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

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

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

13 Plaintiff,

14 v.

15 KENKO CHINA OUTLET, INC., a
16 California Corporation; THINKTANK
17 TECHNOLOGY, INC., a California
18 Corporation; CSS BRANDS, INC., a
19 Delaware Corporation; ROSS STORES,
20 INC., a Delaware Corporation; ROSS
21 DRESS FOR LESS, INC., a Virginia
22 Corporation; ROSS STORES, INC. DBA
DD'S DISCOUNTS, INC. a Delaware
23 Corporation; and DOES 1-20;

24 Defendants.

CASE NO. CGC - 13 - 534806

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)

BY FAX

25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
26 defendants KENKO CHINA OUTLET, INC., THINKTANK TECHNOLOGY, INC., CSS
27 BRANDS, INC., ROSS STORES, INC., ROSS DRESS FOR LESS, INC., ROSS STORES,
28 INC., DBA DD'S DISCOUNTS, INC., and DOES 1-20 as follows:

1
COMPLAINT FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986 (HEALTH AND SAFETY CODE § 25249.5, ET SEQ.)

ENDORSED
FILED

San Francisco County Superior Court

OCT 10 2013

CLERK OF THE COURT
DENNIS TOYAMA

BY: _____ Deputy Clerk

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 KENKO CHINA OUTLET, INC. ("KENKO") is a California Corporation, doing business in the state of California at all relevant times herein.
3. Defendant THINKTANK TECHNOLOGY, INC. ("THINKTANK") is a California Corporation, doing business in the state of California at all relevant times herein.
4. Defendant CSS BRANDS, INC. ("CSS") is a Delaware Corporation, doing business in the state of California at all relevant times herein.
5. Defendant ROSS STORES, INC. ("ROSS STORES") is a Delaware corporation, doing business in the State of California at all relevant times herein.
6. Defendant ROSS DRESS FOR LESS, INC. ("ROSS DRESS") is a Virginia corporation, doing business in the State of California at all relevant times herein.
7. Defendant ROSS STORES, INC., DBA DD's DISCOUNTS, INC. ("DD'S DISCOUNTS") is a Delaware Corporation, doing business in the state of California at all relevant times herein.
8. 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.
9. At all times mentioned herein, the term "Defendants" includes KENKO, THINKTANK, CSS, ROSS STORES, ROSS DRESS, DD'S DISCOUNTS, and DOES 1-20.

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

3 11. Upon information and belief, at all times relevant to this action, each of the Defendants,
4 including DOES 1-20, was an agent, servant, or employee of each of the other
5 Defendants. In conducting the activities alleged in this Complaint, each of the
6 Defendants was acting within the course and scope of this agency, service, or
7 employment, and was acting with the consent, permission, and authorization of each of
8 the other Defendants. All actions of each of the Defendants alleged in this Complaint
9 were ratified and approved by every other Defendant or their officers or managing agents.
10 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
11 wrongful conduct of each of the other Defendants.

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

16 JURISDICTION

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

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

3 15. Venue is proper in the County of San Francisco because one or more of the instances of
4 wrongful conduct occurred, and continues to occur, in the County of San Francisco
5 and/or because Defendants conducted, and continue to conduct, business in the County of
6 San Francisco with respect to the consumer product that is the subject of this action.

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8 **BACKGROUND AND PRELIMINARY FACTS**

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

18 17. Proposition 65 requires the Governor of California to publish a list of chemicals known to
19 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
20 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
21 chemicals and chemical families. Proposition 65 imposes warning requirements and
22 other controls that apply to Proposition 65-listed chemicals.

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

3 19. Proposition 65 provides that any person "violating or threatening to violate" the statute
4 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

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

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

9 20. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing
10 products of exposing, knowingly and intentionally, persons in California to the
11 Proposition 65-listed chemicals of such products without first providing clear and
12 reasonable warnings of such to the exposed persons prior to the time of exposure.
13 Plaintiff later discerned that Defendants engaged in such practice.

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

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

SATISFACTION OF PRIOR NOTICE

- 1
- 2 23. On or about October 19, 2012 Plaintiff gave notice of alleged violations of Health and
- 3 Safety Code section 25249.6, concerning consumer products exposures, subject to a
- 4 private action to THINKTANK, DD'S DISCOUNTS and to the California Attorney
- 5 General, County District Attorneys, and City Attorneys for each city containing a
- 6 population of at least 750,000 people in whose jurisdictions the violations allegedly
- 7 occurred, concerning the products Emergency Road Kits.
- 8 24. On or about June 20, 2013 Plaintiff gave notice of alleged violations of Health and Safety
- 9 Code section 25249.6, concerning consumer products exposures, subject to a private
- 10 action to THINKTANK, KENKO and to the California Attorney General, County
- 11 District Attorneys, and City Attorneys for each city containing a population of at least
- 12 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
- 13 products Emergency Road Kits.
- 14 25. On or about November 2, 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 DRESS, ROSS STORES, CSS 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 products Emergency Road Kits.
- 20 26. Before sending the notices of alleged violation, Plaintiff investigated the consumer
- 21 products involved, the likelihood that such products would cause users to suffer
- 22 significant exposures to lead, and the corporate structure of each of the Defendants.
- 23 27. 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 lead, the subject
- 27 Proposition 65-listed chemical of this action. Based on that information, the attorney for
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1 Plaintiff who executed the Certificate of Merit believed there was a reasonable and
2 meritorious case for this private action. The attorney for Plaintiff attached to the
3 Certificate of Merit served on the Attorney General the confidential factual information
4 sufficient to establish the basis of the Certificate of Merit.

5 28. 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 29. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
9 gave notices of the alleged violations to KENKO, THINKTANK, DD'S DISCOUNTS,
10 CSS, ROSS STORES, ROSS DRESS, and the public prosecutors referenced in Paragraph
11 23, 24, & 25.

12 30. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
13 any applicable district attorney or city attorney has commenced and is diligently
14 prosecuting an action against the Defendants.

15 FIRST CAUSE OF ACTION

16 (By CONSUMER ADVOCACY GROUP, INC. and against THINKTANK, DD'S
17 DISCOUNTS, KENKO, and DOES 1-20 for Violations of Proposition 65, The Safe
18 Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§
19 25249.5, *et seq.*))

20 Emergency Road Kits

21 31. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
22 reference paragraphs 1 through 30 of this complaint as though fully set forth herein.

23 32. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of Emergency Road Kits, which includes but is not
25 limited to "ThinkTank Technology® 31 Piece Roadside Emergency Kit, KC 10011"
26 ("KITS").

27 33. KITS contain lead.
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1 34. Defendants knew or should have known that lead has been identified by the State of
2 California as a chemical known to cause reproductive toxicity and therefore was subject
3 to Proposition 65 warning requirements. Defendants were also informed of the presence
4 of lead in KITS within Plaintiff's notice of alleged violations further discussed above at
5 Paragraph 23 and 24.

6 35. Plaintiff's allegations regarding KITS 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 KITS is a consumer product, and, as mentioned herein, exposures to lead took place as a
11 result of such normal and foreseeable consumption and use.

12 36. Plaintiff is informed, believes, and thereon alleges that between October 19, 2009 and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of KITS, which Defendants manufactured, distributed, or sold as
15 mentioned above, to lead, 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 KITS in California. Defendants know and intend that California
18 consumers will use and consume KITS, thereby exposing them to lead. Defendants
19 thereby violated Proposition 65.

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

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

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

7 40. Based on the allegations herein, Defendants are liable for civil penalties of up to
8 \$2,500.00 per day per individual exposure to lead from KITS, pursuant to Health and
9 Safety Code section 25249.7(b).

10 41. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
11 filing this Complaint.

12 **SECOND CAUSE OF ACTION**

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

17 **Emergency Road Kits**

18 42. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
19 reference paragraphs 1 through 41 of this complaint as though fully set forth herein.

20 43. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
21 distributor, promoter, or retailer of Emergency Road Kits, which includes but is not
22 limited to "Complete Emergency Road Side Kit by Power Advantage, 30pc, Item# AU-
23 03217" ("KITS").

24 44. KITS contain lead.

25 45. Defendants knew or should have known that lead has been identified by the State of
26 California as a chemical known to cause reproductive toxicity and therefore was subject
27 to Proposition 65 warning requirements. Defendants were also informed of the presence
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1 of lead in KITS within Plaintiff's notice of alleged violations further discussed above at
2 Paragraph 25.

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

9 47. Plaintiff is informed, believes, and thereon alleges that between November 2, 2009 and
10 the present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of KITS, which Defendants manufactured, distributed, or sold as
12 mentioned above, to lead, without first providing any type of clear and reasonable
13 warning of such to the exposed persons before the time of exposure. Defendants have
14 distributed and sold KITS in California. Defendants know and intend that California
15 consumers will use and consume KITS, thereby exposing them to lead. Defendants
16 thereby violated Proposition 65.

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

22 49. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
23 Proposition 65 as to KITS have been ongoing and continuous to the date of the signing of
24 this complaint, as Defendants engaged and continue to engage in conduct which violates
25 Health and Safety Code section 25249.6, including the manufacture, distribution,
26 promotion, and sale of KITS, so that a separate and distinct violation of Proposition 65
27 occurred each and every time a person was exposed to lead by KITS as mentioned herein.
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1 50. 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 51. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to lead from KITS, pursuant to Health and
6 Safety Code section 25249.7(b).

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


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10 **PRAYER FOR RELIEF**

11 Plaintiff demands against each of the Defendants as follows:

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

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18 Dated: 10/9, 2013

YEROUSHALMI & ASSOCIATES

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20 BY: 
21 Reuben Yeroushalmi
22 Attorneys for Plaintiff,
23 Consumer Advocacy Group, Inc.
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