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6 Attorneys for Plaintiff  
7 Consumer Advocacy Group, Inc.

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

12 CONSUMER ADVOCACY GROUP, INC.,  
13 in the public interest,

14 Plaintiff,

15 v.

16 UNITED PACIFIC DESIGNS, INC.,  
17 California Corporation, ACI  
18 INTERNATIONAL, a California  
Corporation, VIACOM INTERNATIONAL,  
19 INC., a Delaware Corporation, VIACOM,  
20 INC., a Delaware Corporation, NATIONAL  
AMUSEMENTS, INC., a Massachusetts  
21 Corporation; and DOES 1-20;

22 Defendants.

CASE NO. BC497912

**CONSENT JUDGMENT [PROPOSED]**

Dept: 53  
Judge: Stephen J. Kleifield  
Complaint filed: December 12, 2012

23  
24 **1. INTRODUCTION**

25 1.1 This Consent Judgment is entered into by and between plaintiff Consumer  
26 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and  
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CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

MAY 21 2015

Sherri R. Carter, Executive Officer/Clerk  
By Michael Rivera, Deputy

1 defendant UNITED PACIFIC DESIGNS, INC. (hereinafter "Defendant"), with each a Party and  
2 collectively referred to as "Parties."

3 1.2 Defendant employs ten or more persons, is a person in the course of doing  
4 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
5 California Health & Safety Code § 25249.5, *et seq.* ("Proposition 65"), and imports, distributes,  
6 and sells Children's Sandals.

7 **1.3 Notice of Violation.**

8 1.3.1 On or about July 27, 2012, CAG served Defendant, and various public  
9 enforcement agencies with a document entitled "60-Day Notice of Intent to Sue" (the "July 27,  
10 2012 Notice") that provided the recipients with notice of alleged violations of Health & Safety  
11 Code § 25249.6 for failing to warn individuals in California of exposures to Di-*n*-butyl Phthalate  
12 (DBP) contained in Sandals, including but not limited to "Dora The Explorer" Sandals, Size 7/8,  
13 Dark Pink, with "DoRa", a print of a dancing girl with black hair in a green dress, purple and  
14 yellow flowers, and a light green plastic toe strap connected to the sandal at three points;  
15 attached tag reads, "DORA THE EXPLORER™ ; © VIACOM INTERNATIONAL INC. All  
16 Rights Reserved", "Manufactured Exclusively for ACI International Los Angeles, CA 90049"

17 1.3.2 No public enforcer has commenced or diligently prosecuted the  
18 allegations set forth in the July 27, 2012 Notice.

19 **1.4 Complaint.**

20 On December 21 2012, CAG filed a Complaint for Penalty, Injunction, and Restitution  
21 ("Complaint") in Los Angeles Superior Court, Case No. BC497912. The Complaint alleges,  
22 among other things, that Defendant violated Proposition 65 by failing to give clear and  
23 reasonable warnings of exposure to DBP from the Covered Products.

24 **1.5 Consent to Jurisdiction**

25 For purposes of this Consent Judgment, the parties stipulate that this Court has  
26 jurisdiction over the allegations of violations contained in the Complaint, and personal  
27 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the  
28

1 City and County of Los Angeles and that this Court has jurisdiction to enter this Consent  
2 Judgment as a full settlement and resolution of the allegations contained in the Complaint, and of  
3 all claims which were or could have been raised by any person or entity based in whole or in  
4 part, directly or indirectly, on the facts alleged therein or arising therefrom or related to.

5 **1.6 No Admission**

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

13 **2. DEFINITIONS**

14 2.1 "Covered Products" means Children's Sandals with DBP.

15 2.2 "Effective Date" means the date that this Consent Judgment is entered by the  
16 Court.

17 2.3 "PVC Components" means parts or portions of the Covered Products made of  
18 polyvinylchloride.

19 2.4 "DBP" means Di-*n*-butyl Phthalate.

20 2.5 "Notice" means the July 27, 2012 Notice.

21 **3. INJUNCTIVE RELIEF/REFORMULATION**

22 3.1 Defendant shall not sell the Covered Products in California unless they are  
23 reformulated to contain less than 0.1% DBP in any and all PVC components. Reformulation is  
24 required for all Covered Products manufactured by, delivered to, or received by Defendants for  
25 sale in California after the Effective Date.

26 3.2 Defendant represents that there are no inventory remaining of the Covered  
27 Products.  
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1 **4. SETTLEMENT PAYMENT**

2 4.1 **Payment and Due Date:** Within fifteen (15) days of the approval of the Consent  
3 Judgment, Defendants shall pay a total of one hundred fifty thousand dollars and zero cents  
4 (\$150,000) in full and complete settlement of all monetary claims by CAG related to the Notice.

5 4.2 **Reimbursement of Attorneys' Fees and Costs:** Defendant shall pay \$145,000  
6 to "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing  
7 costs, expert fees, attorney fees, and other litigation costs and expenses for all work performed  
8 through the approval of this Consent Judgment.

9 4.3 **Civil Penalties.** Defendant shall issue two separate checks for a total amount of  
10 two thousand five hundred dollars (\$2,500.00) as penalties pursuant to Health & Safety Code §  
11 25249.12: (a) one check made payable to the State of California's Office of Environmental  
12 Health Hazard Assessment (OEHHA) in the amount of \$1,875.00, representing 75% of the total  
13 penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$625.00,  
14 representing 25% of the total penalty. Two separate 1099s shall be issued for the above  
15 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184  
16 (EIN: 68-0284486) in the amount of \$1,875.00. The second 1099 shall be issued in the amount  
17 of \$625.00 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard,  
18 Suite 240W, Beverly Hills, California 90212.

19 4.4 **Payment In Lieu of Civil Penalties:** Defendant shall pay two thousand five  
20 hundred dollars (\$2,500.00) in lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG  
21 will use this payment for investigation of the public's exposure to Proposition 65 listed  
22 chemicals through various means, laboratory fees for testing for Proposition 65 listed chemicals,  
23 expert fees for evaluating exposures through various mediums, including but not limited to  
24 consumer product, occupational, and environmental exposures to Proposition 65 listed  
25 chemicals, and the cost of hiring consulting and retained experts who assist with the extensive  
26 scientific analysis necessary for those files in litigation, in order to reduce the public's exposure  
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1 to Proposition 65 listed chemicals by notifying those persons and/or entities believed to be  
2 responsible for such exposures and attempting to persuade those persons and/or entities to  
3 reformulate their products or the source of exposure to completely eliminate or lower the level of  
4 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the  
5 instant Action. Further, should the court require it, CAG will submit under seal, an accounting  
6 of these funds as described above as to how the funds were used. The check shall be made  
7 payable to "Consumer Advocacy Group, Inc."

8 4.5 All Payments referenced in paragraphs 4.2, 4.3, and 4.4, shall be delivered to:  
9 Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W, Beverly  
10 Hills, CA 90212, within 15 days after the Consent Judgment is signed.

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

12 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on  
13 behalf of itself and in the public interest, and Defendant and its officers, directors, insurers,  
14 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
15 companies, and their successors and assigns, and any other person in the course of doing  
16 business, and the successors and assigns of any of them, who may use, maintain, distribute or sell  
17 Covered Products ("Downstream Defendant Releasees"), for all claims for violations of  
18 Proposition 65 up through the Effective Date based on exposure to DBP from Covered Products  
19 as set forth in the Notice. Defendant and Defendant Releasees' compliance with this Consent  
20 Judgment shall constitute compliance with Proposition 65 with respect to exposure to DBP from  
21 Covered Products.

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

10  
11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT  
13 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,  
14 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
15 DEBTOR.

16 CAG understands and acknowledges that the significance and consequence of this waiver of  
17 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
18 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from  
19 any violation of Proposition 65 or any other statutory or common law regarding the failure to  
20 warn about exposure to DBP from Children's Sandals, including but not limited to any exposure  
21 to, or failure to warn with respect to exposure to DBP from Children's Sandals, CAG will not be  
22 able to make any claim for those damages against Defendant or the Defendant Releasees or  
23 Downstream Defendant Releasees. Furthermore, CAG acknowledges that it intends these  
24 consequences for any such Claims arising from any violation of Proposition 65 or any other  
25 statutory or common law regarding the failure to warn about exposure to DBP from ("Children's  
26 Sandals") as may exist as of the date of this release but which CAG does not know exist, and  
27 which, if known, would materially affect their decision to enter into this Consent Judgment,  
28 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,  
negligence, or any other cause.



1 **6. ENFORCEMENT OF JUDGMENT**

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

9 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
10 proceeding to enforce Section 3 of this Consent Judgment, CAG shall provide a Notice of  
11 Violation ("NOV") to Defendant. The NOV shall include for each Covered Product: the date(s)  
12 the alleged violation(s) was observed and the location at which the Covered Product was offered  
13 for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered  
14 Product, including an identification of the PVC component(s) of the Covered Product that were  
15 tested.

16 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the  
17 alleged violation if, within 30 days of receiving such NOV, Defendant serves a Notice of  
18 Election ("NOE") that meets one of the following conditions:

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

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

26 6.2.2 **Contested NOV.** Defendant may serve an NOE informing CAG of its  
27 election to contest the NOV within 30 days of receiving the NOV.  
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1 (a) In its election, Defendant may request that the same sample(s) of  
2 Covered Product(s) tested by CAG be subject to confirmatory testing at an EPA-  
3 accredited laboratory.

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

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

12 6.3. In any proceeding brought by either Party to enforce this Consent Judgment,  
13 the prevailing party shall be entitled to recover its attorney's fees and costs.

14 **7. ENTRY OF CONSENT JUDGMENT**

15 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
16 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
17 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

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

2 8.1 This Consent Judgment may be modified only upon written agreement of the  
3 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
4 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

5 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
6 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

7 **9. RETENTION OF JURISDICTION**

8 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
9 terms of this Consent Judgment.

10 **10. DUTIES LIMITED TO CALIFORNIA**

11 This Consent Judgment shall have no effect on Covered Products sold outside the State of  
12 California.

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

14 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
15 California Attorney General so that the Attorney General may review this Consent Judgment  
16 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the  
17 Attorney General has received the aforementioned copy of this Consent Judgment, and in the  
18 absence of any written objection by the Attorney General to the terms of this Consent Judgment,  
19 the parties may then submit it to the Court for approval.

20 **12. ATTORNEY FEES**

21 12.1 Except as specifically provided in Section 4.2, each Party shall bear its own costs  
22 and attorney fees in connection with this action.

23 **13. GOVERNING LAW**

24 13.1 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.  
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1           13.2 The Parties, including their counsel, have participated in the preparation of this  
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty  
5 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a  
6 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent  
7 Judgment agrees that any statute or rule of construction providing that ambiguities are to be  
8 resolved against the drafting Party should not be employed in the interpretation of this Consent  
9 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

10 **14. EXECUTION AND COUNTERPARTS**

11           14.1 This Consent Judgment may be executed in counterparts and by means of  
12 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
13 one document.

14 **15. NOTICES**

15           15.1 Any notices under this Consent Judgment shall be by personal delivery or First  
16 Class Mail.

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18           If to CAG:

19           Reuben Yeroushalmi, Esq.  
20           9100 Wilshire Boulevard, Suite 240W  
21           Beverly Hills, CA 90212  
22           (310) 623-1926

23  
24           If to United Pacific Designs, Inc.(aka "UPD, Inc."):

25           Shahin Dardashty  
26           United Pacific Designs, Inc.  
27           4507 S. Maywood Ave.  
28           Vernon, CA 90058

With a copy to:

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1 Jeffrey Margulies  
2 Norton Rose Fulbright US LLP  
3 555 South Flower Street, Forty-First Floor  
4 Los Angeles, CA 90071

4 **17. AUTHORITY TO STIPULATE**

5 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
6 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf  
7 of the party represented and legally to bind that party.

8 AGREED TO:

8 AGREED TO:

9 Date: 03/13, 2015

9 Date: 3/13/15, 2015

11  
12 By: Michael Mann  
13 Plaintiff, CONSUMER ADVOCACY  
14 GROUP, INC.

11  
12 By: [Signature]  
13 Defendant, UPD, INC.

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16 **IT IS SO ORDERED.**

17  
18 Date: 5-21-15

**STEVEN J. KLEIFIELD**

19 \_\_\_\_\_  
20 JUDGE OF THE SUPERIOR COURT  
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