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ENDORSED  
FILED  
ALAMEDA COUNTY  
SEP 27 2013

CLERK OF SUPERIOR COURT  
**Donnan Phan**  
Deputy

6 Attorneys for Plaintiff,  
7 Consumer Advocacy Group, Inc.

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

9 **COUNTY OF ALAMEDA**

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

13 Plaintiff,

14 v.

15 FORTUNE DYNAMIC, INC., a California  
16 Corporation; ROSS DRESS FOR LESS,  
17 INC. a Virginia Corporation; ROSS  
18 STORES, INC., a Delaware Corporation; and  
19 DOES 1-20;

20 Defendants.

CASE NO. **RC13697300**

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**

21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
22 defendants FORTUNE DYNAMIC, INC., ROSS DRESS FOR LESS, INC., ROSS STORES  
23 INC., , and DOES 1-20 as follows:

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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 FORTUNE DYNAMIC, INC. ("FORTUNE DYNAMIC") is a California corporation, doing business in the State of California at all relevant times herein.
3. Defendant ROSS DRESS FOR LESS, INC. ("ROSS DRESS FOR LESS") is a Virginia corporation, doing business in the State of California at all relevant times herein.
4. Defendant ROSS STORES, INC. ("ROSS STORES") is a Delaware corporation, doing business in the State of California at all relevant times herein.
5. 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.
6. At all times mentioned herein, the term "Defendants" includes FORTUNE DYNAMIC, ROSS DRESS FOR LESS, ROSS STORES, and DOES 1-20.
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. 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 9. 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 10. 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 11. 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 12. 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 17. Plaintiff identified certain practices of manufacturers and distributors of Di-*n*-butyl  
2 Phthalate ("DBP") and Diethyl Hexyl Phthalate ("DEHP")-bearing products of exposing,  
3 knowingly and intentionally, persons in California to the Proposition 65-listed chemicals  
4 of such products without first providing clear and reasonable warnings of such to the  
5 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants  
6 engaged in such practice.

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

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

21 **SATISFACTION OF PRIOR NOTICE**

22 20. On or about October 19, 2012, Plaintiff gave notice of alleged violations of Health and  
23 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
24 private action to FORTUNE DYNAMIC, ROSS DRESS FOR LESS, ROSS STORES,  
25 and to the California Attorney General, County District Attorneys, and City Attorneys for  
26 each city containing a population of at least 750,000 people in whose jurisdictions the  
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1 violations allegedly occurred, concerning the product Footwear containing DBP and  
2 DEHP.

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

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

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

19 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
20 gave notices of the alleged violations to FORTUNE DYNAMIC, ROSS DRESS FOR  
21 LESS, ROSS STORES, and the public prosecutors referenced in Paragraph 20.

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

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**FIRST CAUSE OF ACTION**

(By CONSUMER ADVOCACY GROUP, INC. and against FORTUNE DYNAMIC,  
ROSS DRESS FOR LESS, ROSS STORES, 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.))

**Footwear**

26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 25 of this complaint as though fully set forth herein.
27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Footwear, which include but are not limited to "Soda® Black Flip Flop with Floral and Chain Strap, Size 7 ½" ("FOOTWEAR").
28. FOOTWEAR contains DBP and DEHP.
29. Defendants knew or should have known that DBP has been identified by the State of California as a chemical known to cause reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Additionally, 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 DBP and DEHP in FOOTWEAR within Plaintiff's notice of alleged violations further discussed above at Paragraph 20.
30. Plaintiff's allegations regarding FOOTWEAR 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)*. FOOTWEAR are consumer products, and, as mentioned herein, exposures to DBP and DEHP took place as a result of such normal and foreseeable consumption and use.
31. Plaintiff's allegations regarding FOOTWEAR also concern occupational exposures, which "means an exposure to any employee in his or her employer's workplace." *Cal.*

1           *Code Regs.* tit. 27, § 25602(f). Exposures of DBP and DEHP to Defendants' employees  
2           occurred through the course of their employment in their employers' workplaces.

3           32. Plaintiff is informed, believes, and thereon alleges that between October 19, 2009 and the  
4           present, each of the Defendants knowingly and intentionally exposed their employees and  
5           California consumers and users of FOOTWEAR, which Defendants manufactured,  
6           distributed, or sold as mentioned above, to DBP and DEHP, without first providing any  
7           type of clear and reasonable warning of such to the exposed persons before the time of  
8           exposure. Defendants have distributed and sold FOOTWEAR in California. Defendants  
9           know and intend that California consumers will use and consume FOOTWEAR, thereby  
10          exposing them to DBP and DEHP. Defendants thereby violated Proposition 65.

11          33. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
12          Persons sustain exposures by handling FOOTWEAR without wearing gloves or any other  
13          personal protective equipment, or by touching bare skin or mucous membranes with  
14          gloves after handling FOOTWEAR, as well as through direct and indirect hand to mouth  
15          contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
16          FOOTWEAR. And as to Defendants' employees, employees may be exposed to DBP and  
17          DEHP in the course of their employment by handling, distributing, and selling  
18          FOOTWEAR.

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

1 35. 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 36. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to DBP and DEHP from FOOTWEAR,  
6 pursuant to Health and Safety Code section 25249.7(b).

7 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
8 filing this Complaint.

9 **PRAYER FOR RELIEF**

10 Plaintiff demands against each of the Defendants as follows:

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

16  
17 Dated: September 27, 2013

YEROUSHALMI & ASSOCIATES

BY:

Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.