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9 Attorneys for Plaintiff,
10 Consumer Advocacy Group, Inc.

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

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

15 **Plaintiff,**

16 **v.**

17 **VERONA LABORATORIES, a Polish**
18 **Corporation; VERONA PRODUCTS**
19 **PROFESSIONAL SP. Z.O.O., a Polish**
20 **Corporation; BIG LOTS STORES, INC., an**
21 **Ohio Corporation; and DOES 1-20**

22 **Defendants.**

23 **CASE NO.**

BC 553792

24 **COMPLAINT FOR PENALTY AND**
25 **INJUNCTION**

26 **Violation of Proposition 65, the Safe**
27 **Drinking Water and Toxic Enforcement**
28 **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 VERONA LABORATORIES, VERONA PRODUCTS PROFESSIONAL SP Z.O.O., BIG LOTS STORES, INC. and DOES 1-20 as follows:

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

* An Association of Independent Law Corporations.

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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

AUG 05 2014

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

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

3 2. Defendants VERONA LABORATORIES and VERONA PRODUCTS

4 PROFESSIONAL SP Z.O.O. (collectively "VERONA") are Polish corporations, doing
5 business in the State of California at all relevant times herein.

6 3. Defendants BIG LOTS STORES, INC., ("BIG LOTS") are Ohio corporations, doing
7 business in the state of California at all relevant times herein.

8 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
9 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
10 complaint to allege their true names and capacities when ascertained. Plaintiff is
11 informed, believes, and thereon alleges that each fictitiously named defendant is
12 responsible in some manner for the occurrences herein alleged and the damages caused
13 thereby.

14 5. At all times mentioned herein, the term "Defendants" includes VERONA
15 LABORATORIES, VERONA PRODUCTS PROFESSIONAL SP Z.O.O., BIG LOTS
16 STORES, INC. and DOES 1-20.

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

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

28

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

5 JURISDICTION

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

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

19 11. Venue is proper in the County of Los Angeles because one or more of the instances of
20 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
21 because Defendants conducted, and continue to conduct, business in the County of Los
22 Angeles with respect to the consumer product that is the subject of this action.

23 BACKGROUND AND PRELIMINARY FACTS

24 12. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
2 from contamination, to allow consumers to make informed choices about the products
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see
4 fit.

5 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to
6 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
7 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
8 chemicals and chemical families. Proposition 65 imposes warning requirements and
9 other controls that apply to Proposition 65-listed chemicals.

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

16 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
17 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
18 "Threaten to violate" means "to create a condition in which there is a substantial
19 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
20 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
21 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

22 16. Plaintiff identified certain practices of manufacturers and distributors of Diaminotoluene-
23 bearing products of exposing, knowingly and intentionally, persons in California to the
24 Proposition 65-listed chemicals of such products without first providing clear and
25 reasonable warnings of such to the exposed persons prior to the time of exposure.
26 Plaintiff later discerned that Defendants engaged in such practice.

1 17. On January 1, 1990, the Governor of California added Diaminotoluene (mixed) to the list
2 of chemicals known to the State to cause cancer. This addition took place more than
3 twenty (20) months before CAG served this Notice.

4 SATISFACTION OF PRIOR NOTICE

5 18. On or about January 17, 2014, Plaintiff gave notice of alleged violations of Health and
6 Safety Code section 25249.6, concerning consumer products exposures, subject to a
7 private action to VERONA LABORATORIES, VERONA PRODUCTS
8 PROFESSIONAL SP Z.O.O., BIG LOTS STORES, INC. and to the California Attorney
9 General, County District Attorneys, and City Attorneys for each city containing a
10 population of at least 750,000 people in whose jurisdictions the violations allegedly
11 occurred, concerning the product Hair Care Products containing Diaminotoluene.

12 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer
13 products involved, the likelihood that such products would cause users to suffer
14 significant exposures to Diaminotoluene, and the corporate structure of each of the
15 Defendants.

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

25 21. Plaintiff's notices of alleged violations also included a Certificate of Service and a
26 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
27 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
28

1 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notices of the alleged violation to VERONA, BIG LOTS and the public prosecutors
3 referenced in Paragraph 18.

4 23. 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 VERONA LABORATORIES,**
10 **VERONA PRODUCTS PROFESSIONAL SP. Z.O.O., BIG LOTS STORES INC. and**
11 **DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
12 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

13 **HAIR CARE PRODUCTS**

14 24. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
15 reference paragraphs 1 through 23 of this complaint as though fully set forth herein. Each
16 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
17 promoter, or retailer of HAIR CARE PRODUCTS, which includes but is not limited to
18 "Revia" Hair Color with "The Proteins of Wheat", "Intense and Long-Lasting Color",
19 New, "Verona Laboratories", 100% 3D Color, No 11 Light Brown,, "Made in European
20 Union" Bar Code: 5 907619 857467, UPC: 145 810080258 5 043 \$4.00 "120" (HAIR
21 CARE PRODUCTS).

22 25. HAIR CARE PRODUCTS contains Diaminotoluene.

23 26. Defendants knew or should have known that Diaminotoluene has been identified by the
24 State of California as a chemical known to cause cancer and reproductive toxicity and
25 therefore was subject to Proposition 65 warning requirements. Defendants were also
26 informed of the presence of Diaminotoluene in HAIR CARE PRODUCTS within
27 Plaintiff's notice of alleged violations further discussed above at Paragraph 18.

28 27. Plaintiff's allegations regarding HAIR CARE PRODUCTS concerns "[c]onsumer
products exposure[s]," which "is an exposure that results from a person's acquisition,
purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,

1 or any exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27,*
2 § 25602(b). HAIR CARE PRODUCTS are consumer products, and, as mentioned
3 herein, exposures to Diaminotoluene took place as a result of such normal and
4 foreseeable consumption and use.

5 28. Plaintiff is informed, believes, and thereon alleges that between January 1, 2011 and the
6 present, each of the Defendants knowingly and intentionally exposed their California
7 consumers and users of HAIR CARE PRODUCTS, which Defendants manufactured,
8 distributed, or sold as mentioned above, to Diaminotoluene, without first providing any
9 type of clear and reasonable warning of such to the exposed persons before the time of
10 exposure. Defendants have distributed and sold HAIR CARE PRODUCTS in California.
11 Defendants know and intend that California consumers will use and consume HAIR
12 CARE PRODUCTS, thereby exposing them to Diaminotoluene. Defendants thereby
13 violated Proposition 65.

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

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

1 31. 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 32. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Diaminotoluene from HAIR CARE
6 PRODUCTS, pursuant to Health and Safety Code section 25249.7(b).

7 33. 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 Dated: August 5, 2014

YEROUSHALMI & YEROUSHLAMI

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