

ENDORSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT  
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CLERK OF THE COURT  
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BY: Deborah Stanna

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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO  
10

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

13 Plaintiff,

14 v.

15 ROSS STORES, INC. dba DD'S  
16 DISCOUNTS, a Delaware Corporation;  
17 ROSS DRESS FOR LESS, a Virginia  
18 Corporation; and DOES 1-20;

19 Defendants.

CASE NO. CGC-13-535763

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)

20  
21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
22 Defendants ROSS STORES, INC. dba DD'S DISCOUNTS, ROSS DRESS FOR LESS, INC.,  
23 and DOES 1-20 as follows:

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BY FAX

1 **THE PARTIES**

- 2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
3 organization qualified to do business in the State of California. CAG is a person within  
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
5 as a private attorney general, brings this action in the public interest as defined under  
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant ROSS STORES, INC. dba DD'S DISCOUNTS ("ROSS STORES") is a  
8 Delaware corporation, doing business in the State of California at all relevant times  
9 herein.
- 10 3. Defendant ROSS DRESS FOR LESS, INC. ("ROSS DRESS") is a Virginia corporation,  
11 doing business in the State of California at all relevant times herein.
- 12 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
13 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
14 complaint to allege their true names and capacities when ascertained. Plaintiff is  
15 informed, believes, and thereon alleges that each fictitiously named defendant is  
16 responsible in some manner for the occurrences herein alleged and the damages caused  
17 thereby.
- 18 5. At all times mentioned herein, the term "Defendants" includes ROSS STORES, ROSS  
19 DRESS, and DOES 1-20.
- 20 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
21 times mentioned herein have conducted business within the State of California.
- 22 7. Upon information and belief, at all times relevant to this action, each of the Defendants,  
23 including DOES 1-20, was an agent, servant, or employee of each of the other  
24 Defendants. In conducting the activities alleged in this Complaint, each of the  
25 Defendants was acting within the course and scope of this agency, service, or  
26 employment, and was acting with the consent, permission, and authorization of each of  
27 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
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1 were ratified and approved by every other Defendant or their officers or managing agents.  
2 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
3 wrongful conduct of each of the other Defendants.

- 4 8. 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 9. 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 10. 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 11. Venue is proper in the County of San Francisco because one or more of the instances of  
23 wrongful conduct occurred, and continues to occur, in the County of San Francisco  
24 and/or because Defendants conducted, and continue to conduct, business in the County of  
25 San Francisco with respect to the consumer product that is the subject of this action.

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BACKGROUND AND PRELIMINARY FACTS

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

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

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

22 15. Proposition 65 provides that any person "violating or threatening to violate" the statute  
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
24 "Threaten to violate" means "to create a condition in which there is a substantial  
25 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).  
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1 16. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl  
2 Phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons  
3 in California to the Proposition 65-listed chemicals of such products without first  
4 providing clear and reasonable warnings of such to the exposed persons prior to the time  
5 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

13 **SATISFACTION OF PRIOR NOTICE**

14 18. On or about December 21, 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 and ROSS DRESS and to the California Attorney  
17 General, County District Attorneys, and City Attorneys for each city containing a  
18 population of at least 750,000 people in whose jurisdictions the violations allegedly  
19 occurred, concerning the product Handbag containing DEHP.

20 19. On or about December 21, 2012, Plaintiff gave notice of alleged violations of Health and  
21 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
22 private action to ROSS STORES and ROSS DRESS and to the California Attorney  
23 General, County District Attorneys, and City Attorneys for each city containing a  
24 population of at least 750,000 people in whose jurisdictions the violations allegedly  
25 occurred, concerning the product Dish Rack containing DEHP.  
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- 1 20. Before sending the notices of alleged violations, Plaintiff investigated the consumer  
2 products involved, the likelihood that such products would cause users to suffer  
3 significant exposures to DEHP, and the corporate structure of each of the Defendants.
- 4 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
5 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
6 Plaintiff who executed the certificate had consulted with at least one person with relevant  
7 and appropriate expertise who reviewed data regarding the exposures to DEHP, the  
8 subject Proposition 65-listed chemicals of this action. Based on that information, the  
9 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
10 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
11 to the Certificate of Merit served on the Attorney General the confidential factual  
12 information sufficient to establish the basis of the Certificate of Merit.
- 13 22. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
14 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
15 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d)*.
- 16 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
17 gave notices of the alleged violation to ROSS STORES and ROSS DRESS and the public  
18 prosecutors referenced in Paragraph 18-19.
- 19 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
20 any applicable district attorney or city attorney has commenced and is diligently  
21 prosecuting an action against the Defendants.

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against ROSS STORES, ROSS  
3 DRESS, and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water  
4 and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

5 **Handbag**

6 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
7 reference paragraphs 1 through 24 of this complaint as though fully set forth herein. Each  
8 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
9 promoter, or retailer of Handbag, which includes but is not limited to, "Young Woman's  
10 Handbag, decorated with black and metallic gold and glitter zebra skin print, D5301  
11 C1950, dd's #400082477408" ("HANDBAG").

12 26. HANDBAG contain DEHP.

13 27. Defendants knew or should have known that DEHP has been identified by the State of  
14 California as a chemical known to cause cancer and reproductive toxicity and therefore  
15 was subject to Proposition 65 warning requirements. Defendants were also informed of  
16 the presence of lead in HANDBAG within Plaintiff's notice of alleged violations further  
17 discussed above at Paragraph 18.

18 28. Plaintiff's allegations regarding HANDBAG concerns "[c]onsumer products  
19 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
20 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
21 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
22 *25602(b)*. HANDBAG are consumer products, and, as mentioned herein, exposures to  
23 lead took place as a result of such normal and foreseeable consumption and use.

24 29. Plaintiff's allegations regarding HANDBAG also concern Occupational Exposures,  
25 which "means an exposure to any employee in his or her employer's workplace." *Cal.*  
26 *Code Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Defendants' employees occurred  
27 through the course of their employment in their employers' workplaces.

1 30. Plaintiff is informed, believes, and thereon alleges that between December 21, 2009 and  
2 the present, each of the Defendants knowingly and intentionally exposed their California  
3 consumers and users of HANDBAG, which Defendants manufactured, distributed, or  
4 sold as mentioned above, to DEHP, without first providing any type of clear and  
5 reasonable warning of such to the exposed persons before the time of exposure.

6 Defendants have distributed and sold HANDBAG in California. Defendants know and  
7 intend that California consumers will use and consume HANDBAG, thereby exposing  
8 them to lead. Defendants thereby violated Proposition 65.

9 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.

10 Persons sustain exposures by handling HANDBAG without wearing gloves or any other  
11 personal protective equipment, or by touching bare skin or mucous membranes with  
12 gloves after handling HANDBAG, as well as through direct and indirect hand to mouth  
13 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
14 HANDBAG.

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

22 33. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
23 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
24 violations alleged herein will continue to occur into the future.

25 34. Based on the allegations herein, Defendants are liable for civil penalties of up to  
26 \$2,500.00 per day per individual exposure to lead from HANDBAG, pursuant to Health  
27 and Safety Code section 25249.7(b).

1 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
2 filing this Complaint.

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4 **SECOND CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against ROSS STORES, ROSS  
6 DRESS, and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water  
7 and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

8 **Dish Rack**

9 36. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
10 reference paragraphs 1 through 35 of this complaint as though fully set forth herein.

11 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
12 distributor, promoter, or retailer of Dish Rack, which includes but is not limited to  
13 "Imperial Home Dish Rack, MW1354, UPC #852038003542" ("DISH RACK")

14 37. DISH RACK contain DEHP.

15 38. Defendants knew or should have known that DEHP has been identified by the State of  
16 California as chemicals known to cause cancer and reproductive toxicity and therefore  
17 was subject to Proposition 65 warning requirements. Defendants were also informed of  
18 the presence of DEHP in DISH RACK within Plaintiff's notice of alleged violations  
19 further discussed above at Paragraph 19.

20 39. Plaintiff's allegations regarding DISH RACK concerns "[c]onsumer products  
21 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
22 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
23 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §  
24 25602(b). DISH RACK are consumer products, and, as mentioned herein, exposures to  
25 DEHP took place as a result of such normal and foreseeable consumption and use.

26 40. Plaintiff's allegations regarding DISH RACK also concern Occupational Exposures,  
27 which "means an exposure to any employee in his or her employer's workplace." *Cal.*  
28 *Code Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendants' employees occurred  
through the course of their employment in their employers' workplaces.

1 41. Plaintiff is informed, believes, and thereon alleges that between December 21, 2009 and  
2 the present, each of the Defendants knowingly and intentionally exposed their employees  
3 and California consumers and users of DISH RACK, which Defendants manufactured,  
4 distributed, or sold as mentioned above, to DEHP, without first providing any type of  
5 clear and reasonable warning of such to the exposed persons before the time of exposure.  
6 Defendants have distributed and sold DISH RACK in California. Defendants know and  
7 intend that California consumers will use and consume DISH RACK, thereby exposing  
8 them to DEHP. Defendants thereby violated Proposition 65.

9 42. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
10 Persons sustain exposures by handling DISH RACK without wearing gloves or any other  
11 personal protective equipment, or by touching bare skin or mucous membranes with  
12 gloves after handling DISH RACK, as well as through direct and indirect hand to mouth  
13 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
14 DISH RACK.

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

22 44. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
23 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
24 violations alleged herein will continue to occur into the future.

25 45. Based on the allegations herein, Defendants are liable for civil penalties of up to  
26 \$2,500.00 per day per individual exposure to DEHP from DISH RACK, pursuant to  
27 Health and Safety Code section 25249.7(b).

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1 46. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
2 filing this Complaint.  
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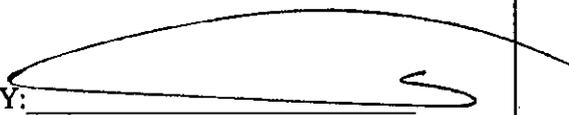
4 **PRAYER FOR RELIEF**

5 Plaintiff demands against each of the Defendants as follows:

- 6 1. A permanent injunction mandating Proposition 65-compliant warnings;  
7 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
8 3. Costs of suit;  
9 4. Reasonable attorney fees and costs; and  
10 5. Any further relief that the court may deem just and equitable.  
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12  
13 Dated: November 24, 2013

YEROUSHALMI & ASSOCIATES

14  
15 BY: 

16 Reuben Yeroushalmi  
17 Attorneys for Plaintiff,  
18 Consumer Advocacy Group, Inc.  
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