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

10 **COUNTY OF SAN MATEO**

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

13 **Plaintiff,**

14 **v.**

**CASE NO. 16-CIV-02377**

**CONSENT JUDGMENT [PROPOSED]**

**Health & Safety Code § 25249.5 et seq.**

15 **ROSS STORES, INC. dba DD'S**  
16 **DISCOUNTS, a Delaware Corporation; T.J.**  
17 **MAXX, a business entity form unknown;**  
18 **THE TJX COMPANIES, INC., a Delaware**  
19 **Corporation; T.J. MAXX OF CA, LLC, a**  
20 **Delaware Limited Liability Company;**  
21 **MARMAXX OPERATING CORP., a**  
22 **Delaware Corporation; BURLINGTON, a**  
23 **business entity form unknown;**  
24 **BURLINGTON COAT FACTORY**  
25 **WAREHOUSE CORPORATION, a**  
26 **Delaware Corporation; and DOES 1-30;**

27 **Defendants.**

**Complaint: November 15, 2016**

28 **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

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1 public, and defendant, LIFEWORKS TECHNOLOGY GROUP, LLC. ("Defendant" or  
2 "Lifeworks") with each a Party to the action and collectively referred to as "Parties."

3 **1.2 Defendants and Products**

4 1.2.1 Defendant is a New York Limited Liability Company which employ ten or  
5 more persons. Among other things, Defendant causes to be manufactured, imports, sells, or  
6 distributes polymer fitness balls.

7 1.2.2 For purposes of this Consent Judgment, Defendant is deemed a person in  
8 the course of doing business in California and are subject to the provisions of the Safe Drinking  
9 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.  
10 ("Proposition 65").

11 **1.3 Chemicals of Concern**

12 1.3.1 Di(2-ethylhexyl)phthalate ("DEHP") is known to the State of California to  
13 cause cancer and birth defects or other reproductive harm.

14 1.3.2 Diisononyl phthalate ("DINP") is known to the State of California to  
15 cause cancer.

16 **1.4 Notices of Violation.**

17 1.4.1 On or about July 7, 2016, CAG served Lifeworks, Ross Stores, Inc.  
18 ("Ross") and others as well as various public enforcement agencies with a document entitled  
19 "60-Day Notice of Violation" ("AG # 2016-00684 Notice") that provided the recipients with  
20 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in  
21 California of exposures to DEHP contained in Fitness Balls sold and/or distributed by Defendant.  
22 No other public enforcer has commenced or diligently prosecuted the allegations set forth in the  
23 AG # 2016-00684 Notice.

24 1.4.2 On or about July 26, 2016, CAG served Lifeworks, TJ Maxx of CA, LLC  
25 ("TJ Maxx"), The TJX Companies ("TJX"), including on behalf of other affiliates including  
26 Marshalls of CA, LLC ("Marshalls") and others as well as various public enforcement agencies  
27 with a document entitled "60-Day Notice of Violation" ("AG # 2016-00738 Notice") that  
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1 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
2 failing to warn individuals in California of alleged exposures to DEHP and DINP contained in  
3 polymer fitness balls sold and/or distributed by Defendant. No other public enforcer has  
4 commenced or diligently prosecuted the allegations set forth in the AG # 2016-00738 Notice.

5 1.4.3 On or about July 26, 2016, CAG served Lifeworks, and Burlington Coat  
6 Factory Warehouse Corporation as well as various public enforcement agencies with a document  
7 entitled "60-Day Notice of Violation" ("AG # 2016-00740 Notice") that provided the recipients  
8 with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
9 individuals in California of alleged exposures to DEHP contained in polymer fitness balls sold  
10 and/or distributed by Defendant. No other public enforcer has commenced or diligently  
11 prosecuted the allegations set forth in the AG # 2016-00740 Notice.

12 1.4.4 On or about December 2, 2016, CAG served Lifeworks, Ross and various  
13 public enforcement agencies with a document entitled "60-Day Notice of Violation" ("AG #  
14 2016-01424 Notice") that provided the recipients with notice of alleged violations of Health &  
15 Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures to  
16 DEHP and DINP contained in polymer fitness balls sold and/or distributed by Defendant. No  
17 other public enforcer has commenced or diligently prosecuted the allegations set forth in the AG  
18 # 2016-01424 Notice.

19 **1.5 Complaint.**

20 21 22 23 24 25 26 27 28  
1.5.1 On November 15, 2016, CAG filed a Complaint for civil penalties and  
injunctive relief ("Original Complaint") in San Mateo County Superior Court to commence Case  
No. 16-CIV-02377 against Ross, TJ Maxx and TJX as Defendants, which was later amended by  
Stipulation to add Burlington Coat Factory of Texas ("BCFT") and Burlington Coat Factory  
Direct Corporation ("BCFD") as Defendants. On December 14, 2017 CAG filed the operative  
First Amended Complaint ("Complaint") against Lifeworks and retailer Defendants Ross, TJ  
Maxx, TJX, Marshalls, BCFT and BCFD (collectively the "Retailer Defendants") which alleges,  
among other things, that Lifeworks and the Retailer Defendants violated Proposition 65 by

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1 failing to give clear and reasonable warnings prior to exposing persons in California to DEHP  
2 and DINP by selling, offering for sale or shipping into California for sale the Covered Products.  
3 The term "Defendants" means all defendants in this action, and specifically Lifeworks and all the  
4 Retailer Defendants.

5           **1.6 Consent to Jurisdiction**

6           1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court  
7 has jurisdiction over the allegations of violations contained in the Complaint and personal  
8 jurisdiction over Lifeworks as to the acts alleged in the Complaint, that venue is proper in the  
9 County of San Mateo and that this Court has jurisdiction to enter this Consent Judgment as a full  
10 settlement and resolution of the allegations contained in the Complaint and of all claims which  
11 were or could have been raised by any person or entity based in whole or in part, directly or  
12 indirectly, on the facts alleged in the Complaint or arising therefrom or related to it.

13           **1.7 No Admission**

14           1.7.1 ~~This Consent Judgment resolves claims that are denied and disputed. The~~  
15 Parties enter into this Consent Judgment pursuant to a full and final settlement of this action in  
16 its entirety as to all Defendants any and all claims between the Parties for the purpose of  
17 avoiding prolonged litigation. Nothing in this Consent Judgment shall be construed as an  
18 admission by any Party or any Retailer Defendant of any material allegation of the Complaint  
19 (each and every allegation of which Lifeworks and the Retailer Defendants deny), any fact,  
20 conclusion of law, issue of law or violation of law, including without limitation, any admission  
21 concerning any violation of Proposition 65 or any other statutory, regulatory, common law, or  
22 equitable doctrine, or the meaning of the terms "knowingly and intentionally expose" or "clear  
23 and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this  
24 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an  
25 admission by the Parties or any Retailer Defendant of any fact, conclusion of law, issue of law,  
26 or violation of law, or of fault, wrongdoing, or liability by any Defendant, its officers, directors,  
27 employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence  
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1 in any administrative or judicial proceeding or litigation in any court, agency, or forum.  
2 Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right,  
3 remedy, argument, or defense the Parties may have in any other or future legal proceeding,  
4 except as expressly provided in this Consent Judgment.  
5

6 **2. DEFINITIONS**

7 2.1 "Covered Products" means all fitness balls, of any style or type, marketed under  
8 the brand names Avia or RBX that have been distributed, sold and/or offered for sale in or into  
9 California by Lifeworks, and that contain DINP, DEHP or both, including those products,  
10 supplied by Lifeworks and sold by any Retailer Defendant.

11 2.2 "Effective Date" means the date that this Consent Judgment is approved by the  
12 Court.

13 2.3 The "Notices" means AG # 2016-00684 Notice, AG # 2016-00738 Notice, AG #  
14 2016-00740 Notice, and AG # 2016-01424 Notice sent by Plaintiff.

15 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**  
16 **WARNINGS.**

17 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in  
18 California, or ship for sale in California any Covered Products unless the concentration level of  
19 DEHP or DINP is less than 0.1 % by weight (1,000 parts per million).  
20

21 3.2 For any Covered Products still existing in the Defendants' inventory as of the  
22 Effective Date, Defendant shall place a Proposition 65 compliant warning on them. Any  
23 warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the  
24 Covered Products, and be prominently placed with such conspicuousness as compared with other  
25 words, statements, designs, or devices as to render it likely to be read and understood by an  
26 ordinary individual under customary conditions before purchase or use. The Parties agree that  
27 the following warning language shall constitute compliance with Proposition 65 with respect to  
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1 the alleged DEHP or DINP in the Covered Products in the Defendants' inventory as of the  
2 Effective Date distributed and/or sold by any Defendant after the Effective Date:

3  
4 **⚠ WARNING:** Consuming this product can expose you to DEHP  
5 and DINP which are known to the State of California to cause cancer  
6 and DEHP which is known to the State of California to cause birth  
7 defects or other reproductive harm. For more information go to  
8 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)  
9

10 **4. SETTLEMENT PAYMENT**

11 **4.1 Payment and Due Date:** Within ten (10) days of the Effective Date, Defendant  
12 shall pay a total of one hundred and ten thousand dollars and zero cents (\$110,000.00) in full and  
13 complete settlement of all monetary claims by CAG related to the Notices, as follows:

14 **4.1.1 Civil Penalty:** Defendant shall issue separate checks totaling five  
15 thousand seven hundred and twenty dollars (\$5,720.00) as penalties pursuant to Health & Safety  
16 Code § 25249.12:

17 (a) Defendant will issue a check made payable to the State of California's  
18 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of four thousand  
19 two hundred and ninety dollars (\$4,290.00) representing 75% of the total penalty and Defendant  
20 will issue a separate check to CAG in the amount of one thousand four hundred and thirty dollars  
21 (\$1,430.00) representing 25% of the total penalty; and

22 (b) Separate 1099s shall be issued for each of the above payments:  
23 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-  
24 0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Associates, 9100  
25 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

26 **4.1.2 Additional Settlement Payments:** Defendant shall make a separate  
27 payment, in the amount of four thousand two hundred and eighty dollars (\$4,280.00) as an  
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1 additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health & Safety  
2 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendant will issue  
3 a separate check to CAG for the Additional Settlement Payment. CAG will use this payment as  
4 follows, eighty five percent (85%) for fees of investigation, purchasing and testing for  
5 Proposition 65 listed chemicals in various products, and for expert fees for evaluating exposures  
6 through 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 retaining experts who assist with the extensive scientific analysis necessary for those files in  
9 litigation and to offset the costs of future litigation enforcing Proposition 65 but excluding  
10 attorney fees; fifteen percent (15%) for administrative costs incurred during investigation and  
11 litigation to reduce the public's exposure to Proposition 65 listed chemicals by notifying those  
12 persons and/or entities believed to be responsible for such exposures and attempting to persuade  
13 those persons and/or entities to reformulate their products or the source of exposure to  
14 completely eliminate or lower the level of Proposition 65 listed chemicals including but not  
15 limited to costs of documentation and tracking of products investigated, storage of products,  
16 website enhancement and maintenance, computer and software maintenance, investigative  
17 equipment, CAG's member's time for work done on investigations, office supplies, mailing  
18 supplies and postage. Within 30 days of a request from the Attorney General, CAG shall provide  
19 to the Attorney General copies of documentation demonstrating how the above funds have been  
20 spent. CAG shall be solely responsible for ensuring the proper expenditure of such additional  
21 settlement payment.  
22

23 **4.1.3 Reimbursement of Attorneys' Fees and Costs:** Defendant shall pay one  
24 hundred thousand dollars (\$100,000.00) to "Yeroushalmi & Yeroushalmi" as reimbursement for  
25 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of  
26 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a  
27 settlement in the public interest.  
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1           4.2     Other than the payment to OEHHA described above, all payments referenced in  
2 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,  
3 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The  
4 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,  
5 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently  
6 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the  
7 payment to OEHHA was delivered.

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

9           5.1     This Consent Judgment is a full, final, and binding resolution between CAG on  
10 behalf of itself and in the public interest and all Defendants in this action, including but not  
11 limited to Lifeworks and the Retailer Defendants, as well all entities to whom Lifeworks directly  
12 or indirectly distributes or sells Covered Products, including but not limited to its manufacturers,  
13 suppliers, distributors, wholesalers, customers, licensors, licensees, retailers (including but not  
14 limited to the Retailer Defendants), franchisees, cooperative members and all downstream  
15 entities in the distribution chain of the Covered Products, and each of their respective  
16 subsidiaries and affiliates (collectively the "Downstream Defendant Releasees"), of any alleged  
17 violation of Proposition 65 that was or could have been asserted by CAG against the Defendants  
18 or the Downstream Defendant Releasees for failure to provide Proposition 65 warnings of  
19 exposure to DEHP and/or DINP from the Covered Products as set forth in the Notices, and fully  
20 resolves all claims that have been or could have been asserted in this action up to and including  
21 the date of entry of Judgment, including but not limited to for failure to provide Proposition 65  
22 warnings for the Covered Products based on the presence of or exposure of persons in California  
23 to DEHP and DINP.

24           CAG, on behalf of itself and in the public interest, fully releases Lifeworks and its  
25 employees, officers, directors, members, managers, parent companies, subsidiaries, divisions,  
26 affiliates (collectively the "Lifeworks Releasees"), and all of Lifeworks' Downstream Defendant  
27 Releasees, as well as the predecessors, successors and assigns of any of them, and all of their  
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1 respective officers, directors, shareholders, members, managers, employees, agents, attorneys  
2 and insurers (collectively the "Defendant Releasees"), from all claims up through the Effective  
3 Date for alleged violations of Proposition 65 based on exposure to DEHP and DINP from the  
4 Covered Products. Compliance with the terms of this Consent Judgment shall be deemed to  
5 constitute compliance by the Defendant Releasees with Proposition 65 regarding alleged  
6 exposures to DEHP and DINP from the Covered Products.

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

25           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
26           CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
27           EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
28           RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
             MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
             DEBTOR OR RELEASED PARTY.

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1 CAG understands and acknowledges that the significance and consequence of this waiver of  
2 California Civil Code section 1542 is that even if CAG has or discovers future claims (including  
3 for civil penalties), suffers future damages arising out of or resulting from, or related directly or  
4 indirectly to, in whole or in part, Claims arising from any alleged violation of Proposition 65 or  
5 any other statutory or common law regarding the failure to warn about exposure to DEHP and  
6 DINP from the Covered Products, including but not limited to any exposure to, or failure to warn  
7 with respect to exposure to DEHP and DINP from the Covered Products, CAG will not be able  
8 to make any claim for such penalties or damages against Defendant Releasees. Furthermore,  
9 CAG acknowledges that it intends these consequences for any such Claims arising from any  
10 violation of Proposition 65 or any other statutory or common law regarding the failure to warn  
11 about exposure to DEHP and DINP from Covered Products as may exist as of the date of this  
12 release but which CAG does not know exist, and which, if known, would materially affect their  
13 decision to enter into this Consent Judgment, regardless of whether their lack of knowledge is the  
14 result of ignorance, oversight, error, negligence, or any other cause.

15  
16 5.3 Nothing in this Section 5 affects CAG's right to commence or prosecute an action  
17 under Proposition 65 against any person other than Lifeworks or Defendant Releasees, for any  
18 matters other than regarding the Covered Products. The releases in this Section 5 are limited to  
19 those Covered Products distributed, sold and/or offered for sale in or into California by  
20 Lifeworks, whether or not those products were later sold by the Retail Defendants or others.

21 5.4 Notwithstanding any other provision of this Consent Judgment, the Defendant  
22 Releasees may assert or raise this Consent Judgment as a defense to any Claim released in this  
23 Consent Judgment to the fullest extent allowed by law, including the doctrines of res judicata and  
24 collateral estoppel.

25 **6. ENFORCEMENT OF JUDGMENT.**

26 6.1 The terms of this Consent Judgment may be enforced exclusively by its Parties.  
27 Any enforcing Party may, by noticed motion or order to show cause before the Superior Court of  
28 California, San Mateo County, giving the notice required by law, enforce the terms and

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1 conditions contained in this Consent Judgment. A Party may enforce any of the terms and  
2 conditions of this Consent Judgment only after that Party first provides 30 days notice to the  
3 Party allegedly failing to comply with the terms and conditions of this Consent Judgment and  
4 attempts to resolve such Party's failure to comply in an open and good faith manner.

5 Notwithstanding the immediately preceding sentence, CAG may bring a motion or an action to  
6 enforce any breach of the settlement payment terms in Section 4 upon five (5) business days  
7 written notice by CAG to Lifeworks.

8           **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
9 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of  
10 Violation ("NOV") to Lifeworks. The NOV shall include for each of the Covered Products: the  
11 date(s) the alleged violation(s) was observed and the location at which the Covered Products  
12 were offered for sale and shall be accompanied by all test data obtained by CAG regarding the  
13 Covered Products, and any other evidence or support for the allegations in the NOV.

14           **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the  
15 alleged violation if, within 60 days of receiving such NOV, Lifeworks serves a Notice of  
16 Election ("NOE") that meets one of the following conditions:

17                   (a) The Covered Products were shipped by Lifeworks for sale in  
18 California before the Effective Date, or

19                   (b) Since receiving the NOV Lifeworks has taken corrective action by  
20 either (i) requesting that its customers or stores in California, as applicable, remove the  
21 Covered Products identified in the NOV from sale in California and destroy or return the  
22 Covered Products to Lifeworks or vendor, as applicable, or (ii) taking all steps necessary  
23 to bring the sale of the product into compliance under the terms of this Consent  
24 Judgment.

25           **6.2.2 Contested NOV.** Lifeworks may serve a NOE informing CAG of its  
26 election to contest the NOV within 30 days of receiving the NOV.  
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1 (a) In its election, Lifeworks may request that the sample(s) of  
2 Covered Products tested by CAG be subject to confirmatory testing at an EPA-accredited  
3 laboratory.

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

9 (c) If Lifeworks does not withdraw a 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 any Party to enforce this Consent Judgment, the  
13 prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-  
14 prevailing parties in such proceeding.

15 **7. DISMISSAL OF RETAILER DEFENDANTS & ENTRY OF CONSENT**  
16 **JUDGMENT**

17 7.1 Upon execution of this Consent Judgment, the Parties shall promptly submit a  
18 Joint Notice of Settlement to the Court which also requests that the action be stayed in its  
19 entirety, other than as to the filing of the Motion to Approve the Consent Judgment and other  
20 matters necessary to obtain approval of and implement this Consent Judgment. Within ten (10)  
21 business days after full payment of the monetary amounts in Section 4 et seq. above, Plaintiff  
22 shall dismiss without prejudice all of the Retailer Defendants, including but not limited to Ross,  
23 TJX, TJ Maxx, Marshalls, BCFT and BCFD.

24 7.2 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
25 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
26 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint.  
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1           7.3    The Parties shall make all reasonable efforts possible to have the Consent  
2 Judgment approved by the Court.

3           7.4    If this Consent Judgment is not approved in full by the Court, (a) this Consent  
4 Judgment and any and all prior agreements between the Parties merged into this Consent  
5 Judgment shall terminate and become null and void, and the actions shall revert to the status that  
6 existed prior to the execution date of this Consent Judgment; (b) no term of this Consent  
7 Judgment or any draft of it, or of the negotiation, documentation, or other part or aspect of the  
8 Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in  
9 evidence for any purpose in this Action, or in any other proceeding; and (c) the Parties agree to  
10 meet and confer to determine whether to modify the terms of the Consent Judgment and to  
11 resubmit it for approval.

12           **8.    MODIFICATION OF JUDGMENT**

13           8.1    This Consent Judgment may be modified only by written agreement of the Parties  
14 and after the Court has entered a modified Consent Judgment based on that written agreement, or  
15 upon motion of any party as provided by law and upon entry of a modified Consent Judgment by  
16 the Court.

17           8.2    Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
18 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.  
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20           **9.    RETENTION OF JURISDICTION**

21           9.1    This Court shall retain jurisdiction of this matter to implement and enforce the  
22 terms of this Consent Judgment.

23           **10.   DUTIES LIMITED TO CALIFORNIA**

24           10.1   This Consent Judgment shall have no effect on Covered Products sold by  
25 Lifeworks and intended for sale outside the State of California.

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

27           11.1   CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the  
28 California Attorney General so that the Attorney General may review this Consent Judgment

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1 prior to its approval by the Court . No sooner than forty-five (45) days after the Attorney General  
2 has received the aforementioned copy of this Consent Judgment, and in the absence of any  
3 written objection by the Attorney General to the terms of this Consent Judgment, may the Court  
4 approve this Consent Judgment.

5 **12. ATTORNEY FEES**

6 12.1 Except as specifically provided in Section 4.1.3 and 6.3, each Party and the  
7 Retailer Defendants shall bear their own costs and attorney fees in connection with the  
8 prosecution or defense of this action.

9 **13. GOVERNING LAW**

10 13.1 The validity, construction, interpretation and performance of this Consent  
11 Judgment shall be governed by the laws of the State of California, without reference to any  
12 conflicts of law provisions of California law.

13 13.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
14 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are

15 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
16 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant  
17 subject to this Consent Judgment may provide written notice to CAG of any asserted change in  
18 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,  
19 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment  
20 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state  
21 or federal law or regulation.

22 13.3 The Parties, including their counsel, have participated in the preparation,  
23 negotiation and drafting of this Consent Judgment and this Consent Judgment is the result of the  
24 joint efforts of the Parties. This Consent Judgment was subject to revision and modification by  
25 the Parties and has been accepted and approved as to its final form by all Parties and their  
26 counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not  
27 be interpreted against any Party as a result of the manner of the preparation of this Consent  
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1 Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction  
2 providing that ambiguities are to be resolved against the drafting Party should not be employed  
3 in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive  
4 California Civil-Code § 1654.

5 **14. EXECUTION AND COUNTERPARTS**

6 14.1 This Consent Judgment may be executed in counterparts which may be  
7 exchanged by means of facsimile or e-mail of a portable document format (pdf) copy, which  
8 taken together shall be deemed to constitute one document and have the same force and effect as  
9 original signatures.

10 **15. NOTICES**

11 15.1 Any notices under this Consent Judgment shall be by First-Class Mail or  
12 recognized overnight delivery service, with a copy also sent by e-mail:

13  
14 If to CAG:  
15 Reuben Yeroushalmi  
16 YEROUSHALMI & YEROUSHALMI  
17 9100 Wilshire Boulevard, Suite 240W  
18 Beverly Hills, CA 90212  
19 (310) 623-1926  
20 Email: lawfirm@yeroushalmi.com

21 If to Defendant.:  
22 Thomas N. FitzGibbon, Esq.  
23 Apex Law, APC  
24 100 Wilshire Blvd., Ste. 700  
25 Santa Monica, CA 90401  
26 Email: tom@apexlaw.com

27 [The Rest of This Page Intentionally Left Blank]

28 //  
//  
//

MM  
MN

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.

7 AGREED TO:

AGREED TO:

8 Date: Feb 26, 2019

Date: Feb 26, 2019

9 *Michael Marcus* *mm*

*Max Namer* *MN*

11 Name: Michael Marcus

Name: Max Namer

12 Title: Director  
13 CONSUMER ADVOCACY GROUP, INC.

Title: Vice President  
LIFEWORKS TECHNOLOGY GROUP,  
14 LLC.

16 IT IS SO ORDERED.

18 Date: SEP 11 2019

*Jelani Davis*  
19  
20 JUDGE OF THE SUPERIOR COURT