSHALMI & ASSOCIATES**

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