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9 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc.

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 18 2014

Sherril R. Carter, Executive Officer/Clerk
By Rosemarie D. Aquino, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13 CONSUMER ADVOCACY GROUP,
14 INC., in the interest of the Public,

15 Plaintiff,

16 v.

17 WINPLUS NORTH AMERICA, INC., a
18 California corporation; BIG LOTS
19 STORES, INC., an Ohio corporation;
20 ROSS STORES INC. DBA DD'S
21 DISCOUNTS, a Delaware corporation;
22 ROSS DRESS FOR LESS, INC. DBA
23 DD'S DISCOUNTS, a Virginia
corporation; and DOES 1-20;

24 Defendants.

CASE NO. BC499630

CONSENT JUDGMENT [REDACTED]

Dept: 46
Judge: Honorable Frederick C. Shaller
Complaint filed: January 22, 2013

25 **1. INTRODUCTION**

26 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
27 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and
28

CONSENT JUDGMENT [REDACTED]

COPY

1 defendant WINPLUS NORTH AMERICA, INC. ("WINPLUS"), on behalf of itself and for the
2 benefit of defendants BIG LOTS STORES, INC. ("BIG LOTS"), ROSS STORES, INC. DBA
3 DD'S DISCOUNTS ("ROSS STORES"), AND ROSS DRESS FOR LESS, INC. DBA DD'S
4 DISCOUNTS ("ROSS DRESS") ("WINPLUS", "BIG LOTS", "ROSS STORES", and "ROSS
5 DRESS" together herein "Defendants"). CAG and Winplus each may be referred to herein as a
6 "Party" and collectively as "Parties."

7 1.2 It is alleged that Winplus employs ten or more persons, is a person in the course of doing
8 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
9 California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65"), and manufactures,
10 distributes, and/or sells the Winplus® Touring Items Type S™ CD Organizer—Black Item #
11 Win-11819A, and the Winplus® Touring Items Type S® Dash Light Blue LED Light, Cool Blue
12 Mood Lighting LM-10793-6, before the effective date of this Consent Judgment ("Covered
13 Products").

14 **1.3 Notice of Violation.**

15 1.3.1 On or about November 3, 2011, CAG served Defendants and various public
16 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "October 19,
17 2011 Notice") that provided the recipients with notice of alleged violations of Health & Safety
18 Code § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
19 the Winplus® Touring Items Type S™ CD Organizers—Black Item # Win-11819A.

20 1.3.2 On or about November 19, 2012, CAG served Defendants and various public
21 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "November
22 16, 2012 Notice") that provided recipients with notice of alleged violations of Health & Safety
23 Code § 25249.6 for failing to warn individuals in California of exposures to exposures to lead
24 contained in the following Car Accessories: Winplus ® touring Items Type S® Dash Light Blue
25 LED Light, Cool Blue Mood Lighting LM-10793-6 (together with the item in § 1.3.1,
26 collectively defined in § 2.1 below as "Covered Products").
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1 1.3.3 No public enforcer has commenced or diligently prosecuted the allegations
2 set forth in the November 3, 2011, or November 19, 2012 Notices.

3 **1.4 Complaint.**

4 On January 22, 2013, CAG filed a Complaint for civil penalties and injunctive relief
5 (“Complaint”) in Los Angeles Superior Court, Case No. BC499630. The Complaint alleges,
6 among other things, that Defendants violated Proposition 65 by failing to give clear and
7 reasonable warnings of exposure to lead and DEHP, as applicable, from Covered Products.

8 **1.5 Consent to Jurisdiction**

9 While otherwise disputed, for purposes of this Consent Judgment, the parties consent that
10 this Court has jurisdiction over the allegations of violations contained in the Complaint and
11 personal jurisdiction over Winplus as to the acts alleged in the Complaint, that venue is proper in
12 the City and County of Los Angeles and that this Court has jurisdiction to enter this Consent
13 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of
14 all claims which were or could have been raised by any person or entity based in whole or in
15 part, directly or indirectly, on the prior conduct of the parties or on the facts alleged in the
16 Complaint or arising therefrom or related to.

17 **1.6 No Admission**

18 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
19 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
20 the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
21 constitute an admission with respect to any material allegation of the Complaint, each and every
22 allegation of which Winplus, on behalf of itself and all other Defendants, denies including
23 jurisdiction, nor may this Consent Judgment or compliance with it be used as evidence of any
24 wrongdoing, misconduct, culpability or liability on the part of Defendants, or any of them.
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1 **2. DEFINITIONS**

2 2.1 "Covered Products" means the Winplus® Touring Items Type S™ CD
3 Organizer—Black Item # Win-11819A ("CD Organizer") and the Winplus ® touring Items Type
4 S® Dash Light Blue LED Light, Cool Blue Mood Lighting LM-10793-6 ("LED light")
5 manufactured, sold, licensed, and/or distributed by Winplus prior to Effective Date of this
6 Consent Judgment.

7 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
8 Court.

9 **3. INJUNCTIVE RELIEF/REFORMULATION**

10 3.1 After the Effective Date Winplus shall not sell or offer for sale in California, or
11 ship products for sale in California, unless the CD Organizer shall have been reformulated to the
12 point where the level of DEHP does not exceed more than 0.1 % by weight, and LED Light to
13 the point that it contains no more than 100 ppm of lead. Alternatively, all Covered Products so
14 offered, sold or shipped shall be affixed with Proposition 65-compliant warnings. In either case,
15 Winplus shall cause all Covered Products to be affixed with Proposition 65-compliant warnings.

16 **4. SETTLEMENT PAYMENT**

17 **Total Payment:** Within 10 days after the Effective Date, Winplus shall mail via certified
18 mail, payments totaling sixty thousand dollars (\$60,000.00) as follows:

19 4.1 **Reimbursement of Attorneys' Fees and Costs:** Winplus shall pay \$55,000
20 "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs,
21 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
22 the approval of this Consent Judgment.

23 4.2 **Civil Penalties.** Winplus shall issue two separate checks for a total amount of
24 four thousand dollars (\$4,000) as penalties pursuant to Health & Safety Code § 25249.12: (a) one
25 check made payable to the State of California's Office of Environmental Health Hazard
26 Assessment (OEHHA) in the amount of \$3,000 representing 75% of the total penalty; and (b)
27

1 one check to Consumer Advocacy Group, Inc. in the amount of \$1,000 representing 25% of the
2 total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be
3 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
4 \$3,000. The second 1099 shall be issued in the amount of \$1,000 to CAG and delivered to:
5 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California
6 90212.

7 4.3 Payments pursuant to 4.1 and 4.2 shall be delivered to: Reuben Yeroushalmi,
8 Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212 within
9 the time agreed upon by the Parties.

10 5. MATTERS COVERED BY THIS CONSENT JUDGMENT

11 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
12 behalf of itself and in the public interest and Winplus and its officers, directors, insurers,
13 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
14 companies, agents, contractors, vendors, and their successors and assigns ("Defendant
15 Releasees"), including but not limited to Big Lots, Ross Stores and Ross Dress, and the
16 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of
17 doing business with Defendants, or any of them, and the successors and assigns of any of them,
18 who may use, maintain, distribute or sell Covered Products ("Downstream Defendant
19 Releasees"), for all conduct of Defendant Releasees and Downstream Defendant Releasees prior
20 to the Effective Date based on alleged exposure to DEHP and lead from Covered Products as set
21 forth in the Notice. Winplus's compliance with this Consent Judgment shall constitute
22 compliance with Proposition 65 with respect to DEHP and lead from Covered Products.

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

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

19 CAG understands and acknowledges that the significance and consequence of this waiver of
20 California Civil Code section 1542 is that even if CAG or the public in whose interest CAG acts
21 suffers future damages arising out of or resulting from, or related directly or indirectly to, in
22 whole or in part, the Claims arising from any alleged violation of Proposition 65 or any other
23 statutory or common law regarding the failure to warn about exposure to DEHP and lead from
24 Covered Products, including but not limited to any exposure to, or failure to warn with respect to
25 exposure to DEHP and lead from the Covered Products, CAG will not be able to make any
26 claim for those damages against Winplus or the Defendant Releasees or Downstream Defendant
27 Releasees. Furthermore, CAG acknowledges that it intends these consequences for any such
28 Claims arising from any alleged violation of Proposition 65 or any other statutory or common
law regarding the failure to warn about exposure to DEHP and lead from Covered Products as

1 may exist as of the date of this release but which CAG does not know exist, and which, if known,
2 would materially affect their decision to enter into this Consent Judgment, regardless of whether
3 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other
4 cause.

5 5.3. Concurrent with entry of this Consent Judgment, CAG shall dismiss this action
6 with prejudice as against Big Lots, Ross Stores and Ross Dress.

7 **6. ENFORCEMENT OF JUDGMENT**

8 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
9 hereto. Except as otherwise agreed by the Parties, the Parties may, by noticed motion or order to
10 show cause before the Superior Court of California, City and County of Los Angeles, giving the
11 notice required by law, enforce the terms and conditions contained herein. A Party may enforce
12 any of the terms and conditions of this Consent Judgment only after that Party first provides
13 notice to the Party allegedly failing to comply with the terms and conditions of this Consent
14 Judgment and provide 60 days in which the Parties shall attempt to resolve such Party's failure to
15 comply in an open and good faith manner.

16 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
17 proceeding alleging Covered Products shipped, sold or offered for sale ("Newly Alleged
18 Products") in violation of Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
19 Violation ("NOV") to Winplus. The NOV shall include for each of the Newly Alleged Products:
20 the date(s) the alleged violation(s) was observed and the location at which the Newly Alleged
21 Products were offered for sale, and shall be accompanied by all test data obtained by CAG
22 regarding the Newly Alleged Products, including an identification of the component(s) of the
23 Newly Alleged Products that were tested. Before any destructive testing of any Newly Alleged
24 Products is conducted by or on behalf of CAG, CAG shall give Winplus an opportunity to
25 inspect and verify at reasonable times and places the authenticity of any Newly Alleged Product
26 in violation of this Consent Judgment.
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1 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
2 alleged violation if, within 60 days of receiving such NOV, Winplus serves a Notice of
3 Election (“NOE”) that meets one of the following conditions:

4 (a) The Newly Alleged Products were shipped by Winplus for sale in
5 California before the Effective Date, or

6 (b) The Newly Alleged Products came from a source other than
7 Winplus, or

8 (b) Since receiving the NOV Winplus has taken corrective action by
9 either (i) requesting that its customers in California remove the Newly Alleged Products
10 identified in the NOV from sale in California and destroy or return the Newly Alleged
11 Products to Defendants, or (ii) providing a clear and reasonable warning for the Newly
12 Alleged Products identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

13 6.2.2 **Contested NOV.** Winplus may serve an NOE informing CAG of its
14 election to contest the NOV within 60 days of receiving the NOV.

15 (a) In its election, Winplus may request that the sample(s) Covered
16 Products tested by CAG be subject to additional confirmatory testing at an EPA-
17 accredited laboratory.

18 (b) If the confirmatory testing establishes that the Newly Alleged
19 Products do not contain DEHP or lead in excess of the level allowed in Section 3.1, CAG
20 shall take no further action regarding the alleged violation. If the testing does not
21 establish compliance with Section 3.1, Winplus may withdraw its NOE to contest the
22 violation and may serve a new NOE pursuant to Section 6.2.1.

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

1 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
2 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
3 violation of Proposition 65 or this Consent Judgment. Without limiting the generality of the
4 foregoing, and/or to the extent the foregoing does not so provide, the prevailing Party in any such
5 proceeding shall recover from the non-prevailing Party, as an item of costs, all attorneys' fees
6 reasonably incurred by the prevailing Party in connection with such proceeding.

7 **7. ENTRY OF CONSENT JUDGMENT**

8 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
9 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
10 Winplus waive their respective rights to a hearing or trial on the allegations of the Complaint.

11 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
12 and any and all prior agreements between the parties merged herein shall terminate and become
13 null and void, and the actions shall revert to the status that existed prior to the execution date of
14 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
15 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
16 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
17 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
18 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

19 **8. MODIFICATION OF JUDGMENT AND RIGHTS THEREUNDER**

20 8.1 This Consent Judgment may be modified only upon written agreement of the
21 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
22 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. Any
23 Party may waive in writing any right it may have under this Consent Judgment.

24 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
25 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.
26
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1 **9. RETENTION OF JURISDICTION**

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

4 **10. DUTIES LIMITED TO CALIFORNIA**

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

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

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

14 **12. ATTORNEY FEES**

15 12.1 Except as specifically provided in Section 4.1 and 6.3, each Party shall bear its
16 own costs and attorney fees in connection with this action.

17 **13. GOVERNING LAW**

18 13.1 The validity, construction and performance of this Consent Judgment shall be
19 governed by the laws of the State of California, without reference to any conflicts of law
20 provisions of California law.

21 13.2 The Parties, including their counsel, have participated in the preparation of this
22 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
23 Consent Judgment was subject to revision and modification by the Parties and has been accepted
24 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
25 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
26 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
27

1 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
2 resolved against the drafting Party should not be employed in the interpretation of this Consent
3 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

4 **14. EXECUTION AND COUNTERPARTS**

5 14.1 This Consent Judgment may be executed in counterparts and by means of
6 facsimile or portable document format (PDF), which taken together shall be deemed to constitute
7 one document.

8 **15. NOTICES**

9 15.1 Any notices under this Consent Judgment shall be by personal delivery or First
10 Class Mail.

11 If to CAG:

12
13 Reuben Yeroushalmi
14 9100 Wilshire Boulevard, Suite 240W
15 Beverly Hills, CA 90212
(310) 623-1926

16 If to Winplus:

17 Daniel Sheehan
18 Current President/CEO
19 Winplus North America, Inc.
20 820 S. Wanamaker Ave.
Ontario, CA 91761

21 With a copy to:

22 John M. Genga, Esq.
23 Genga & Associates, P.C.
24 15260 Venture Blvd., Suite 1810
Sherman Oaks, CA 91403

1 **16. AUTHORITY TO STIPULATE**

2 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
4 of the party represented and legally to bind that party.

5
6 **AGREED TO:**

AGREED TO:

7 Date: 11-4 -, 2014

Date: _____, 2014

8
9
10 By: 
11 Plaintiff, CONSUMER ADVOCACY
12 GROUP, INC.

By: _____
Defendant, WINPLUS NORTH AMERICA,
INC.

13
14
15 **IT IS SO ORDERED.**

16
17 Date: _____

JUDGE OF THE SUPERIOR COURT

1 **16. AUTHORITY TO STIPULATE**

2 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
4 of the party represented and legally to bind that party.

6 AGREED TO:

7 Date: _____, 2014

6 AGREED TO:

7 Date: 11/13/2014 _____, 2014

10 By: _____
11 Plaintiff, CONSUMER ADVOCACY
12 GROUP, INC.

DocuSigned by:
10 *Dan Sheehan*
11 By: _____
12 Defendant, WINPLUS NORTH AMERICA,
13 INC.

15 **IT IS SO ORDERED.**

16
17 Date: 11-18-2014

FREDENICK C. SHALLER

JUDGE OF THE SUPERIOR COURT