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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

SEP 04 2013

John A. Clarke, Executive Officer/Clerk  
By Amber Hayes, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

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

Plaintiff,

v.

HOPEFUL ENTERPRISE, INC., a  
California Corporation; ROSS STORES,  
INC., a Delaware Corporation; ROSS  
DRESS FOR LESS, INC., a Virginia  
Corporation; and DOES 1-20;

Defendants.

CASE NO. **BC520240**

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
defendants HOPEFUL ENTERPRISE, INC., ROSS STORES, INC., ROSS DRESS FOR LESS,  
INC., and DOES 1-20 as follows:

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1 //

2 THE PARTIES

- 3 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
- 4 organization qualified to do business in the State of California. CAG is a person within
- 5 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
- 6 as a private attorney general, brings this action in the public interest as defined under
- 7 Health and Safety Code section 25249.7, subdivision (d).
- 8 2. Defendant HOPEFUL ENTERPRISE, INC. ("HOPEFUL ENTERPRISE") is a California
- 9 Corporation, doing business in the State of California at all relevant times herein.
- 10 3. Defendant ROSS STORES, INC. ("ROSS STORES") is a Delaware corporation, doing
- 11 business in the State of California at all relevant times herein.
- 12 4. Defendant ROSS DRESS FOR LESS, INC. ("ROSS DRESS FOR LESS") is a Virginia
- 13 corporation, 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 HOPEFUL
- 21 ENTERPRISE, ROSS STORES, ROSS DRESS FOR LESS, 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. Upon information and belief, at all times relevant to this action, each of the Defendants,
- 25 including DOES 1-20, was an agent, servant, or employee of each of the other
- 26 Defendants. In conducting the activities alleged in this Complaint, each of the
- 27 Defendants was acting within the course and scope of this agency, service, or
- 28

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

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

### 10 JURISDICTION

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

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

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

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2  
3 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

24 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
26 "Threaten to violate" means "to create a condition in which there is a substantial  
27 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

3 17. Plaintiff identified certain practices of manufacturers and distributors of Di (2-ethylhexy)  
4 phthalate (“DEHP”) and Di-*n*-butyl phthalate (“DBP”)-bearing products of exposing,  
5 knowingly and intentionally, persons in California to the Proposition 65-listed chemicals  
6 of such products without first providing clear and reasonable warnings of such to the  
7 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants  
8 engaged in such practice.

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

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

23 **SATISFACTION OF PRIOR NOTICE**

24 20. On or about January 14, 2013, Plaintiff gave notice of alleged violations of Health and  
25 Safety Code section 25249.6, concerning consumer products and occupational exposures,  
26 subject to a private action to HOPEFUL ENTERPRISE, ROSS STORES, ROSS DRESS  
27 FOR LESS, and to the California Attorney General, County District Attorneys, and City  
28

1 Attorneys for each city containing a population of at least 750,000 people in whose  
2 jurisdictions the violations allegedly occurred, concerning the products Dish Drainers.

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 DEHP and DBP, 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 DEHP and DBP,  
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 notices 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 HOPEFUL ENTERPRISE, ROSS STORES,  
21 ROSS DRESS FOR LESS, 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.

1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against HOPEFUL  
3 ENTERPRISE, INC., a California Corporation; ROSS STORES, INC., a Delaware  
4 Corporation; ROSS DRESS FOR LESS, INC., a Virginia Corporation; and DOES  
5 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic  
6 Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

7 **Dish Drainers**

8 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
9 reference paragraphs 1 through 25 of this complaint as though fully set forth herein.

10 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
11 distributor, promoter, or retailer of Dish Drainers, which includes but is not limited to  
12 "Hopeful Small Dish Drainer, Item Number: DD120001-1RD, UPC #816563011151"  
13 ("DISH DRAINERS").

14 28. DISH DRAINERS contain DEHP and DBP.

15 29. Defendants knew or should have known that DEHP and DBP has been identified by the  
16 State of California as a chemical known to cause reproductive toxicity and therefore was  
17 subject to Proposition 65 warning requirements. Defendants were also informed of the  
18 presence of DEHP and DBP in DISH DRAINERS within Plaintiff's notice of alleged  
19 violations further discussed above at Paragraph 20.

20 30. Plaintiff's allegations regarding DISH DRAINERS concern "[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 DRAINERS are consumer products, and, as mentioned herein,  
25 exposures to DEHP and DBP took place as a result of such normal and foreseeable  
26 consumption and use.

27 31. Plaintiff's allegations regarding also concern "occupational exposure(s)," which are  
28 "exposures to any employee in his or her workplace," *Cal. Code Regs. tit. 27, § 25602(f)*.  
As mentioned herein, employees were exposed to DEHP and DBP in their employer's

1 workplace as a result of handling DISH DRAINERS, without having first been given  
2 clear and reasonable warnings that such handling would cause exposure to DEHP and  
3 DBP.

4 32. Plaintiff is informed, believes, and thereon alleges that between January 14, 2010 and the  
5 present, each of the Defendants knowingly and intentionally exposed California  
6 consumers and users of DISH DRAINERS, which Defendants manufactured, distributed,  
7 or sold as mentioned above, to DEHP and DBP without first providing any type of clear  
8 and reasonable warning of such to the exposed persons before the time of exposure.  
9 Defendants have distributed and sold DISH DRAINERS in California. Defendants know  
10 and intend that California consumers will use and consume SUNGLASSES, thereby  
11 exposing them to DEHP and DBP. Defendants thereby violated Proposition 65.

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

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

25 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
26 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
27 violations alleged herein will continue to occur into the future.

28

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

4 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.  
6

7 **PRAYER FOR RELIEF**

8 Plaintiff demands against each of the Defendants as follows:

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

14  
15 Dated: September 3, 2013

YEROUSHALMI & ASSOCIATES

BY: \_\_\_\_\_

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