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6 Attorneys for Plaintiff  
7 Consumer Advocacy Group, Inc.

*Original*  
**FILED**  
LOS ANGELES SUPERIOR COURT  
JUN 26 2013  
JOHN A. CLARKE, CLERK  
*Anthony R. Rico*  
BY ANTHONY RICO, DEPUTY

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES – UNLIMITED**

11 CONSUMER ADVOCACY GROUP,  
INC., in the public interest,  
12  
13 Plaintiff,  
14 v.  
15 NYGALA CORP. dba FLOMO®, a New  
16 Jersey Corporation and DOES 1-20;  
17 Defendants.

CASE NO. BC479596  
**[PROPOSED] CONSENT JUDGMENT**  
Health & Safety Code § 25249.5 *et seq.*  
Department: 17  
Judge: Hon. Richard E. Rico  
Complaint filed: February 24, 2012

18 **1. INTRODUCTION**

19  
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  
22 of the public and defendant, NYGALA CORP. allegedly dba FLOMO®, (herein referred to as  
23 "Defendant") with each a Party to the action and collectively referred to as "Parties."

24 1.2 Defendant employs ten or more persons, is a person in the course of doing  
25 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
26 California Health & Safety Code §§ 25249.6 *et seq.* ("Proposition 65"), and is alleged to  
27 manufacture, distribute, and sell (1) "Flomo® Unlimited Stationery Set, Item No. RL-MG592";  
28

1 (2) "Flomo® 100 Color Clips, 50 mm, MG933" and (3) "Flomo® Stationary Set, Item No. RL-  
2 MG591" (all three products together herein referred to as the "Covered Products").

3 **1.3 Notice of Violation.**

4 On August 5, 2011, CAG served Defendant, and various public enforcement agencies  
5 with a document entitled "60-Day Notice of Violation" ("August 5, 2011 Notice") that provided  
6 the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to  
7 warn individuals in California of exposures to lead contained in the Covered Products sold by  
8 Defendant. No public enforcer has commenced or diligently prosecuted the allegations set forth  
9 in the August 5, 2011 Notice. Lead is known to the State of California to cause cancer and/or  
10 birth defects or other reproductive harm.

11 **1.4 Complaint.**

12 On February 24, 2012, CAG filed a Complaint for civil penalties and injunctive relief  
13 ("Complaint") in Los Angeles Superior Court, Case No. BC479596, against Defendant and other  
14 entities. The Complaint alleges, among other things, that Defendant violated Proposition 65 by  
15 failing to give clear and reasonable warnings of exposure to lead from the Covered Products.  
16

17 **1.5 Consent to Jurisdiction**

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

25 **1.6 No Admission**

26 This Consent Judgment resolves claims that are denied and disputed. The Parties enter  
27 into this Consent Judgment pursuant to a full and final settlement of any and all claims between  
28

1 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not  
2 constitute an admission with respect to any material allegation of the Complaint, each and every  
3 allegation of which Defendant denies, nor may this Consent Judgment or compliance with it be  
4 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of  
5 Defendant, in this or any other case or proceeding of any kind hereafter.

6 **2. DEFINITIONS**

7 2.1 "Accessible Component" means any component of a Covered Product that could  
8 be touched by a person during reasonably foreseeable use.

9 2.2 "Covered Product" or "Covered Products" means (1) "Flomo® Unlimited  
10 Stationery Set, Item No. RL-MG592"; (2) "Flomo® 100 Color Clips, 50 mm, MG933" and (3)  
11 "Flomo® Stationery Set, Item No. RL-MG591".

12 2.3 "Effective Date" means the date that this Consent Judgment is entered by the  
13 Court.

14 2.4 "Lead" means lead and lead compounds.

15 2.5 "Notice" means the August 5, 2011 Notice.

16 **3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE**  
17 **WARNINGS.**

18 3.1 Defendant shall not sell or distribute the Covered Product in California unless it is  
19 reformulated to contain less than 100 parts per million of lead.

20 **4. SETTLEMENT PAYMENT**

21 4.1 Within 14 days of the Effective Date or receipt of Forms W-9 from CAG,  
22 whichever is later, Defendant shall pay a total of thirty-thousand dollars and zero cents  
23 (\$30,000.00) to CAG in full and complete settlement of all monetary claims by CAG related to  
24 the Notice, as follows.

25 4.2 **Payment In Lieu of Civil Penalties:** Defendant shall pay one-thousand dollars  
26 (\$1,000.00) in lieu of civil penalties to CAG pursuant to California Health and Safety Code §  
27

1 25249.7(b). CAG will use this payment for investigation of the public's exposure to Proposition  
2 65 listed chemicals through various means, laboratory fees for testing for Proposition 65 listed  
3 chemicals, expert fees for evaluating exposures through various mediums, including but not  
4 limited to consumer product, occupational, and environmental exposures to Proposition 65 listed  
5 chemicals, and the cost of hiring consulting and retained experts who assist with the extensive  
6 scientific analysis necessary for those files in litigation, in order to reduce the public's exposure  
7 to Proposition 65 listed chemicals by notifying those persons and/or entities believed to be  
8 responsible for such exposures and attempting to persuade those persons and/or entities to  
9 reformulate their products or the source of exposure to completely eliminate or lower the level of  
10 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the  
11 instant Action. Further, should the court require it, CAG will submit under seal, an accounting  
12 of these funds as described above as to how the funds were used. The check shall be made  
13 payable to "Consumer Advocacy Group, Inc." and delivered to Reuben Yeroushalmi,  
14 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California  
15 90212.

16 **4.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall pay twenty-  
17 eight thousand dollars (\$28,000.00) to "Yeroushalmi & Associates" as reimbursement for the  
18 investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs and  
19 expenses for all work performed through the approval of this Consent Judgment.

20 **4.4 Civil Penalty:** Defendant shall issue two separate checks for a total amount of  
21 one-thousand dollars (\$1,000.00) as penalties pursuant to Health & Safety Code § 25249.12: (a)  
22 one check made payable to the State of California's Office of Environmental Health Hazard  
23 Assessment (OEHHA) in the amount of \$750.00, representing 75% of the total penalty; and (b)  
24 one check to Consumer Advocacy Group, Inc. in the amount of \$250.00, representing 25% of the  
25 total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be  
26 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of  
27 \$750.00. The second 1099 shall be issued in the amount of \$250.00 to CAG and delivered to:  
28

1 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California  
2 90212.

3 4.5 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,  
4 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

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

6 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on  
7 behalf of itself and in the public interest and Defendant, all the recipients in the August 5, 2011  
8 Notice and Defendant's officers, directors, insurers, employees, parents, shareholders, divisions,  
9 subdivisions, subsidiaries, partners, affiliates, sister companies and their successors and assigns  
10 ("Defendant Releasees") and each of their suppliers, customers, distributors, wholesalers,  
11 retailers, or any other person in the course of doing business, and the successors and assigns of  
12 any of them who may use, maintain, distribute or sell the Covered Products, and all persons and  
13 entities who are downstream in the stream of commerce from Defendant who sell or distribute  
14 the Covered Products ("Downstream Defendant Releasees"), for all claims for violations of  
15 Proposition 65 up through the Effective Date based on exposure to Lead from Covered Products  
16 as set forth in the Notice. Defendant and Defendant Releasees' compliance with this Consent  
17 Judgment shall constitute compliance with Proposition 65 with respect to Lead from the Covered  
18 Products as set forth in the Notice.

19 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
20 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
21 indirectly, any form of legal action and releases all claims, including, without limitation, all  
22 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
23 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
24 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,  
25 fixed or contingent (collectively "Claims"), against Defendant, all the recipients in the August 5,  
26 2011 Notice, Defendant Releasees, and Downstream Defendant Releasees arising from any  
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1 violation of Proposition 65 or any other statutory or common law regarding the failure to warn  
2 about exposure to Lead in the Covered Products. In furtherance of the foregoing, as to alleged  
3 exposures to the Covered Products, CAG hereby waives any and all rights and benefits which it  
4 now has, or in the future may have, conferred upon it with respect to the Claims by virtue of the  
5 provisions of section 1542 of the California Civil Code, which provides as follows:  
6

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT  
9 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,  
DEBTOR.

10 CAG understands and acknowledges that the significance and consequence of this waiver of  
11 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
12 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,  
13 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead  
14 or lead compounds from Covered Products, CAG will not be able to make any claim for those  
15 damages against Defendant, all the recipients in the August 5, 2011 Notice, the Defendant  
16 Releasees, or Downstream Defendant Releasees. Furthermore, CAG acknowledges that it  
17 intends these consequences for any such Claims as may exist as of the date of this release but  
18 which CAG does not know exist, and which, if known, would materially affect their decision to  
19 enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of  
20 ignorance, oversight, error, negligence, or any other cause.  
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22 **6. ENFORCEMENT OF JUDGMENT**

23 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
24 hereto. Subject to Section 6.2, the parties may, by noticed motion or order to show cause before  
25 the Superior Court of California, Los Angeles County, giving the notice required by law, enforce  
26 the terms and conditions contained herein. A Party may enforce any of the terms and conditions  
27 of this Consent Judgment only after that Party first provides 30 days notice to the Party allegedly  
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1 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve  
2 such Party's failure to comply in an open and good faith manner.

3       **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
4 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of  
5 Violation ("NOV") to Defendant. The NOV shall include for each Covered Product: the date(s)  
6 the alleged violation(s) was observed and the location at which the Covered Product was offered  
7 for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered  
8 Product, including an identification of the component(s) of the Covered Product that were tested.

9       **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the  
10 alleged violation if, within 30 days of receiving such NOV, Defendant serves a Notice of  
11 Election ("NOE") that meets one of the following conditions:

12           (a) The Covered Product was shipped by Defendant for sale in  
13 California before the Effective Date, or

14           (b) Since receiving the NOV Defendant has taken corrective action by  
15 either (i) requesting that its customers in California remove the Covered Product  
16 identified in the NOV from sale in California and destroy or return the Covered Product  
17 to Defendant, or (ii) providing a clear and reasonable warning for the Covered Product  
18 identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

19       **6.2.2 Contested NOV.** Defendant may serve an NOE informing CAG of its  
20 election to contest the NOV within 30 days of receiving the NOV.

21           (a) In its election, Defendant may request that the sample(s) Covered  
22 Product tested by CAG be subject to confirmatory testing at an EPA-accredited  
23 laboratory.

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

3 (c) If Defendant does not withdraw an NOE to contest the NOV, the  
4 Parties shall meet and confer for a period of no less than 30 days before CAG may seek  
5 an order enforcing the terms of this Consent Judgment.  
6

7 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such  
8 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
9 violation of Proposition 65 or this Consent Judgment.

10 **7. ENTRY OF CONSENT JUDGMENT**

11 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
12 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
13 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

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

22 **8. MODIFICATION OF JUDGMENT**

23 8.1 This Consent Judgment may be modified only upon written agreement of the  
24 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
25 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

26 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
27 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.  
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1 **9. RETENTION OF JURISDICTION**

2 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
3 terms of this Consent Judgment.

4 **10. DUTIES LIMITED TO CALIFORNIA**

5 10.1 This Consent Judgment shall have no effect on Covered Products sold by  
6 Defendant outside the State of California.

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

8 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
9 California Attorney General so that the Attorney General may review this Consent Judgment  
10 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the  
11 Attorney General has received the aforementioned copy of this Consent Judgment, and in the  
12 absence of any written objection by the Attorney General to the terms of this Consent Judgment,  
13 the parties may then submit it to the Court for approval.

14 **12. ATTORNEY FEES**

15 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs  
16 and attorney fees in connection with this action.

17 **13. ENTIRE AGREEMENT**

18 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
19 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,  
20 negotiations, commitments and understandings related hereto. No representations, oral or  
21 otherwise, express or implied, other than those contained herein have been made by any party  
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
23 deemed to exist or to bind any of the Parties.  
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1 **14. GOVERNING LAW**

2 14.1 The validity, construction and performance of this Consent Judgment shall be  
3 governed by the laws of the State of California, without reference to any conflicts of law  
4 provisions of California law.

5 14.2 The Parties, including their counsel, have participated in the preparation of this  
6 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
7 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
8 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty  
9 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a  
10 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent  
11 Judgment agrees that any statute or rule of construction providing that ambiguities are to be  
12 resolved against the drafting Party should not be employed in the interpretation of this Consent  
13 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

14 **15. EXECUTION AND COUNTERPARTS**

15 15.1 This Consent Judgment may be executed in counterparts and by means of  
16 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
17 one document.

18 **16. NOTICES**

19 Any notices under this Consent Judgment shall be by personal delivery of First Class  
20 Mail.

21 If to CAG:

22 Reuben Yeroushalmi  
23 9100 Wilshire Boulevard, Suite 610E  
24 Beverly Hills, CA 90212  
25 (310) 623-1926

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If to Defendant, Nygala Corp. dba Flomo®:

Nygala Corp. dba Flomo®  
698 US Highway 46 West  
Teterboro, NJ 07608

With a copy to:

Nicholas Boylan, Esq.  
Law Offices of Nicholas A. Boylan, APC  
450 A. Street, Suite 400  
San Diego, CA 92101

**17. AUTHORITY TO STIPULATE**

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: 4-24, 2013

Date: \_\_\_\_\_, 2013



Name: Michel Sassoon

Name: \_\_\_\_\_

Title: Executive Director  
CONSUMER ADVOCACY GROUP,  
INC.

Title: \_\_\_\_\_  
NYGALA CORP. dba FLOMO®.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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If to Defendant, Nygala Corp. dba Flomo®:

Nygala Corp. dba Flomo®  
698 US Highway 46 West  
Teterboro, NJ 07608

With a copy to:

Nicholas Boylan, Esq.  
Law Offices of Nicholas A. Boylan, APC  
450 A. Street, Suite 400  
San Diego, CA 92101

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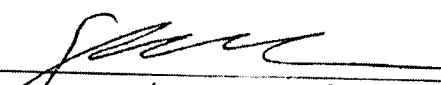
AGREED TO:

Date: \_\_\_\_\_, 2013

AGREED TO:

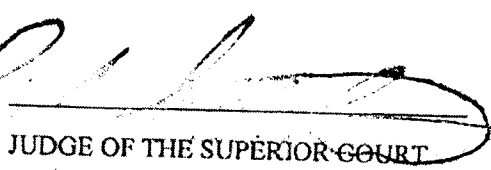
Date: April 29, 2013

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
CONSUMER ADVOCACY GROUP,  
INC.

  
Name: Wendy Shen  
Title: President / CEO  
NYGALA CORP. dba FLOMO®.

**IT IS SO ORDERED.**

Date: June 26, 2013

  
JUDGE OF THE SUPERIOR COURT