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LOS ANGELES
SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES- CENTRAL DISTRICT

CONSUMER ADVOCACY GROUP,
INC., in the interest of the Public,

Plaintiff,

v.

SENTRY INDUSTRIES, INC., GTM
WHOLESALE LIQUIDATORS, BIG
LOTS, INC., BIG LOTS STORES, INC.,
ROSS DRESS FOR LESS, INC., ROSS
STORES, INC., and DOES 1-50

Defendants.

CASE NO. BC46718

~~[PROPOSED]~~ ORDER GRANTING MOTION
TO APPROVE AND ENTER CONSENT
JUDGMENT BETWEEN CONSUMER
ADVOCACY GROUP, INC. AND SENTRY
INDUSTRIES, INC.

Hearing Date: September 28, 2012
Time: 8:30 pm
Dept: 15
Judge: Hon. Richard L. Fruin

Complaint: June 16, 2011

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On September 28, 2012 at 8:30 p.m., the Court heard the Motion to Approve and Enter Consent Judgment Between Consumer Advocacy Group, Inc. ("Plaintiff") and Defendant Sentry Industries, Inc. ("Defendant"). The Court, having considered the documents filed in connection with this matter, and no opposition being filed, has arrived at the following conclusions and SO
ORDERS:

1 1. The Court grants the Motion to Approve and Enter Consent Judgment Between Plaintiff
2 and Defendant, in its entirety pursuant to California Health and Safety Code section 25249.7,
3 subdivision (f)(4).

4 2. The Court approves the [Proposed] Consent Judgment, which Plaintiff and Defendant
5 have submitted to this Court for approval pursuant to Proposition 65 (*Cal. Health & Safety Code*
6 *§§25249.5, et seq.*) after making the following findings:

7 i. The Court finds that the [Proposed] Consent Judgment complies with the
8 requirements of Health and Safety Code § 25249.7 et seq. Defendant has agreed to cease
9 sale of the consumer products Radios, Headphones/Earbuds, and Flashlight/Lanterns
10 (hereinafter "Covered Products") unless it is reformulated to contain less than 100 parts
11 per million of lead and/or less than 0.1% of DEHP. The Consent Judgment also requires
12 Defendant to pay \$82,000.00 to defray Plaintiff's attorney's fees, which is less than the
13 actual lodestar figure of \$112,207.50. Additionally, the Consent Judgment requires
14 Defendant to pay \$7,000.00 to Plaintiff as payment in lieu of a civil penalty, and also
15 \$10,000.00 to the State of California's Office of Environmental Health Hazard
16 Assessment and Plaintiff as civil penalties. Further, the proposed settlement terms are
17 presumed to confer a public benefit.

18 ii. A public benefit is presumed, because the [Proposed] Consent Judgment requires
19 Defendant to cease sale in California of the Covered Products unless the Covered
20 Products have been reformulated to contain less than 100 parts per million of lead and
21 less than 0.1% of DEHP.

22 3. The Court shall sign and hereby directs the Clerk to file and enter the [Proposed] Consent
23 Judgment.
24

25 Dated: Sept. 28, 2012

26 Richard S. Furr
27 Judge of the Superior Court
28

SEP 28 2012

LOS ANGELES
SUPERIOR COURT

REC'D
AUG 21 2012
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1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
YEROUSHALMI & ASSOCIATES
3 9100 Wilshire Boulevard, Suite 610E
Beverly Hills, California 90212
4 Telephone: (310) 623-1926
Facsimile: (310) 623-1930

5 Attorneys for Plaintiff
6 CONSUMER ADVOCACY GROUP, INC.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

10
11 CONSUMER ADVOCACY GROUP,

12 Plaintiff,

13 v.

14 SENTRY INDUSTRIES, INC., GTM
15 WHOLESALE LIQUIDATORS, BIG LOTS,
INC., BIG LOTS STORES, INC., ROSS
16 DRESS FOR LESS, INC., ROSS STORES,
INC., and DOES 1-50

17 Defendants.

Case No. BC463718

CONSENT JUDGMENT [~~PROPOSED~~]

Health & Safety Code § 25249.5 *et seq.*

Dept.: 15

Judge: Hon. Richard D. Fruin

18
19 1. INTRODUCTION

20 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
21 Advocacy Group, Inc. (referred to as "CAG) acting on behalf of itself and in the interest of the
22 public and defendant, Sentry Industries, Inc. (referred to as "Sentry") with each a Party to the
23 action and collectively referred to as "Parties."

24 1.2 Sentry employs ten or more persons, is a person in the course of doing business for
25 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
26 Safety Code §§ 25249.6 *et seq.* ("Proposition 65"), and manufactures, distributes, and sells
27 Radios, Headphones/ Earbuds, and Flashlights/Lanterns. Lead and DEHP are known to the State
28 of California to cause cancer and/or birth defects or other reproductive harm.

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1 1.3 **Notices of Violation.**

2 On October 18, 2010, CAG served Sentry, and various public enforcement agencies with
3 a document entitled "60-Day Notice of Violation" ("October 18, 2010 Notice") that provided the
4 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
5 individuals in California of exposures to lead contained in Headphones sold by Sentry. No public
6 enforcer has commenced or diligently prosecuted the allegations set forth in the October 18, 2010
7 Notice.

8 On December 27, 2010, CAG served Sentry, and various public enforcement agencies
9 with a document entitled "60-Day Notice of Violation" ("December 27, 2010 Notice") that
10 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
11 failing to warn individuals in California of exposures to lead contained in Flashlights sold by
12 Sentry. No public enforcer has commenced or diligently prosecuted the allegations set forth in
13 the December 27, 2010 Notice.

14 On May 26, 2011, CAG served Sentry, and various public enforcement agencies with a
15 document entitled "60-Day Notice of Violation" ("May 26, 2011 Notice") that provided the
16 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
17 individuals in California of exposures to lead contained in AM/FM Radios sold by Sentry. No
18 public enforcer has commenced or diligently prosecuted the allegations set forth in the May 26,
19 2011 Notice.

20 On June 7, 2011, CAG served Sentry, and various public enforcement agencies with a
21 document entitled "60-Day Notice of Violation" ("June 7, 2011 Notice") that provided the
22 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
23 individuals in California of exposures to DEHP contained in Flashlights sold by Sentry. No
24 public enforcer has commenced or diligently prosecuted the allegations set forth in the June 7,
25 2011 Notice.

26 On July 17, 2011, CAG served Sentry, and various public enforcement agencies with a
27 document entitled "60-Day Notice of Violation" ("July 17, 2011 Notice") that provided the
28 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn

1 individuals in California of exposures to DEHP contained in Headphones sold by Sentry. No
2 public enforcer has commenced or diligently prosecuted the allegations set forth in the July 17,
3 2011 Notice.

4 On March 6, 2012, CAG served Sentry, and various public enforcement agencies with a
5 document entitled "60-Day Notice of Violation" ("March 6, 2012 Notice") that provided the
6 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
7 individuals in California of exposures to DEHP contained in AM/FM Radios sold by Sentry. No
8 public enforcer has commenced or diligently prosecuted the allegations set forth in the March 6,
9 2012 Notice.

10 **1.4 Complaint.**

11 On June 16, 2011, CAG filed the Complaint for civil penalties and injunctive relief
12 ("Complaint") in Los Angeles, Superior Court, Case No. BC475262, against Sentry and other
13 entities. The Complaint alleges, among other things, that Sentry violated Proposition 65 by
14 failing to give clear and reasonable warnings of exposure to lead and DEHP from Radios,
15 Headphones, and Flashlights.

16 **1.5 Consent to Jurisdiction**

17 For purposes of this Consent Judgment, the Parties stipulate that this Court has
18 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
19 over Sentry as to the acts alleged in the Complaint, that venue is proper in the County of Los
20 Angeles and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
21 and resolution of the allegations contained in the Complaint and of all claims which were or could
22 have been raised by any person or entity based in whole or in part, directly or indirectly, on the
23 facts alleged therein or arising therefrom or related to.

24 **1.6 No Admission**

25 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
26 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
27 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
28 constitute an admission with respect to any material allegation of the Complaint, each and every

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1 allegation of which Sentry denies, nor may this Consent Judgment or compliance with it be used
2 as evidence of any wrongdoing, misconduct, culpability or liability on the part of Sentry.

3 **2. DEFINITIONS**

4 2.1 "Accessible Component" means any component of a Covered Product that could
5 be touched by a person during reasonably foreseeable use.

6 2.2 "Covered Products" means Radios, Headphones/Earbuds, and
7 Flashlights/Lanterns.

8 2.3 "Effective Date" means the date that this Consent Judgment is entered by the
9 Court.

10 2.4 "Lead" means lead and lead compounds.

11 2.5 "DEHP" means Bis(2ethylhexyl)Phthalate.

12 2.6 "Notices" means the October 18, 2010, December 27, 2010, May 26, 2011, June 7,
13 2011, July 17, 2011, and March 6, 2012 notices.

14 **3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE**
15 **WARNINGS.**

16 3.1 Sentry has asserted and asserts that its covered products have been reformulated,
17 and tested to meet the standards of Proposition 65. CAG disputes these assertions and maintains
18 that it has done a series of testing that have shown the covered products did not meet the
19 requirements of Proposition 65. However, Sentry agrees that to the extent a covered product has
20 not been reformulated, Sentry shall not sell the Covered Products in California unless they are
21 reformulated to contain no greater than 100 parts per million of lead and 0.1% of DEHP. Sentry's
22 continued testing of these covered products, using both an EPA accredited lab and EPA
23 accredited procedures and standards, shall be prima facia evidence of its good faith compliance
24 with this consent judgment.

25 **4. SETTLEMENT PAYMENT**

26 4.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from CAG,
27 whichever is later, Sentry shall pay a total of \$99,000 in full and complete settlement of all
28 monetary claims by CAG related to the Notices, as follows.

1 4.2 **Payment In Lieu of Civil Penalties:** Sentry shall pay \$7,000 in lieu of civil
2 penalties to "Consumer Advocacy Group, Inc." CAG will use the payment for such projects and
3 purposes related to environmental protection, worker health and safety, or reduction of human
4 exposure to hazardous substances (including administrative and litigation costs arising from such
5 projects), as CAG may choose.

6 4.3 **Reimbursement of Attorneys Fees and Costs:** Sentry shall pay \$82,000 to
7 "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs,
8 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
9 the approval of this Consent Judgment.

10 4.4 **Civil Penalty:** Defendant shall issue two separate checks for a total amount of
11 \$10,000 as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable
12 to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the
13 amount of \$7,500, representing 75% of the total penalty; and (b) one check to Consumer
14 Advocacy Group, Inc. in the amount of \$2,500, representing 25% of the total penalty. Two
15 separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA,
16 P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$7,500. The second
17 1099 shall be issued in the amount of \$2,500 to CAG and delivered to: Yeroushalmi &
18 Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

19 4.5 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,
20 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

21 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

22 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
23 behalf of itself and in the public interest and Sentry and its officers, directors, insurers,
24 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
25 companies and their successors and assigns ("Defendant Releasees") and each of their suppliers,
26 customers, distributors, wholesalers, retailers, or any other person in the course of doing business,
27 and the successors and assigns of any of them who may use, maintain, distribute or sell Covered
28 Products, and all persons and entities who are downstream in the stream of commerce from

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1 Sentry who sell or distribute the Covered Product, ("Downstream Defendant Releasees"), for all
2 claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead
3 and DEHP from Covered Products as set forth in the Notices. Sentry and Defendant Releasees'
4 compliance with this Consent Judgment shall constitute compliance with Proposition 65 with
5 respect to Lead and DEHP from the Covered Products as set forth in the Notices.

6 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
7 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
8 indirectly, any form of legal action and releases all claims, including, without limitation, all
9 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
10 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
11 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
12 contingent (collectively "Claims"), against Sentry, Defendant Releasees, and Downstream
13 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
14 common law regarding the failure to warn about exposure to Lead and DEHP in the Covered
15 Products. In furtherance of the foregoing, as to alleged exposures to Covered Products, CAG
16 hereby waives any and all rights and benefits which it now has, or in the future may have,
17 conferred upon it with respect to the Claims by virtue of the provisions of section 1542 of the
18 California Civil Code, which provides as follows:

19
20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
21 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
22 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

23 CAG understands and acknowledges that the significance and consequence of this waiver of
24 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
25 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
26 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or
27 lead compounds and/or DEHP from Covered Products, CAG will not be able to make any claim
28 for those damages against Sentry the Defendant Releasees, or Downstream Defendant Releasees.

1 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may
2 exist as of the date of this release but which CAG does not know exist, and which, if known,
3 would materially affect their decision to enter into this Consent Judgment, regardless of whether
4 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

5 **6. ENFORCEMENT OF JUDGMENT**

6 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
7 hereto. Subject to Section 6.2, the parties may, by noticed motion or order to show cause before
8 the Superior Court of California, Los Angeles County, giving the notice required by law, enforce
9 the terms and conditions contained herein. However, a Party may enforce any of the terms and
10 conditions of this Consent Judgment only after that Party first provides 45 days written notice to
11 the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and
12 attempts to resolve such Party's failure to comply in an open, fully transparent and good faith
13 manner.

14 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
15 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
16 Violation ("NOV") to Sentry. The NOV shall include for each Covered Products: the date(s) the
17 alleged violation(s) was observed and the specific store location at which the Covered Products
18 was purchased, and shall be accompanied by the store purchase receipt and all test data and test
19 results obtained by CAG regarding the Covered Products, including an identification of the
20 component(s) of the Covered Products that were tested. All test results, no matter what the result,
21 shall be provided.

22 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
23 alleged violation if, within 30 days of receiving such NOV, Sentry serves a Notice of
24 Election ("NOE") that meets one of the following conditions:

25 (a) The Covered Products were shipped by Sentry for sale in California
26 before the Effective Date, or

27 (b) Since receiving the NOV Sentry has taken corrective action by
28 either (i) requesting that its customers in California remove the Covered Products

1 identified in the NOV from sale in California and destroy or return the Covered Products
2 to Sentry, or (ii) providing a clear and reasonable warning for the Covered Products
3 identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

4 6.2.2 **Contested NOV.** Sentry may serve an NOE informing CAG of its election
5 to contest the NOV within 30 days of receiving the NOV.

6 (a) In its election, Sentry may request that the sample(s) of Covered
7 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
8 laboratory. CAG will provide Sentry in such case with a chain of custody certification.

9 (b) If the confirmatory testing establishes that the Covered Products
10 does not contain lead in excess of the level allowed in Section 3.1 CAG shall take no
11 further action regarding the alleged violation. If the testing does not establish compliance
12 with Section 3.1, Sentry may withdraw its NOE to contest the violation and may serve a
13 new NOE pursuant to Section 6.2.1.

14 (c) If Sentry does not withdraw an NOE to contest the NOV, the
15 Parties shall meet and confer for a period of no less than 30 days before CAG may seek an
16 order enforcing the terms of this Consent Judgment.

17 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
18 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
19 violation of Proposition 65 or this Consent Judgment.

20 **7. ENTRY OF CONSENT JUDGMENT**

21 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
22 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
23 Sentry waive their respective rights to a hearing or trial on the allegations of the Complaint.

24 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
25 and any and all prior agreements between the parties merged herein shall terminate and become
26 null and void, and the actions shall revert to the status that existed prior to the execution date of
27 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
28 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall

1 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
2 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
3 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

4 **8. MODIFICATION OF JUDGMENT**

5 8.1 This Consent Judgment may be modified only upon written agreement of the
6 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
7 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

8 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
9 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

10 **9. RETENTION OF JURISDICTION**

11 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
12 terms of this Consent Judgment.

13 **10. DUTIES LIMITED TO CALIFORNIA**

14 10.1 This Consent Judgment shall have no effect on Covered Products sold by Sentry
15 outside the State of California.

16 **11. SERVICE ON THE ATTORNEY GENERAL**

17 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
18 California Attorney General so that the Attorney General may review this Consent Judgment
19 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
20 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
21 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
22 the parties may then submit it to the Court for approval.

23 **12. ATTORNEY FEES**

24 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
25 and attorney fees in connection with this action.

26 **13. ENTIRE AGREEMENT**

27 13.1 This Consent Judgment contains the sole and entire agreement and understanding
28 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,

1 negotiations, commitments and understandings related hereto. No representations, oral or
2 otherwise, express or implied, other than those contained herein have been made by any party
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
4 deemed to exist or to bind any of the Parties.

5 **14. GOVERNING LAW**

6 14.1 The validity, construction and performance of this Consent Judgment shall be
7 governed by the laws of the State of California, without reference to any conflicts of law
8 provisions of California law.

9 14.2 The Parties, including their counsel, have participated in the preparation of this
10 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
11 Consent Judgment was subject to revision and modification by the Parties and has been accepted
12 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
13 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
14 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
15 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
16 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
17 this regard, the Parties hereby waive California Civil Code § 1654.

18 **15. EXECUTION AND COUNTERPARTS**

19 15.1 This Consent Judgment may be executed in counterparts and by means of
20 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
21 one document.

22 **16. NOTICES**

23 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
24 Class Mail.

25
26 If to CAG:
27 Reuben Yeroushalmi
28 9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212
(310) 623-1926

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1 If to Sentry:
2 PO Box 885
3 One Bridge Street
4 Hillburn, NY 10931-0885

5 With a copy to:
6 Scott Hirsch, Esq.
7 HIRSCH & HIRSCH, LLP
8 64 Hilton Avenue
9 Hempstead, New York 11550
10 (516) 486-8500


11 **AUTHORITY TO STIPULATE**

12 16.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized
13 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
14 the party represented and legally to bind that party.

15 **AGREED TO:**

16 Date: ^{July} June 2, 2012

17 CONSUMER ADVOCACY GROUP,
18 INC.

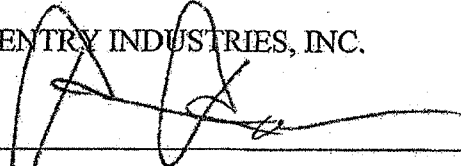
19 
20 Name: MICHEL SASSOON

21 Title: EXECUTIVE DIRECTOR

15 **AGREED TO:**

16 Date: June 28, 2012

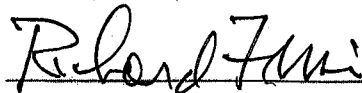
17 SENTRY INDUSTRIES, INC.

19 
20 Name: Daniel Lopez

21 Title: President

22 **IT IS SO ORDERED.**

23 Date: Sept. 28, 2012

24 

25 JUDGE OF THE SUPERIOR COURT