

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Jon Takasugi

1 Reuben Yeroushalmi (SBN 193981)

2 reuben@yeroshalmi.com

3 **YERUSHALMI & YERUSHALMI\***

4 9100 Wilshire Boulevard, Suite 240W

5 Beverly Hills, California 90212

6 Telephone: (310) 623-1926

7 Facsimile: (310) 623-1930

8 Attorneys for Plaintiff,

9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 ROSS STORES, INC. DBA DD'S  
17 DISCOUNTS, a Delaware Corporation;  
18 and DOES 1-30,

19 Defendants.

CASE NO. 20STCV45871

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)

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21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges three causes of action  
22 against defendants ROSS STORES, INC. DBA DD'S DISCOUNTS, and DOES 1-30 as  
23 follows:  
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**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 STORES, INC. DBA DD’S DISCOUNTS (“ROSS”) is a Delaware Corporation qualified to do business in Delaware, and doing business in the State of California at all relevant times herein.
3. 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.
4. At all times mentioned herein, the term “Defendants” includes ROSS and DOES 1-30.
5. 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.
6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-30, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing

1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated  
2 the alleged wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

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

- 21 10. Venue is proper in the County of Los Angeles because one or more of the instances of  
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles  
23 and/or because Defendants conducted, and continue to conduct, business in the County  
24 of Los Angeles with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

19 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
20 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
21 25249.7. "Threaten to violate" means "to create a condition in which there is a  
22 substantial probability that a violation will occur." *Health & Safety Code* §  
23 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day  
24 per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

25 15. Plaintiff identified certain practices of manufacturers and distributors of Di(2-  
26 ethylhexyl)phthalate ("DEHP") and Diisononyl phthalate ("DINP") -bearing products  
27 of exposing, knowingly and intentionally, persons in California to DEHP of such  
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1 products without first providing clear and reasonable warnings of such to the exposed  
2 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged  
3 in such practice.

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

10 17. On October 24, 2003, the Governor of California added DEHP to the list of chemicals  
11 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*  
12 *Regs.* tit. 27, § 27001(c)). Pursuant to Health and Safety Code Sections 25249.9 and  
13 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to  
14 the State to cause developmental and male reproductive toxicity, DEHP became fully  
15 subject to Proposition 65 warning requirements and discharge prohibitions.

16 **SATISFACTION OF PRIOR NOTICE**

17 18. Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6 as  
18 follows:

- 19 a. On or about March 10, 2020, concerning consumer products exposures subject  
20 to a private action to ROSS and to the California Attorney General, County  
21 District Attorneys, and City Attorneys for each city containing a population of at  
22 least 750,000 people in whose jurisdictions the violations allegedly occurred,  
23 concerning Magnifying Mirrors.
- 24 b. On or about August 18, 2020, Plaintiff gave notice of alleged violations of  
25 Health and Safety Code Section 25249.6, concerning consumer products  
26 exposures subject to a private action to ROSS and to the California Attorney  
27 General, County District Attorneys, and City Attorneys for each city containing  
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1 a population of at least 750,000 people in whose jurisdictions the violations  
2 allegedly occurred, concerning Makeup Bags.

3 c. On or about September 2, 2020, Plaintiff gave notice of alleged violations of  
4 Health and Safety Code Section 25249.6, concerning consumer products  
5 exposures subject to a private action to ROSS and to the California Attorney  
6 General, County District Attorneys, and City Attorneys for each city containing  
7 a population of at least 750,000 people in whose jurisdictions the violations  
8 allegedly occurred, concerning Jewelry Box.

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

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

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

24 22. Plaintiff is commencing this action more than sixty (60) days from the dates that  
25 Plaintiff gave notice of the alleged violations to ROSS, and the public prosecutors  
26 referenced in Paragraph 18.

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1 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General,  
2 nor 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, and DOES 1-10**  
6 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement**  
7 **Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

8 **Mirrors**

9 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this  
10 complaint as though fully set forth herein.

11 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
12 distributor, promoter, or retailer of Magnifying Mirrors including but not limited to:  
13 “nicole miller NEW YORK;” “MAGNIFYING MIRROR WITH SUTCION CUPS;”  
14 “www.nicolemiller.com;” “FOR ADULTS ONLY. NOT TESTED ON ANIMALS.  
15 DESIGNED IN THE USA / MADE IN CHINA DESIGNED EXCLUSIVELY AND  
16 DISTRIBUTED BY: ENCHANTÉ ACCESSORIES INC., NY, NY 10016;” “1 92598  
17 30873 3;” “ROSS;” “\$5.99;” “COMPARABLE VALUE \$10.00;” “K 400194926344  
18 D111 C5932;” (“Mirrors”).

19 26. Mirrors contain DEHP.

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

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

1 Mirrors are consumer products, and, as mentioned herein, exposures to DEHP took  
2 place as a result of such normal and foreseeable consumption and use.

3 29. Plaintiff is informed, believes, and thereon alleges that between March 10, 2017 and the  
4 present, each of the Defendants knowingly and intentionally exposed California  
5 consumers and users of Mirrors, which Defendants manufactured, distributed, or sold as  
6 mentioned above, to DEHP, without first providing any type of clear and reasonable  
7 warning of such to the exposed persons before the time of exposure. Defendants have  
8 distributed and sold Mirrors in California. Defendants know and intend that California  
9 consumers will use Mirrors, thereby exposing them to DEHP. Defendants thereby  
10 violated Proposition 65.

11 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
12 Persons sustain exposures by using, carrying, or handling the Mirrors without wearing  
13 gloves or by touching bare skin or mucous membranes with or without gloves after  
14 handling Mirrors, as a direct and indirect hand to mouth contact, hand to mucous  
15 membrane, trans-dermal absorption, or breathing in particulate matter emanating from  
16 Mirrors during use, as well as through environmental mediums that carry the DEHP  
17 once contained within the Mirrors.

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

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

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

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

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7 **SECOND CAUSE OF ACTION**

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

11 **Cosmetic Bags**

12 35. Plaintiff repeats and incorporates by reference paragraphs 1 through 34 of this  
13 complaint as though fully set forth herein.

14 36. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
15 distributor, promoter, or retailer of Clear Plastic Makeup Bags with PVC Components  
16 including but not limited to: • 2 pc set Clear Silver Make-up Bag; "ALFA Bags";  
17 "Classic-Collection U.S.A"; "2pc Set Cosmetic Cases"; "D5423 C5427"; "SKU  
18 400203626784"; "Product Made in China" and • 2 pc set Clear Blue Make-up Bag;  
19 "Eyelashes in Color"; "ALFA Bags"; "Classic-Collection U.S.A"; "2pc Set Csometric  
20 Cases"; "D5423 C5427"; "SKU 400203626777"; "Product Made in China" ("Makeup  
21 Bags").

22 37. Makeup Bags contain DEHP.

23 38. Defendants knew or should have known that DEHP has been identified by the State of  
24 California as a chemical known to cause cancer; developmental toxicity; 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 Makeup Bags within  
27 Plaintiff's notice of alleged violations further discussed above at Paragraph 18b.

28 39. Plaintiff's allegations regarding Makeup Bags concerns "[c]onsumer products  
exposure[s]," which "is an exposure that results from a person's acquisition, purchase,

1 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
2 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
3 *25602(b)*. Makeup Bags are consumer products, and, as mentioned herein, exposures to  
4 DEHP took place as a result of such normal and foreseeable consumption and use.

5 40. Plaintiff is informed, believes, and thereon alleges that between August 18, 2017 and  
6 the present, each of the Defendants knowingly and intentionally exposed California  
7 consumers and users of Makeup Bags, which Defendants manufactured, distributed, or  
8 sold as mentioned above, to DEHP, without first providing any type of clear and  
9 reasonable warning of such to the exposed persons before the time of exposure.  
10 Defendants have distributed and sold Makeup Bags in California. Defendants know  
11 and intend that California consumers will use Makeup Bags, thereby exposing them to  
12 DEHP. Defendants thereby violated Proposition 65.

13 41. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
14 Persons sustain exposures by using, carrying, or handling the Handbags without  
15 wearing gloves or by touching bare skin or mucous membranes with or without gloves  
16 after handling Handbags, as a direct and indirect hand to mouth contact, hand to mucous  
17 membrane, trans-dermal absorption, or breathing in particulate matter emanating from  
18 Handbags during use, as well as through environmental mediums that carry the DEHP  
19 once contained within the Handbags.

20 42. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations  
21 of Proposition 65 as to Makeup Bags have been ongoing and continuous, as Defendants  
22 engaged and continue to engage in conduct which violates Health and Safety Code  
23 Section 25249.6, including the manufacture, distribution, promotion, and sale of  
24 Makeup Bags, so that a separate and distinct violation of Proposition 65 occurred each  
25 and every time a person was exposed to DEHP by Makeup Bags as mentioned herein.  
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1 43. 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 44. 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 Makeup Bags, pursuant to  
6 Health and Safety Code Section 25249.7(b).

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

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10 **THIRD CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against ROSS, and DOES 21-  
12 30 for Violations of Proposition 65, The Safe Drinking Water and Toxic  
13 Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

14 **Jewelry Organizer**

15 46. Plaintiff repeats and incorporates by reference paragraphs 1 through 45 of this  
16 complaint as though fully set forth herein.

17 47. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
18 distributor, promoter, or retailer of Jewelry Box including but not limited to: • Pink  
19 Jewelry Box. “VRG Dongwha MDF Joint Stock Company”; “TSCA Title VI  
20 Compliant”; Fabrication Date: 08/2019”; “PINK/CORAL066”; “SKU 400199338135  
21 10x6. 7x5.5 Storage” and • Silver Jewelry Box. “VRG Dongwha MDF Joint Stock  
22 Company”; “TSCA Title VI Compliant”; Fabrication Date: 08/2019”; “SILVER007”;  
23 “SKU 400199338012 10x6x4 Oval Storage” (“Jewelry Boxes”).

24 48. Jewelry Boxes contain DEHP.

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

1 50. Plaintiff's allegations regarding Jewelry Boxes concerns "[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)*. Jewelry Boxes are consumer products, and, as mentioned herein, exposures  
6 to DEHP took place as a result of such normal and foreseeable consumption and use.

7 51. Plaintiff is informed, believes, and thereon alleges that between September 2, 2017 and  
8 the present, each of the Defendants knowingly and intentionally exposed California  
9 consumers and users of Jewelry Boxes, which Defendants manufactured, distributed, or  
10 sold as mentioned above, to DEHP, without first providing any type of clear and  
11 reasonable warning of such to the exposed persons before the time of exposure.

12 Defendants have distributed and sold Jewelry Boxes in California. Defendants know  
13 and intend that California consumers will use Jewelry Boxes, thereby exposing them to  
14 DEHP. Defendants thereby violated Proposition 65.

15 52. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
16 Persons sustain exposures by using, or handling the Jewelry Boxes without wearing  
17 gloves or by touching bare skin or mucous membranes with or without gloves after  
18 handling Jewelry Boxes, as a direct and indirect hand to mouth contact, hand to mucous  
19 membrane, trans-dermal absorption, or breathing in particulate matter emanating from  
20 Jewelry Boxes during use, as well as through environmental mediums that carry the  
21 DEHP once contained within the Jewelry Boxes.

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

3 54. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
4 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
5 violations alleged herein will continue to occur into the future.

6 55. Based on the allegations herein, Defendants are liable for civil penalties of up to  
7 \$2,500.00 per day per individual exposure to DEHP from Jewelry Boxes, pursuant to  
8 Health and Safety Code Section 25249.7(b).

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

11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each of the Defendants as follows:

13 57. A permanent injunction mandating Proposition 65-compliant warnings;

14 58. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);

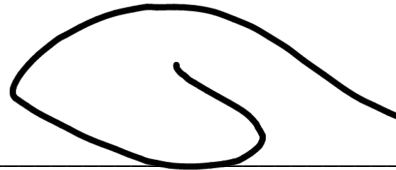
15 59. Costs of suit;

16 60. Reasonable attorney fees and costs; and

17 61. Any further relief that the court may deem just and equitable.

18  
19 Dated: December 1, 2020

YEROUSHALMI & YEROUSHALMI\*

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23 Reuben Yeroushalmi  
24 Attorneys for Plaintiff,  
25 CONSUMER ADVOCACY GROUP, INC.  
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