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7 CONSUMER ADVOCACY GROUP, INC.

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11
12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,

14 Plaintiff,

15 v.

16 ROSS DRESS FOR LESS, INC., a Virginia
17 Corporation;
ROSS STORES, INC., dba DD'S
18 DISCOUNTS a Delaware Corporation;
19 ROSS PROCUREMENT INC., a Delaware
20 Corporation;
and DOES 1-70,

21 Defendants.

CASE NO. **20STCV03564**

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
23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges seven causes of action
24 against defendants ROSS DRESS FOR LESS, ROSS STORES, INC., dba DD'S DISCOUNTS,
25 INC., ROSS PROCUREMENT INC., and DOES 1-70 as follows:
26
27

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 as a private attorney general, brings this action in the public interest as defined under Health and Safety Code Section 25249.7, subdivision (d).
2. Defendant ROSS DRESS FOR LESS, INC. (“ROSS DRESS”) is a Virginia Corporation, qualified to do business in Virginia, and doing business in the State of California at all relevant times herein.
3. Defendant ROSS STORES, INC., dba DD’S DISCOUNTS (“ROSS STORES”) is a Delaware Corporation, qualified to do business in Delaware, and doing business in the State of California at all relevant times herein.
4. Defendant ROSS PROCUREMENT INC. (“ROSS PRO”) is a Delaware Corporation, qualified to do business in Delaware, and doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-30, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
6. At all times mentioned herein, the term “Defendants” includes ROSS DRESS, ROSS STORES, ROSS PRO, and DOES 1-70.
7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-70, was an agent, servant, or employee of each of the other

1 Defendants. In conducting the activities alleged in this Complaint, each of the Defendants
2 was acting within the course and scope of this agency, service, or employment, and was
3 acting with the consent, permission, and authorization of each of the other Defendants.
4 All actions of each of the Defendants alleged in this Complaint were ratified and
5 approved by every other Defendant or their officers or managing agents. Alternatively,
6 each of the Defendants aided, conspired with and/or facilitated the alleged wrongful
7 conduct of each of the other Defendants.

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

12 JURISDICTION

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

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

- 26 12. Venue is proper in the County of Los Angeles because one or more of the instances of
27 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or

1 because Defendants conducted, and continue to conduct, business in the County of Los
2 Angeles with respect to the consumer product that is the subject of this action.

3 **BACKGROUND AND PRELIMINARY FACTS**

4 13. In 1986, California voters approved an initiative to address growing concerns about
5 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
7 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
8 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
9 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
10 from contamination, to allow consumers to make informed choices about the products
11 they buy, and to enable persons to protect themselves from toxic chemicals as they see
12 fit.

13 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to
14 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
15 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
16 chemicals and chemical families. Proposition 65 imposes warning requirements and
17 other controls that apply to Proposition 65-listed chemicals.

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

24 16. Proposition 65 provides that any person “violating or threatening to violate” the statute
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
26 “Threaten to violate” means “to create a condition in which there is a substantial
27 probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).

1 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
2 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

3 17. Plaintiff identified certain practices of manufacturers and distributors of consumer
4 products of exposing, knowingly and intentionally, persons in California to Di(2-
5 ethylhexyl)phthalate (“DEHP”) and Diisononyl Phthalate (“DINP”) in such products
6 without first providing clear and reasonable warnings of such to the exposed persons
7 prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such
8 practice.

9 18. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
10 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
11 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
12 addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP
13 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

14 19. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
15 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*
16 *Regs.* tit. 27, § 27001(c)). Pursuant to Health and Safety Code sections 25249.9 and
17 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to
18 the State to cause reproductive and developmental toxicity, DEHP became fully subject
19 to Proposition 65 warning requirements and discharge prohibitions.

20 20. On December 20, 2013, the Governor of California added DINP to the list of chemicals
21 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
22 Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after
23 addition of DINP to the list of chemicals known to the State to cause cancer, DINP
24 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

25 **SATISFACTION OF PRIOR NOTICE**

26 21. On or about May 22, 2019, Plaintiff gave notice of alleged violations of Health and
27 Safety Code Section 25249.6, concerning consumer products exposures, subject to a

1 private action to ROSS DRESS, ROSS STORES, and to the California Attorney General,
2 County District Attorneys, and City Attorneys for each city containing a population of at
3 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
4 the Clear Plastic Handbags with PVC Components

5 22. On or about August 21, 2019, 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 ROSS DRESS, ROSS STORES, ROSS PRO, and to the California
8 Attorney General, County District Attorneys, and City Attorneys for each city containing
9 a population of at least 750,000 people in whose jurisdictions the violations allegedly
10 occurred, concerning the Fanny Pack with Plastic Components.

11 23. On or about September 17, 2019, Plaintiff gave notice of alleged violations of Health and
12 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
13 private action to ROSS STORES, and to the California Attorney General, County District
14 Attorneys, and City Attorneys for each city containing a population of at least 750,000
15 people in whose jurisdictions the violations allegedly occurred, concerning the Booster
16 Cables with Polymer Components.

17 24. On or about September 23, 2019, Plaintiff gave notice of alleged violations of Health and
18 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
19 private action to ROSS STORES, and to the California Attorney General, County District
20 Attorneys, and City Attorneys for each city containing a population of at least 750,000
21 people in whose jurisdictions the violations allegedly occurred, concerning the Backpack
22 with Plastic Components.

23 25. On or about October 2, 2019, Plaintiff gave notice of alleged violations of Health and
24 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
25 private action to ROSS DRESS, ROSS STORES, ROSS PRO, and to the California
26 Attorney General, County District Attorneys, and City Attorneys for each city containing
27 a population of at least 750,000 people in whose jurisdictions the violations allegedly

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1 occurred, concerning the Plastic Cosmetic Case.

2 26. On or about October 4, 2019, Plaintiff gave notice of alleged violations of Health and
3 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
4 private action to ROSS STORES, and to the California Attorney General, County District
5 Attorneys, and City Attorneys for each city containing a population of at least 750,000
6 people in whose jurisdictions the violations allegedly occurred, concerning the Kid's
7 Backpack with Plastic Components.

8 27. On or about October 23, 2019, Plaintiff gave notice of alleged violations of Health and
9 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
10 private action to ROSS STORES, ROSS DRESS, ROSS PRO and to the California
11 Attorney General, County District Attorneys, and City Attorneys for each city containing
12 a population of at least 750,000 people in whose jurisdictions the violations allegedly
13 occurred, concerning the Steering Wheel Cover with PVC Components.

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

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

1 30. Plaintiff's notice 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 31. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notice of the alleged violations to ROSS DRESS, ROSS STORES, ROSS PRO, and
6 the public prosecutors referenced in Paragraphs 21-27.

7 32. 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 ROSS DRESS, ROSS
12 STORES and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water
13 and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

14 **Women's Accessories**

15 33. Plaintiff repeats and incorporates by reference paragraphs 1 through 32 of this complaint
16 as though fully set forth herein.

17 34. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Clear Plastic Handbags with PVC Components
19 ("Handbag"), including but not limited Clear Handbag with gold handle; "Orchid Love";
20 "Style No. 483; Color: Gold; Size 20x9x16cm"; "Made In China";
21 "SKU400189389376".

22 35. Handbag contains DEHP.

23 36. Defendants knew or should have known that DEHP has been identified by the State of
24 California as a chemical known to cause cancer and developmental and male
25 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
26 Defendants were also informed of the presence of DEHP in Handbag within Plaintiff's
27 notice of alleged violations further discussed above at Paragraph 21.

28 37. Plaintiff's allegations regarding Handbag concerns "[c]onsumer products exposure[s],"

1 which "is an exposure that results from a person's acquisition, purchase, storage,
2 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
3 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

4 Handbag is a consumer product, and, as mentioned herein, exposures to DEHP took place
5 as a result of such normal and foreseeable consumption and use.

6 38. Plaintiff is informed, believes, and thereon alleges that between May 22, 2016 and the
7 present, each of the Defendants knowingly and intentionally exposed California
8 consumers and users of Handbags, which Defendants manufactured, distributed, or sold
9 as mentioned above, to DEHP, without first providing any type of clear and reasonable
10 warning of such to the exposed persons before the time of exposure. Defendants have
11 distributed and sold Handbag in California. Defendants know and intend that California
12 consumers will use Handbag, thereby exposing them to DEHP. Defendants thereby
13 violated Proposition 65.

14 39. The principal routes of exposure are through transdermal absorption, ingestion and
15 inhalation. Persons sustain exposures by using or handling Handbag without wearing
16 gloves or any other personal protective equipment, or by touching bare skin or mucous
17 membranes with gloves after handling Handbag, as well as through direct and indirect
18 hand to mouth contact, hand to food to mouth, hand to mucous membrane, as well as
19 environmental mediums that carry the DEHP once contained in the Handbag.

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

26 41. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
27 mentioned herein is ever continuing. Plaintiff further alleges and believes that the

1 violations alleged herein will continue to occur into the future.

2 42. Based on the allegations herein, Defendants are liable for civil penalties of up to
3 \$2,500.00 per day per individual exposure to DEHP from Handbag, pursuant to Health
4 and Safety Code Section 25249.7(b).

5 43. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
6 filing this Complaint.

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8 **SECOND CAUSE OF ACTION**

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

13 **Fashion Accessories**

14 44. Plaintiff repeats and incorporates by reference paragraphs 1 through 43 of this complaint
15 as though fully set forth herein.

16 45. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 distributor, promoter, or retailer of Fanny Pack with Plastic Components (“Fanny Pack”),
18 including but not limited to “love trove;” “LOS ANGELES;” “MB136;” “MARBLE;”
19 “MADE IN CHINA;” “dd’s DISCOUNTS;” “D5301 C2000;” “400191836974”.

20 46. Fanny Pack contains DINP.

21 47. Defendants knew or should have known that DINP has been identified by the State of
22 California as a chemical known to cause cancer and therefore was subject to Proposition
23 65 warning requirements. Defendants were also informed of the presence of DINP in
24 Fanny Pack within Plaintiff’s notice of alleged violations further discussed above at
25 Paragraph 22.

26 48. Plaintiff’s allegations regarding Fanny Pack concerns “[c]onsumer products exposure[s],”
27 which “is an exposure that results from a person’s acquisition, purchase, storage,
28 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b).*

1 Fanny Pack is a consumer product, and, as mentioned herein, exposures to DINP took
2 place as a result of such normal and foreseeable consumption and use.

3 49. Plaintiff is informed, believes, and thereon alleges that between August 21, 2016 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Fanny Packs, which Defendants manufactured, distributed, or
6 sold as mentioned above, to DINP, without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.
8 Defendants have distributed and sold Fanny Pack in California. Defendants know and
9 intend that California consumers will use Fanny Pack, thereby exposing them to DINP.
10 Defendants thereby violated Proposition 65.

11 50. The principal routes of exposure are through transdermal absorption, ingestion and
12 inhalation. Persons sustain exposures by using or handling Fanny Pack without wearing
13 gloves or any other personal protective equipment, or by touching bare skin or mucous
14 membranes with gloves after handling Fanny Pack, as well as through direct and indirect
15 hand to mouth contact, hand to food to mouth, hand to mucous membrane, as well as
16 environmental mediums that carry the DINP once contained in the Fanny Pack.

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

23 52. 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 53. Based on the allegations herein, Defendants are liable for civil penalties of up to
27 \$2,500.00 per day per individual exposure to DINP from Fanny Pack, pursuant to Health

1 and Safety Code Section 25249.7(b).

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

4 **THIRD CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against ROSS STORES, and**
6 **DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
7 **Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

8 **Automotive Tools**

9 55. Plaintiff repeats and incorporates by reference paragraphs 1 through 54 of this complaint
10 as though fully set forth herein.

11 56. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Booster Cables with Polymer Components ("Cable"),
13 including but not limited "Plus Start™ Booster Cables"; "12 Feet Long 10 Gauge 28
14 71301"; "150 AMP"; "No Tangle, Color Coded Cables; Fits Top and Side Terminal
15 Batteries; Ideal For Small Compartment Storage"; "Front to Front"; "Contents Made in
16 China Distributed by Sears, Roebuck and Co., Hoffman Estates, IL 60179"; "UPC 0
17 26666 91103 0".

18 57. Cable contains DEHP.

19 58. Defendants knew or should have known that DEHP has been identified by the State of
20 California as a chemical known to cause cancer and developmental and male
21 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
22 Defendants were also informed of the presence of DEHP in Cable within Plaintiff's notice
23 of alleged violations further discussed above at Paragraph 23.

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

1 a result of such normal and foreseeable consumption and use.

2 60. Plaintiff is informed, believes, and thereon alleges that between September 17, 2016 and
3 the present, each of the Defendants knowingly and intentionally exposed California
4 consumers and users of Cables, which Defendants manufactured, distributed, or sold as
5 mentioned above, to DEHP, without first providing any type of clear and reasonable
6 warning of such to the exposed persons before the time of exposure. Defendants have
7 distributed and sold Cable in California. Defendants know and intend that California
8 consumers will use Cables, thereby exposing them to DEHP. Defendants thereby
9 violated Proposition 65.

10 61. The principal routes of exposure are through dermal contact, ingestion and inhalation.
11 Persons sustain exposures by using, carrying or handling Cable without wearing gloves
12 or any other personal protective equipment, or by touching bare skin or mucous
13 membranes with gloves after handling Cable, as well as through direct and indirect hand
14 to mouth contact, hand to food to mouth, hand to mucous membrane, as well as
15 environmental mediums that carry the DEHP once contained in the Cable.

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

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

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

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

3 **FOURTH CAUSE OF ACTION**

4 **(By CONSUMER ADVOCACY GROUP, INC. and against ROSS STORES, and**
5 **DOES 31-40 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
6 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*)**

7 **Fashion Accessories**

8 66. Plaintiff repeats and incorporates by reference paragraphs 1 through 65 of this complaint
9 as though fully set forth herein.

10 67. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
11 distributor, promoter, or retailer of Backpack with Plastic Components. ("Backpack"),
12 including but not limited "Orchid Love;" "STYLE NO.: #475;" "COLOR: CLEAR;"
13 "SIZE: 25*21*11 CM;" "MADE IN CHINA;" RN# 122345;" "ROSS;" "D2011 C5765;"
14 "400189623777".

15 68. Backpack contains DEHP.

16 69. Defendants knew or should have known that DEHP has been identified by the State of
17 California as a chemical known to cause cancer and developmental and male
18 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
19 Defendants were also informed of the presence of DEHP in Backpack within Plaintiff's
20 notice of alleged violations further discussed above at Paragraph 24.

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

27 71. Plaintiff is informed, believes, and thereon alleges that between September 23, 2016 and
28 the present, each of the Defendants knowingly and intentionally exposed California

1 consumers and users of Backpacks, which Defendants manufactured, distributed, or sold
2 as mentioned above, to DEHP, without first providing any type of clear and reasonable
3 warning of such to the exposed persons before the time of exposure. Defendants have
4 distributed and sold Backpack in California. Defendants know and intend that California
5 consumers will use Backpack, thereby exposing them to DEHP. Defendants thereby
6 violated Proposition 65.

7 72. The principal routes of exposure are through dermal contact, ingestion and inhalation.

8 Persons sustain exposures by using, carrying or handling Backpack without wearing
9 gloves or any other personal protective equipment, or by touching bare skin or mucous
10 membranes with gloves after handling Backpack, as well as through direct and indirect
11 hand to mouth contact, hand to food to mouth, hand to mucous membrane, as well as
12 environmental mediums that carry the DEHP once contained in the Backpack.

13 73. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of

14 Proposition 65 as to Backpack have been ongoing and continuous, as Defendants
15 engaged and continue to engage in conduct which violates Health and Safety Code
16 Section 25249.6, including the manufacture, distribution, promotion, and sale of
17 Backpack, so that a separate and distinct violation of Proposition 65 occurred each and
18 every time a person was exposed to DEHP by Backpack as mentioned herein.

19 74. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65

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

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

23 \$2,500.00 per day per individual exposure to DEHP from Backpack, pursuant to Health
24 and Safety Code Section 25249.7(b).

25 76. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to

26 filing this Complaint.
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1 **FIFTH CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against ROSS DRESS, ROSS**
3 **STORES, ROSS PRO, and DOES 41-50 for Violations of Proposition 65, The Safe**
4 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
5 **25249.5, *et seq.*))**

6 **Cosmetic Cases**

7 77. Plaintiff repeats and incorporates by reference paragraphs 1 through 76 of this complaint
8 as though fully set forth herein.

9 78. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Plastic Cosmetic Case ("Cosmetic Case"), including
11 but not limited "ali&dax;" "AD06694;" "10 PIECE SET;" "AD8624CH;" "IMPORTED
12 BY ACI BRANDS INC. 2616 SHERIDAN GARDEN DRIVE, OAKVILLE, ONTARIO,
13 L6J 7Z2 CANADA;" "WWW.ACIBRANDS.COM;" "MADE IN CHINA;" "6 20584
14 58624 2;" "dd's DISCOUNTS;" "D5423 C5430;" "COSMTIC CASES;"
15 "400192251462".

16 79. Cosmetic Case contains DEHP.

17 80. Defendants knew or should have known that DEHP has been identified by the State of
18 California as a chemical known to cause cancer and developmental and male
19 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
20 Defendants were also informed of the presence of DEHP in Cosmetic Case within
21 Plaintiff's notice of alleged violations further discussed above at Paragraph 25.

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

28 82. Plaintiff is informed, believes, and thereon alleges that between October 2, 2016 and the
present, each of the Defendants knowingly and intentionally exposed California

1 consumers and users of Cosmetic Cases, which Defendants manufactured, distributed, or
2 sold as mentioned above, to DEHP, without first providing any type of clear and
3 reasonable warning of such to the exposed persons before the time of exposure.

4 Defendants have distributed and sold Cosmetic Case in California. Defendants know and
5 intend that California consumers will use Cosmetic Case, thereby exposing them to
6 DEHP. Defendants thereby violated Proposition 65.

7 83. The principal routes of exposure are through dermal contact, ingestion and inhalation.

8 Persons sustain exposures by using, carrying or handling Cosmetic Case without wearing
9 gloves or any other personal protective equipment, or by touching bare skin or mucous
10 membranes with gloves after handling Cosmetic Case, as well as through direct and
11 indirect hand to mouth contact, hand to food to mouth, hand to mucous membrane, as
12 well as environmental mediums that carry the DEHP once contained in the Cosmetic
13 Case.

14 84. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
15 Proposition 65 as to Cosmetic Case have been ongoing and continuous, as Defendants
16 engaged and continue to engage in conduct which violates Health and Safety Code
17 Section 25249.6, including the manufacture, distribution, promotion, and sale of
18 Cosmetic Case, so that a separate and distinct violation of Proposition 65 occurred each
19 and every time a person was exposed to DEHP by Cosmetic Case as mentioned herein.

20 85. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
21 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
22 violations alleged herein will continue to occur into the future.

23 86. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to DEHP from Cosmetic Case, pursuant to
25 Health and Safety Code Section 25249.7(b).

26 87. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
27 filing this Complaint.

28

1 **SIXTH CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against ROSS STORES, and**
3 **DOES 51-60 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.)**

5 **Kid's Accessories**

6 88. Plaintiff repeats and incorporates by reference paragraphs 1 through 87 of this complaint
7 as though fully set forth herein.

8 89. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Kid's Backpack with Plastic Components. ("Kid's
10 Backpack"), including but not limited Clear Pink Backpack. "Kiss Me Couture"; "Style:
11 KMC1615, Color: Pink"; SKU 400186183649, "Made in China".

12 90. Kid's Backpack contains DEHP.

13 91. Defendants knew or should have known that DEHP has been identified by the State of
14 California as a chemical known to cause cancer and developmental and male
15 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
16 Defendants were also informed of the presence of DEHP in Kid's Backpack within
17 Plaintiff's notice of alleged violations further discussed above at Paragraph 26.

18 92. Plaintiff's allegations regarding Kid's Backpack concerns "[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)*. Kid's Backpack is a consumer product, and, as mentioned herein, exposures to
23 DEHP took place as a result of such normal and foreseeable consumption and use.

24 93. Plaintiff is informed, believes, and thereon alleges that between October 4, 2016 and the
25 present, each of the Defendants knowingly and intentionally exposed California
26 consumers and users of Kid's Backpacks, which Defendants manufactured, distributed,
27 or sold as mentioned above, to DEHP, without first providing any type of clear and
28 reasonable warning of such to the exposed persons before the time of exposure.

1 Defendants have distributed and sold Kid's Backpack in California. Defendants know
2 and intend that California consumers will use Kid's Backpack, thereby exposing them to
3 DEHP. Defendants thereby violated Proposition 65.

4 94. The principal routes of exposure are through dermal contact, ingestion and inhalation.

5 Persons sustain exposures by using, carrying or handling Kid's Backpack without
6 wearing gloves or any other personal protective equipment, or by touching bare skin or
7 mucous membranes with gloves after handling Kid's Backpack, as well as through direct
8 and indirect hand to mouth contact, hand to food to mouth, hand to mucous membrane, as
9 well as environmental mediums that carry the DEHP once contained in the Kid's
10 Backpack.

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

17 96. 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 97. 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 Kid's Backpack, pursuant to
22 Health and Safety Code Section 25249.7(b).

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

1
2
3 **SEVENTH CAUSE OF ACTION**

4 **(By CONSUMER ADVOCACY GROUP, INC. and against ROSS STORES, ROSS**
5 **DRESS, ROSS PRO and DOES 61-70 for Violations of Proposition 65, The Safe**
6 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
7 **25249.5, *et seq.*))**

8 **Auto Accessories**

9 99. Plaintiff repeats and incorporates by reference paragraphs 1 through 98 of this complaint
10 as though fully set forth herein.

11 100. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Steering Wheel Cover with PVC Components.
13 (“Steering Wheel”), including but not limited “Plus Start™ Booster Cables”; “12 Feet
14 Long 10 Gauge 28 71301”; “150 AMP”; “No Tangle, Color Coded Cables; Fits Top and
15 Side Terminal Batteries; Ideal For Small Compartment Storage”; “Front to Front”;
16 ‘Contents Made in China Distributed by Sears, Roebuck and Co., Hoffman Estates, IL
17 60179”; “UPC 0 26666 91103 0”.

18 101. Steering Wheel contains DEHP.

19 102. Defendants knew or should have known that DEHP has been identified by the
20 State of California as a chemical known to cause cancer and developmental and male
21 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
22 Defendants were also informed of the presence of DEHP in Steering Wheel within
23 Plaintiff’s notice of alleged violations further discussed above at Paragraph 27.

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

1 104. Plaintiff is informed, believes, and thereon alleges that between October 23, 2016
2 and the present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Steering Wheels, which Defendants manufactured, distributed, or
4 sold as mentioned above, to DEHP, without first providing any type of clear and
5 reasonable warning of such to the exposed persons before the time of exposure.

6 Defendants have distributed and sold Steering Wheel in California. Defendants know
7 and intend that California consumers will use Steering Wheel, thereby exposing them to
8 DEHP. Defendants thereby violated Proposition 65.

9 105. The principal routes of exposure are through dermal contact, ingestion and
10 inhalation. Persons sustain exposures by using, carrying or handling Steering Wheel
11 without wearing gloves or any other personal protective equipment, or by touching bare
12 skin or mucous membranes with gloves after handling Steering Wheel, as well as through
13 direct and indirect hand to mouth contact, hand to food to mouth, hand to mucous
14 membrane, as well as environmental mediums that carry the DEHP once contained in the
15 Steering Wheel.

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

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

25 108. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to DEHP from Steering Wheel, pursuant to
27 Health and Safety Code Section 25249.7(b).

1 109. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein
2 prior to 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.

10
11 Dated: January 28, 2020

YEROUSHALMI & YEROUSHALMI

12
13
14 BY: 

15 Reuben Yeroushalmi
16 Attorneys for Plaintiff,
17 CONSUMER ADVOCACY GROUP, INC.