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5 Attorneys for Plaintiff
6 CONSUMER ADVOCACY GROUP, INC.

ENDORSED
FILED
San Francisco County Superior Court

DEC 07 2012

CLERK OF THE COURT
BY: GINA GONZALES
Deputy Clerk

OCT 19 2012

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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

12 Plaintiff,

14 v.

15 ROSS DRESS FOR LESS, INC., a Virginia
Corporation, d.b.a. dd's DISCOUNT; ROSS
16 STORES INC., d.b.a. dd's DISCOUNT, a
Delaware Corporation; ALLISON
17 CORPORATION., a New Jersey Corporation;
18 and DOES 1-50;

19 Defendants.

Case No. CGC-11-516777

CONSENT JUDGMENT ~~[PROPOSED]~~

Health & Safety Code § 25249.5 et seq.

Dept.:

Judge:

BY FAX

20 1. INTRODUCTION

21 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
22 Advocacy Group, Inc. (referred to as "CAG) acting on behalf of itself and in the interest of the
23 public and defendants, Ross Dress for Less, Inc., Ross Stores, Inc. (collectively "Ross") and
24 Allison Corporation ("Allison") with each a Party to the action and collectively referred to as
25 "Parties."

26 1.2 Ross employs ten or more persons, is a person in the course of doing business for
27 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
28

1 Safety Code §§ 25249.6 et seq. ("Proposition 65"), and manufacture, distribute, and sell the
2 AutoLogix™ Racing Massage™ Steering Wheel Cover, Item # 54-6167. Lead is known to the
3 State of California to cause cancer and/or birth defects or other reproductive harm.

4 1.3 Allison employs ten or more persons, is a person in the course of doing business
5 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
6 & Safety Code §§ 25249.6 et seq. ("Proposition 65"), and manufacture, distribute, and sell the
7 AutoLogix™ Racing Massage™ Steering Wheel Cover, Item # 54-6167. Lead is known to the
8 State of California to cause cancer and/or birth defects or other reproductive harm.

9 1.4 **Notice of Violation.**

10 On May 26, 2011, CAG served Ross, Allison, and various public enforcement agencies
11 with a document entitled "60-Day Notice of Violation" ("May 26, 2011 Notice") that provided
12 the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to
13 warn individuals in California of exposures to lead contained in the AutoLogix™ Racing
14 Massage™ Steering Wheel Cover, Item # 54-6167 sold by Ross and Allison. No public enforcer
15 has commenced or diligently prosecuted the allegations set forth in the May 26, 2011 Notice.

16 1.5 **Complaint.**

17 On December 20, 2011, CAG filed a Complaint for civil penalties and injunctive relief
18 ("Complaint") in San Francisco, Superior Court, Case No. CGC-11-516777, against Ross, Allison
19 and other entities. The Complaint alleges, among other things, that Ross and Allison violated
20 Proposition 65 by failing to give clear and reasonable warnings of exposure to lead from the
21 AutoLogix™ Racing Massage™ Steering Wheel Cover, Item # 54-6167.

22 1.6 **Consent to Jurisdiction**

23 For purposes of this Consent Judgment, the Parties stipulate that this Court has
24 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
25 over Ross and Allison as to the acts alleged in the Complaint, that venue is proper in the County
26 of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full
27 settlement and resolution of the allegations contained in the Complaint and of all claims which
28 were or could have been raised by any person or entity based in whole or in part, directly or

1 indirectly, on the facts alleged therein or arising therefrom or related to.

2 **1.7 No Admission**

3 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
4 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
5 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
6 constitute an admission with respect to any material allegation of the Complaint, each and every
7 allegation of which Ross and Allison denies, nor may this Consent Judgment or compliance with
8 it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Ross
9 or Allison.

10 **2. DEFINITIONS**

11 2.1 "Accessible Component" means any component of a Covered Product that could
12 be touched by a person during reasonably foreseeable use.

13 2.2 "Covered Products" means AutoLogix™ Racing Massage™ Steering Wheel
14 Cover, Item # 54-6167. Covered Products does not include other brands of steering wheel covers
15 sold by defendants.

16 2.3 "Effective Date" means the date that this Consent Judgment is entered by the
17 Court.

18 2.4 "Lead" means lead and lead compounds.

19 2.5 "Notice" means the May 26, 2011 Notice.

20 **3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE**
21 **WARNINGS.**

22 3.1 Within 14 business days of the Effective Date Ross and Allison shall not sell the
23 Covered Product in California unless it is reformulated to contain less than 100 parts per million
24 of lead.

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, Allison shall pay a total of \$45,000 as complete settlement of all monetary
28 claims by CAG related to the Notice, as follows.

1 4.2 **Payment In Lieu of Civil Penalties:** Allison shall pay \$2,500 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:** Allison shall pay \$40,000 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:** Allison shall issue two separate checks for a total amount of two
11 thousand five hundred dollars (\$2,500) as penalties pursuant to Health & Safety Code §
12 25249.12: (a) one check made payable to the State of California's Office of Environmental Health
13 Hazard Assessment (OEHHA) in the amount of \$1,875.00, representing 75% of the total penalty;
14 and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$625 representing 25% of
15 the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall
16 be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount
17 of \$750. The second 1099 shall be issued in the amount of \$250 to CAG and delivered to:
18 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
19 90212

20 4.5 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,
21 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

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

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

1 Products, and all persons and entities who are downstream in the stream of commerce from
2 Allison Corporation who sell or distribute the Covered Product, including but not limited to Ross
3 Dress For Less, Inc. and Ross Stores, Inc. (collectively referred to as "Ross"), ("Downstream
4 Defendant Releasees"), for all claims for violations of Proposition 65 up through the Effective
5 Date based on exposure to Lead from Covered Product as set forth in the Notice. Allison and
6 Defendant Releasees' compliance with this Consent Judgment shall constitute compliance with
7 Proposition 65 with respect to Lead from the Covered Product as set forth in the Notice.

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

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

25 CAG understands and acknowledges that the significance and consequence of this waiver of
26 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
27 resulting from, or related directly or indirectly to, in whole or in part, the Covered Product,
28 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or

1 lead compounds from Covered Product, CAG will not be able to make any claim for those
2 damages against Allison the Defendant Releasees, or Downstream Defendant Releasees.
3 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may
4 exist as of the date of this release but which CAG does not know exist, and which, if known,
5 would materially affect their decision to enter into this Consent Judgment, regardless of whether
6 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

7 **6. ENFORCEMENT OF JUDGMENT**

8 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
9 hereto. Subject to Section 6.2, the parties may, by noticed motion or order to show cause before
10 the Superior Court of California, San Francisco, giving the notice required by law, enforce the
11 terms and conditions contained herein. A Party may enforce any of the terms and conditions of
12 this Consent Judgment only after that Party first provides 30 days notice to the Party allegedly
13 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
14 such Party's failure to comply in an open and good faith manner.

15 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
16 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
17 Violation ("NOV") to Allison. The NOV shall include for each Covered Product: the date(s) the
18 alleged violation(s) was observed and the location at which the Covered Product was offered for
19 sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Product,
20 including an identification of the component(s) of the Covered Product that were tested.

21 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
22 alleged violation if, within 30 days of receiving such NOV, Allison serves a Notice of
23 Election ("NOE") that meets one of the following conditions:

24 (a) The Covered Product was shipped by Allison for sale in California
25 before the Effective Date, or

26 (b) Since receiving the NOV Allison has taken corrective action by
27 either (i) requesting that its customers in California remove the Covered Product identified
28 in the NOV from sale in California and destroy or return the Covered Product to Allison,

1 or (ii) providing a clear and reasonable warning for the Covered Product identified in the
2 NOV pursuant to 27 Cal. Code Regs. § 25603.

3 6.2.2 **Contested NOV.** Allison may serve an NOE informing CAG of its
4 election to contest the NOV within 30 days of receiving the NOV.

5 (a) In its election, Allison may request that the sample(s) Covered
6 Product tested by CAG be subject to confirmatory testing at an EPA-accredited
7 laboratory.

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

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

16 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
17 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
18 violation of Proposition 65 or this Consent Judgment.

19 7. ENTRY OF CONSENT JUDGMENT

20 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
21 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
22 Max Sales waive their respective rights to a hearing or trial on the allegations of the Complaint.

23 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
24 and any and all prior agreements between the parties merged herein shall terminate and become
25 null and void, and the actions shall revert to the status that existed prior to the execution date of
26 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
27 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
28 have any effect, nor shall any such matter be admissible in evidence for any purpose in this

1 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
2 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

3 **8. MODIFICATION OF JUDGMENT**

4 8.1 This Consent Judgment may be modified only upon written agreement of the
5 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
6 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

7 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
8 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

9 **9. RETENTION OF JURISDICTION**

10 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
11 terms of this Consent Judgment.

12 **10. DUTIES LIMITED TO CALIFORNIA**

13 10.1 This Consent Judgment shall have no effect on Covered Products sold by Allison
14 outside the State of California.

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

16 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
17 California Attorney General so that the Attorney General may review this Consent Judgment
18 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
19 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
20 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
21 the parties may then submit it to the Court for approval.

22 **12. ATTORNEY FEES**

23 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
24 and attorney fees in connection with this action.

25 **13. ENTIRE AGREEMENT**

26 13.1 This Consent Judgment contains the sole and entire agreement and understanding
27 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
28 negotiations, commitments and understandings related hereto. No representations, oral or

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

4 **14. GOVERNING LAW**

5 14.1 The validity, construction and performance of this Consent Judgment shall be
6 governed by the laws of the State of California, without reference to any conflicts of law
7 provisions of California law.

8 14.2 The Parties, including their counsel, have participated in the preparation of this
9 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
10 Consent Judgment was subject to revision and modification by the Parties and has been accepted
11 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
12 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
13 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
14 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
15 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
16 this regard, the Parties hereby waive California Civil Code § 1654.

17 **15. EXECUTION AND COUNTERPARTS**

18 15.1 This Consent Judgment may be executed in counterparts and by means of
19 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
20 one document.

21 **16. NOTICES**

22 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
23 Class Mail.

24 If to CAG:

25 Reuben Yeroushalmi, Esq.
26 9100 Wilshire Boulevard, Suite 610E
27 Beverly Hills, CA 90212
28 (310) 623-1926

If to Allison Corporation:

Allison Corporation
David Dennison
15 Okner Parkway

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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:

May 25
Date: *April*, 2012



Name: *MICHELE SORESEN*

Title: *Executive Director*
CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

May 4
Date: *April*, 2012



Name: *DAVID DENWOOD*

Title: *President*
ALLISON CORPORATION

IT IS SO ORDERED.

Date: DEC 07 2012

A. JAMES ROBERTSON, II

JUDGE OF THE SUPERIOR COURT