

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY & SMITH, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 15 2019

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8 *Attorneys for Plaintiff*

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 HECTOR VELARDE, EMA BELL,  
13 ANTHONY FERREIRO,

14 Plaintiffs,

15 vs.

16 ROSS STORES, INC.,

17 Defendant.

Case No.:

**RG19011044**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELEIF**

**(Violation of Health & Safety Code § 25249.5 et  
seq.)**

18 Plaintiffs Hector Velarde (“Velarde”), Ema Bell (“Bell”) and Anthony Ferreiro  
19 (“Ferreiro”) (collectively, “Plaintiffs”), by and through their attorneys, alleges the following  
20 cause of action in the public interest of the citizens of the State of California.

21 **BACKGROUND OF THE CASE**

22 1. Plaintiffs bring this representative action on behalf of all California citizens to  
23 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
24 at the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,  
25 “[n]o person in the course of doing business shall knowingly and intentionally expose any  
26 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
27 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

28 2. This complaint is a representative action brought by Plaintiffs in the public  
interest of the citizens of the State of California to enforce the People’s right to be informed of  
the health hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical

BY FAX

1 found in underbed storage boxes/bags/containers manufactured by Ningbo General Union Co.,  
2 Ltd. sold and/or distributed by defendant Ross Stores, Inc. (“Ross Stores” or “Defendant”) in  
3 California.

4 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
5 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
6 known to the State to cause cancer and it has come under the purview of Proposition 65  
7 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
8 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
9 known to cause reproductive toxicity.

10 4. Proposition 65 requires all businesses with ten (10) or more employees that  
11 operate within California or sell products therein to comply with Proposition 65 regulations.  
12 Included in such regulations is the requirement that businesses must label any product containing  
13 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and  
14 intentionally” exposing any person to it.

15 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
16 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety  
17 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
18 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety  
19 Code § 25249.7.

20 6. Plaintiffs allege that Defendant distributes and/or offers for sale in California,  
21 without a requisite exposure warning, underbed boot bags, Under-the-Bed shoe organizers, and  
22 Under-the-Bed storage bags (collectively, the “Products”) that expose persons to DEHP.

23 7. Defendant’s failure to warn consumers and other individuals in California of the  
24 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution  
25 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and  
26 civil penalties described herein.

27 8. Plaintiffs seeks civil penalties against Defendant for its violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).



1 registered with the California Secretary of State as foreign corporations authorized to do business  
2 in the State of California, and/or has otherwise purposefully availed itself of the California  
3 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts  
4 consistent and permissible with traditional notions of fair play and substantial justice.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 16. On March 19, 2018, March 20, 2018, and July 26, 2018, plaintiffs Velarde, Bell  
7 and Ferreiro, respectively, gave notice of alleged violation of Health and Safety Code § 25249.6  
8 (collectively, the “Notices”) to Defendant concerning the exposure of California citizens to  
9 DEHP contained in the Products without proper warning, subject to a private action to Defendant  
10 and to the California Attorney General’s office and the offices of the County District attorneys  
11 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
12 herein violations allegedly occurred.

13 17. The Notices complied with all procedural requirements of Proposition 65  
14 including the attachment of a Certificate of Merit affirming that Plaintiffs’ counsel had consulted  
15 with at least one person with relevant and appropriate expertise who reviewed relevant data  
16 regarding DEHP exposure, and that counsel believed there was meritorious and reasonable cause  
17 for a private action.

18 18. After receiving the Notices, and to Plaintiffs’ best information and belief, none of  
19 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
20 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which  
21 are the subject of Plaintiff’s notice of violation.

22 19. Plaintiffs are commencing this action more than sixty (60) days from the date of  
23 the Notice to Defendant, as required by law.

24 **FIRST CAUSE OF ACTION**

25 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

26 20. Plaintiffs hereby repeats and incorporates by reference paragraphs 1 through 19 of  
27 this complaint as though fully set forth herein.

28

1           21.     Defendant has, at all times mentioned herein, acted as a distributor and/or retailer  
2 of the Product.

3           22.     The Products contain DEHP, a hazardous chemical found on the Proposition 65  
4 list of chemicals known to be hazardous to human health.

5           23.     The Products do not comply with the Proposition 65 warning requirements.

6           24.     Plaintiffs, based on their best information and belief, avers that at all relevant  
7 times herein, and at least since August 5, 2017, continuing until the present, that Defendant has  
8 continued to knowingly and intentionally expose California users and consumers of the Product  
9 to DEHP without providing required warnings under Proposition 65.

10          25.     The exposures that are the subject of the Notice result from the purchase,  
11 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
12 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to  
13 DEHP by dermal absorption through direct skin contact with the Products during routine use  
14 when the Products are manipulated with bare hands. The Products can be expected to emit gas  
15 phase DEHP into the air and accumulate DEHP at the surface over the lifetime of the Products.  
16 Concentrations of gas phase DEHP can potentially be absorbed to the surface of the interior  
17 contents that are subsequently handled, worn in direct contact with skin, mouthed, or ingested by  
18 the user. If the Products are stored in a drawer, DEHP that leaches from the Products may  
19 contaminate other articles contained within the storage space that are subsequently handled,  
20 worn, or ingested by the user. Finally, while mouthing of the Products does not seem likely,  
21 some amount of exposure through ingestion can occur by touching the Products with subsequent  
22 touching of the user's hand to mouth.

23          26.     Plaintiffs, based on their best information and belief, avers that such exposures  
24 will continue every day until clear and reasonable warnings are provided to purchasers and users  
25 of the Products, or until this known toxic chemical is removed from the Products.

26          27.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
27 Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will  
28

1 occur by its deliberate, non-accidental participation in the importation, distribution, sale and  
2 offering of the Products to consumers in California

3 28. Plaintiffs have engaged in good faith efforts to resolve the herein claims prior to  
4 this Complaint.

5 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
6 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

7 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
8 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs demand judgment against Defendant and requests the  
11 following relief:

- 12 A. That the court assess civil penalties against Defendant in the amount of  
13 \$2,500 per day for each violation in accordance with Health and Safety  
14 Code § 25249.7(b);
- 15 B. That the court preliminarily and permanently enjoin Defendant mandating  
16 Proposition 65 compliant warnings on the Product;
- 17 C. That the court grant Plaintiffs' reasonable attorney's fees and costs of suit.
- 18 D. That the court grant any further relief as may be just and proper.

19  
20 Dated: March 14, 2018

BRODSKY & SMITH, LLC

21 By:  \_\_\_\_\_  
22 Evan J. Smith (SBN242352)  
23 Ryan P. Cardona (SBN302113)  
24 9595 Wilshire Boulevard, Suite 900  
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*Attorneys for Plaintiff*