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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

JAN 22 2013

John A. Clarke, Executive Officer/Clerk  
BY Mary Flores, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9  
10 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

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

13  
14 Plaintiff,

15 v.

16 WINPLUS NORTH AMERICA, INC., a  
California corporation; BIG LOTS STORES,  
17 INC., an Ohio corporation; ROSS STORES  
18 INC. DBA DD'S DISCOUNTS, a Delaware  
corporation; ROSS DRESS FOR LESS, INC.  
19 DBA DD'S DISCOUNTS, a Virginia  
corporation; and DOES 1-20;

20  
21 Defendants.

CASE NO. **BC 499630**

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)

22 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants,  
23 WINPLUS NORTH AMERICA, INC., BIG LOTS STORES, INC., ROSS STORES, INC.,  
24 ROSS DRESS FOR LESS, INC., AND DOES 1-20, as follows:

25 **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

1 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private  
2 attorney general, brings this action in the public interest as defined under Health and  
3 Safety Code section 25249.7, subdivision (d).

4 2. Defendant Winplus North America, Inc. ("Winplus") is a California corporation,  
5 qualified to do business and doing business in the State of California at all relevant times  
6 herein.

7 3. Defendant Big Lots Stores, Inc. ("Big Lots") is an Ohio corporation, qualified to do  
8 business and doing business in the State of California at all relevant times herein.

9 4. Defendant Ross Stores, Inc. dba dd's DISCOUNTS ("Ross Stores") is a Delaware  
10 corporation, qualified to do business and doing business in the State of California at all  
11 relevant times herein.

12 5. Defendant Ross Dress for Less, Inc. dba dd's DISCOUNTS ("Ross Dress") is a Virginia  
13 corporation, qualified to do business and doing business in the State of California at all  
14 relevant times herein.

15 6. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,  
16 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
17 complaint to allege their true names and capacities when ascertained. Plaintiff is  
18 informed, believes, and thereon alleges that each fictitiously named defendant is  
19 responsible in some manner for the occurrences herein alleged and the damages caused  
20 thereby.

21 7. At all times mentioned herein, the term "Defendants" includes Winplus, Big Lots, Ross  
22 Stores, Ross Dress, and Does 1-20.

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

25 9. At all times relevant to this action, each of the Defendants, including Does 1-20, was an  
26 agent, servant, or employee of each of the other Defendants. In conducting the activities  
27 alleged in this Complaint, each of the Defendants was acting within the course and scope  
28 of this agency, service, or employment, and was acting with the consent, permission, and

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

5 10. 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 11. 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 12. 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 13. Venue is proper in the County of Los Angeles because one or more of the instances of  
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
25 because Defendants conducted, and continue to conduct, business in the County of Los  
26 Angeles with respect to the consumer product that is the subject of this action.

27 **BACKGROUND AND PRELIMINARY FACTS**

1 14. In 1986, California voters approved an initiative to address growing concerns about  
2 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
3 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
4 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
5 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
6 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
7 from contamination, to allow consumers to make informed choices about the products  
8 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
9 fit.

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

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

21 17. Proposition 65 provides that any person “violating or threatening to violate” the statute  
22 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

23 “Threaten to violate” means “to create a condition in which there is a substantial  
24 probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).

25 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
26 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

27 18. Plaintiff identified certain practices of manufacturers and distributors of Lead and Diethyl  
28 Hexyl Phthalate (“DEHP”)-bearing products of exposing, knowingly and intentionally,

1 persons in California to the Proposition 65-listed chemicals of such products without first  
2 providing clear and reasonable warnings of such to the exposed persons prior to the time  
3 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

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

17 21. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
18 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).  
19 Lead is known to the State to cause developmental, female, and male reproductive  
20 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
21 months after addition of Lead to the list of chemicals known to the State to cause  
22 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements  
23 and discharge prohibitions.

24 **SATISFACTION OF PRIOR NOTICE**

25 22. On or about October 19, 2011, Plaintiff gave notice of alleged violations of Health and  
26 Safety Code section 25249.6, concerning consumer products exposures and occupational  
27 exposures, subject to a private action to Winplus, Big Lots, and to the California Attorney  
28 General, County District Attorneys, and City Attorneys for each city containing a

1 population of at least 750,000 people in whose jurisdictions the violations allegedly  
2 occurred, concerning the product WinPlus® Touring Items Type S™ CD Organizer-  
3 Black Item# Win-11819A.

4 23. On or about November 16, 2012, Plaintiff gave notice of alleged violations of Health and  
5 Safety Code section 25249.6, concerning consumer products exposures and occupational  
6 exposures, subject to a private action to Winplus, Ross Stores, Ross Dress, and to the  
7 California Attorney General, County District Attorneys, and City Attorneys for each city  
8 containing a population of at least 750,000 people in whose jurisdictions the violations  
9 allegedly occurred, concerning the product Car Accessories.

10 24. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
11 products involved, the likelihood that such products would cause users to suffer  
12 significant exposures to DEHP and LEAD, and the corporate structure of each of the  
13 Defendants.

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

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

1 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
2 gave notices of the alleged violations to Winplus, Big Lots, Ross Stores Ross Dress, and  
3 the public prosecutors referenced in Paragraphs 22-23.

4 28. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
5 any applicable district attorney or city attorney has commenced and is diligently  
6 prosecuting an action against the Defendants.

7  
8 **FIRST CAUSE OF ACTION**

9 **(By Consumer Advocacy Group, Inc. and against Winplus North America, Inc., Big Lots  
10 Stores, Inc., and Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and  
11 Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

12 **WinPlus® Touring Items Type S™ CD Organizer-Black Item# Win-11819A**

13 29. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
14 paragraphs 1 through 28 of this complaint as though fully set forth herein.

15 30. Winplus and Big Lots is, and at all times mentioned herein was, a manufacturer,  
16 distributor, promoter, or retailer of WinPlus® Touring Items Type S™ CD Organizer-  
17 Black Item# Win-11819A (hereinafter "Cases").

18 31. Plaintiff is informed, believes, and thereon alleges that Cases contain DEHP.

19 32. Winplus and Big Lots knew or should have known that DEHP has been identified by the  
20 State of California as chemicals known to cause cancer and reproductive toxicity and  
21 therefore was subject to Proposition 65 warning requirements. Winplus and Big Lots  
22 were also informed of the presence of DEHP in Cases within Plaintiff's notice of alleged  
23 violations further discussed above at Paragraph 22.

24 33. Plaintiff's allegations regarding Cases concerns "[c]onsumer products exposure[s],"  
25 which "is an exposure that results from a person's acquisition, purchase, storage,  
26 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
27 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

1 Cases is a consumer product designed to be used in the car, and, as mentioned herein,  
2 exposures to DEHP took place as a result of such normal and foreseeable consumption  
3 and use.

4 34. Plaintiff's allegations regarding Cases also concern Occupational Exposures, which  
5 "means an exposure to any employee in his or her employer's workplace." *Cal. Code*  
6 *Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Winplus and Big Lots' employees  
7 occurred through the course of their employment in their employers' workplaces.

8 35. Plaintiff is informed, believes, and thereon alleges that between October 19, 2008 and the  
9 present, Winplus and Big Lots knowingly and intentionally exposed California  
10 consumers and users of Cases, which Winplus and Big Lots manufactured, distributed, or  
11 sold as mentioned above, to DEHP, without first providing any type of clear and  
12 reasonable warning of such to the exposed persons before the time of exposure. Winplus  
13 and Big Lots have distributed and sold Cases in California. Winplus and Big Lots know  
14 and intend that California consumers will use and consume Cases thereby exposing them  
15 to DEHP. Winplus and Big Lots thereby violated Proposition 65.

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

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

1 38. 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 39. Based on the allegations herein, Winplus and Big Lots are liable for civil penalties of up  
5 to \$2,500.00 per day per individual exposure to DEHP from Cases, pursuant to Health  
6 and Safety Code section 25249.7(b).

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

9  
10 **SECOND CAUSE OF ACTION**

11 **(By Consumer Advocacy Group, Inc. and against Winplus North America, Inc., Ross**  
12 **Stores, Inc., Ross Dress for Less, Inc., and Does 1-20 for Violations of Proposition 65, The**  
13 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***  
14 ***25249.5, et seq.*))**

15 **Car Accessories**

16 41. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
17 paragraphs 1 through 40 of this complaint as though fully set forth herein.

18 42. Winplus, Ross Stores, Ross Dress is, and at all times mentioned herein was, a  
19 manufacturer, distributor, promoter, or retailer of Car Accessories, including but not  
20 limited to WinPlus® Touring Items Type S® Dash Light Blue LED Light, Cool Blue  
21 Mood Lighting LM-10793-6 (hereinafter "Accessories").

22 43. Plaintiff is informed, believes, and thereon alleges that Accessories contain Lead.

23 44. Winplus, Ross Stores, Ross Dress knew or should have known that Lead has been  
24 identified by the State of California as chemicals known to cause cancer and reproductive  
25 toxicity and therefore was subject to Proposition 65 warning requirements. Winplus,  
26 Ross Stores, Ross Dress were also informed of the presence of Lead in Accessories  
27 within Plaintiff's notice of alleged violations further discussed above at Paragraph 23

28 45. Plaintiff's allegations regarding Accessories concerns "[c]onsumer products  
exposure[s]," which "is an exposure that results from a person's acquisition, purchase,

1 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
2 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
3 *25602(b)*. Accessories is a consumer product designed to be used in the car, and, as  
4 mentioned herein, exposures to Lead took place as a result of such normal and  
5 foreseeable consumption and use.

6 46. Plaintiff is informed, believes, and thereon alleges that between November 16, 2009 and  
7 the present, Winplus, Ross Stores, and Ross Dress knowingly and intentionally exposed  
8 California consumers and users of Accessories, which Winplus, Ross Stores, and Ross  
9 Dress manufactured, distributed, or sold as mentioned above, to Lead, without first  
10 providing any type of clear and reasonable warning of such to the exposed persons before  
11 the time of exposure. Winplus, Ross Stores, and Ross Dress have distributed and sold  
12 Accessories in California. Winplus, Ross Stores, and Ross Dress know and intend that  
13 California consumers will use and consume Accessories thereby exposing them to Lead.  
14 Winplus, Ross Stores, and Ross Dress thereby violated Proposition 65.

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

20 48. Plaintiff is informed, believes, and thereon alleges that each of Winplus, Ross Stores, and  
21 Ross Dress’s violations of Proposition 65 as to Cases have been ongoing and continuous  
22 to the date of the signing of this complaint, as Winplus, Ross Stores, and Ross Dress  
23 engaged and continue to engage in conduct which violates Health and Safety Code  
24 section 25249.6, including the manufacture, distribution, promotion, and sale of  
25 Accessories, so that a separate and distinct violation of Proposition 65 occurred each and  
26 every time a person was exposed to Lead by Accessories as mentioned herein.

1 49. 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 50. Based on the allegations herein, Winplus, Ross Stores, and Ross Dress are liable for civil  
5 penalties of up to \$2,500.00 per day per individual exposure to Lead from Accessories,  
6 pursuant to Health and Safety Code section 25249.7(b).

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

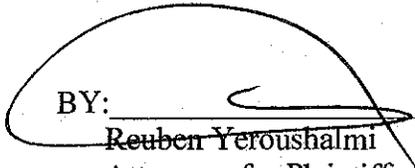
9 **PRAYER FOR RELIEF**

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  
18  
19 Dated: 1/18, 2013

YEROUSHALMI & ASSOCIATES

20  
21 BY: 

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