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YEROUSHALMI & ASSOCIATES
Reuben Yeroushalmi (SBN 193981)
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, California 90212
Telephone: 310) 623-1926
Facsimile: (310) 623-1930

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FILED
LOS ANGELES SUPERIOR COURT
JAN 08 2013

JOHN A. CLARKE, CLERK
S. Temblador
BY S. TEMBLADOR, DEPUTY

Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CONSUMER ADVOCACY GROUP,
Plaintiff,

v.

THE ASHLEY COLLECTION, INC., a New
York Corporation, ROSS STORES, INC., a
Delaware Corporation, and Does 1-50,
Defendant.

Case No. BC474603

Assigned For All Purposes To The
Honorable Ernest Hiroshige, Dept. 54

CONSENT JUDGMENT [PROPOSED]

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between plaintiff Consumer Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and defendant The Ashley Collection, Inc. dba Protocol ("Ashley"), with each a Party and collectively referred to as "Parties."

1.2 Ashley employs ten or more persons, is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65"), and manufactures, distributes, and sells air compressors.

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1.3 Notices of Violation.

On or about December 29, 2010, CAG served Ashley, Ross Stores, Inc. ("Ross") and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to lead and lead compounds contained in Protocol 250 PSI Compact Air Compressor (No. 879-02). No public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

1.4 Complaint.

On December 6, 2011, CAG filed a Complaint for civil penalties and injunctive relief ("Complaint") in Los Angeles, Superior Court, Case No. BC474603, against Ashley and Ross. The Complaint alleges, among other things, that Ashley violated Proposition 65 by failing to give clear and reasonable warnings of exposure to lead from Protocol 250 PSI Compact Air Compressor (No. 879-02).

1.5 Consent to Jurisdiction

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

1.6 No Admission

This Consent Judgment resolves claims that are denied and disputed. The parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any material allegation of the Complaint, each and every allegation of which Ashley denies, nor may this Consent Judgment or compliance with it be used

02/07/2015

1 as evidence of any wrongdoing, misconduct, culpability or liability on the part of Ashley.

2 **2. DEFINITIONS**

3 2.1 "Accessible Component" means any component of a Covered Product that could
4 be touched by a person during reasonably foreseeable use.

5 2.2 "Covered Product" means Protocol 250 PSI Compact Air Compressor (No. 8709-2
6 RSI).¹

7 2.3 "Effective Date" means the date that this Consent Judgment is approved by the
8 Court.

9 2.4 "Lead" means lead and lead compounds.

10 **3. INJUNCTIVE RELIEF/REFORMULATION**

11 3.1 On or after the Effective Date, Ashley shall not manufacture or import for sale in
12 California Covered Products that contain Accessible Components with more than 100 parts per
13 million ("ppm") Lead by weight.

14 **4. SETTLEMENT PAYMENT**

15 4.1 Within five business days of the Effective Date or receipt of Forms W-9 from
16 CAG, whichever is later, Ashley shall pay a total of \$40,000 to CAG in full and complete
17 settlement of all monetary claims by CAG related to the Notices, as follows.

18 4.2 Civil Penalty: Defendant shall issue two separate checks for a total amount of one
19 thousand dollars (\$1,000) as penalties pursuant to Health & Safety Code § 25249.12: (a) one
20 check made payable to the State of California's Office of Environmental Health Hazard
21 Assessment (OEHHA) in the amount of \$750, representing 75% of the total penalty; and (b) one
22 check to Consumer Advocacy Group, Inc. in the amount of \$250, representing 25% of the total
23 penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be
24 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
25 \$750. The second 1099 shall be issued in the amount of \$250 to CAG and delivered to:
26 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
27 90212
28

¹ The style number named in the Notice (879-02) is not the correct style number.

1 4.3 **Payment In Lieu of Civil Penalties:** Ashley shall pay \$1000 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 4.4 **Reimbursement of Attorneys' Fees and Costs:** Ashley shall pay \$38,000 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 4.5 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,
11 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

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

13 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
14 behalf of itself and in the public interest and Ashley and its officers, directors, insurers,
15 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
16 companies and their successors and assigns ("Defendant Releasees") and each of their suppliers,
17 customers, distributors, wholesalers, retailers (including but not limited to Ross), or any other
18 person in the course of doing business, and the successors and assigns of any of them, who may
19 use, maintain, distribute or sell Covered Products ("Downstream Defendant Releasees"), for all
20 claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead
21 from Covered Products as set forth in the Notices. Ashley's and Defendant Releasees'
22 compliance with this Consent Judgment shall constitute compliance with Proposition 65 with
23 respect to Lead from the Covered Products as set forth in the Notices.

24 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
25 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
26 indirectly, any form of legal action and releases all claims, including, without limitation, all
27 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
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1 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
2 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
3 contingent (collectively "Claims"), against Ashley, Defendant Releasees, and Downstream
4 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
5 common law regarding the failure to warn about exposure to Lead in air compressors
6 manufactured, distributed, or sold by Ashley. In furtherance of the foregoing, as to alleged
7 exposures to Covered Products, CAG hereby waives any and all rights and benefits which it now
8 has, or in the future may have, conferred upon it with respect to the Claims by virtue of the
9 provisions of section 1542 of the California Civil Code, which provides as follows:

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

15 CAG understands and acknowledges that the significance and consequence of this waiver of
16 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
17 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
18 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or
19 lead compounds from Covered Products, CAG will not be able to make any claim for those
20 damages against Ashley or the Released Entities. Furthermore, CAG acknowledges that it
21 intends these consequences for any such Claims as may exist as of the date of this release but
22 which CAG does not know exist, and which, if known, would materially affect their decision to
23 enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of
24 ignorance, oversight, error, negligence, or any other cause.

25 **6. ENFORCEMENT OF JUDGMENT**

26 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
27 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
28 California, Los Angeles County, giving the notice required by law, enforce the terms and
conditions contained herein. A Party may enforce any of the terms and conditions of this Consent

1 Judgment only after that Party first provides 30 days' notice to the Party allegedly failing to
2 comply with the terms and conditions of this Consent Judgment and attempts to resolve such
3 Party's failure to comply in an open and good faith manner.

4 6.2 In any proceeding brought by either Party to enforce this Consent Judgment, such
5 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
6 violation of Proposition 65 or this Consent Judgment.

7 **7. ENTRY OF CONSENT JUDGMENT**

8 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
9 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
10 Ashley waive their respective rights to a hearing or trial on the allegations of the Complaint.

11 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
12 and any and all prior agreements between the parties merged herein shall terminate and become
13 null and void, and the actions shall revert to the status that existed prior to the execution date of
14 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
15 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
16 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
17 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
18 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

19 **8. MODIFICATION OF JUDGMENT**

20 8.1 This Consent Judgment may be modified only upon written agreement of the
21 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
22 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

23 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
24 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

25 **9. RETENTION OF JURISDICTION**

26 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
27 terms of this Consent Judgment.
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10. DUTIES LIMITED TO CALIFORNIA

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

11. SERVICE ON THE ATTORNEY GENERAL

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

12. ATTORNEY FEES

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

13. ENTIRE AGREEMENT

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

14. GOVERNING LAW

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

14.2 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted

1 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
2 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
3 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
4 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
5 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
6 this regard, the Parties hereby waive California Civil Code §.1654.

7 **15. EXECUTION AND COUNTERPARTS**

8 15.1 This Consent Judgment may be executed in counterparts and by means of
9 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
10 one document.

11 **16. NOTICES**

12 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
13 Class Mail.

14
15 If to CAG:

16 Reuben Yeroushalmi, Esq.
17 9100 Wilshire Boulevard, Suite 610E
18 Beverly Hills, CA 90212
(310) 623-1926

19 If to Ashley:

20 Robert Goldy
21 CEO
22 The Ashley Collection, Inc.
23 600 W. 57th Street
24 2nd floor
25 New York, NY 10019

26 With a copy to:

27 Jeffrey B. Margulies, Esq.
28 Fulbright & Jaworski LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071
(213) 892-9286

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17. AUTHORITY TO STIPULATE

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

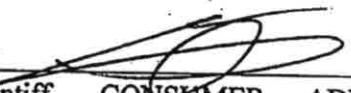
AGREED TO:

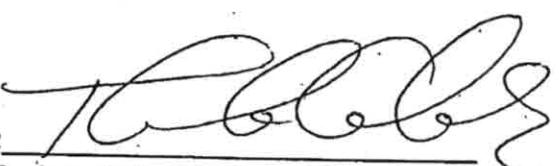
AGREED TO:

Date: July __, 2012

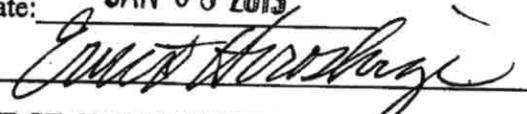
Date: July __, 2012

MICHEL SASSOON
EXECUTIVE DIRECTOR

By: 
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: 
Defendant, THE ASHLEY COLLECTION, INC.

IT IS SO ORDERED.

Date: JAN 08 2013

JUDGE OF THE SUPERIOR COURT

02/07/2013
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