

FILED
San Francisco County Superior Court

MAY 28 2014

CLERK OF THE COURT
BY: Jane Gonzales
Deputy Clerk

1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 YERUSHALMI & ASSOCIATES
5 9100 Wilshire Boulevard, Suite 240W
6 Beverly Hills, California 90212
7 Telephone: (310) 623-1926
8 Facsimile: (310) 623-1930

9 Attorneys for Plaintiff
10 CONSUMER ADVOCACY GROUP, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13 CONSUMER ADVOCACY GROUP, INC., in
14 the interest of the Public,
15 Plaintiff,
16 v.
17 NEXT PRODUCTS (USA), LLC, et al,
18 Defendants.

Case No. CGC-13-528729

CONSENT JUDGMENT (PROPOSED)
Health & Safety Code § 25249.5 *et seq.*

19 **1. INTRODUCTION**

20 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
21 Advocacy Group, Inc. (referred to as "CAG) acting on behalf of itself and in the interest of the
22 public and defendants Ross Stores, Inc. (collectively "Ross") with each a Party to the action and
23 collectively referred to as "Parties."

24 1.2 CAG is a California corporation that serves as a private enforcer of Proposition 65,
25 as described in Proposition 65 and the regulations of the Attorney General of California at 11 Cal.
26 Code Regs. § 3000 *et seq.*

27 1.3 Ross employs ten or more persons, is a person in the course of doing business for
28 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &

1 Safety Code §§ 25249.6 et seq. ("Proposition 65"), and distributes and sells Emergency Roadside
2 Kit with Tools directly or indirectly supplied to Ross by Next Products (USA), LLC, including
3 but not limited to "Steel Bolts® Emergency Roadside Safety Kit" "30 PCS Tool Set" "Next
4 Products USA LLC", UPC #3 17211 855771." Lead is known to the State of California to cause
5 cancer and/or birth defects or other reproductive harm.

6 **1.4 Notice of Violation.**

7 On February 11, 2013, CAG served Ross, and various public enforcement agencies with a
8 document entitled "60-Day Notice of Violation" that provided the recipients with notice of
9 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California
10 of exposures to lead contained in the Emergency Roadside Kit with Tools it sells, including but
11 not limited to "Steel Bolts® Emergency Roadside Safety Kit" "30 PCS Tool Set" "Next Products
12 USA LLC", UPC #3 17211 855771." (herein the "February 11, 2013 Notice") No public
13 enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

14 **1.5 Complaint.**

15 On October 24, 2013, CAG filed a First Amended Complaint for civil penalties and
16 injunctive relief ("Complaint") in San Francisco, Superior Court, Case No. CGC-11-528729,
17 against Ross. The Complaint alleges, among other things, that Ross violated Proposition 65 by
18 failing to give clear and reasonable warnings of exposure to lead from Emergency Roadside Kit
19 with Tools, including but not limited to "Steel Bolts® Emergency Roadside Safety Kit" "30 PCS
20 Tool Set" "Next Products USA LLC", UPC #3 17211 855771."

21 **1.6 Consent to Jurisdiction**

22 For purposes of this Consent Judgment, the Parties stipulate that this Court has
23 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
24 over Ross as to the acts alleged in the Complaint, that venue is proper in the County of San
25 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
26 and resolution of the allegations contained in the Complaint and of all claims which were or could
27 have been raised by any person or entity based in whole or in part, directly or indirectly, on the
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1 facts alleged therein or arising therefrom or related to.

2 **1.7 No Admission**

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

9 **2. DEFINITIONS**

10 1.1 "Accessible Component" means a component of a Covered Product that could be
11 touched by a person during normal or foreseeable use of the Covered Product.

12 2.1 "Covered Product" means any Emergency Roadside Kit with Tools supplied to
13 Ross by Next Products (USA), LLC, including but not limited to "Steel Bolts® Emergency
14 Roadside Safety Kit" "30 PCS Tool Set" "Next Products USA LLC", UPC #3 17211 855771."

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

17 2.3 "Lead" means lead and lead compounds.

18 2.4 "Notice" means the February 11, 2013 Notice.

19 **3. INJUNCTIVE RELIEF/REFORMULATION**

20 3.1 As of the Effective Date, Ross shall not sell or offer for sale in the State of
21 California any Covered Product that contains lead in concentrations of more than 200 parts per
22 million by weight in any Accessible Component.

23 **4. SETTLEMENT PAYMENTS**

24 4.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from CAG,
25 whichever is later, Ross shall pay a total of \$44,000 as complete settlement of all monetary claims
26 by CAG related to the Notice, as follows.

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2 4.2 **Payment In Lieu of Civil Penalties:** Ross shall pay \$1,000.00 in lieu of civil
3 penalties to "Consumer Advocacy Group, Inc." CAG will use this payment for investigation of
4 the public's exposure to Proposition 65 listed chemicals through various means, laboratory fees
5 for testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through
6 various mediums, including but not limited to consumer product, occupational, and
7 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and
8 retained experts who assist with the extensive scientific analysis necessary for those files in
9 litigation, in order to reduce the public's exposure to Proposition 65 listed chemicals by notifying
10 those persons and/or entities believed to be responsible for such exposures and attempting to
11 persuade those persons and/or entities to reformulate their products or the source of exposure to
12 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing the
13 same public harm as allegedly in the instant Action. Further, should the court require it, CAG
14 will submit under seal, an accounting of these funds as described above as to how the funds were
15 used.

16 4.3 **Reimbursement of Attorney's Fees and Costs:** Ross shall pay \$41,000.00 to
17 "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs,
18 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
19 the approval of this Consent Judgment.

20 4.4 **Civil Penalty:** Ross shall issue two separate checks for a total amount of
21 \$2,000.00 as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable
22 to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the
23 amount of \$1,500.00, representing 75% of the total penalty, and (b) one check to Consumer
24 Advocacy Group, Inc. in the amount of \$500.00 representing 25% of the total penalty. Two
25 separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA,
26 P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,500.00. The
27 second 1099 shall be issued in the amount of \$500.00 to CAG and delivered to: Yeroushalmi &
28 Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212

1 4.5 All payments to CAG and Yeroushalmi & Associates under this Consent
2 Judgment shall be delivered to: Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W,
3 Beverly Hills, CA 90212.

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

5 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
6 behalf of itself and in the public interest and Ross and its officers, directors, insurers, employees,
7 parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies
8 and their successors and assigns ("Defendant Releasees") and all persons and entities who are
9 downstream in the stream of commerce from Ross who sell or distribute the Covered Products
10 ("Downstream Defendant Releasees"), for all claims for violations of Proposition 65 up through
11 the Effective Date based on exposure to Lead from the Covered Products, through the Effective
12 Date. Ross's and Defendant Releasees' compliance with this Consent Judgment shall constitute
13 compliance with Proposition 65 with respect to Lead from Covered Products as set forth in the
14 Notice. This Section 5.1 shall not extend upstream to any entity that manufactured the Covered
15 Products or any component parts thereof, or any distributor or supplier who sold the Covered
16 Products to Ross.

17 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
18 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
19 indirectly, any form of legal action and releases all claims, including, without limitation, all
20 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
21 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
22 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
23 contingent (collectively "Claims"), against Ross, Defendant Releasees, and Downstream
24 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
25 common law regarding the failure to warn about exposure to Lead in Covered Products through
26 the Effective Date. In furtherance of the foregoing, as to alleged exposures to Covered Product,
27 CAG hereby waives any and all rights and benefits which it now has, or in the future may have,
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1 conferred upon it with respect to the Claims by virtue of the provisions of section 1542 of the
2 California Civil Code, which provides as follows:
3

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

7 CAG understands and acknowledges that the significance and consequence of this waiver of
8 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
9 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
10 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or
11 lead compounds from Covered Products, CAG will not be able to make any claim for those
12 damages against Ross the Defendant Releasees, or Downstream Defendant Releasees.

13 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may
14 exist as of the date of this release but which CAG does not know exist, and which, if known,
15 would materially affect their decision to enter into this Consent Judgment, regardless of whether
16 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.
17 This Section 5.2 shall not extend upstream to any entity that manufactured the Covered Product
18 or any component parts thereof, or any distributor or supplier who sold the Covered Product to
19 Ross.

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 of
23 California, San Francisco, giving the notice required by law, enforce the terms and conditions
24 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
25 only after that Party first provides 30 days' notice to the Party allegedly failing to comply with the
26 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
27 comply in an open and good faith manner.
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6.2 Notice of Violation. Prior to bringing any motion, order to show cause, or other proceeding to enforce Section 3 of this Consent Judgment, CAG shall provide a Notice of Violation ("NOV") to Ross. The NOV shall include for each Covered Product: the date(s) the alleged violation(s) was observed and the location at which the Covered Product was offered for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Product.

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

(a) The Covered Product was received by Ross for sale in California before the Effective Date, or

(b) Since receiving the NOV Ross has taken corrective action by removing the Covered Product identified in the NOV from sale in California, or (ii) providing a clear and reasonable warning for the Covered Product identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

6.2.2 Contested NOV. Ross may serve an NOE informing CAG of its election to contest the NOV within 30 days of receiving the NOV.

(a) In its election, Ross may request that the same sample(s) of Covered Product(s) tested by CAG be subject to confirmatory testing at an accredited laboratory.

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

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

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

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 Ross 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.

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.

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

9. RETENTION OF JURISDICTION

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

10. DUTIES LIMITED TO CALIFORNIA

10.1 This Consent Judgment shall have no effect on Covered Products sold by Ross outside the State of California.

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11. SERVICE ON THE ATTORNEY GENERAL

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

12. ATTORNEY'S FEES

12.1 Except as specifically provided in Section 4.3, each Party shall bear its own costs and attorney fees in connection with this action.

13. ENTIRE AGREEMENT

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

14. GOVERNING LAW

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

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

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

4 **15. EXECUTION IN COUNTERPARTS**

5 15.1 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 **16. NOTICES**

9 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
10 Class Mail.

<p>12 If to CAG: 13 Reuben Yeroushalmi, Esq. 14 Yeroushalmi & Yeroushalmi 15 9100 Wilshire Boulevard, Suite 240W 16 Beverly Hills, CA 90212 17 (310) 623-1926</p>	<p>12 If to Ross: 13 General Counsel 14 Ross Stores, Inc. 15 4440 Rosewood Drive 16 Pleasanton, CA 94588 17 18 With a copy to: 19 Jeffrey B. Margulies 20 Fulbright & Jaworski LLP 21 555 South Flower Street 22 41st Floor 23 Los Angeles, California 90071</p>
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24 **17. AUTHORITY TO STIPULATE**

25 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
26 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
27 the party represented and legally to bind that party.
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AGREED TO:

Date:

Name:

Title:
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date: April 1, 2014

Name: Ken Saw

Title: ~~Grand Vice President~~ Corporate
ROSS STORES, INC. Counsel

IT IS SO ORDERED.

Date:

(see next page)

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date: 3-28-14



Name: Michel Sassoon

Title: Executive Director
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date:

Name:

Title:
ROSS STORES, INC.

IT IS SO ORDERED.

Date: MAY 28 2014



JUDGE OF THE SUPERIOR COURT
ERNEST H. GOLDSMITH