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6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

AUG 22 2011

John A. Clarke, Executive Officer/Clerk
By K. Tollack, Deputy
KATHLEEN TOLLACK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

13 Plaintiff,

14 v.

15 CLOSEOUT GROUP!, INC., a Pennsylvania
16 Corporation; ROSS DRESS FOR LESS, INC.,
dba DD'S DISCOUNTS®, a California
17 Corporation; ROSS STORES, INC., dba DD'S
DISCOUNTS®, a California Corporation; and
18 DOES 1-50,

19 Defendants.

CASE NO. BC456853

[PROPOSED] STIPULATED CONSENT
JUDGMENT AND [PROPOSED] ORDER

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: March 9, 2011
TRIAL DATE: None Set

20
21 **1. INTRODUCTION**

22 1.1 On March 9, 2011, Plaintiff, Consumer Advocacy Group, Inc. ("CAG"), filed a
23 complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v. Closeout*
24 *Group!, Inc., et al*, Case No. BC456853 (the "Action"), for civil penalties and injunctive relief
25 pursuant to the provisions of California Health & Safety Code § 25249.5, *et seq.* ("Proposition
26 65") against Closeout Group!, Inc. ("Closeout"), and other entities. CAG and Closeout are
27 collectively referred to hereinafter as "Parties."
28

COPY

1 1.2 Closeout is a corporation that employs 10 or more persons. Closeout allegedly has
2 made available for distribution in the State of California the following product: Axis® auto
3 expressions™ Steering Wheel Cover Massage Grip Part # 3790804-Grey (“Covered Product”).
4 The Covered Product allegedly contains Lead, a chemical known to the State of California to
5 cause cancer and birth defects or other reproductive harm. (Lead is hereinafter referred to as
6 “Noticed Chemical.”)

7 1.3 On or about July 23, 2010, CAG sent a Proposition 65 Notice of Intent to Sue for
8 violations of California Health & Safety Code § 25249.6 *et seq.* related to the Covered Product.
9 CAG and Closeout subsequently began informal discovery and began negotiations to resolve the
10 dispute. On or about December 23, 2010, CAG served another notice to Closeout and the
11 appropriate public enforcement agencies claiming that Closeout was in violation of Proposition 65
12 in regard to the Covered Product. CAG's notice and the Complaint in this Action allege that
13 Closeout exposed people who handle the Covered Product to Lead, without first providing clear
14 and reasonable warnings, in violation of California Health & Safety Code § 25249.6 *et seq.*

15 1.4 Closeout denies the material allegations of the notice and the Complaint, and denies
16 liability for the cause of action alleged in the Complaint and in connection with the Action.

17 1.5 For purposes of this Stipulated Consent Judgment only, the Parties stipulate that
18 this Court has jurisdiction over the allegations of violations contained in CAG's Complaint and
19 personal jurisdiction over Closeout as to the acts alleged in CAG's Complaint, that venue is proper
20 in the County of Los Angeles, and that this Court has jurisdiction to enter this Stipulated Consent
21 Judgment as a full and final resolution of all claims which were or could have been raised in the
22 Complaint based on the facts alleged therein.

23 1.6 The parties enter into this Stipulated Consent Judgment pursuant to a settlement of
24 certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and
25 costly litigation, including without limitation the expenditure of significant funds by Closeout for
26 scientific analysis and related proceedings before the Office of Environmental Hazard Assessment
27 and/or the Courts related to the Covered Product, and similar expenditures by CAG to oppose such
28 analysis and proceedings.

 1.7 Nothing in this Stipulated Consent Judgment shall be construed as an admission by

1 the Parties of any fact, conclusion of law, issue of law or violation of law, including without
2 limitation, any admission concerning any violation of Proposition 65 or any other statutory,
3 regulatory, common law, or equitable doctrine, or the meaning of the terms "knowingly and
4 intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section
5 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with its terms, shall
6 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of
7 law, or violation of law, or of fault, wrongdoing, or liability by Closeout, its officers, directors,
8 employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in
9 any administrative or judicial proceeding or litigation in any court, agency, or forum.

10 1.8 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any
11 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
12 except as expressly provided in this Stipulated Consent Judgment.

13 1.9 This Stipulated Consent Judgment is the product of negotiations and compromise
14 and is accepted by the Parties, for purposes of settling, compromising, and resolving issues
15 disputed in this action, including future compliance by Closeout with Section 2 of this Stipulated
16 Consent Judgment, and shall not be used for any other purpose, or in any other matter.

17 **2. COMPLIANCE – INJUNCTIVE RELIEF**

18 2.1 Within thirty (30) days of approval of this Stipulated Consent Judgment by the
19 Court, Closeout agrees, promises, and represents that they will cease all California distribution
20 and/or sales of the Covered Product. If Closeout decides to resume distribution and/or sales of the
21 Covered Product, Closeout shall reformulate the Covered Product to a point where there is no
22 Lead in the Covered Product.

23 **3. SETTLEMENT PAYMENT**

24 3.1 Within ten (10) days of the approval of this Stipulated Consent Judgment by the
25 Court, Closeout shall pay a total of sixty-five thousand dollars (\$65,000) to Consumer Advocacy
26 Group, Inc. and Yeroushalmi & Associates. The payment shall be made by separate checks
27 apportioned as follows:

28 3.1.1 Monetary Payment in Lieu of Civil Penalty: Nineteen thousand dollars
(\$19,000.00) shall be paid to CAG in lieu of any civil penalty pursuant to California Health

1 and Safety Code § 25249.7(b). CAG will use the payment for such projects and purposes
2 related to environmental protection, worker health and safety, or reduction of human exposure
3 to hazardous substances (including administrative and litigation costs arising from such
4 projects), as CAG may choose. The check shall be made payable to Consumer Advocacy
5 Group, Inc. and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire
6 Boulevard, Suite 610E, Beverly Hills, California 90212.

7 3.1.2 Attorneys' Fees and Costs: Forty-Six thousand dollars (\$46,000.00) of such
8 payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable
9 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
10 investigating, bringing this matter to Closeout's attention, litigating, and negotiating a
11 settlement in the public interest. The check shall be made payable to Yeroushalmi &
12 Associates and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100
13 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

14 4. MODIFICATION OF STIPULATED CONSENT JUDGMENT

15 4.1 This written Stipulated Consent Judgment may only be modified by written
16 agreement of CAG and Closeout upon stipulation and Order of the Court, or after noticed motion,
17 and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion of CAG or
18 Closeout as provided by law and upon entry of a modified Stipulated Consent Judgment by the
19 Court.

20 5. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT

21 5.1 Either party may, by motion or application for an order to show cause before the
22 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in
23 paragraphs 9.1 and 9.2 of this Stipulated Consent Judgment, enforce the terms and conditions
24 contained in this Stipulated Consent Judgment. The prevailing party shall be entitled to its
25 reasonable attorneys' fees and costs associated with such motion or application.

26 6. APPLICATION OF STIPULATED CONSENT JUDGMENT

27 6.1 This Stipulated Consent Judgment shall apply to and be binding upon the
28 Parties hereto, their parent companies, affiliates and each of their divisions, subdivisions and
29 subsidiaries, officers, directors, employees, agents and their successors or assigns, and to the

1 extent allowed by law, on the general public.

2 **7. CLAIMS COVERED AND RELEASED**

3 7.1 CAG, on behalf of itself and in the public interest, hereby releases and discharges
4 Closeout, along with Royal Dutch Shell plc, Shell Oil Company, Pennzoil-Quaker State Company
5 d/b/a SOPUS Products, and Shell Oil Products US d/b/a Equilon Enterprises (collectively "Shell
6 Entities"), Kraco Enterprises LLC, KE Mats Holding Corp., KE Mats Intermediate Holding Corp.,
7 Kraco Enterprises, LLC, QSHK Corporation, Kraco Car Care International Limited and Auto
8 Expressions, LLC, and each of their related parents, subsidiaries, affiliates, predecessors,
9 successors and assigns, and all of their officers, directors, employees, and shareholders, and all
10 persons and entities who are either upstream or downstream in the stream of commerce from
11 Released Entities who sell or distribute the Covered Product, including but not limited to Ross
12 Stores, Inc. and Big Lots Stores, Inc., and each of their related parents, subsidiaries, affiliates,
13 predecessors, successors and assigns, and all of their officers, directors, employees, and
14 shareholders, (and only as to the covered product distributed or sold by Closeout) collectively,
15 "Released Parties") from any and all claims asserted, or that could have been asserted, in this
16 litigation arising from the alleged failure to provide Proposition 65 warnings for the Covered
17 Product regarding the exposure of individuals to the Noticed Chemical in the Covered Product.
18 CAG, on behalf of itself only, hereby releases and discharges the Released Parties from any and
19 all known and unknown past, present, and future rights, claims, causes of action, damages, suits,
20 penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs, and expenses
21 related to or arising out of the facts and claims asserted, or that could have been asserted, under
22 state or federal law or the facts alleged in Plaintiff's Proposition 65 Notice or the Complaint
23 relating to any and all claims concerning exposure of any person to the Noticed Chemical in the
24 Covered Product. Compliance with the terms of this Stipulated Consent Judgment shall constitute
25 compliance by the Released Parties with Proposition 65 with respect to exposures to the Noticed
26 Chemical contained in the Covered Product. This release does not limit or affect the obligations of
27 any party created under this Stipulated Consent Judgment. This release, in interest of the public
28 and on behalf of CAG, is limited to only the Covered Product and Notice Chemical therein.

7.2 Unknown Claims. It is possible that other injuries, damages, liability, or claims not

1 now known to the Parties arising out of the facts alleged in the Complaint and relating to the
2 exposure of individuals to the Noticed Chemical in the Covered Product will develop or be
3 discovered, and this Stipulated Consent Judgment is expressly intended to cover and include all
4 such injuries, damages, liability, and claims, including all rights of action therefor. CAG has full
5 knowledge of the contents of Section 1542 of the Civil Code. CAG, on behalf of itself only,
6 acknowledges that the claims released in section 7.1 above may include unknown claims and
7 waives Section 1542 as to any such unknown claims. Section 1542 reads as follows:

8 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
9 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
10 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
11 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
12 **OR HER SETTLEMENT WITH THE DEBTOR"**

13 CAG acknowledges and understands the significance and consequences of this specific waiver of
14 Civil Code Section 1542.

15 8. SEVERABILITY

16 8.1 In the event that any of the provisions of this Stipulated Consent Judgment are held
17 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
18 affected.

19 9. NOTICE AND CURE

20 9.1 No action to enforce this Stipulated Consent Judgment may be commenced, and no
21 notice of violation related to the Products may be served or filed against Closeout by CAG, unless
22 the party seeking enforcement or alleging violation notifies the other party of the specific acts
23 alleged to breach this Stipulated Consent Judgment at least 90 days before serving or filing any
24 motion, action, or Notice of Violation. Any notice to Closeout must contain (a) the name of the
25 product, (b) specific dates when the product was sold in California, (c) the store or other place at
26 which the product was available for sale to consumers, and (d) any other evidence or other support
27 for the allegations in the notice.

28 9.2 Within 30 days of receiving the notice described in Section 9.1, Closeout shall
either (1) withdraw the product, or (2) refute the information provided under Section 9.1. Should
the parties be unable to resolve the dispute, either party may seek relief under Section 5.

1 **10. GOVERNING LAW**

2 10.1 The terms of this Stipulated Consent Judgment shall be governed by the laws of the
3 State of California.

4 **11. PROVISION OF NOTICE**

5 11.1 All notices required pursuant to this Stipulated Consent Judgment and
6 correspondence shall be sent to the following:

7 For Consumer Advocacy Group, Inc.
8 Reuben Yeroushalmi
9 YEROUSHALMI & ASSOCIATES
10 9100 Wilshire Boulevard, Suite 610E
11 Beverly Hills, CA 90212
12 T: 310-623-1926
13 F: 310-623-1930

 For Closeout Group!, Inc.
 Joseph M. Armstrong
 Eizen Fineburg & McCarthy, P.C.
 Two Commerce Square – Suite 3410
 2001 Market Street
 Philadelphia, PA 19103
 Tel: (215) 751-9666
 Fax: (215) 751-9310

13 **12. COURT APPROVAL**

14 12.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be of no
15 further force or effect.

16 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title
17 11 California Code of Regulations section 3003.

18 **13. EXECUTION AND COUNTERPARTS**

19 13.1 This Stipulated Consent Judgment may be executed in counterparts and by means
20 of facsimile, which taken together shall be deemed to constitute one document. Facsimile or pdf
21 signatures shall be construed as valid as the original.

22 **14. AUTHORIZATION**

23 14.1 Each signer of this Stipulated Consent Judgment certifies that he or she is fully
24 authorized by the party he or she represents to stipulate to the terms and conditions of this
25 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on

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27
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1 behalf of the party represented and legally bind that party. The undersigned have read, understand
2 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as
3 explicitly provided herein, each party is to bear its own fees and costs.
4

5 Dated: 6/6/11

CONSUMER ADVOCACY GROUP, INC.

6
7 Lyn H. Marcus

8 Name and Title: Lyn H. Marcus, Pres.
9

10 Dated: 6/6/11

CLOSEOUT GROUP!, INC.

11
12 Mervin Dezenhall

13 Mervin Dezenhall, President
14

15 **ORDER AND JUDGMENT**

16 Based upon the Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and
17 Closeout Group!, Inc., the Consent Judgment is approved and judgment is hereby entered
18 according to the terms herein.
19

20 Dated: 8-22-2011

Soussean G. Bruguera

21
22 Judge, Superior Court of the State of California
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