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

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

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

16 Plaintiff,

17 v.

18 ROSS STORES, INC., a Delaware  
19 Corporation; and DOES 1-20;

20 Defendants.

CASE NO. **BC 5 6 9 5 9 8**

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)

21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
22 Defendants ROSS STORES, INC., and DOES 1-20 as follows:

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CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JAN 16 2015

Sherri R. Carter, Executive Officer/Clerk  
By Myrna Beltran, Deputy

COPY



1 7. 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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl  
23 Phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons  
24 in California to the Proposition 65-listed chemicals of such products without first  
25 providing clear and reasonable warnings of such to the exposed persons prior to the time  
26 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

27 16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
28 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP

1 to the list of chemicals known to the State to cause developmental male reproductive  
2 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
3 months after addition of DEHP to the list of chemicals known to the State to cause  
4 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
5 requirements and discharge prohibitions.

6 17. Plaintiff identified certain practices of manufacturers, distributors and retailers of  
7 exposing, knowingly and intentionally, persons in California to Di-n-butyl Phthalate  
8 (“DBP”) in consumer products without first providing clear and reasonable warnings of  
9 such to the exposed persons prior to the time of exposure. Plaintiff later discerned that  
10 Defendants engaged in such practice.

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

17  
18 **SATISFACTION OF PRIOR NOTICE**

19 19. On or about May 28, 2014, Plaintiff gave notice of alleged violations of Health and  
20 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
21 private action to ROSS STORES and to the California Attorney General, County District  
22 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
23 people in whose jurisdictions the violations allegedly occurred, concerning the product  
24 Fitness Accessories containing DEHP.

25 20. On or about July 24, 2014, Plaintiff gave notice of alleged violations of Health and Safety  
26 Code section 25249.6, concerning consumer products exposures, subject to a private  
27 action to ROSS STORES and to the California Attorney General, County District  
28 Attorneys, and City Attorneys for each city containing a population of at least 750,000

1 people in whose jurisdictions the violations allegedly occurred, concerning the product  
2 Footwear containing DBP.

3 21. Before sending the notices of alleged violations, 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 chemicals 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 violation to ROSS STORES and the public prosecutors  
21 referenced in Paragraph 19 and 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 ROSS STORES and DOES 1-  
3 20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act  
4 of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

5 **Flip Flops**

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

8 27. Each of the Defendants are, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of Flip Flops, which includes but is not limited to: "Hoof  
10 Feet™ Chic Complete 5-piece pedicure kit! Includes: flip-flops (size M/L), toespacers,  
11 foot scrub, foot lotion, clipper, No. 03064, UPC 7 17937 03064 1" ("FLIP FLOPS").

12 28. FLIP FLOPS contain DBP.

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

18 30. Plaintiff's allegations regarding FLIP FLOPS concern "[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)*. FLIP FLOPS are consumer products, and, as mentioned herein, exposures to  
23 DBP took place as a result of such normal and foreseeable use.

24 31. Plaintiff is informed, believes, and thereon alleges that between July 24, 2011 and the  
25 present, each of the Defendants knowingly and intentionally exposed their California  
26 consumers and users of FLIP FLOPS, which Defendants manufactured, distributed, or  
27 sold as mentioned above, to DBP, without first providing any type of clear and  
28 reasonable warning of such to the exposed persons before the time of exposure.

Defendants have distributed and sold DBP in California. Defendants know and intend

1 that California consumers will use FLIP FLOPS, thereby exposing them to DBP.

2 Defendants thereby violated Proposition 65.

3 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.

4 Persons sustain exposures by handling FLIP FLOPS without wearing gloves or any other  
5 personal protective equipment, or by touching bare skin or mucous membranes with  
6 gloves after handling FLIP FLOPS, as well as through direct and indirect hand to mouth  
7 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
8 FLIP FLOPS.

9 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of

10 Proposition 65 as to FLIP FLOPS have been ongoing and continuous to the date of the  
11 signing of this complaint, as Defendants engaged and continue to engage in conduct  
12 which violates Health and Safety Code section 25249.6, including the manufacture,  
13 distribution, promotion, and sale of FLIP FLOPS, so that a separate and distinct violation  
14 of Proposition 65 occurred each and every time a person was exposed to DBP by FLIP  
15 FLOPS as mentioned herein.

16 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65

17 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
18 violations alleged herein will continue to occur into the future.

19 35. Based on the allegations herein, Defendants are liable for civil penalties of up to

20 \$2,500.00 per day per individual exposure to DBP from FLIP FLOPS, pursuant to Health  
21 and Safety Code section 25249.7(b).

22 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
23 filing this Complaint.

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1 Defendants have distributed and sold SAUNA SUITS in California. Defendants know  
2 and intend that California consumers will use and wear SAUNA SUITS, thereby  
3 exposing them to DEHP. Defendants thereby violated Proposition 65.

4 42. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
5 Persons sustain exposures by handling SAUNA SUITS without wearing gloves or any  
6 other personal protective equipment, or by touching bare skin or mucous membranes with  
7 gloves after handling SAUNA SUITS, as well as through direct and indirect hand to  
8 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
9 from SAUNA SUITS.

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

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

20 45. Based on the allegations herein, Defendants are liable for civil penalties of up to  
21 \$2,500.00 per day per individual exposure to DEHP from SAUNA SUITS, pursuant to  
22 Health and Safety Code section 25249.7(b).

23 46. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
24 filing this Complaint.

25 **PRAYER FOR RELIEF**

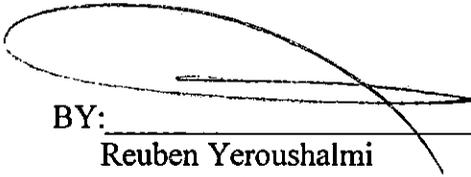
26 Plaintiff demands against each of the Defendants as follows:

- 27 1. A permanent injunction mandating Proposition 65-compliant warnings;  
28 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);

- 1 3. Costs of suit;
- 2 4. Reasonable attorney fees and costs; and
- 3 5. Any further relief that the court may deem just and equitable.

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6 Dated: January 16, 2015

YEROUSHALMI & YEROUSHALMI

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9 BY: 

10 Reuben Yeroushalmi  
11 Attorneys for Plaintiff,  
12 Consumer Advocacy Group, Inc.  
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