

FILED
Superior Court of California
County of Los Angeles

JAN 05 2017

Sherri B. Carter, Executive Officer/Clerk
By: *[Signature]* Deputy
Steve Temblador

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ROOM 102

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff,

v.

KITTRICH CORPORATION, a California
Corporation; DO IT BEST CORP., an
Indiana Corporation; and DOES 1-20;

Defendants.

CASE NO. BC613901

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Dept. 54

Judge: Ernest M. Hiroshige

Complaint filed: March 17, 2016

Date of Trial: N/A

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER ADVOCACY GROUP, INC. (referred to as "CAG") acting on behalf of itself and in the interest of the public, and defendant, KITTRICH CORPORATION ("Kittrich" or "Defendant"), each a Party to the action and collectively referred to as "Parties." This Consent Judgment is intended to fully resolve all claims, demands, and allegations related to this action and the Notices of Violation referred to herein.

1.2 Defendant and Products

1.2.1 Defendant Kittrich is a California corporation which employs ten or more persons. For purposes of this Consent Judgment, Defendant is deemed a person in the course of doing business in California and is subject to the provisions of the Safe Drinking Water and

CONSENT JUDGMENT

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1 Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
2 (“Proposition 65”).

3 1.2.2 Defendant Kittrich manufactures, causes to be manufactured, sells, or
4 distributes (1) All Purpose Gripper Pads, (2) Gripper Pads, (3) Grip Liners, (4) Kitchen Liners,
5 (5) Garage liners, (6) Shelf Liners, (7) Grip-n-Stick Liner, (8) and Grip Pads, together referred to
6 hereinafter as the “Covered Products,” defined in Section 2.1 below.

7 **1.3 Chemicals of Concern**

8 1.3.1 Diethyl hexyl phthalate (“DEHP”) is known to the State of California to
9 cause cancer and/or birth defects or other reproductive harm.

10 1.3.2 Diisononyl phthalate (“DINP”) is known to the State of California to
11 cause cancer.

12 **1.4 Notices of Violation.**

13 1.4.1 On July 1, 2015, CAG served Kittrich, Do It Best Corp. (“DIB”),
14 California Do-It Center, and various public enforcement agencies with a document entitled “60-
15 Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act
16 of 1986” (“July 1, 2015 Notice”) that provided the recipients with notice of alleged violations of
17 Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged
18 exposures to DEHP contained in All Purpose Gripper Pads sold by Defendant. No public
19 enforcer has commenced or diligently prosecuted the allegations set forth in the July 1, 2015
20 Notice.

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22 1.4.2 On January 29, 2016, CAG served Kittrich, Pliant Solutions Corporation,
23 Anawalt Lumber & Materials, Co., Anawalt Lumber & Materials Co. - Montrose, Anawalt
24 Lumber Co., Inc. and various public enforcement agencies with a document entitled “60-Day
25 Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of
26 1986” (“January 29, 2016 Notice”) that provided the recipients with notice of alleged violations
27 of Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged
28 exposures to DEHP contained in All Purpose Gripper Pads sold by Defendant. No public

1 enforcer has commenced or diligently prosecuted the allegations set forth in the January 29, 2015
2 Notice.

3 1.4.3 On February 5, 2016, CAG served Kittrich, Super 99 Cent Discount, ("99
4 Cent") and various public enforcement agencies with a document entitled "60-Day Notice of
5 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986"
6 ("February 5, 2016 Notice") that provided the recipients with notice of alleged violations of
7 Health & Safety Code §. 25249.6 for failing to warn individuals in California of alleged
8 exposures to DEHP contained in Gripper Pads sold by Defendant. No public enforcer has
9 commenced or diligently prosecuted the allegations set forth in the February 5, 2016 Notice.

10 1.4.4 On February 5, 2016, CAG served CAG served Kittrich, DIB, and various
11 public enforcement agencies with a document entitled "60-Day Notice of Intent to Sue for
12 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("Second February 5,
13 2016 Notice") that provided the recipients with notice of alleged violations of Health & Safety
14 Code § 25249.6 for failing to warn individuals in California of alleged exposures to DINP
15 contained in Grip Liners and Gripper Pads sold by Defendant. No public enforcer has
16 commenced or diligently prosecuted the allegations set forth in the Second, February 5, 2016
17 Notice.

18 1.4.5 On February 5, 2016, CAG served Kittrich and Pioneer & Lucerne
19 Hardware Co. Inc., Lucerne Hardware and Pliant Solutions Corp., and various public
20 enforcement agencies with a document entitled "60-Day Notice of Intent to Sue for Violation of
21 the Safe Drinking Water and Toxic Enforcement Act of 1986" ("Third February 5, 2016
22 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code §
23 25249.6 for failing to warn individuals in California of alleged exposures to DINP contained in
24 Grip Liners sold by Defendant. No public enforcer has commenced or diligently prosecuted the
25 allegations set forth in the Third February 5, 2016 Notice.

26 1.4.6 On February 5, 2016, CAG served Kittrich and Anawalt Lumber Co., and
27 Anawalt Lumber and Materials Co., and various public enforcement agencies with a document
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1 entitled "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic
2 Enforcement Act of 1986" ("Fourth February 5, 2016 Notice") that provided the recipients with
3 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
4 California of alleged exposures to DINP contained in Grip Liners sold by Defendant. No public
5 enforcer has commenced or diligently prosecuted the allegations set forth in the Fourth February
6 5, 2016 Notice.

7 1.4.7 On July 29, 2016, CAG served Kittrich, Home Depot, Inc., ("Home
8 Depot") and various public enforcement agencies with a document entitled "60-Day Notice of
9 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986"
10 ("July 29, 2016 Notice") that provided the recipients with notice of alleged violations of Health
11 & Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures to
12 DINP contained in Plastic Shelf Liners sold by Defendant. No public enforcer has commenced
13 or diligently prosecuted the allegations set forth in the July 29, 2016 Notice.

14 1.4.8 On August 19, 2016, CAG served Kittrich, DIY Home Center, and various
15 public enforcement agencies with a document entitled "60-Day Notice of Intent to Sue for
16 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("Second February 5,
17 2016 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 alleged exposures to DINP
19 contained in Plastic Shelf Liners sold by Defendant. No public enforcer has commenced or
20 diligently prosecuted the allegations set forth in the August 19, 2016 Notice.

21
22 **1.5 Complaint**

23 On March 17, 2016, CAG filed a Complaint for civil penalties and injunctive relief
24 ("Complaint") in the Superior Court of California County of Los Angeles, Case No. BC613901,
25 against the Defendant. CAG filed a First Amended Complaint ("FAC") on or about September
26 27, 2016. The Complaint and FAC allege, among other things, that Defendant violated
27 Proposition 65 by failing to give clear and reasonable warnings of alleged exposure to DEHP
28 and/or DINP from the Covered Products. The FAC is the operative complaint in this Action.

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1 **1.6 Consent to Jurisdiction**

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

9 **1.7 No Admission**

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

2 2.1 "Covered Products" includes means (1) All Purpose Gripper Pads, including but
3 not limited to the Magic Cover® Grip Extra 4 All-Purpose Gripper Pads; White 5.5" round;
4 GXGP-7914-01; Kittrich Corporation, La Mirada, CA 90638; Made In China; UPC No.: 0 87508
5 99547 2; (2) Gripper Pads, including but not limited to "Grip Pads (4 Piece Set), Con-Tact®
6 Brand.515 in, 13,97 cm (Round). White KTCH-CGP001-01. Kittrich Corporation. S25-0531
7 (SKU:601040) UPC: 7 90444 01845 6"; (3) Grip Liners, including but not limited to, Grip Liner,
8 Con-Tact® Brand. 45,72 cm x 1,22 m., 18in x 4ft. 04F-C6U51-01 Black. Kittrich Corporation.
9 '606240 P 5C08 – PioneerHD – 4 03/5 3152 A EA, \$9.99' UPC: 7 90444 00210 3"; (4) Kitchen
10 Liners, including but not limited to the "Natural Weave Liner"; "Durable and washable"; 12 in.
11 x 4 ft.; 30,48 cm x 1,22 m; Caution: Not for use on lacquered or urethane surfaces. Finish
12 damage may occur; "Kittrich® Corporation La Mirada, CA 90638; 04F-127666-01; Lattice
13 Honey; UPC:087508000558," (5) Garage Liners; (6) Shelf Liners; (7) Grip n Stick Liner; and (8)
14 Grip Pads sold distributed, processed, packaged, produced, manufactured and/or handled by the
15 Defendant, which were the subject of the "Notices" served by CAG and sold by the Defendant.

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

18 2.3 "DEHP" means Diethyl hexyl phthalate.

19 2.4 "DINP" means Diisononyl phthalate

20 2.5 "Notices" means the July 1, 2015, January 29, 2016, February 5, 2016 (4
21 Notices), July 29, 2016, the August 19, 2016 Notices, and all other notices issued by CAG to any
22 Party or any person or entity referenced herein.

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24 ///

25 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
26 **WARNINGS**

27 3.1 Within 30 days of the Effective Date, Defendant shall not sell the Covered
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1 Products in California unless they are reformulated to contain less than 0.1% (1,000 parts per
2 million) DEHP.

3 3.2 For any Covered Products still existing in Defendant's inventory as of the
4 Effective Date, that have not been reformulated to contain less than 0.1% (1,000 parts per
5 million) DEHP, to the extent they do not fall within the safe harbor provisions not requiring a
6 label, Defendant shall place a Proposition 65 compliant warning on those covered products. Any
7 warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the
8 Covered Products, and be prominently placed with such conspicuousness as compared with other
9 words, statements, designs, or devices as to render it likely to be read and understood by an
10 ordinary individual under customary conditions before purchase or use. The warning shall state:

11 **WARNING:** This product contains a chemical known to the State of California
12 to cause cancer and birth defects or other reproductive harm.

13 3.3 Within 30 days of the Effective Date, Defendant shall not sell the Covered
14 Products in California unless they are reformulated to contain less than 0.1% (1,000 parts per
15 million) DINP.

16 3.4 For any Covered Products still existing in Defendant's inventory as of the
17 Effective Date, that have not been reformulated to contain less than 0.1% (1,000 parts per
18 million) DINP, to the extent they do not fall within the safe harbor provisions not requiring a
19 label, Defendant shall place a Proposition 65 compliant warning on those covered products. Any
20 warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the
21 Covered Products, and be prominently placed with such conspicuousness as compared with other
22 words, statements, designs, or devices as to render it likely to be read and understood by an
23 ordinary individual under customary conditions before purchase or use. The warning shall state:

24 **WARNING:** This product contains a chemical known to the State of California
25 to cause cancer.

26
27 3.5 If a Defendant or any Party bound by this Consent Judgment defaults under any of
28 this Agreement's terms, the non-defaulting Party will give to the defaulting Party a written notice

1 of the default. The defaulting Party will have thirty (30) days after receipt of this notice to cure
2 the default. Only if the defaulting Party fails to cure the default within this time period, may the
3 non-defaulting Party exercise those remedies granted under this Agreement or applicable law.

4 **4. SETTLEMENT PAYMENT**

5 **4.1 Payment and Due Date:** Within twenty (20) business days of the Effective Date,
6 Defendant shall pay the total amount of one hundred and ten-thousand dollars and zero cents
7 (\$110,000.00) (the "Total Settlement Amount") in full and complete settlement of all monetary
8 claims by CAG related to the Notices in this action. Under no circumstances shall the total
9 amount Defendant pays pursuant to this Consent Judgment exceed the Total Settlement Amount.
10 The Total Settlement Amount shall be paid as follows:

11 **4.1.1 Civil Penalty:** Defendant shall issue two separate checks totaling Eleven
12 Thousand Five Hundred Dollars (\$11,500) as penalties pursuant to Health & Safety Code §
13 25249.12 as follows:

14 **4.1.1.1** Defendant will issue one check made payable to the State of
15 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of
16 Eight Thousand Six Hundred and Twenty-five Dollars (\$8,625) representing 75% of the total
17 penalty. Defendant shall deliver the OEHHA payment to P.O. Box 4010, Sacramento, California
18 95184.

19 **4.1.1.2** Defendant will issue a second check to CAG in the amount of
20 Two Thousand Eight Hundred and Seventy-five Dollars (\$2,875) representing 25% of the total
21 penalty.
22

23 **4.1.2 Payments In Lieu of Civil Penalties:** Defendant shall pay Eight
24 Thousand Five Hundred Dollars \$8,500 of the Total Settlement Amount in lieu of civil penalties
25 payable to "Consumer Advocacy Group, Inc." CAG will use this payment for investigation of
26 the public's exposure to Proposition 65 listed chemicals through various means, including
27 laboratory fees for testing for Proposition 65 listed chemicals, administrative costs and fees
28 related to such activities, expert fees for evaluating exposures through various mediums,

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1 including but not limited to consumer product, occupational, and environmental exposures to
2 Proposition 65 listed chemicals, and the cost of hiring consulting and retained experts who assist
3 with the extensive scientific analysis necessary for those files in litigation, as well as
4 administrative costs and fees related to such activities in order to reduce the public's exposure to
5 Proposition 65 listed chemicals by notifying those persons and/or entities believed to be
6 responsible for such exposures and attempting to persuade those persons and/or entities to
7 reformulate their products or the source of exposure to completely eliminate or lower the level of
8 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the
9 instant Action. Further, should the Court require it, CAG will submit under seal, an accounting
10 of these funds as described above as to how the funds were used.

11 **4.1.3 Payment to Charity:** Defendant shall pay \$15,000 of the Total Settlement
12 Amount to the Beverly Hills Cancer Center & Research Foundation ("BHCCRF"). BHCCRF is
13 a registered California 501(c)(3) corporation, incorporated on September 9, 2013. The mission
14 of the BHCCRF is to further cancer research. The BHCCRF addresses the public harm
15 addressed in the Instant Action, specifically, addressing the effects of exposure to products
16 containing DEHP and DINP, chemicals known to the State of California, to cause cancer.
17 Defendant shall issue a 1099 Form to the Beverly Hills Cancer Center and Research Foundation,
18 in the amount of \$15,000, and deliver it to the BHCCRF, c/o Shervin Gabayan at 8900 Wilshire
19 Boulevard, Beverly Hills, California 90211.

20 **4.1.4 Reimbursement of Attorney's Fees and Costs:** As part of the Total
21 Settlement Amount, Defendant shall cause a check in the amount of Seventy-Five Thousand
22 Dollars (\$75,000) made payable to "Yeroushalmi & Yeroushalmi" to be issued as reimbursement
23 for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a
24 result of investigating, litigating, and negotiating a settlement in the public interest.
25

26 **4.2** All payments referenced in Section 4.1 above, except for the OEHHA payment,
27 shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd.,
28 Suite 240W, Beverly Hills, California 90212.

1 4.3 The payment referenced in paragraph 4.1.3 above, shall be delivered to the
2 Beverly Hills Cancer Center and Research Foundation, at 8900 Wilshire Boulevard, Beverly
3 Hills, CA 90211, Attention: Shervin Gabayan.

4 4.4 Defendant will issue two Forms 1099 for the above-referenced payments: (1)
5 OEHHA (EIN: 68-0284486) in the amount of Eight Thousand Six Hundred Twenty-five
6 (\$8,625) which shall be delivered to OEHHA at P.O. Box 4010, Sacramento, CA 95184 for the
7 payment required by Paragraph 4.1.1.1; and (2) CAG in the amount of Two Thousand Eight
8 Hundred Seventy-Five (\$2,875) which shall be delivered to CAG c/o Yeroushalmi &
9 Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, California 90212.

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 Defendant and its officers, directors, insurers,
13 employees, attorneys, parents, shareholders, divisions, subdivisions, subsidiaries, partners,
14 affiliates, sister companies, and their successors and assigns ("Defendant Releasees"), or any
15 other person in the course of doing business, and the successors and assigns of any of them, who
16 may use, maintain, distribute or sell Covered Products, including, but not limited, to Do It Best
17 Corp., Do it Best Corp. Members, Pliant Solutions Corporation, Anawalt Lumber & Materials
18 Co., Anawalt Lumber & Materials Co.-Montrose, Anawalt Lumber Co., Inc., and Do-It Center
19 ("Downstream Defendant Releasees"), for all claims, known and unknown, whether asserted by
20 CAG or not, and without limitation, for violations of Proposition 65 up through the Effective
21 Date based on failure to warn about alleged exposure to DEHP and/or DINP, from Covered
22 Products, as set forth in the Notices. CAG represents and warrants that it is not aware of any
23 further or additional claims it holds or may hold against the Defendant, the Defendant Releasees,
24 or the Downstream Defendant Releasees. Defendant and Defendant Releasees' compliance with
25 this Consent Judgment shall constitute compliance with Proposition 65 with respect to alleged
26 exposure to DEHP and/or DINP from Covered Products. Nothing in this Section affects CAG's
27 right to commence or prosecute an action under Proposition 65 against any person other than
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CONSENT JUDGMENT

1 Defendant, Defendant Releasees or Downstream Defendant Releasees (Defendant, Defendant
2 Releasees or Downstream Defendant Releasees herein referred to as "Released Parties")

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

18
19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
21 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
22 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
23 OR HER SETTLEMENT WITH THE DEBTOR.

24 CAG understands and acknowledges that the significance and consequence of this waiver of
25 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
26 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
27 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
28 about alleged exposure to DEHP and/or DINP from the Covered Products, including but not
limited to any alleged exposure to, or failure to warn with respect to alleged exposure to DEHP

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1 and/or DINP from the Covered Products, CAG will not be able to make any claim for those
2 damages against the Released Parties. Furthermore, CAG acknowledges that it intends these
3 consequences for any such Claims arising from any violation of Proposition 65 or any other
4 statutory or common law regarding the failure to warn about alleged exposure to DEHP and/or
5 DINP from Covered Products as may exist as of the date of this release but which CAG does not
6 know exist, and which, if known, would materially affect their decision to enter into this Consent
7 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,
8 error, negligence, or any other cause.

9 **6. ENTRY OF CONSENT JUDGMENT**

10 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
11 California Health & Safety Code section 25249.7(f). Upon entry of the Consent Judgment,
12 CAG, Defendant waives their respective rights to a hearing or trial on the allegations of the FAC.

13 6.2 If this Consent Judgment is not approved in full by the Court, (a) this Consent
14 Judgment and any and all prior agreements between the parties merged herein shall terminate
15 and become null and void, and the actions shall revert to the status that existed prior to the
16 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
17 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
18 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
19 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
20 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

21 6.3 CAG will file a request for a dismissal with prejudice as to Defendant Do It Best
22 Corp., within ten (10) days of the Effective Date.

23 **7. MODIFICATION OF JUDGMENT**

24 7.1 This Consent Judgment may be modified only upon written agreement of the
25 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
26 any party as provided by law and upon entry of a modified Consent Judgment by the Court.
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1 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
2 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

3 **8. RETENTION OF JURISDICTION**

4 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
5 terms of this Consent Judgment under Code of Civil Procedure section 664.6.

6 **9. DUTIES LIMITED TO CALIFORNIA**

7 9.1 This Consent Judgment shall have no effect on Covered Products sold by
8 Defendant outside the State of California. That notwithstanding, the extent of the releases
9 provided herein apply globally regardless of jurisdiction, and nothing herein shall limit Released
10 Parties from selling the Covered Products outside the State of California.

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

12 10.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
13 California Attorney General so that the Attorney General may review this Consent Judgment
14 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
15 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
16 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
17 the parties may then submit it to the Court for approval.

18 **11. ATTORNEY FEES**

19 11.1 Except as specifically provided herein, each Party shall bear its own attorneys'
20 fees and costs in connection with this Action.

21 **12. ENTIRE AGREEMENT**

22 12.1 This Consent Judgment contains the sole and entire agreement and understanding
23 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
24 negotiations, commitments and understandings related hereto. No representations, oral or
25 otherwise, express or implied, other than those contained herein have been made by any party
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
27 deemed to exist or to bind any of the Parties.
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1 **13. GOVERNING LAW**

2 13.1 The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.

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

14 **14. EXECUTION AND COUNTERPARTS**

15 14.1 This Consent Judgment may be executed in counterparts and by means of
16 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
17 one document and have the same force and effect as original signatures.

18 **15. NOTICES**

19 15.1 Any notices under this Consent Judgment shall be by personal delivery of First
20 Class Mail.

21 If to CAG:

22
23 Yeroushalmi & Yeroushalmi
24 9100 Wilshire Boulevard, Suite 240W
25 Beverly Hills, CA 90212
26 (310) 623-1926

27 If to Kittrich, Inc.:

28 Peter Stavropoulos, General Counsel
Kittrich Corporation
14555 Alondra Boulevard

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1 Los Angeles, CA 90038

2 With a copy to:

3 John Mark Jennings
4 Kutak Rock, LLP
5 5 Park Plaza, Suite 1500
6 Irvine, CA 92614
7 (949) 417-0999

7 16. AUTHORITY TO STIPULATE

8 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
9 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
10 of the party represented and legally to bind that party.

11 AGREED TO:

11 AGREED TO:

12 Date: Sept 30, 2016

12 Date: 9/30, 2016

13 

13 

14 Name: Michael Marcus

14 Name: ROBERT FRIEDLAND

15 Title: Director
16 CONSUMER ADVOCACY
17 GROUP, INC.

15 Title: CEO
16 KITTRICH, INC.

18 IT IS SO ORDERED.

19 Date: 1-5-17

20 
21 Hon. Ernest M. Hiroshige
22 JUDGE OF THE SUPERIOR COURT

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