

**COPY**

**ENDORSED  
FILED**  
San Francisco County Superior Court

**OCT 28 2013**

**CLERK OF THE COURT**  
BY: KAREN LIU  
Deputy Clerk

1 Reuben Yeroushalmi (SBN 193981)  
Daniel D. Cho (SBN 105409)  
2 Ben Yeroushalmi (SBN 232540)  
YEROUSHALMI & ASSOCIATES  
3 BEVERLY HILLS, CA 90212  
Telephone: 310-623-1926  
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5 Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.  
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF SAN FRANCISCO

OCT 25 2013

9  
10 CONSUMER ADVOCACY GROUP, INC., in  
the public interest,  
11 Plaintiff,  
12  
v.  
13 THE CHILDREN'S PLACE RETAIL  
14 STORES, INC.; and DOES 1 through 20,  
15 Defendants.

Case No. CGC 12-520879

**STIPULATED CONSENT JUDGMENT  
AND ORDER**

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: May 17, 2012  
TRIAL DATE: None set

**BY FAX**

17 **I. INTRODUCTION**

18 1.1 On May 17, 2012, Plaintiff, the Consumer Advocacy Group, Inc. ("CAG"), filed a  
19 complaint in the San Francisco Superior Court entitled *Consumer Advocacy Group, Inc. v. The*  
20 *Children's Place Retail Stores, Inc.*, Case No. CGC 12-520879 (the "Action"), for civil penalties  
21 and injunctive relief pursuant to the provisions of California Health & Safety Code § 25249.5, *et*  
22 *seq.* ("Proposition 65"). The Children's Place Retail Stores, Inc. shall be referred to hereinafter as  
23 "Defendant," and CAG and Defendant shall collectively be referred to hereinafter as "Parties."

24 1.2 Defendant is a corporation. Defendant has offered for sale in the State of  
25 California children's footwear products (the "Product" or "Products") allegedly containing the  
26 chemicals Di (2-ethylhexyl) phthalate ("DEHP") and Bis (2-ethylhexyl) phthalate (DBP),  
27 chemicals known to the State of California to cause cancer and birth defects or other reproductive  
28 harm.

1           1.3    On or about August 24, 2011, CAG served Defendant and the appropriate public  
2 enforcement agencies with notice claiming that Defendant was in violation of Proposition 65 in  
3 regard to the Products. CAG later amended that notice on November 3, 2011 and May 23, 2012 to  
4 include additional allegedly non-compliant Products. CAG's notices and the Complaint in this  
5 Action allege that Defendant exposed people who handle the Products to DEHP and DBP, without  
6 first providing clear and reasonable warnings, in violation of California Health & Safety Code §  
7 25249.6.

8           1.4    Defendant denies the material allegations of the notices and the Complaint, and  
9 denies liability for the cause of action alleged in the Complaint and in connection with the Action.  
10 Defendant maintains that the Products manufactured, distributed, and sold by it in California have  
11 at all times been in compliance with all applicable laws. CAG disputes Defendant's contentions.  
12 Defendant reserves all of its rights and defenses with regard to any claim by any person under  
13 Proposition 65 or otherwise.

14           1.5    The Parties enter into this Stipulated Consent Judgment pursuant to a settlement of  
15 certain disputed claims as alleged in the Complaint and the Sixty-Day Notices for the purpose of  
16 avoiding prolonged and costly litigation, including without limitation the expenditure of  
17 significant funds by Defendant for scientific analysis and related proceedings before the Office of  
18 Environmental Hazard Assessment and/or the Courts related to the Products, and similar  
19 expenditures by CAG to oppose such analysis and proceedings.

20           1.6    Nothing in this Stipulated Consent Judgment shall be construed as an admission by  
21 the Parties of any fact, conclusion of law, issue of law or violation of law, including without  
22 limitation, any admission concerning any violation of Proposition 65 or any other statutory,  
23 regulatory, common law, or equitable doctrine, or the meaning of the terms "knowingly and  
24 intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section  
25 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with its terms, shall  
26 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of  
27 law, or violation of law, or of fault, wrongdoing, or liability by Defendant, or their respective  
28 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or

1 admitted as evidence in any administrative or judicial proceeding or litigation in any court,  
2 agency, or forum.

3 1.7 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any  
4 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,  
5 except as expressly provided in this Stipulated Consent Judgment.

6 1.8 This Stipulated Consent Judgment is the product of negotiation and compromise  
7 and is accepted by the Parties, for purposes of settling, compromising, and resolving issues  
8 disputed in this action, including future compliance by Defendant with Section 2 of this Stipulated  
9 Consent Judgment, and shall not be used for any other purpose, or in any other matter.

10 **2. COMPLIANCE – REFORMULATION AND TESTING**

11 2.1 As defined above, the Product covered by this Stipulation is children's footwear  
12 products sold only by The Children's Place. For purposes of this Stipulation and the Judgment to  
13 be entered hereon, "Phthalates" shall mean the chemicals DEHP and DBP. "Phthalate-Free"  
14 Product shall mean a Product that contains less than one-tenth of one percent (.001) Phthalates.

15 2.2 As of the Effective Date, Defendant agrees to reformulate Products manufactured  
16 for retail sale in North America to be Phthalate-Free.

17 2.3 As of the Effective Date, for any existing Products in California stores that are not  
18 yet reformulated, Defendant shall remove those Products from the market and destroy the  
19 Products.

20 2.4 Defendant will institute a testing program for its Products in which certain Products  
21 are randomly tested in California using EPA testing methodologies to ensure that the Products are  
22 Phthalate-Free.

23 **3. MONETARY PAYMENTS**

24 3.1 Within ten business (10) days of entry of this Stipulated Consent Judgment by the  
25 Court, in settlement of all the claims referred to in this Consent Judgment against it, Defendant  
26 shall make a the following payments:

27 3.1.1 Civil Penalties: Defendant shall make payment of seventy-five hundred  
28 dollars (\$7,500), to be apportioned in accordance with Health & Safety Code § 25249.12(c)(1)(

1 and (d), with 75% of these funds remitted to the State of California's Office of Environmental  
2 Health Hazard Assessment ("OEHHA") and the remaining 25% of these penalty monies remitted  
3 to CAG as provided by Health & Safety Code § 25249.12(d). Defendant shall issue two separate  
4 checks for the penalty payment: (a) one check made payable to "Yeroushalmi & Associates in  
5 Trust for OEHHA" in the amount of \$5,625.00, representing 75% of the total penalty, and (b) one  
6 check to "Consumer Advocacy Group, Inc." in the amount of \$1,875.00, representing 25% of the  
7 total penalty. Two separate 1099s shall be issued for the above payments.

8           3.1.2 Attorneys' Fees and Costs: Fifty-five thousand dollars (\$55,000) of such  
9 payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable  
10 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of  
11 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a settlement  
12 in the public interest. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &  
13 Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. Yeroushalmi  
14 & Associates shall provide its address and federal tax identification number to Defendant prior to  
15 such payment.

16           3.1.3 Payment in Lieu of Civil Penalties: The Children's Place shall pay \$2,500  
17 in lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG will use the payment for such  
18 projects and purposes related to environmental protection, worker health and safety, or reduction  
19 of human exposure to hazardous substances (including administration and litigation costs arising  
20 from such projects, as CAG may choose.

21           3.2 All payments shall be delivered care of: Reuben Yeroushalmi, Yeroushalmi &  
22 Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

23           **4. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

24           4.1 This written Stipulated Consent Judgment may only be modified by written  
25 agreement of CAG and Defendant upon stipulation and Order of the Court, or after noticed  
26 motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion of  
27 CAG or Defendant as provided by law and upon entry of a modified Stipulated Consent Judgment  
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1 by the Court. The Attorney General shall be served with notice of any proposed modification to  
2 this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

3 **5. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT**

4 5.1 Any of the Parties may, by motion or application for an order to show cause before  
5 the Superior Court of the County of San Francisco, consistent with the terms and conditions set  
6 forth in paragraphs 9.1 and 9.2 of this Stipulated Consent Judgment, enforce the terms and  
7 conditions contained in this Stipulated Consent Judgment.

8 **6. APPLICATION OF STIPULATED CONSENT JUDGMENT**

9 6.1 This Stipulated Consent Judgment shall apply to and be binding upon the Parties  
10 hereto, their divisions, subdivisions and subsidiaries, officers, directors, employees, agents and  
11 their successors or assigns, and to the extent allowed by law, on the general public.

12 **7. CLAIMS COVERED AND RELEASED**

13 7.1 Waiver and Release of Claim Against Defendant: In further consideration of the  
14 promises and agreements herein contained, and for the payments to be made pursuant to Section 3,  
15 above, CAG, on behalf of itself, its past and current agents, representatives, attorneys, including,  
16 without limitation, Yeroushalmi & Associates, and in the public interest, hereby releases and  
17 discharges Defendant, including its subsidiaries, affiliates, related companies, predecessors,  
18 successors and assigns, suppliers, authorized dealers, or any other person in the course of doing  
19 business and all officers, directors, employees, agents, representatives, attorneys, licensors,  
20 members, managers, shareholders of any of them (collectively, the "Released Parties") from any  
21 and all claims asserted, or that could have been asserted, in this or other litigation arising from the  
22 alleged failure of any of the Released Parties to provide Proposition 65 warnings for the Products  
23 regarding the exposure of individuals to DBP or DEHP in the Product. CAG, on behalf of itself  
24 only, hereby releases and discharges the Released Parties from any and all known and unknown  
25 past, present, and future rights, claims, causes of action, damages, suits, penalties, liabilities,  
26 injunctive relief, declaratory relief, and attorney fees, costs, and expenses related to or arising out  
27 of the facts and claims asserted, or that could have been asserted, under state or federal law in this  
28 or other litigation arising from or related to the Product or the facts alleged in Plaintiff's

1 Proposition 65 Notice or the Complaint, including without limitation any and all claims  
2 concerning exposure of any person to DBP and DEHP in the Product. Compliance with the terms  
3 of this Stipulated Consent Judgment shall constitute compliance by the Released Parties with  
4 Proposition 65 with respect to exposures to DBP and DEHP contained in the Products. This  
5 release does not limit or affect the obligations of any party that are created under this Stipulated  
6 Consent Judgment.

7       7.2    Waiver and Release of Claims Against Downstream Persons.

8       CAG, on behalf of itself its past and current agents, representatives, attorneys, including,  
9 without limitation, Yeroushalmi & Associates, and in the public interest, hereby releases and  
10 discharges each distributor, wholesaler, retailer, customer, purchaser, seller, dealer, owner,  
11 operator, lessor, lessee, licensee, or user of the Product manufactured, distributed, and/or sold by  
12 the Released Parties, and all their subsidiaries, affiliates and related companies, and the officers,  
13 directors, employees, agents, representatives, attorneys, licensors, members, managers, suppliers,  
14 authorized dealers, and shareholders of them (collectively, "Downstream Persons"), from any and  
15 all claims asserted, or that could have been asserted, in this litigation arising from the alleged  
16 failure of any of the Released Parties or the Downstream Persons to provide Proposition 65  
17 warnings for the Products regarding the exposure of individuals to DBP or DEHP in the Product.  
18 CAG, on behalf of itself only, hereby releases and discharges the Downstream Persons from any  
19 and all known and unknown past, present, and future rights, claims, causes of action, damages,  
20 suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs, and  
21 expenses related to or arising out of the facts and claims asserted, or that could have been asserted,  
22 under state or federal law in this litigation arising from or related to the Product or the facts  
23 alleged in Plaintiff's Proposition 65 Notice or the Complaint, including without limitation any and  
24 all claims concerning exposure of any person to Phthalates in the Products. This release does not  
25 limit or affect the obligations of any party that are created under this Stipulated Consent Judgment.

26       7.3    Matters Covered By This Consent Judgment/Release of Future Claims.

27       As to the Products, this Consent Judgment is a full, final, and binding resolution between  
28 CAG, acting on behalf of itself and, as to those matters raised in CAG's Notice, the public interest

1 pursuant to Health and Safety Code Section 25249.7(d), on the one hand, and the Released Parties  
2 and Downstream Persons on the other hand, for the alleged failure to provide clear, reasonable,  
3 and lawful warnings of exposure to lead used or contained in the Products. As to the Products,  
4 compliance with the terms of this Consent Judgment resolves any issue, now and in the future,  
5 concerning compliance by the Released Parties and Downstream Persons with existing  
6 requirements of Proposition 65 to provide clear and reasonable warning about exposure to  
7 Phthalates in the Products.

8       7.4 Unknown Claims. It is possible that other injuries, damages, liability, or claims not  
9 now known to the Parties arising out of the facts alleged in the Complaint and relating to the  
10 Product will develop or be discovered, and this Stipulated Consent Judgment is expressly intended  
11 to cover and include all such injuries, damages, liability, and claims, including all rights of action  
12 therefor. CAG has full knowledge of the contents of Section 1542 of the Civil Code. CAG, on  
13 behalf of itself only, acknowledges that the claims released in section 7.1 and 7.2 above may  
14 include unknown claims and waives Section 1542 as to any such unknown claims. Section 1542  
15 reads as follows:

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

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

21       **8. SEVERABILITY**

22       8.1 In the event that any of the provisions of this Stipulated Consent Judgment are held  
23 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
24 affected.

25       **9. NOTICE AND CURE**

26       9.1 No action to enforce this Stipulated Consent Judgment may be commenced, and no  
27 notice of violation related to the Product may be served or filed against Defendant by CAG, unless  
28 the party seeking enforcement or alleging violation notifies the other party of the specific acts

1 alleged to breach this Stipulated Consent Judgment at least 90 days before serving or filing any  
2 motion, action, or Notice of Violation. Any such notice must contain (a) the name of the product,  
3 (b) specific dates when the product was sold in California without the warning specified in Section  
4 2, (c) the store or other place at which the product was available for sale to consumers, and (d) any  
5 other evidence or other support for the allegations in the notice.

6 9.2 Within 30 days of receiving the notice described in Section 9.1, Defendant shall  
7 either (1) withdraw the product, or (2) refute the information provided under Section 9.1. Should  
8 the parties be unable to resolve the dispute, either party may seek relief under Section 5.

9 **10. GOVERNING LAW**

10 10.1 The terms of this Stipulated Consent Judgment shall be governed by the laws of the  
11 State of California.

12 **11. PROVISION OF NOTICE**

13 11.1 All notices required pursuant to this Stipulated Consent Judgment and  
14 correspondence shall be sent to the following:

15 For CAG:	For The Children's Place Retail Stores, Inc.:
16 Reuben Yeroushalmi	Meredith A. Jones-McKeown
17 YEROUSHALMI & ASSOCIATES	SHEPPARD MULLIN RICHTER &
18 9100 Wilshire Boulevard, Suite 610E	HAMPTON LLP
19 Beverly Hills, CA 90212	4 Embarcadero Center, 17 <sup>th</sup> Floor
T: 310-623-1926	San Francisco, CA 94111
F: 310-623-1930	T: 415-774-3278
	F: 415-434-3947

20 **12. COURT APPROVAL**

21 12.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be of no  
22 further force or effect.

23 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title  
24 11 California Code of Regulations section 3003. Within a reasonable time of receiving all  
25 necessary signatures to this Consent Judgment, and consistent with Health & Safety Code  
26 §25249.7(f), Plaintiff shall notice a Motion to Approve Settlement and for Entry of Consent  
27 Judgment ("Motion") in the San Francisco Superior Court for a hearing scheduled not earlier than  
28



1 forty-five (45) days later. Plaintiff shall serve this Consent Judgment and the noticed Motion on  
2 the California Attorney General's office within a reasonable time of receiving all necessary  
3 signatures.

4 12.3 If the Court enters this Consent Judgment, Plaintiff shall, within ten (10) working  
5 days after entry, electronically provide or otherwise serve a copy of it and the report required  
6 pursuant to 11 Cal. Code Regs. § 3004 to/on the California Attorney General's Office.

7 12.4 The "Effective Date" of this Consent Judgment shall be the date this Consent  
8 Judgment is entered by the Court.

9 **13. EXECUTION AND COUNTER PARTS**

10 13.1 This Stipulated Consent Judgment may be executed in counterparts, which taken  
11 together shall be deemed to constitute one document. Facsimile or pdf signatures shall be  
12 construed as valid as the original.

13 **14. AUTHORIZATION**

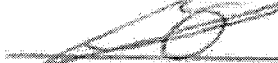
14 14.1 Each signer of this Stipulated Consent Judgment certifies that he or she is fully  
15 authorized by the party he or she represents to stipulate to the terms and conditions of this  
16 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on  
17 behalf of the party represented and legally bind that party. The undersigned have read, understand  
18 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as  
19 explicitly provided herein, each party is to bear its own fees and costs.

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Dated: 3-8-13


CONSUMER ADVOCACY GROUP, INC.



Name and Title: Michel Sassoon  
Executive director

Dated: March 6, 2013

THE CHILDREN'S PLACE RETAIL STORES, INC.



Bradley Cost  
Senior Vice President, General Counsel

**ORDERED JUDGMENT**

Based upon the Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and The Children's Place Retail Stores, Inc., the Consent Judgment is approved and judgment is hereby entered according to the terms herein.

**OCT 25 2013**

Dated: \_\_\_\_\_

**ERNEST H. GOLDSMITH**

Judge, Superior Court of the State of California

**ERNEST H. GOLDSMITH**