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CONSUMER ADVOCACY GROUP, INC.

REC'D

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FILED
LOS ANGELES SUPERIOR COURT

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JOHN A. CLARKE, CLERK
Antonio Ortiz
BY ANTONIO ORTIZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CONSUMER ADVOCACY GROUP,

Plaintiff,

v.

YOUNG SUNG (U.S.A), INC., a California
Corporation; ROSS DRESS FOR LESS, INC.,
a Virginia Corporation, d.b.a. dd's
DISCOUNT; ROSS STORES INC., d.b.a. dd's
DISCOUNT, a Delaware Corporation; and
DOES 1-50,

Defendant.

Case No. BC479181

Assigned For All Purposes To The
Honorable Richard E. Rico

[PROPOSED] CONSENT JUDGMENT

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 Young Sung (U.S.A.), Inc. ("Young Sung"), with each a Party and collectively referred to as "Parties."

1.2 Young Sung 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") that distributes or sells automotive accessories, including steering wheel covers and automobile tuning kits ("Automotive

Accessories"). Lead is known to the State of California to cause cancer and/or birth defects or other reproductive harm.

1.3 Notices of Violation.

1.3.1 On or about October 17, 2011, CAG served Young Sung and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("October 17, 2011 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 Steering Wheel Cover with pictures of Our Lady of Guadalupe sold by Young Sung. No public enforcer has commenced or diligently prosecuted the allegations set forth in the October 27, 2011 Notice.

1.3.2 On or about April 10, 2012, CAG served Young Sung and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("April 10, 2012 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 automobile tuning kits sold by Young Sung. No public enforcer has commenced or diligently prosecuted the allegations set forth in the April 10, 2012 Notice.

1.4 Complaint

1.4.1 On February 16, 2012, CAG filed a Complaint for civil penalties and injunctive relief ("Complaint") in Los Angeles, Superior Court, Case No. BC479181, against Young Sung. The Complaint alleges, among other things, that Young Sung violated Proposition 65 by failing to give clear and reasonable warnings of exposure to lead from Steering Wheel Covers.

1.4.2 On or about April 18, 2012, CAG filed a first amended complaint in the action.

1.4.3 Upon entry of this Consent Judgment, the complaint shall be deemed amended to include the violations alleged in the April 10, 2012 Notice.

1 1.5 **Consent to Jurisdiction**

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

9 1.6 **No Admission**

10 This Consent Judgment resolves claims that are denied and disputed. The parties enter
11 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
12 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
13 constitute an admission with respect to any material allegation of the Complaint, each and every
14 allegation of which Young Sung denies, nor may this Consent Judgment or compliance with it be
15 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Young
16 Sung.

17 **2. DEFINITIONS**

18 2.1 “Covered Products” means steering wheel covers, including steering wheel covers
19 sold individually or in kits containing steering wheel covers sold by Young Sung.

20 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
21 Court.

22 2.3 “Lead” means lead and lead compounds.

23 2.4 “Notices” means the October 17, 2011 Notice and the April 10, 2012 Notice.

24 **3. INJUNCTIVE RELIEF/REFORMULATION.**

25 3.1 On or after the Effective Date, Young Sung shall not purchase, import,
26 manufacture, distribute, sell, or offer for sale Covered Products intended for sale to California
27 consumers if the Covered Product contains more than 100 parts per million (“ppm”) Lead by
28 weight.

1 3.2 Notwithstanding Section 3.1 above, as of the Effective Date, to the extent Young
2 Sung sells or ships any Covered Product purchased before the Effective Date that does not meet
3 the reformulation standard set forth in Section 3.1 for sale to consumers in California, any such
4 Covered Product shall bear a warning that is affixed to the packaging of, or directly on, the
5 Covered Product. Any warning provided pursuant to this section shall be prominently placed
6 with such conspicuousness as compared with other words, statements, designs, or devices as to
7 render it likely to be read and understood by an ordinary individual under customary conditions
8 before purchase or use. The warning shall state:

9 **WARNING:** This product contains a chemical known to the State of California
10 to cause cancer, or birth defects, or other reproductive harm.

11 **4. SETTLEMENT PAYMENT**

12 4.1 **Settlement Amount:** Young Sung shall pay the total sum of \$57,500 as a
13 settlement payment in full and complete settlement of all monetary claims by CAG related to the
14 Notices, as follows.

15 4.1.1 **Payment In Lieu of Civil Penalties:** Young Sung shall pay \$1250 in lieu
16 of civil penalties to "Consumer Advocacy Group, Inc." CAG will use the payment for
17 such projects and purposes related to environmental protection, worker health and safety,
18 or reduction of human exposure to hazardous substances (including administrative and
19 litigation costs arising from such projects), as CAG may choose.

20 4.1.2 **Reimbursement of Attorneys Fees and Costs:** Young Sung shall pay
21 \$52,500 to "Yeroushalmi & Associates" as reimbursement for the investigation fees and
22 costs, testing costs, expert fees, attorney fees, and other litigation costs and expenses for
23 all work performed through the approval of this Consent Judgment.

24 4.1.3 **Civil Penalty:** Defendant shall issue two separate checks for a total amount
25 of five thousand dollars (\$3,750) as penalties pursuant to Health & Safety Code § 25192:
26 (a) one check made payable to the State of California's Office of Environmental Health
27 Hazard Assessment (OEHHA) in the amount of \$2,812.50, representing 75% of the total
28 penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$937.50,

1 representing 25% of the total penalty. Two separate 1099s shall be issued for the above
2 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA
3 95184 (EIN: 68-0284486) in the amount of \$2,812.50. The second 1099 shall be issued in
4 the amount of \$937.50 to CAG and delivered to: Yeroushalmi & Associates, 9100
5 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

6 4.2 **Delivery of Payments:** Payments shall be delivered to: Reuben Yeroushalmi,
7 Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

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

9 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
10 behalf of itself and in the public interest and Young Sung and its officers, directors, insurers,
11 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
12 companies and their successors and assigns ("Defendant Releasees") and each of their suppliers,
13 customers, distributors, wholesalers, retailers (including but not limited to Ross Stores, Inc. and
14 Ross Dress for Less, Inc.), or any other person in the course of doing business, and the successors
15 and assigns of any of them, who may use, maintain, distribute or sell Covered Products
16 ("Downstream Defendant Releasees"), for all claims for violations of Proposition 65 up through
17 the Effective Date based on exposure to Lead from Covered Products as set forth in the Notices.
18 Young Sung's and Defendant Releasees' compliance with this Consent Judgment shall constitute
19 compliance with Proposition 65 with respect to Lead from the Covered Products as set forth in
20 the Notices.

21 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
22 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
23 indirectly, any form of legal action and releases all claims, including, without limitation, all
24 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
25 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
26 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
27 contingent (collectively "Claims"), against Young Sung, Defendant Releasees, and Downstream
28 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or

1 common law regarding the failure to warn about exposure to Lead in Covered Products. In
2 furtherance of the foregoing, as to alleged exposures to Covered Products, CAG hereby waives
3 any and all rights and benefits which it now has, or in the future may have, conferred upon it with
4 respect to the Claims by virtue of the provisions of section 1542 of the California Civil Code,
5 which provides as follows:

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

11 CAG understands and acknowledges that the significance and consequence of this waiver of
12 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
13 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
14 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or
15 lead compounds from Covered Products, CAG will not be able to make any claim for those
16 damages against Young Sung or the Released Entities. 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.

21 6. ENFORCEMENT OF JUDGMENT

22 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
23 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
24 California, Los Angeles County, giving the notice required by law, enforce the terms and
25 conditions contained herein. A Party may enforce any of the terms and conditions of this Consent
26 Judgment only after that Party first provides 30 days' notice to the Party allegedly failing to
27 comply with the terms and conditions of this Consent Judgment and attempts to resolve such
28 Party's failure to comply in an open and good faith manner.

6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of

1 Violation ("NOV") to Young Sung. The NOV shall include for each Covered Product: the
2 date(s) the alleged violation(s) was observed and the location at which the Covered Product was
3 offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
4 Covered Product, including an identification of the component(s) of the Covered Product that
5 were tested.

6 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
7 alleged violation if, within 30 days of receiving such NOV, Young Sung serves a Notice
8 of Election ("NOE") that meets one of the following conditions:

9 (a) The Covered Product was shipped by Young Sung for sale in
10 California before the Effective Date, or

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

16 **6.2.2 Contested NOV.** Young Sung may serve an NOE informing CAG of its
17 election to contest the NOV within 30 days of receiving the NOV.

18 (a) In its election, Young Sung may request that the sample(s) Covered
19 Product tested by CAG be subject to confirmatory testing at an EPA-accredited
20 laboratory.

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

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

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

7. ENTRY OF CONSENT JUDGMENT

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

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

7.3 If this Consent Judgment is not entered by the Court, and the Parties have exhausted their meet and confer efforts pursuant to Section 7.2, upon 15 days' written notice from Young Sung for the refund of any and all payments made by Young Sung to Yeroushalmi & Associates in trust pursuant to Section 4.1, Yeroushalmi & Associates shall refund any and all such payments made by Young Sung to Yeroushalmi & Associates in trust.

7.4 Within 10 days of the entry of the Consent Judgment, CAG shall file a Request for Dismissal dismissing Ross Dress for Less, Inc. and Ross Stores, Inc. from this action, with prejudice.

8. MODIFICATION OF JUDGMENT

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

1 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
2 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

3 **9. RETENTION OF JURISDICTION**

4 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
5 terms of this Consent Judgment.

6 **10. DUTIES LIMITED TO CALIFORNIA**

7 10.1 This Consent Judgment shall have no effect on Covered Products sold by Young
8 Sung outside the State of California.

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

10 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, and the
11 motion for approval of this Consent Judgment on the California Attorney General in accordance
12 with 11 C.C.R. § 3003.

13 **12. ATTORNEY FEES**

14 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
15 and attorney fees in connection with this action.

16 **13. ENTIRE AGREEMENT**

17 13.1 This Consent Judgment contains the sole and entire agreement and understanding
18 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
19 negotiations, commitments and understandings related hereto. No representations, oral or
20 otherwise, express or implied, other than those contained herein have been made by any party
21 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
22 deemed to exist or to bind any of the parties.

23 **14. GOVERNING LAW**

24 14.1 The validity, construction and performance of this Consent Judgment shall be
25 governed by the laws of the State of California, without reference to any conflicts of law
26 provisions of California law.

27 14.2 The Parties, including their counsel, have participated in the preparation of this
28 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This

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

8 **15. EXECUTION AND COUNTERPARTS**

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

12 **16. NOTICES**

13 16.1 Any notices under this Consent Judgment shall be by personal delivery, overnight
14 courier, or First Class Mail.

15 If to CAG:

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

21 If to Young Sung:

22 O Pyung Kwon
23 President
24 Young Sung USA Inc.
25 1122 S. Alvarado Street
26 Los Angeles, CA 90006
27 Tel: (213) 427-2580

28 With a copy to:

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

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: November 15, 2012

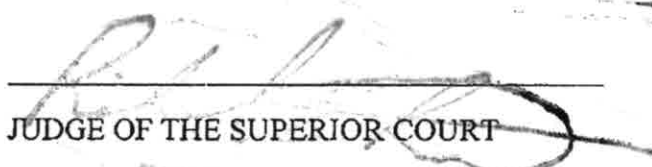
Date: November 15, 2012

By: By: 

Name: Michael Sassoon
Plaintiff CONSUMER ADVOCACY
GROUP, INC.

O Pyung Kwon, President
Defendant YOUNG SUNG (U.S.A.), INC.

IT IS SO ORDERED.

Date: Jan. 3, 2013
JUDGE OF THE SUPERIOR COURT

RICHARD E. RICO