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**ENDORSED
FILED**
San Francisco County Superior Court

MAR 14 2014

CLERK OF THE COURT
BY: VICTORIA GONZALEZ
Deputy Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN FRANCISCO**

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

15 Plaintiff,

16 v.

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

21 Defendants.

CASE NO. **CGC-14-537987**

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)

22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against

23 Defendants ROSS STORES, INC., ROSS DRESS FOR LESS, INC., and DOES 1-20 as follows:

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BY FAX

THE PARTIES

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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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1 **BACKGROUND AND PRELIMINARY FACTS**

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 June 20, 2013, 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 Shower Curtain Liners containing DEHP.

20 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer
21 products involved, the likelihood that such products would cause users to suffer
22 significant exposures to DEHP, 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 DEHP, the
27 subject Proposition 65-listed chemicals of this action. Based on that information, the
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1 attorney for Plaintiff who executed the Certificate of Merit believed there was a
2 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
3 to the Certificate of Merit served on the Attorney General the confidential factual
4 information 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 violation to ROSS STORES and 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 **FIRST CAUSE OF ACTION**

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

18 **Shower Curtain Liners**

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. Each
21 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
22 promoter, or retailer of Shower Curtain Liners, which includes but is not limited to,
23 "Daniel's Bath Deluxe Quality Vinyl Curtain/Liner, Reinforced Grommets, Magnetic
24 Hem, 70"W x 72"L, "100% Vinyl", Made in China, "Clear", barcode: 7 831154 001222"
25 ("LINERS").

26 25. LINERS contain DEHP.

1 26. Defendants knew or should have known that DEHP has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of DEHP in LINERS within Plaintiff's notice of alleged violations further
5 discussed above at Paragraph 18.

6 27. Plaintiff's allegations regarding LINERS concerns "[c]onsumer products exposure[s],"
7 which "is an exposure that results from a person's acquisition, purchase, storage,
8 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
9 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.
10 LINERS are consumer products, and, as mentioned herein, exposures to DEHP took
11 place as a result of such normal and foreseeable consumption and use.

12 28. Plaintiff is informed, believes, and thereon alleges that between June 20, 2010 and the
13 present, each of the Defendants knowingly and intentionally exposed their California
14 consumers and users of LINERS, which Defendants manufactured, distributed, or sold as
15 mentioned above, to DEHP, without first providing any type of clear and reasonable
16 warning of such to the exposed persons before the time of exposure. Defendants have
17 distributed and sold LINERS in California. Defendants know and intend that California
18 consumers will use and consume LINERS, thereby exposing them to DEHP. Defendants
19 thereby violated Proposition 65.

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

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

6 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
7 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
8 violations alleged herein will continue to occur into the future.

9 32. Based on the allegations herein, Defendants are liable for civil penalties of up to
10 \$2,500.00 per day per individual exposure to DEHP from LINERS, pursuant to Health
11 and Safety Code section 25249.7(b).

12 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
13 filing this Complaint.

14 **PRAYER FOR RELIEF**

15 Plaintiff demands against each of the Defendants as follows:

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

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23 Dated: March 14, 2014

YEROUSHALMI & ASSOCIATES

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25
26 BY: 

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