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ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 04 2016

CLERK OF THE SUPERIOR COURT  
By Samuel Thomas Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ALAMEDA**

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

12 Plaintiff,

13 v.

14 CENTURION GARDEN AND OUTDOOR  
15 LIVING, INC. a Delaware Corporation;  
16 ROSS STORES, INC., a Delaware  
17 Corporation and DOES 1-20;

18 Defendants.

CASE NO. **RG16806471**

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)

19 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
20 Defendants and CENTURION GARDEN AND OUTDOOR LIVING, INC., ROSS STORES,  
21 INC. and DOES 1-20 as follows:

22 **THE PARTIES**

- 23 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
24 organization qualified to do business in the State of California. CAG is a person within  
25 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
26 as a private attorney general, brings this action in the public interest as defined under  
27 Health and Safety Code section 25249.7, subdivision (d).

28 ///

**BY FAX**

- 1 2. Defendant CENTURION GARDEN AND OUTDOOR LIVING, INC.  
2 (“CENTURION”), is a Delaware corporation doing business in the State of California at  
3 all relevant times herein.
- 4 3. Defendant ROSS STORES, INC, (“ROSS”), is a Delaware corporation doing business in  
5 the State of California at all relative times herein.
- 6 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
7 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
8 complaint to allege their true names and capacities when ascertained. Plaintiff is  
9 informed, believes, and thereon alleges that each fictitiously named defendant is  
10 responsible in some manner for the occurrences herein alleged and the damages caused  
11 thereby.
- 12 5. At all times mentioned herein, the term “Defendants” includes CENTURION, ROSS and  
13 DOES 1-20.
- 14 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
15 times mentioned herein have conducted business within the State of California.
- 16 7. Upon information and belief, at all times relevant to this action, each of the Defendants,  
17 including DOES 1-20, was an agent, servant, or employee of each of the other  
18 Defendants. In conducting the activities alleged in this Complaint, each of the  
19 Defendants was acting within the course and scope of this agency, service, or  
20 employment, and was acting with the consent, permission, and authorization of each of  
21 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
22 were ratified and approved by every other Defendant or their officers or managing agents.  
23 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
24 wrongful conduct of each of the other Defendants.
- 25 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
26 Defendants was a person doing business within the meaning of Health and Safety Code  
27 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
28 employees at all relevant times.

1 **JURISDICTION**

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

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

15 11. Venue is proper in the County of Alameda because one or more of the instances of  
16 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or  
17 because Defendants conducted, and continue to conduct, business in the County of  
18 Alameda with respect to the consumer product that is the subject of this action.

19 **BACKGROUND AND PRELIMINARY FACTS**

20 12. In 1986, California voters approved an initiative to address growing concerns about  
21 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
22 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
23 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
24 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
25 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
26 from contamination, to allow consumers to make informed choices about the products  
27 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
28 fit.

- 1 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
2 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
3 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
4 chemicals and chemical families. Proposition 65 imposes warning requirements and  
5 other controls that apply to Proposition 65-listed chemicals.
- 6 14. All businesses with ten (10) or more employees that operate or sell products in California  
7 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
8 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
9 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
10 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
11 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 12 15. Proposition 65 provides that any person "violating or threatening to violate" the statute  
13 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
14 "Threaten to violate" means "to create a condition in which there is a substantial  
15 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
16 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
17 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 18 16. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate, also  
19 known as Bis (2-ethylhexyl) phthalate (“DEHP”) to the list of chemicals known to the  
20 State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of  
21 chemicals known to the State to cause developmental male reproductive toxicity.  
22 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
23 after addition of DEHP to the list of chemicals known to the State to cause reproductive  
24 toxicity, DEHP became fully subject to Proposition 65 warning requirements and  
25 discharge prohibitions.
- 26 17. Plaintiff identified certain practices of manufacturers and distributors products bearing  
27 DEHP exposing, knowingly and intentionally, persons in California to the Proposition  
28 65-listed chemicals of such products without first providing clear and reasonable

1 warnings of such to the exposed persons prior to the time of exposure. Plaintiff later  
2 discerned that Defendants engaged in such practice.

3 **SATISFACTION OF PRIOR NOTICE**

4 18. On or about May 5, 2015 Plaintiff gave notice of alleged violations of Health and Safety  
5 Code section 25249.6, concerning consumer products exposures subject to a private  
6 action to CENTURION and ROSS and to the California Attorney General, County  
7 District Attorneys, and City Attorneys for each city containing a population of at least  
8 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the  
9 product Hand Tools, containing DEHP.

10 19. On or about October 8, 2015, Plaintiff gave notice of alleged violations of Health and  
11 Safety Code section 25249.6, concerning consumer products exposures and occupational  
12 exposures, subject to a private action to CENTURION and ROSS and to the California  
13 Attorney General, County District Attorneys, and City Attorneys for each city containing  
14 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
15 occurred, concerning the product Hand Tools containing DEHP.

16 20. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
17 products involved, the likelihood that such products would cause users to suffer  
18 significant exposures to DEHP and the corporate structure of each of the Defendants.

19 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
20 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
21 Plaintiff who executed the certificate had consulted with at least one person with relevant  
22 and appropriate expertise who reviewed data regarding the exposures to DEHP, the  
23 subject Proposition 65-listed chemicals of this action. Based on that information, the  
24 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
25 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
26 to the Certificate of Merit served on the Attorney General the confidential factual  
27 information sufficient to establish the basis of the Certificate of Merit.  
28

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

4 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
5 gave notices of the alleged violation to CENTURION, ROSS and the public prosecutors  
6 referenced in Paragraphs 18 and 19.

7 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
8 any applicable district attorney or city attorney has commenced and is diligently  
9 prosecuting an action against the Defendants.

10 **FIRST CAUSE OF ACTION**

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

14 **Pruning Saws**

15 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
16 reference paragraphs 1 through 24 of this complaint as though fully set forth herein. Each  
17 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
18 promoter, or retailer of pruning saws with polymer grips, which includes but is not  
19 limited to "Pruning Saw Centurion® 'Blade 7 Inch' '000-463 Centurion Garden &  
20 Outdoor Living, www.centurionbrands.com Made in China, Ross 'Original \$6.99, \$4.99,  
21 SKU# 400115202304, DV03, D1072, C6907' UPC# 8 45049 00215 4" ("PRUNING  
22 SAWS").

23 26. PRUNING SAWS contains DEHP.

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

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

7 29. Plaintiff is informed, believes, and thereon alleges that between May 5, 2012, and the  
8 present, each of the Defendants knowingly and intentionally exposed California  
9 consumers of PRUNING SAWS, which Defendants manufactured, distributed, or sold as  
10 mentioned above, to DEHP without first providing any type of clear and reasonable  
11 warning of such to the exposed persons before the time of exposure. Defendants have  
12 distributed and sold PRUNING SAWS in California. Defendants know and intend that  
13 California consumers will use and consume PRUNING SAWS, thereby exposing them to  
14 DEHP. Defendants thereby violated Proposition 65.

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

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

1 32. 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 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to DEHP from PRUNING SAWS, pursuant to  
6 Health and Safety Code section 25249.7(b).

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

9 **SECOND CAUSE OF ACTION**

10 **(By CONSUMER ADVOCACY GROUP, INC. and against CENTURION, ROSS 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 **Pruning Tips**

14 35. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
15 reference paragraphs 1 through 34 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 pruning tips with polymer grips which includes but is not limited  
18 to: (1) “Pruner’ Centurion® ‘Precision Cut, Hardened Steel Blade’ Centurion Garden &  
19 Outdoor Living, www.centurionbrands.com Made in China, Ross ‘Original \$12.99,  
20 \$3.99, SKU# 400119550883, N512, D1075 C6907, 315’ UPC# 8 45049 00423 3” and  
21 (2) “Pruner TITANIUM, GoldGuard™’ Centurion® ‘Left or Right Hand Lock’  
22 Centurion Garden & Outdoor Living, www.centurionbrands.com Made in China, Ross  
23 ‘Original \$18.00, \$8.99, SKU# 400124383513 N519, D1075, C6907 668’ UPC# 8 45049  
24 00184 3” (“PRUNING TIPS”).

25 36. PRUNING TIPS contain DEHP.

26 37. Defendants knew or should have known that DEHP has been identified by the State of  
27 California as a chemical known to cause cancer and reproductive toxicity and therefore  
28 was subject to Proposition 65 warning requirements. Defendants were also informed of



1 the presence of DEHP in PRUNING TIPS within Plaintiff's notice of alleged violations  
2 further discussed above at Paragraph 20.

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

9 39. Plaintiff is informed, believes, and thereon alleges that between October 8, 2012, and the  
10 present, each of the Defendants knowingly and intentionally exposed California  
11 consumers of PRUNING TIPS, which Defendants manufactured, distributed, or sold as  
12 mentioned above, to DEHP 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 PRUNING TIPS in California. Defendants know and intend that  
15 California consumers will use and consume PRUNING TIPS, thereby exposing them to  
16 DEHP. Defendants thereby violated Proposition 65. .

17 40. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
18 Persons sustain exposures by wearing PRUNING TIPS, handling PRUNING TIPS  
19 without wearing gloves or any other personal protective equipment, or by touching bare  
20 skin or mucous membranes with gloves after handling PRUNING TIPS, as well as  
21 through direct and indirect hand to mouth contact, hand to mucous membrane, or  
22 breathing in particulate matter dispersed from PRUNING TIPS. And as to Defendant's  
23 employees, employees may be exposed to DEHP in their course of their employment by  
24 handling, distributing, and selling PRUNING TIPS.

25 41. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
26 Proposition 65 as to PRUNING TIPS have been ongoing and continuous to the date of  
27 the signing of this complaint, as Defendants engaged and continue to engage in conduct  
28 which violates Health and Safety Code section 25249.6, including the manufacture,

1 distribution, promotion, and sale of PRUNING TIPS, so that a separate and distinct  
2 violation of Proposition 65 occurred each and every time a person was exposed to DEHP  
3 by PRUNING TIPS as mentioned herein.

4 42. 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 43. 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 PRUNING TIPS, pursuant to  
9 Health and Safety Code section 25249.7(b).

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

12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

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

19  
20 Dated: March 4, 2016

YEROUSHALMI & YEROUSHLAMI

21  
22 BY: \_\_\_\_\_

23 Reuben Yeroushalmi  
24 Attorney for Plaintiff,  
25 Consumer Advocacy Group, Inc.  
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