

MAY 15 2014

Sherri R. Carter, Executive Officer/Clerk
By Jeff W. Lipp, Deputy

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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **LOS ANGELES – CENTRAL DISTRICT**

10
11 **CONSUMER ADVOCACY GROUP, INC.,**
in the public interest,

12
13 Plaintiff,

14 v.

15 **MARUKAI CORPORATION**, a Hawai'i
16 Corporation, **DAISO CALIFORNIA LLC**, a
California Limited Liability Company,
17 **DAISO HOLDING, USA INC.**, a
Washington Corporation, and **DOES 1-20**;

18
19 Defendants.

CASE NO. BC469147
(Consolidated with BC492509)

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Dept. 40
Judge: Hon. Michelle R. Rosenblatt
Complaint filed: September 8, 2011
FAC filed: May 29, 2012

20
21 **1. INTRODUCTION**

22 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
23 Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself and in the interest of
24 the public, and defendants, Marukai Corporation (referred to as "Marukai"), Daiso California
25 LLC (referred to as "Daiso LLC"), and Daiso Holding, USA Inc. (referred to as "Daiso
26 Holding") (Daiso LLC and Daiso Holding collectively referred to as "Daiso," and Marukai,
27 Daiso LLC, and Daiso Holding collectively referred to as "Settling Defendants" and
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1 individually as a "Settling Defendant"), with each referred to as a "Party" and collectively
2 referred to as "Parties."

3 **1.2 Defendants and Products**

4 1.2.1 Marukai is a Hawaii corporation which acknowledges for purposes of
5 this Consent Judgment that it employs ten or more persons in the State of California. CAG
6 alleges that Marukai manufactures, causes to be manufactured, sells, or distributes certain
7 products. The products that are the subject of this Consent Judgment, as described by CAG,
8 are:

9 (1) Clear Monthly type Wall tapestry pocket "Storage Pocket" "size width about
10 16 inch x height [sic] about 17.6 inch" "40 cm x 44 cm" "Produced for DAISO JAPAN" "D106"
11 "NO. 131", UPC# 4940921813753 (hereinafter "Storage Pocket");

12 (2) Black Monthly type Wall tapestry pocket "Storage Pocket" "size width about
13 16 inch x height [sic] about 17.6 inch" "40 cm x 44 cm" "Produced for DAISO JAPAN" "D106"
14 "NO. 132", UPC# 4940921813760 (hereinafter "Tapestry Pocket");

15 (3) Wall Hanging Pocket "CD" "For Compact disc putting" "8 pocket" "clear type"
16 "Produced for DAISO JAPAN" "D-106" "No. 126" "Storage Pocket", UPC# 4940921813777
17 (hereinafter "Hanging Pocket");

18 (4) Suspended vinyl accessory bag "3" "Waterproof vinyl bag" "WCT 1"
19 "Accessory case" "No. 5" "DAISO" "For toys storage" "For pocket-size tissue paper
20 preservation" "For bath small items storage" "18 x 14 x 15 cm", UPC# 4984355070870
21 (hereinafter "Accessory Bag"),

22 (5) Orange Pick-Up Tool "(L)" "Easy to reach with magnet iron articles from
23 places beyond reach." "It is 16" in the total length if it extends it." "40 cm" "16" "Produced
24 For DAISO JAPAN" "HANDTOOL" "818", UPC# 4984343511255 (hereinafter "Tool");
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1 (6) Blue Pick-Up Tool "(L)" "Easy to reach with magnet iron articles from places
2 beyond reach." "It is 16" in the total length if it extends it." "40 cm" "16" "Produced For
3 DAISO JAPAN" "HANDTOOL" "818", UPC# 4984343511255 (hereinafter "Blue Tool");

4 (7) Life Style Storage Pocket "Size" "35x20cm" "Decorate it with pictures or post
5 cards." "Pocket" "144", UPC# 4947678920987 (hereinafter "Pocket");

6 (8) Coating clip "2" "Agrafe" "recouverte" "Size" "25 mm" "1.0 inch" "5 pcs." "It
7 is kind to the hands and moderate fit feeling!" "DAISO" "D-137" "Clip" "No. 308", UPC
8 # 4984343736726 (hereinafter "Clip");

9 (9) 6-Ring Vinyl Binder/Organizer "No. 901" "B7" "1-4-14" (in light blue, purple,
10 and yellow), UPC 4984343131903 (hereinafter "Binder");

11 (10) Sunglasses with Light Gray Lenses and Silver Frame "UV 400" "Blocks Both
12 UVA and UVB Rays" "UV Protection up to 100%", (hereinafter "Gray Sunglasses");

13 (11) Sunglasses with Black Frame and Dark Gray Lenses "UV 400" "Blocks Both
14 UVA and UVB Rays" "UV Protection up to 100%", (hereinafter "Black Sunglasses");

15 (12) Brake Tool, UPC# 4984343296534 (hereinafter "Brake Tool");

16 (13) Belt with Light Brown Lining, "GF-60" "SM" Written in Lining (hereinafter
17 "Belt");

18 (14) Coated Clips "20mm" "6P" "Clip", UPC 4982790321977 (hereinafter "Coated
19 Clips");

20 (15) Cheetah Reader Wear Reading Glasses, Power + 2.00, UPC# 739042008414
21 (hereinafter "Reading Glasses"); and

22 (16) Vinyl Tissue Purse (Tissue Pouch Polka Dot/Leopard Pattern) (Pouch No. 612)
23 (hereinafter "Tissue Purse").

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25 1.2.2 CAG alleges that Daiso LLC is a California limited liability company
26 which employs ten or more persons. CAG alleges that Daiso LLC manufactures, causes to be
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1 manufactured, sells, or distributes 1) Storage Pocket, 2) Tapestry Pocket, 3) Hanging Pocket,
2 4) Accessory Bag, 5) Tool, 6) Blue Tool, 7) Pocket, 8) Clip, and 9) Tissue Purse.

3 1.2.3 Daiso Holding is a Washington Corporation which employs less than ten
4 persons.

5 1.2.4 For purposes of this Consent Judgment, Marukai and Daiso LLC each
6 acknowledges that it is a person in the course of doing business in California and is subject to
7 the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
8 Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").

9 **1.3 Chemicals of Concern**

10 1.3.1 Diethyl hexyl phthalate ("DEHP") is identified on the current list issued
11 by the State of California under Proposition 65 (the "Proposition 65 List") as a chemical
12 known to the State of California to cause cancer and/or birth defects or other reproductive
13 harm.

14 1.3.2 Di-n-butyl phthalate ("DBP") is identified on the Proposition 65 List as
15 a chemical known to the State of California to cause cancer and/or birth defects or other
16 reproductive harm.

17 1.3.3 Lead is identified on the Proposition 65 List as a chemical known to the
18 State of California to cause cancer and/or birth defects or other reproductive harm.

19 **1.4 Notices of Violation**

20 1.4.1 On or about November 30, 2010, CAG served Marukai and various
21 public enforcement agencies with a document entitled "60-Day Notice of Violation" (the
22 "November 30, 2010 Notice"), pursuant to which CAG sought to provide the recipients with
23 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals
24 in California of exposures to DEHP in Tissue Purse. No public enforcer has commenced or
25 diligently prosecuted the allegations set forth in the November 30, 2010 Notice.
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1 1.4.2 On or about December 23, 2010, CAG served Daiso LLC, Daiso
2 Holding and various public enforcement agencies with a document entitled "60-Day Notice of
3 Violation" (the "December 23, 2010 Notice"), pursuant to which CAG sought to provide the
4 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to
5 warn individuals in California of exposures to DEHP in Tissue Purse. No public enforcer has
6 commenced or diligently prosecuted the allegations set forth in the December 23, 2010 Notice.

7 1.4.3 On or about November 23, 2011, CAG served Marukai, Daiso LLC,
8 Daiso Holding and various public enforcement agencies with a document entitled "60-Day
9 Notice of Violation" (the "November 23, 2011 Notice"), pursuant to which CAG sought to
10 provide the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
11 failing to warn individuals in California of exposures to DEHP contained in 1) Storage Pocket,
12 2) Tapestry Pocket, 3) Hanging Pocket, 4) Accessory Bag, 5) Tool, 6) Blue Tool, 7) Pocket,
13 8) Gray Sunglasses, 9) Black Sunglasses, and for exposures to lead contained in 1) Belt,
14 2) Brake Tool, 3) Binder, 4) Clip, and for exposures to DBP contained in 1) Gray Sunglasses.
15 No public enforcer has commenced or diligently prosecuted the allegations set forth in the
16 November 23, 2011 Notice.

17 1.4.4 On or about December 5, 2011, CAG served Marukai, and various
18 public enforcement agencies with a document entitled "60-Day Notice of Violation" (the
19 "December 5, 2011 Notice"), pursuant to which CAG sought to provide the recipients with
20 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals
21 in California of exposures to lead contained in Coated Clips. No public enforcer has
22 commenced or diligently prosecuted the allegations set forth in the December 5, 2011 Notice.

23 1.4.5 On or about April 10, 2012, CAG served Marukai, and various public
24 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "April 10,
25 2012 Notice"), pursuant to which CAG sought to provide the recipients with notice of alleged
26 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
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1 exposures to DEHP contained in Reading Glasses. No public enforcer has commenced or
2 diligently prosecuted the allegations set forth in the April 10, 2012 Notice.

3 **1.5 CAG's Allegations and Claims**

4 1.5.1 On September 8, 2011, CAG filed a Complaint against Marukai, Daiso
5 LLC, and Daiso Holding (collectively "Defendants") for civil penalties and injunctive relief in
6 Los Angeles Superior Court, Case No. BC469147. CAG later filed a First Amended
7 Complaint ("FAC") on or about May 29, 2012. The parties stipulate for purposes of this
8 Consent Judgment that the FAC is deemed amended to include a cause of action for violation
9 of Proposition 65 with respect to the Reading Glasses.

10 1.5.2 CAG also filed a Complaint against Marukai on September 21, 2012 in
11 Los Angeles Superior Court, Case No. BC492509, which was then consolidated with Case No.
12 BC469147 on January 28, 2013.

13 1.5.3 The Complaint and FAC in this action and the Complaint in the
14 consolidated action (collectively referred to below as the "Complaints") allege, among other
15 things, consumer, occupational and environmental exposures in violation of Proposition 65 and
16 that Settling Defendants violated Proposition 65 by failing to give clear and reasonable
17 warnings of exposure to DEHP, DBP, and lead with respect to Covered Products (as defined
18 below) and Marukai Only Covered Products (as defined below).

19 **1.6 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over the allegations of violations contained in the Complaints and personal
22 jurisdiction over Settling Defendants as to the acts alleged in the Complaints, that venue is
23 proper in the County of Los Angeles and that this Court has jurisdiction to enter this Consent
24 Judgment as a full settlement and resolution of the allegations contained in the Complaints and
25 of all claims which were or could have been raised by any person or entity based in whole or in
26 part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.
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1 1.7 **No Admission**

2 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
3 into this Consent Judgment pursuant to a full and final settlement of any and all claims
4 between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent
5 Judgment shall be construed as an admission by any of the Parties of: (1) any material
6 allegation of the Complaints (each and every allegation of which, as directed to it, each of the
7 Settling Defendants denies); or (2) any fact, conclusion of law, issue of law or violation of law,
8 including without limitation, (a) any admission concerning any violation of Proposition 65 or
9 any other statutory, regulatory, common law, or equitable doctrine, or (b) the meaning of the
10 terms "knowingly and intentionally expose" or "clear and reasonable warning" as used in
11 Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance
12 with its terms, shall constitute or be construed as an admission by the Parties of any fact,
13 conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by any
14 Settling Defendant, its officers, directors, employees, or parent, subsidiary or affiliated entities,
15 or be offered or admitted as evidence in any administrative or judicial proceeding or litigation
16 in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice,
17 waive, or impair any right, remedy, argument, or defense the Parties may have in any other or
18 future legal proceeding, except as expressly provided in this Consent Judgment.

19 **2. DEFINITIONS**

20 2.1 "Covered Products" means the following products if manufactured, distributed,
21 or sold by either Daiso or Marukai: 1) Storage Pocket, 2) Tapestry Pocket, 3) Hanging Pocket,
22 4) Accessory Bag, 5) Tool, 6) Blue Tool, 7) Pocket, 8) Clip, and 9) Tissue Purse. Covered
23 Products are limited to those products which were specifically referenced in the Notices (as
24 defined below).

25 2.2 "Marukai Only Covered Products" means the following products if
26 manufactured, distributed or sold by Marukai: 1) Binder, 2) Gray Sunglasses, 3) Black
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1 Sunglasses, 4) Brake Tool, 5) Belt, 6) Coated Clips, and 7) Reading Glasses. Marukai Only
2 Covered Products are limited to those products which were subject to the Notices (as defined
3 below).

4 2.3 "Effective Date" means the date this Consent Judgment is entered by the Court.

5 2.4 "Notices" means the November 30, 2010, December 23, 2010, November 23,
6 2011, December 5, 2011, and April 10, 2012 60-Day Notices of Violation sent by CAG as
7 specified in Section 1.4 above.

8 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
9 **WARNINGS**

10 3.1 Daiso and Marukai each agrees not to sell or offer for sale in California the
11 Covered Products unless they are reformulated as follows:

12 (a) Storage Pocket, Tapestry Pocket, Hanging Pocket, Accessory Bag, Tool,
13 Blue Tool, Pocket, and Tissue Purse to contain less than 1,000 parts per million of DEHP; and

14 (b) Clip to contain less than 100 parts per million of lead.

15 3.2 Further, Marukai shall not sell or offer for sale in California Marukai Only
16 Covered Products in California unless they are reformulated as follows:

17 (a) Gray Sunglasses, Black Sunglasses, Reading Glasses, to contain less
18 than 1,000 parts per million of DEHP;

19 (b) Gray Sunglasses to contain less than 1,000 parts per million of DBP; and

20 (c) Coated Clips, Binder, Brake Tool, and Belt to contain less than 100 parts
21 per million of lead.

22 3.3 Reformulation is required for all Covered Products and Marukai Only Covered
23 Products manufactured by, delivered to, or received by a Settling Defendant for sale in
24 California after the Effective Date. For all Covered Products and Marukai Only Covered
25 Products to be sold or distributed in California and existing in a Settling Defendant's inventory
26 as of the Effective Date, Defendants will provide Proposition 65 compliant warnings on said
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1 products. For purposes of this Consent Judgment, a Settling Defendant shall not engage in
2 any California sale of the Covered Products or Marukai Only Covered Products without
3 providing a warning containing the following or substantially similar to the following language
4 that is placed on the labels or tags of Covered Products and Marukai Only Covered Products:

5 (a) For Covered Products Alleged in the Complaints to Contain Lead -

6
7 **WARNING: This product contains lead, a chemical known to the State of**
8 **California to cause cancer and birth defects or other reproductive harm. Wash hands**
9 **after handling.**

10 (b) For Covered Products Alleged in the Complaints to Contain DEHP -

11 **WARNING: This product contains Diethyl hexyl phthalate ("DEHP"), a chemical**
12 **known to the State of California to cause cancer and birth defects or other reproductive**
13 **harm. Wash hands after handling.**

14 (c) For Marukai Only Covered Products Alleged in the Complaints to
15 Contain Lead -

16 **WARNING: This product contains lead, a chemical known to the State of**
17 **California to cause cancer and birth defects or other reproductive harm. Wash hands**
18 **after handling.**

19 (d) For Marukai Only Covered Products Alleged in the Complaints to
20 Contain DBP -

21 **WARNING: This product contains Di-n-butyl phthalate ("DBP"), a chemical**
22 **known to the State of California to cause birth defects or other reproductive harm. Wash**
23 **hands after handling.**

24 (e) For Marukai Only Covered Products Alleged in the Complaints to
25 Contain DEHP -

26 **WARNING: This product contains Diethyl hexyl phthalate ("DEHP"), a chemical**
27 **known to the State of California to cause cancer and birth defects or other reproductive**
28 **harm. Wash hands after handling.**

4. SETTLEMENT PAYMENT

4.1 **Payment and Due Date:** Within ten (10) business days of entry of this Consent
Judgment, and in full and complete settlement of all monetary claims by CAG related to the

1 Notices and to the claims that were or could have been asserted in the Complaints, Marukai
2 shall pay the sum of One Hundred Ninety Thousand Dollars and No Cents (\$190,000.00) and
3 Daiso shall pay the sum of One Hundred Thousand Dollars and No Cents (\$100,000.00), as
4 follows:

5 4.1.1 Checks totaling Twenty-eight Thousand Dollars (\$28,000.00) as
6 penalties pursuant to Health & Safety Code § 25249.12 shall be issued, as follows:

7 (a) Marukai will issue a check made payable to the State of
8 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the
9 amount of Fifteen Thousand Dollars and No Cents (\$15,000.00) and Daiso will issue a
10 check made payable to OEHHA in the amount of Six Thousand Dollars and No Cents
11 (\$6,000.00), the total amount of these two checks (\$21,000.00) representing 75% of the
12 total penalty;

13 (b) Marukai will issue a check to CAG in the amount of Five
14 Thousand Dollars and No Cents (\$5,000.00) and Daiso will issue a check to CAG in the
15 amount of Two Thousand Dollars and No Cents (\$2,000.00), the total amount of these
16 two checks (\$7,000.00) representing 25% of the total penalty; and

17 (c) Separate 1099s shall be issued for each of the above payments.
18 Marukai and Daiso will each issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA
19 95184 (EIN: 68-0284486), in the amount of \$15,000.00 by Marukai and in the amount
20 of \$6,000.00 by Daiso. Marukai and Daiso will also each issue a 1099 to CAG c/o
21 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,
22 California 90212 in the amount of \$5,000.00 by Marukai and in the amount of
23 \$2,000.00 on the part of Daiso.
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25 4.1.2 **Payment In Lieu of Civil Penalties:** As payment in lieu of civil
26 penalties, Marukai will issue a check to CAG in the amount of Thirteen Thousand Dollars and
27 No Cents (\$13,000.00) and Daiso will issue a check to CAG in the amount of Five Thousand
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1 Dollars and No Cents (\$5,000.00). CAG represents that it will use these payments for the
2 following: (a) investigation of the public's exposure to Proposition 65 listed chemicals
3 through various means, laboratory fees for testing for Proposition 65 listed chemicals;
4 (b) expert fees for evaluating exposures through various mediums, including but not limited to
5 consumer product, occupational, and environmental exposures to Proposition 65 listed
6 chemicals; and (c) the cost of hiring consulting and retained experts who assist with the
7 extensive scientific analysis necessary for the litigation. CAG represents that it will undertake
8 the foregoing, in order to reduce the public's exposure to Proposition 65 listed chemicals by
9 notifying those persons and/or entities believed to be responsible for such exposures and
10 attempting to persuade those persons and/or entities to reformulate their products or the source
11 of exposure to completely eliminate or lower the level of Proposition 65 listed chemicals,
12 thereby addressing the same public harm allegedly at issue in the instant Actions. Further,
13 should the Court require it, CAG will submit under seal, an accounting of these funds as
14 described above as to how the funds were used. The checks for the separate payments due
15 from Daiso and Marukai under this Section 4.1.2 shall be made payable to "Consumer
16 Advocacy Group, Inc." and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates,
17 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

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19 **4.1.3 Reimbursement of Attorneys' Fees and Costs:** Marukai shall pay
20 One Hundred Fifty-seven Thousand Dollars and No Cents (\$157,000.00) and Daiso shall pay
21 Eighty-seven Thousand Dollars and No Cents (\$87,000.00) to "Yeroushalmi & Associates" as
22 reimbursement to CAG for its claims for reasonable investigation fees and costs, attorneys'
23 fees, and any other costs incurred as a result of investigating, bringing this matter to
24 Defendants' attention, litigating, and negotiating a settlement in the public interest. The check
25 shall be made payable to "Yeroushalmi & Associates" and delivered to Reuben Yeroushalmi,
26 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California
27 90212.

1 4.2 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
2 Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

3 4.3 The payment obligations of Daiso and Marukai under this Consent Judgment
4 are separate and several obligations.

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 Marukai, of any alleged violation of Proposition
8 65 that was or could have been asserted by CAG against Marukai for failure to provide
9 Proposition 65 warnings of exposure to DEHP and lead from Covered Products and DEHP,
10 DBP, and lead from Marukai Only Covered Products as set forth in the Notices for the Covered
11 Products and Marukai Only Covered Products and the Complaints, and fully resolves all claims
12 that have been or could have been asserted in the Actions up through and including the
13 Effective Date for failure to provide Proposition 65 warnings for the Covered Products
14 regarding DEHP and lead and Marukai Only Covered Products regarding DEHP, DBP, and
15 lead. CAG, on behalf of itself and in the public interest, hereby releases, discharges and
16 covenants not to sue Marukai and its parent companies, subsidiaries, officers, directors,
17 shareholders, agents, employees, divisions, affiliates, suppliers, franchisees, licensors,
18 licensees, customers, distributors, wholesalers, retailers and all other downstream entities in the
19 distribution chain of any of Covered Products and Marukai Only Covered Products, and the
20 predecessors, successors and assigns of any of them, and all of their respective officers,
21 directors, shareholders, members, managers, employees, and agents (“Marukai Released
22 Parties”) and MKK Imports, its parent companies, subsidiaries, officers, directors,
23 shareholders, agents, employees, and affiliates and the predecessors, successors and assigns of
24 any of them, and all of their respective officers, directors, shareholders, members, managers,
25 employees, and agents (the “Upstream Released Parties”) from all claims up to and including
26 through the Effective Date for violations of Proposition 65 based on exposure to DEHP and
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1 lead from the Covered Products and DEHP, DBP and lead from Marukai Only Covered
2 Products. The only upstream releases being given are to the Upstream Released Parties and
3 not to any other entities. Compliance with the terms of this Consent Judgment shall be deemed
4 to constitute compliance by the Marukai Released Parties and the Upstream Released Parties
5 with Proposition 65 regarding alleged exposures to DEHP and lead from the Covered Products
6 and DEHP, DBP, and lead from Marukai Only Covered Products. Nothing in this Section
7 affects CAG's right to commence or prosecute an action under Proposition 65 against any
8 person other than the Marukai Released Parties or the Upstream Released Parties.

9 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
10 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
11 indirectly, any form of legal action and releases all claims, including, without limitation, all
12 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
13 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
14 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
15 fixed or contingent (collectively "Claims"), against the Marukai Released Parties and the
16 Upstream Released Parties arising from any violation of Proposition 65 or any other statutory
17 or common law regarding the failure to warn about exposure to DEHP or lead from the
18 Covered Products and DEHP, DBP, or lead from Marukai Only Covered Products.

19 5.3 This Consent Judgment is a full, final, and binding resolution between CAG on
20 behalf of itself and in the public interest and Daiso, of any alleged violation of Proposition 65
21 that was or could have been asserted by CAG against Daiso for failure to provide Proposition
22 65 warnings of exposure to DEHP and lead from the Covered Products as set forth in the
23 Notices for the Covered Products, and fully resolves all claims that have been or could have
24 been asserted in this action up to and including the Effective Date for failure to provide
25 Proposition 65 warnings for the Covered Products regarding DEHP and lead. CAG, on behalf
26 of itself and in the public interest, hereby releases, discharges and covenants not to sue Daiso
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1 and its parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensors,
2 licensees, customers, distributors, wholesalers, retailers and all other downstream entities in the
3 distribution chain of any of the Covered Products, and the predecessors, successors and assigns
4 of any of them, and all of their respective officers, directors, shareholders, members, managers,
5 employees, agents, (collectively, "Second Released Parties"), from all claims up to and
6 including the Effective Date for violations of Proposition 65 based on exposure to DEHP and
7 lead from the Covered Products. Compliance with the terms of this Consent Judgment shall be
8 deemed to constitute compliance by the Second Released Parties with Proposition 65 regarding
9 alleged exposures to DEHP and lead from the Covered Products. Nothing in this Section
10 affects CAG's right to commence or prosecute an action under Proposition 65 against any
11 person other than Daiso or Second Released Parties.

12 5.4 CAG on behalf of itself, its past and current agents, representatives, attorneys,
13 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
14 indirectly, any form of legal action and releases all Claims against Daiso and the Second
15 Released Parties arising from any violation of Proposition 65 or any other statutory or common
16 law regarding the failure to warn about exposure to DEHP or lead from the Covered Products.

17 5.5 In furtherance of the foregoing, as to alleged exposures to DEHP and lead from
18 the Covered Products and as to alleged exposures to DEHP, DBP, and lead from Marukai Only
19 Covered Products, CAG on behalf of itself only, hereby waives any and all rights and benefits
20 which it now has, or in the future may have, conferred upon it with respect to Claims arising
21 from any violation of Proposition 65 or any other statutory or common law regarding the
22 failure to warn about exposure to DEHP and lead from the Covered Products and exposure to
23 DEHP, DBP, and lead from Marukai Only Covered Products by virtue of the provisions of
24 section 1542 of the California Civil Code, which provides as follows:

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

3 CAG understands and acknowledges that the significance and consequence of this waiver of
4 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
5 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
6 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
7 about exposure to DEHP and lead from the Covered Products and exposure to DEHP, DBP,
8 and lead from Marukai Only Covered Products, including but not limited to any exposure to, or
9 failure to warn with respect to exposure to DEHP and lead from the Covered Products, and
10 exposure to or failure to warn with respect to exposure to DEHP, DBP and lead from Marukai
11 Only Covered Products, CAG will not be able to make any claim for those damages against
12 any of the Marukai Released Parties, the Upstream Released Parties, Daiso, or the Second
13 Released Parties. Furthermore, CAG acknowledges that it intends these consequences for any
14 such Claims arising from any violation of Proposition 65 or any other statutory or common law
15 regarding the failure to warn about exposure to DEHP and lead from Covered Products and
16 DEHP, DBP, and lead from Marukai Only Covered Products as may exist as of the Effective
17 Date but which CAG does not know exist, and which, if known, would materially affect its
18 decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the
19 result of ignorance, oversight, error, negligence, or any other cause.

20 **6. ENFORCEMENT OF JUDGMENT**

21 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
22 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court
23 of California, Los Angeles County, giving the notice required by law, enforce the terms and
24 conditions contained herein. A Party may enforce any of the terms and conditions of this
25 Consent Judgment only after that Party first provides 90 days notice to the Party allegedly
26 failing to comply with the terms and conditions of this Consent Judgment and attempts in good
27 faith to resolve such Party's failure to comply.

1 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or
2 other proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of
3 Violation (“NOV”) to each Settling Defendant alleged to be in violation of the terms of this
4 Consent Judgment (hereinafter “an NOV Recipient”). The NOV shall include for each of
5 Covered Products or Marukai Only Covered Products (1) the date(s) the alleged violation(s)
6 was observed, and (2) the location at which the Covered Product and/or Marukai Only Covered
7 Product was offered for sale. The NOV shall be accompanied by all test data obtained by CAG
8 regarding the Covered Products and/or Marukai Only Covered Products, including an
9 identification of the component(s) of the Covered Products and/or Marukai Only Covered
10 Products that were tested.

11 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
12 alleged violation if, within 60 days of receiving such NOV, the NOV Recipient serves a
13 Notice of Election (“NOE”) that meets one of the following conditions:

14 (a) The Covered Products and/or Marukai Only Covered Products
15 alleged to be in violation identified in the NOV were shipped by or to the NOV
16 Recipient for sale in California before the Effective Date, or

17 (b) Since receiving the NOV, the NOV Recipient has taken
18 corrective action by either (i) removing, or requesting that its customers or stores in
19 California remove the Covered Products and/or Marukai Only Covered Products
20 identified in the NOV from sale in California and destroy or return the Covered
21 Products and/or Marukai Only Covered Products to the NOV Recipient or vendor, as
22 applicable, or (ii) providing a “clear and reasonable warning” pursuant to 27 Cal. Code
23 Regs. § 25603 for the Covered Products and/or Only Marukai Only Covered Products
24 identified in the NOV.
25

1 6.2.2 **Contested NOV.** A Settling Defendant on which an NOV is served
2 may serve an NOE informing CAG of its election to contest the NOV within thirty (30)
3 days of receiving the NOV.

4 (a) In its election, the NOV Recipient may request that the sample(s)
5 Covered Products and/or Marukai Only Covered Products tested by CAG be subject to
6 confirmatory testing at an EPA-accredited laboratory.

7 (b) If the confirmatory testing establishes that the Covered Products
8 and/or Marukai Only Covered Products do not contain DEHP in excess of the levels
9 allowed in Section 3.1, above, CAG shall take no further action regarding the alleged
10 violation. If the testing does not establish compliance with Section 3.1 and/or 3.2,
11 above, the NOV Recipient may withdraw its NOE to contest the violation and may
12 serve a new NOE pursuant to Section 6.2.1.

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

17 6.3 In any proceeding brought by any Party to enforce this Consent Judgment, such
18 Party may seek whatever fines, costs, penalties, and/or remedies as may be provided under
19 applicable law or this Consent Judgment.

20
21 **7. ENTRY OF CONSENT JUDGMENT**

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

26 7.2 If this Consent Judgment is not approved in its entirety by the Court, (a) this
27 Consent Judgment and any and all prior agreements between the parties merged herein shall
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1 terminate and become null and void, and the actions shall revert to the status that existed as of
2 the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
3 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
4 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
5 purpose in the Action(s), or in any other proceeding; and (c) the Parties agree to meet and
6 confer to determine whether to modify the terms of the Consent Judgment and to resubmit it
7 for approval.

8 **8. MODIFICATION OF JUDGMENT**

9 8.1 This Consent Judgment may be modified only upon written agreement of all of
10 the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon
11 motion of any party as provided by law and upon entry of a modified Consent Judgment by the
12 Court.

13 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith
14 to meet and confer with the other Parties prior to filing a motion to modify the Consent
15 Judgment.

16 **9. RETENTION OF JURISDICTION**

17 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
18 terms of this Consent Judgment.

19 **10. DUTIES LIMITED TO CALIFORNIA**

20 10.1 This Consent Judgment shall have no effect on Covered Products or Marukai
21 Only Covered Products sold by Settling Defendants outside the State of California.

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

23 11.1 CAG shall serve a copy of this Consent Judgment, signed by all Parties, on the
24 California Attorney General so that the Attorney General may review this Consent Judgment
25 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
26 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
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1 absence of any written objection by the Attorney General to the terms of this Consent
2 Judgment, the Parties may then submit it to the Court for approval.

3 **12. ATTORNEY FEES**

4 12.1 Except as specifically provided in Section 4.1.3, each Party shall bear its own
5 costs and attorney fees in connection with this action and the consolidated action.

6 **13. ENTIRE AGREEMENT**

7 13.1 This Consent Judgment contains the sole and entire agreement and
8 understanding of the Parties with respect to the entire subject matter hereof and any and all
9 prior discussions, negotiations, commitments and understandings related hereto. No
10 representations, oral or otherwise, express or implied, other than those contained herein have
11 been made by any Party hereto with regard to the subject matter hereof. No other agreements,
12 oral or otherwise, shall be deemed to exist or to bind any of the Parties with regard to the
13 subject matter hereof unless specifically referred to herein.

14 **14. GOVERNING LAW**

15 14.1 The validity, construction and performance of this Consent Judgment shall be
16 governed by the laws of the State of California, without reference to any conflicts of law
17 provisions of California law.

18 14.2 The terms of this Consent Judgment shall be governed by the laws of the State
19 of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
20 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment
21 are rendered inapplicable or are no longer required as a result of any such repeal or preemption,
22 or rendered inapplicable by reason of law generally as to the Covered Products and Marukai
23 Only Covered Products, then any Settling Defendant subject to this Consent Judgment may
24 provide written notice to CAG of any asserted change in the law, and shall have no further
25 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
26 Covered Products and/or Marukai Only Covered Products are so affected. Nothing in this
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1 Consent Judgment shall be interpreted to relieve a Settling Defendant from any obligation to
2 comply with any pertinent state or federal law or regulation.

3 14.3 The Parties, including their counsel, have participated in the preparation of this
4 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
5 This Consent Judgment was subject to revision and modification by the Parties and has been
6 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
7 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
8 Party as a result of the manner of the preparation of this Consent Judgment. Each Party agrees
9 that any statute or rule of construction providing that ambiguities are to be resolved against the
10 drafting party should not be employed in the interpretation of this Consent Judgment and, in
11 this regard, the Parties hereby waive California Civil Code § 1654.

12 **15. EXECUTION AND COUNTERPARTS**

13 15.1 This Consent Judgment may be executed in counterparts and by means of
14 facsimile or portable document format (pdf), which taken together, shall be deemed to
15 constitute one document and have the same force and effect as original signatures.

16 **16. NOTICES**

17 16.1 Any notices under this Consent Judgment shall be by personal delivery or First
18 Class Mail, return receipt requested (and deemed given as of the date of receipt).

19
20 If to CAG:

21 Reuben Yeroushalmi, Esq.
22 9100 Wilshire Boulevard, Suite 240W
23 Beverly Hills, CA 90212
(310) 623-1926

24 If to Marukai:

25 Sonja Inglin, Esq.
26 BAKER HOSTETLER
27 11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025

1
2 If to Daiso:

3 Elizabeth Shoemaker, Esq.
4 TERAOKA & PARTNERS LLP
5 One Embarcadero Center, Suite 1020
6 San Francisco CA 94111

7 **17. AUTHORITY TO STIPULATE**

8 17.1 Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party for which he or she has signed to enter into this Consent Judgment and
10 to execute it on behalf of and bind that Party.

11
12 AGREED TO:

13 Date: 4-17, 2014

14
15 Name: MICHEL GASSON
16 Title: Executive Director
17 CONSUMER ADVOCACY GROUP,
18 INC.

AGREED TO:

Date: _____, 2014

Name: _____
Title: _____
MARUKAI CORPORATION

19 AGREED TO:

20 Date: _____, 2014

21
22 Name: _____
23 Title: _____
24 DAISO CALIFORNIA LLC

AGREED TO:

Date: _____, 2014

Name: _____
Title: _____
DAISO HOLDING USA INC.

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If to Daiso:

Elizabeth Shoemaker, Esq.
TERAOKA & PARTNERS LLP
One Embarcadero Center, Suite 1020
San Francisco CA 94111

17. AUTHORITY TO STIPULATE

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party for which he or she has signed to enter into this Consent Judgment and to execute it on behalf of and bind that Party.

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date: April 29, 2014

Name: Rui Matsuoka

Title: Vice President
MARUKAI CORPORATION

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
DAISO CALIFORNIA LLC

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
DAISO HOLDING USA INC.

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If to Daiso:

Elizabeth Shoemaker, Esq.
TERAOKA & PARTNERS LLP
One Embarcadero Center, Suite 1020
San Francisco CA 94111

17. AUTHORITY TO STIPULATE

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party for which he or she has signed to enter into this Consent Judgment and to execute it on behalf of and bind that Party.

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
MARUKAI CORPORATION

AGREED TO:

Date: APRIL 21, 2014



Name: Yoshihide Murata

Title: Senior Vice President
DAISO CALIFORNIA LLC

AGREED TO:

Date: APRIL 21, 2014



Name: Yoshihide Murata

Title: Senior Vice President
DAISO HOLDING USA INC.

IT IS SO ORDERED,
5-15-14


Michelle R. Rosenblatt