

1 Reuben Yeroushalmi (SBN 193981)
2 Ben Yeroushalmi (SBN 232540)
3 Peter T. Sato (SBN 238486)
4 **YEROUSHALMI & YEROUSHALMI**
5 An Association of Independent Law Corporations
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, California 90212
8 Telephone: 310.623.1926
9 Facsimile: 310.623.1930

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

FILED

JUL 27 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF MARIN**

BY FAX

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

16 Plaintiff,

17 v.

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

21 Defendants.

CASE NO. CIV 1602714

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

24 **THE PARTIES**

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

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

28 ///

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. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl
19 Phthalate ("DEHP") bearing products of exposing, knowingly and intentionally, persons
20 in California to the Proposition 65-listed chemicals of such products without first
21 providing clear and reasonable warnings of such to the exposed persons prior to the time
22 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

23 17. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
24 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
25 to the list of chemicals known to the State to cause developmental male reproductive
26 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
27 months after addition of DEHP to the list of chemicals known to the State to cause
28

1 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
2 requirements and discharge prohibitions.

3 **SATISFACTION OF PRIOR NOTICE**

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

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

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

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

25 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
26 gave notices of the alleged violation to ROSS DRESS FOR LESS, ROSS STORES and
27 the public prosecutors referenced in Paragraph 18.

1 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
2 any applicable district attorney or city attorney has commenced and is diligently
3 prosecuting an action against the Defendants.

4 **FIRST CAUSE OF ACTION**

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

9 **Avocado Slicer**

10 24. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
11 reference paragraphs 1 through 23 of this complaint as though fully set forth herein. Each
12 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
13 promoter, or retailer of Avocado Slicer, which includes but is not limited to, "Ecolution®
14 Cook Well. Do Good. Avocado Slicer, Kitchen Extras!® Epoca International, Inc., Boca
15 Raton, FL, Made in China. ROSS, Compare at \$8.00, \$3.99, SKU# 400125600244
16 EKABK-0803, UPC: 7 41393 43207 7" ("AVOCADO SLICER")

17 25. AVOCADO SLICER contains DEHP.

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

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

1 28. Plaintiff is informed, believes, and thereon alleges that between October 8, 2012 and the
2 present, each of the Defendants knowingly and intentionally exposed their California
3 consumers and users of AVOCADO SLICER, which Defendants manufactured,
4 distributed, or sold as mentioned above, to DEHP, without first providing any type of
5 clear and reasonable warning of such to the exposed persons before the time of exposure.
6 Defendants have distributed and sold AVOCADO SLICER in California. Defendants
7 know and intend that California consumers will use AVOCADO SLICER, thereby
8 exposing them to DEHP. Defendants thereby violated Proposition 65.

9 29. The principal routes of exposure are through dermal contact, ingestion and inhalation.
10 AVOCADO SLICER is used in the preparation of food which is then consumed by the
11 user. Persons sustain exposures by handling AVOCADO SLICER without wearing
12 gloves or any other personal protective equipment, or by touching bare skin or mucous
13 membranes with gloves after handling AVOCADO SLICER, as well as through direct
14 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
15 particulate matter dispersed from AVOCADO SLICER.

16 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
17 Proposition 65 as to AVOCADO SLICER have been ongoing and continuous to the date
18 of the signing of this complaint, as Defendants engaged and continue to engage in
19 conduct which violates Health and Safety Code section 25249.6, including the
20 manufacture, distribution, promotion, and sale of AVOCADO SLICER, so that a separate
21 and distinct violation of Proposition 65 occurred each and every time a person was
22 exposed to DEHP by AVOCADO SLICER as mentioned herein.

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

26 32. Based on the allegations herein, Defendants are liable for civil penalties of up to
27 \$2,500.00 per day per individual exposure to DEHP from AVOCADO SLICER, pursuant
28 to Health and Safety Code section 25249.7(b).

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

3 **PRAYER FOR RELIEF**

4 Plaintiff demands against each of the Defendants as follows:

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

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12 Dated: July 27, 2016

YEROUSHALMI & YEROUSHLAMI

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15 BY: 

16 Reuben Yeroushalmi
17 Attorneys for Plaintiff,
18 Consumer Advocacy Group, Inc.
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