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**FILED**  
ALAMEDA COUNTY

MAR 25 2021

CLERK OF THE SUPERIOR COURT  
By - *Pam Williams*

1 Reuben Yeroushalmi (SBN 193981)  
2 Tiffine E. Malamphy (SBN 213329)  
3 Shannon E. Royster (SBN 314126)  
4 **YEROUSHALMI & YEROUSHALMI\***  
5 9100 Wilshire Boulevard, Suite 240W  
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6 Attorneys for Plaintiff,  
7 CONSUMER ADVOCACY GROUP, INC.

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

9 **COUNTY OF ALAMEDA**

FEB 04 2021

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

13 Plaintiff,

14 v.

15 ROSS STORES, INC. dba DD's  
16 DISCOUNTS a Delaware Corporation;  
17 ROSS DRESS FOR LESS, INC. a Virginia  
18 Corporation;  
19 ROSS PROCUREMENT, INC., a Delaware  
20 Corporation;  
21 NAXA ELECTRONICS, INC., a California  
22 Corporation;  
23 PERFECT IMAGE, LLC, a New York  
24 Limited Liability Company;  
25 and DOES 1-20.

23 Defendants.

CASE NO. RG19034033

[Assigned for All Purposes to the Hon.  
Evelio Grillo, Dept. 15]

~~PROPOSED~~ CONSENT JUDGMENT  
BETWEEN CONSUMER ADVOCACY  
GROUP, INC. AND NAXA  
ELECTRONICS, INC.

Health & Safety Code § 25249.5 *et seq.*

Complaint Filed: September 6, 2019

25 **1. INTRODUCTION**

26 1.1 This Consent Judgment is entered into by and between Plaintiff Consumer  
27 Advocacy Group, Inc. (referred to as "CAG" or "Plaintiff"), acting on behalf of itself and in the  
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1 public interest, and Defendant Naxa Electronics, Inc. (referred to as “Defendant”) with each a  
2 “Party” to the action and collectively referred to as the “Parties.”

3 **1.2 Defendant**

4 1.2.1 CAG alleges that Defendant is a California corporation which employs ten or  
5 more persons. For purposes of this Consent Judgment only, Defendant is deemed a person in  
6 the course of doing business in California and subject to the provisions of the Safe Drinking  
7 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.  
8 (“Proposition 65”).

9 1.2.2 CAG alleges that Defendant manufactures, sells, or distributes headphones in  
10 California that contain the listed chemicals Di (2-ethylhexyl) Phthalate (“DEHP”) and  
11 Diisononyl phthalate (“DINP”).

12 **1.3 Listed Chemicals**

13 1.3.1 DEHP, also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) Phthalate,  
14 has been listed by the State of California as a chemical known to cause cancer and birth defects  
15 or other reproductive harm.

16 1.3.2 DINP, also known as Diisononyl phthalate, has been listed by the State of  
17 California as a chemical known to cause cancer.

18 **1.4 Notices of Violation**

19 1.4.1 On or about June 17, 2019, CAG served a “60-Day Notice of Intent to Sue for  
20 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986,” AG# 2019-01167  
21 (“June 17, 2019 Notice”), that provided the recipients, specifically including Defendant, with  
22 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in  
23 California of alleged exposures to DEHP contained in headphones sold by Defendant in  
24 California.

25 1.4.2 On or about October 18, 2019, CAG served a “60-Day Notice of Intent to Sue for  
26 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986,” AG# 2019-01964  
27 (“October 18, 2019 Notice”), that provided the recipients, specifically including Defendant, with  
28

1 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in  
2 California of alleged exposures to DEHP and DINP contained in headphones sold by Defendant  
3 in California. Collectively the June 17, 2019 and October 18, 2019 60-day notices are referred  
4 to hereafter as the "Notices." To the best of the Parties knowledge, no public enforcer has  
5 commenced or is diligently prosecuting the allegations set forth in the Notices.

6 **1.5 Complaint**

7 1.5.1 On or about September 6, 2019, CAG filed a Complaint for civil penalties and  
8 injunctive relief ("Complaint") in Alameda County Superior Court, Case No. RG19034033,  
9 against Defendant. The Complaint alleges, among other things, that Defendant violated  
10 Proposition 65 for allegedly failing to give clear and reasonable warnings of alleged exposure to  
11 DEHP in headphone products that Defendant allegedly manufactured, imported, distributed,  
12 and/or sold in California. Upon the Court's entry of this Consent Judgment, the Complaint in  
13 this matter will be deemed amended to include the allegations concerning exposure to DINP  
14 from Defendant's headphone products as set forth in the October 2018 Notice.

15 **1.6 Consent to Jurisdiction**

16 1.6.1 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
17 has jurisdiction over the allegations of violations contained in the Notices and Complaint,  
18 personal jurisdiction over Defendant as to the acts alleged in the Notices and Complaint, that  
19 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this  
20 Consent Judgment as a full and final settlement and resolution of all allegations against  
21 Defendant contained in the Notices and Complaint, and of all claims which were or could have  
22 been raised by any person or entity based in whole or in part, directly or indirectly, on the facts  
23 alleged therein or arising therefrom or related thereto.

24 **1.7 No Admission**

25 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The Parties  
26 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
27 between the Parties for the purpose of avoiding prolonged litigation. Defendant expressly  
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1 maintains that all of its products, including but not limited to the products subject to the Notices  
2 and Complaint, comply with all laws including Proposition 65, and are completely safe for their  
3 intended use. Nothing in this Consent Judgment shall be construed as an admission by  
4 Defendant of any material allegation in the Notices or the Complaint, or of any fact, conclusion  
5 of law, issue of law or violation of law of any kind, including without limitation, any admission  
6 concerning any alleged or actual violation of Proposition 65 or any other statutory, regulatory,  
7 common law, or equitable doctrine, including but not limited to the meaning of the terms  
8 “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and  
9 Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms,  
10 shall constitute or be construed as an admission by Defendant of any fact, conclusion of law,  
11 issue of law, or violation of law, or of fault, wrongdoing, or liability by Defendant, its officers,  
12 directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted  
13 as evidence in any administrative or judicial proceeding or litigation in any court, agency, or  
14 forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any  
15 right, remedy, argument, or defense the Defendant may have in any other or future legal  
16 proceeding, except as expressly provided in this Consent Judgment.

17 **2. DEFINITIONS**

18 2.1 “Covered Products” means all headphones manufactured, imported, distributed,  
19 and/or sold in California by Defendant, including but not limited to: “naxa;” “THE NEW  
20 GENERATION IN TECHNOLOGY;” “METRO GO WIRELESS HEADPHONES;”  
21 “Bluetooth WIRELESS;” “dd’s DISCOUNTS;” “400189585129;” “NAXA ELECTRONICS  
22 CORPORATION;” “MADE IN CHINA;” “M/D:3379-06-2017;” “NE-963 RED;”  
23 “www.naxa.com;” “8 40005 01203 1”, and “naxa;” “METRO GO WIRELESS  
24 HEADPHONES;” “Bluetooth;” “NAXA ELECTRONICS CORPORATION;” “NE—963; M/D  
25 3308-02-2019;” “RED;” “[www.naxa.com](http://www.naxa.com);” “8 40005 01203 1;” “MADE IN CHINA.” The  
26 Covered Products are limited to those manufactured, imported, distributed, and/or sold by or  
27 supplied by Defendant in California, whether sold to California consumers by Defendant or  
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1 resold to California consumers by others including but not limited to retailers of NAXA

2 Covered Products.

3 2.2 "Effective Date" means the date that this Consent Judgment is approved by the  
4 Court.

5 2.3 "DEHP" means Di (2-ethylhexyl) Phthalate, also known as Diethyl Hexyl  
6 Phthalate and Bis (2-ethylhexyl) Phthalate.

7 2.4 "DINP" means Diisononyl phthalate.


8 2.5 "Listed Chemicals" means DEHP and DINP.

9 2.6 "Notices" means the June 17, 2019 Notice and the October 18, 2019 Notice.

10 **3. INJUNCTIVE RELIEF/REFORMULATION**

11 3.1 After the Effective Date, Defendant shall not manufacture or have manufactured  
12 for sale in California any Covered Products unless the level of DEHP and DINP in the Covered  
13 Products does not exceed more than 0.1% (1,000 parts per million) of each by weight.

14 3.2 For any Covered Products that will be offered by Defendant for sale in California  
15 manufactured prior to the Effective Date and still existing in Defendant's inventory as of the  
16 Effective Date, Defendant shall place a Proposition 65 compliant warning on them. Any  
17 warning provided pursuant to this section shall be on the product label, or affixed to the  
18 packaging of, or directly on, the Covered Products, and shall be prominently placed with such  
19 conspicuousness as compared with other words, statements, designs, or devices as to render it  
20 likely to be read and understood by an ordinary individual under customary conditions before  
21 purchase or use. The equilateral triangle pictogram shall be in yellow with a black exclamation  
22 mark; provided however, the pictogram may be in white instead of yellow if the Covered  
23 Product label or sticker containing the warning does not contain the color yellow. The warning  
24 shall state either:

25  
26  [California Proposition 65] **WARNING:** This product can expose you to chemicals  
27 including DEHP, which are known to the State of California to cause cancer and birth  
28 defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

1 Or

2 **⚠** [California Proposition 65] **WARNING:** Cancer and  
3 Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

4 Language in brackets is optional.

5 **4. SETTLEMENT PAYMENT**

6 **4.1 Payment and Due Date:** Within ten (10) days of the Effective Date, Defendant  
7 shall pay an all-inclusive total of seventy five thousand dollars and zero cents (\$75,000) in full  
8 and complete settlement of any and all claims for monetary relief of any kind, including but not  
9 limited to claims for civil penalties, damages, attorney's fees, expert fees or any other claim for  
10 costs, expenses or monetary relief of any kind, for all claims that were or could have been  
11 asserted in the Notices and Complaint (the "Total Settlement Payment"). The \$75,000 total  
12 settlement payment shall be allocated as follows:

13 **4.1.1 Civil Penalty:** Defendant shall issue two separate checks totaling eighteen  
14 thousand eight hundred and sixty dollars and zero cents (\$18,860) in full and complete  
15 resolution of any claim for civil penalties alleged in the Notices and Complaint pursuant to  
16 Health & Safety Code § 25249.12 as follows:

17 (a) Defendant will issue one check made payable to the State of California's Office of  
18 Environmental Health Hazard Assessment ("OEHHA") in the amount of fourteen thousand one  
19 hundred and forty-five dollars and zero cents (\$14,145) representing 75% of the total civil  
20 penalty and Defendant will issue a second check to CAG in the amount of four thousand seven  
21 hundred and fifteen dollars and zero cents (\$4,715) representing 25% of the total civil penalty;

22 (b) Separate 1099s shall be issued for each of the above payments: Defendant will issue  
23 a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount  
24 of \$18,860. Defendant will also issue a 1099 to CAG in the amount of \$4,715 and deliver it to  
25 CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,  
26 California 90212.

27 **4.1.2 Additional Settlement Payments:** In full and complete resolution of any claim  
28 for additional settlement payments for the claims alleged in the Notices and Complaint,

1 Defendant shall issue one check for fourteen thousand one hundred and forty dollars and zero  
2 cents (\$14,140) payable to "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code  
3 § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG will use this portion  
4 of the Total Settlement Payment as follows, eighty five percent (85%) for fees of investigation,  
5 purchasing and testing for the Proposition 65 Listed Chemicals in various consumer products,  
6 and for expert fees for evaluating exposures through various mediums, including but not limited  
7 to consumer product, occupational, and environmental exposures to the Proposition 65 Listed  
8 Chemicals, and the cost of hiring consulting and retaining experts who assist with the extensive  
9 scientific analysis necessary for those files in litigation and to offset the costs of future litigation  
10 enforcing Proposition 65 but excluding attorney fees; fifteen percent (15%) for administrative  
11 costs incurred during investigation and litigation to reduce the public's exposure to the  
12 Proposition 65 Listed Chemicals by notifying those persons and/or entities believed to be  
13 responsible for such exposures and attempting to persuade those persons and/or entities to  
14 reformulate their products or the source of exposure to completely eliminate or lower the level of  
15 the Proposition 65 Listed Chemicals including but not limited to costs of documentation and  
16 tracking of products investigated, storage of products, website enhancement and maintenance,  
17 computer and software maintenance, investigative equipment, CAG's member's time for work  
18 done on investigations, office supplies, mailing supplies and postage. Within 30 days of a  
19 request from the Attorney General, CAG shall provide to the Attorney General copies of  
20 documentation demonstrating how the above funds have been spent. CAG shall be solely  
21 responsible for ensuring the proper expenditure of such additional settlement payment.

22 **4.1.3 Reimbursement of Attorney Fees and Costs:** In full and complete resolution  
23 of any claims to Plaintiff's attorney's fees and expenses related to this matter, Defendant shall  
24 issue a check in the amount of forty-two thousand and zero cents (\$42,000) payable to  
25 "Yeroushalmi & Yeroushalmi" as full and complete reimbursement for any and all costs,  
26 reasonable investigation fees, expenses, attorneys' fees, expert fees, and any and all other costs  
27 and expenses of any kind incurred as a result of investigating, bringing this matter to  
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1 Defendant's attention, preparing and serving the Notices, litigating and negotiating a settlement  
2 in the public interest, and seeking and obtaining court approval of this Consent Judgment.

3 4.2 Other than the payment to OEHHA described above, all payments referenced in  
4 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,  
5 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The  
6 payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard  
7 Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812.  
8 Defendant shall provide written confirmation to CAG that the payment to OEHHA has been  
9 made concurrently with the payment it makes to OEHHA.

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 their owners, officers, directors,  
13 insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
14 affiliates (including but not limited to NAXA, Inc.), sister companies, predecessors, and their  
15 successors and assigns ("Defendant Releasees"), and all entities to whom Defendant directly or  
16 indirectly distributes or sells Covered Products, including, but not limited to, downstream  
17 distributors, downstream wholesalers, customers, retailers (including but not limited to Newegg,  
18 Inc., Ross stores, Inc., dd Discounts, and their affiliates), marketplace hosts, franchisees,  
19 cooperative members, licensors, licensees, and the successors and assigns of any of them, who  
20 may use, maintain, distribute or sell Covered Products ("Downstream Defendant Releasees"), of  
21 all claims for alleged or actual violations of Proposition 65 for alleged exposures to Listed  
22 Chemicals from Covered Products manufactured, imported, distributed, and/or sold by  
23 Defendant up through the Effective Date as set forth in the Notices and Complaint. Defendant's  
24 compliance with the terms of this Consent Judgment shall constitute compliance with  
25 Proposition 65 with respect to alleged exposures to Listed Chemicals from Covered Products  
26 manufactured, imported, distributed, and/or sold by Defendant Releasees or Downstream  
27 Defendant Releasees (collectively the "Released Parties") after the Effective Date. Nothing in  
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1 this Section affects CAG's right to commence or prosecute an action under Proposition 65  
2 against any person other than Defendant, Defendant Releasees, or Downstream Defendant  
3 Releasees.

4           5.2     CAG on behalf of itself, its past and current agents, representatives, attorneys,  
5 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
6 indirectly, any form of legal action and releases all claims, including, without limitation, all  
7 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
8 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
9 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,  
10 fixed or contingent (collectively "Claims"), against the Released Parties arising from any actual  
11 or alleged violation of Proposition 65 or any other statutory or common law claim regarding the  
12 Covered Products manufactured, imported, distributed and/or sold by the Released Parties  
13 through the Effective Date regarding any actual or alleged failure to warn about exposure to  
14 Listed Chemicals from the Covered Products. In furtherance of the foregoing, CAG on behalf  
15 of itself only, hereby waives any and all rights and benefits which it now has, or in the future  
16 may have, conferred upon it with respect to Claims regarding the Covered Products  
17 manufactured, distributed and/or sold by the Defendant Releasees or Downstream Defendant  
18 Releasees through the Effective Date arising from any actual or alleged violation of Proposition  
19 65 or any other statutory or common law regarding the failure to warn about exposure to Listed  
20 Chemicals from the Covered Products by virtue of the provisions of section 1542 of the  
21 California Civil Code, which provides as follows:

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

28 CAG understands and acknowledges that the significance and consequence of this waiver of  
California Civil Code section 1542 is that even if CAG suffers future damages arising out of or

1 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any  
2 violation of Proposition 65 or any other statutory or common law regarding the Covered  
3 Products manufactured, imported, distributed and/or sold by the Defendant Releasees or  
4 Downstream Defendant Releasees through the Effective Date regarding the failure to warn  
5 about actual or alleged exposure to Listed Chemicals from the Covered Products, CAG will not  
6 be able to make any claim for those damages, penalties or any other relief against Defendant  
7 Releasees or Downstream Defendant Releasees. Furthermore, CAG acknowledges that it  
8 intends these consequences for any such Claims arising from any actual or alleged violation of  
9 Proposition 65 or any other statutory or common law claim regarding the failure to warn about  
10 exposure to Listed Chemicals from the Covered Products as may exist as of the date of this  
11 release but which CAG does not know exist, and which, if known, would materially affect  
12 CAG's decision to enter into this Consent Judgment, regardless of whether their lack of  
13 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

14 **6. ENTRY OF CONSENT JUDGMENT**

15 6.1 CAG shall be responsible for preparing a motion seeking approval of this  
16 Consent Judgment pursuant to California Health & Safety Code § 25249.7(f). The Parties agree  
17 to act in good faith to obtain Court approval of the Consent Judgment. Upon entry of the  
18 Consent Judgment, CAG and Defendant waive their respective rights to a hearing, trial, or  
19 appeal on the allegations in the Notices and/or Complaint.

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

3 6.3 CAG agrees that it will dismiss without prejudice any claims against any  
4 Defendant Releasee or Downstream Defendant Releasee in the captioned action or any other  
5 action related to Covered Products within ten calendar days of the Court's approval of this  
6 Consent Judgment. Defendant will cooperate with CAG in the preparation and filing of any  
7 papers that need to be filed with the court to accomplish this.

8 **7. MODIFICATION OF JUDGMENT**

9 7.1 This Consent Judgment may be modified only upon written agreement of the  
10 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
11 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

12 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
13 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

14 **8. ENFORCEMENT**

15 8.1 Any alleged violation of the terms of this Consent Judgment shall be enforced  
16 exclusively hereunder by the Parties hereto. Before CAG moves to enforce the terms of this  
17 Consent Judgment, CAG must provide written notice to Defendant of any alleged violation, and  
18 provide all evidence supporting the alleged violation including any applicable test results,  
19 product photographs, and purchase receipts, subject to a reasonable confidentiality agreement if  
20 requested. The Parties will thereafter meet and confer for a minimum period of 30 days to allow  
21 time for NAXA to present to CAG any relevant compliance information and/or corrective action  
22 taken related to the alleged violation, including if applicable the date of manufacture, import,  
23 distribution, or sale of the Covered Product at issue for purposes of determining the applicability  
24 of the release hereunder. If the Parties cannot resolve the alleged violation, either Party may  
25 move to enforce the terms of this Consent Judgment consistent with the terms hereof.  
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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 under Code of Civil Procedure section 664.6.

4 9.2 In any proceeding brought by either Party to enforce this Consent Judgment, the  
5 prevailing party shall be entitled to recover its reasonable attorney's fees and costs as  
6 determined by the court or agreement of the Parties.

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

8 10.1 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, CAG may  
12 then submit it to the Court for approval.

13 **11. ENTIRE AGREEMENT**

14 11.1 This Consent Judgment contains the sole and entire agreement and understanding  
15 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,  
16 negotiations, commitments and understandings related hereto. No representations, oral or  
17 otherwise, express or implied, other than those contained herein have been made by any party  
18 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
19 deemed to exist or to bind any of the Parties.

20 **12. ATTORNEY FEES**

21 12.1 Except as specifically provided in Sections 4.1.3 and 9.2, each Party shall bear its  
22 own attorneys' fees and costs in connection with the claims alleged in the Notices and  
23 Complaint, and resolved in this Consent Judgment.

24 **13. GOVERNING LAW**

25 13.1 The validity, construction, terms, and performance of this Consent Judgment  
26 shall be governed by the laws of the State of California, without reference to any conflicts of  
27 law provisions of California law.

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1           13.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
2 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
3 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
4 rendered inapplicable by reason of law generally as to the Covered Products, then Defendant  
5 may provide written notice to CAG of any asserted change in the law, and shall have no further  
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
7 Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to  
8 relieve Defendant from any obligation to comply with any other pertinent state or federal law or  
9 regulation.

10           13.3 The Parties, including their counsel, have participated in the preparation of this  
11 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
12 This Consent Judgment was subject to revision and modification by the Parties and has been  
13 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
14 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
15 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
16 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are  
17 to be resolved against the drafting Party should not be employed in the interpretation of this  
18 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code section  
19 1654.

20 **14. EXECUTION AND COUNTERPARTS**

21           14.1 This Consent Judgment may be executed in counterparts and by means of  
22 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
23 one document and have the same force and effect as original signatures.

24 **15. NOTICES**

25           15.1 Any notices under this Consent Judgment shall be by delivery of First-Class Mail  
26 and be effective upon receipt as follows:

27           If to Plaintiff CONSUMER ADVOCACY GROUP, INC.:

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Reuben Yeroushalmi, Esq.  
YEROUSHALMI & YEROUSHALMI  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

If to Defendant NAXA ELECTRONICS, INC.:

Michael Shak  
CEO & President  
Naxa Electronics, Inc.  
2320 East 49<sup>th</sup> Street  
Vernon CA 90058

With copy to:

James Robert Maxwell, Esq.  
ROGERS JOSEPH O'DONNELL  
311 California St., 10<sup>th</sup> Fl.  
San Francisco, CA 94104

16. AUTHORITY TO STIPULATE

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

AGREED TO:

AGREED TO:

Date: Oct 16, 2020

Date: \_\_\_\_\_, 2020

Michael Marcus

Name: Michael Marcus

Name: \_\_\_\_\_

Title: Director

Title: \_\_\_\_\_

CONSUMER ADVOCACY GROUP,  
INC.

NAXA ELECTRONICS, INC.

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Reuben Yeroushalmi, Esq.  
YEROUSHALMI & YEROUSHALMI  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

If to Defendant NAXA ELECTRONICS, INC.:

Michael Shak  
CEO & President  
Naxa Electronics, Inc.  
2320 East 49<sup>th</sup> Street  
Vernon CA 90058

With copy to:

James Robert Maxwell, Esq.  
ROGERS JOSEPH O'DONNELL  
311 California St., 10<sup>th</sup> Fl.  
San Francisco, CA 94104

**16. AUTHORITY TO STIPULATE**

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

AGREED TO:

AGREED TO:

Date: \_\_\_\_\_, 2020

Date: 10/20, 2020

\_\_\_\_\_

*Michael Shak*

Name: \_\_\_\_\_

Name: MICHAEL SHAK

Title: \_\_\_\_\_

Title: PRESIDENT

CONSUMER ADVOCACY GROUP,  
INC.

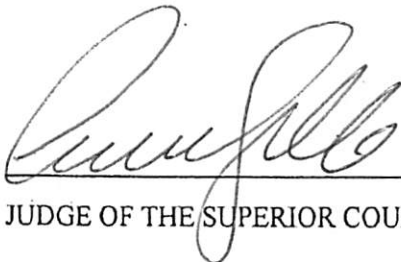
NAXA ELECTRONICS, INC.

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IT IS SO ORDERED.

MAR 25 2021

Date: \_\_\_\_\_

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT





21093780

**FILED**  
ALAMEDA COUNTY

MAR 25 2021

CLERK OF THE SUPERIOR COURT

By *Tom Williams*

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FEB 04 2021

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

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

Plaintiff

v.

ROSS STORES, INC. dba DD's DISCOUNTS  
a Delaware Corporation;  
ROSS DRESS FOR LESS, INC. a Virginia  
Corporation;  
ROSS PROCUREMENT, INC., a Delaware  
Corporation;  
NAXA ELECTRONICS, INC., a California  
Corporation;  
PERFECT IMAGE, LLC, a New York Limited  
Liability Company;  
and DOES 1-20,

Defendants.

CASE NO. RG19034033

~~[PROPOSED]~~ ORDER GRANTING  
MOTION TO APPROVE AND ENTER  
CONSENT JUDGMENT BETWEEN  
PLAINTIFF CONSUMER ADVOCACY  
GROUP, INC. AND DEFENDANT NAXA  
ELECTRONICS, INC.

[Notice of Motion and Motion;  
Memorandum of Points and Authorities,  
Supporting Declaration of Reuben  
Yeroushalmi and Michael Marcus Filed  
Concurrently Herewith]

[Assigned for All Purposes to the Hon.  
Evelio Grillo, Dept. 15]

Res. ID: R-2220206  
Date: March 25, 2021  
Time: 1:30 p.m.  
Dept: 15

Complaint Filed: September 6, 2019

FEB 04 RECD

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**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

On March 25, 2021 at 1:30 p.m. in Department 15, the Court heard the Motion to Approve and Enter Consent Judgment Between Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff") and Defendant NAXA ELECTRONICS, INC. ("Defendant"). The Court, having considered the documents filed in connection with this matter, and no opposition being filed, has arrived at the following conclusions and SO ORDERS:

1. The Court GRANTS the Motion to Approve and Enter Consent Judgment Between Plaintiff and Defendant, in its entirety pursuant to California Health and Safety Code section 25249.7, subdivision (f)(4).

2. The Court approves the [Proposed] Consent Judgment, which Plaintiff and Defendant have submitted to this Court for approval pursuant to Proposition 65 (Cal. Health & Safety Code ["HSC"] § 25249.5, *et seq.*). The Court finds that the [Proposed] Consent Judgment complies with the requirements of HSC § 25249.7 *et seq.* Defendant's agreement to change its conduct complies with HSC § 25249.7(f)(4)(A) as follows:

- a. After the Effective Date, Defendant shall manufacture or have manufactured for sale in California any Covered Products unless the level of DEHP and DINP in the Covered Product does not exceed 0.1 % by weight (1,000 parts per million) of each by weight.
- b. For any Covered Products that will be offered by Defendant for sale in California manufacturer prior to the Effective Date and still existing in Defendant's inventory as of the Effective Date, Defendant shall place a Proposition 65 compliant warning on them.
- c. Defendant shall pay a total of seventy five thousand dollars and zero cents (\$75,000.00) covering civil penalties, additional settlement payments, and attorneys' fees and costs. This payment is divided as follows:
  - i. \$18,860.00 payment as civil penalties is reasonable under the factors set forth in HSC § 25249.7(b)(2). Pursuant to HSC § 25249.12, \$14,145.00 representing 75% of the total penalty will be paid to State of California's Office of Environmental Health Hazard Assessment (OEHHA) and \$4,715.00 representing 25% of the total penalty will be paid to Plaintiff;

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ii. \$14,140.00 payment to Plaintiff, as an Additional Settlement Payment is in the public interest to offset the civil penalty and satisfies the guidelines for Proposition 65 settlements set forth at Cal. Code Regs., title 11 sections 3203(d) and 3204(b) because Plaintiff will use the funds to address the same public harm alleged in this action and Plaintiff is accountable; and

iii. Defendants' payment of \$42,000.00 for attorneys' fees and costs to Plaintiff's attorneys to which the parties have agreed to is reasonable under California law pursuant to HSC § 25249.7(f)(4).

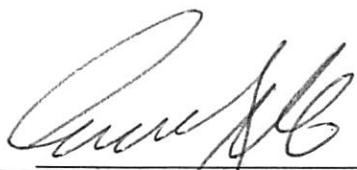
a) Further, the proposed settlement terms are presumed to confer a public benefit. A public benefit is presumed, because the [Proposed] Consent Judgment requires Defendant to sell reformulated products with reduced levels of DEHP and DINP or affix Proposition 65 warnings on existing inventory for the Covered Products throughout all of California.

3. The Court shall sign and hereby directs the Clerk to file and enter the [Proposed] Consent Judgment.

IT IS SO ORDERED.

MAR 25 2021

Dated: \_\_\_\_\_



Hon. Evelio Grillo  
Judge of the Superior Court