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5

6 Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

COUNTY OF LOS ANGELES—CENTRAL DISTRICT

10

11 CONSUMER ADVOCACY GROUP,

Case No. BC465245

12

Plaintiff,

CONSENT JUDGMENT [PROPOSED]

13

v.

Health & Safety Code § 25249.5 *et seq.*

14

ROSS DRESS FOR LESS, INC., ROSS
STORES, INC., and MAX SALES GROUP,
15 INC.

Dept.: 78

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Judge: Hon. William F. Fahey

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Defendants.

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1. INTRODUCTION

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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, Max Sales Group, Inc. (referred to as "Max Sales") with each a Party to the action and collectively referred to as "Parties."

1.2 Max Sales employs ten or more persons, is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* ("Proposition 65"), and manufacture, distribute, and sell Automobile Emergency Kits ("Emergency Kits"). Lead is known to the State of California to cause cancer and/or birth defects or other reproductive harm.

1 **1.3 Notice of Violation.**

2 On March 6, 2011, CAG served Max Sales, and various public enforcement agencies with
3 a document entitled “60-Day Notice of Violation” (“March 6, 2011 Notice”) that provided the
4 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
5 individuals in California of exposures to lead contained in FINEAUTO™ Products 31 Piece
6 Roadside Emergency Kit sold by Max Sales. No public enforcer has commenced or diligently
7 prosecuted the allegations set forth in the March 6, 2011 Notice.

8 **1.4 Complaint.**

9 On July 13, 2011, CAG filed a Complaint for civil penalties and injunctive relief
10 (“Complaint”) in Los Angeles, Superior Court, Case No. BC465245, against Max Sales and other
11 entities. The Complaint alleges, among other things, that Max Sales violated Proposition 65 by
12 failing to give clear and reasonable warnings of exposure to lead from FINEAUTO™ Products 31
13 Piece Roadside Emergency Kit.

14 **1.5 Consent to Jurisdiction**

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

22 **1.6 No Admission**

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

1 **2. DEFINITIONS**

2 2.1 "Accessible Component" means any component of a Covered Product that could
3 be touched by a person during reasonably foreseeable use.

4 2.2 "Covered Products" means FINEAUTO™ Products 31 Piece Roadside Emergency
5 Kit.

6 2.3 "Effective Date" means the date that this Consent Judgment is entered by the
7 Court.

8 2.4 "Lead" means lead and lead compounds.

9 2.5 "Notice" means the March 6, 2011 Notice.

10 **3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE**
11 **WARNINGS.**

12 3.1 Max Sales shall not sell the Covered Product in California unless it is
13 reformulated to contain less than 100 parts per million of lead.

14 **4. SETTLEMENT PAYMENT**

15 4.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from CAG,
16 whichever is later, Max Sales shall pay a total of \$52,000 to CAG in full and complete settlement
17 of all monetary claims by CAG related to the Notice, as follows.

18 4.2 **Payment In Lieu of Civil Penalties:** Max Sales shall pay \$1,000 in lieu of civil
19 penalties to "Consumer Advocacy Group, Inc." CAG will use the payment for such projects and
20 purposes related to environmental protection, worker health and safety, or reduction of human
21 exposure to hazardous substances (including administrative and litigation costs arising from such
22 projects), as CAG may choose.

23 4.3 **Reimbursement of Attorneys Fees and Costs:** Max Sales shall pay \$50,000 to
24 "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs,
25 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
26 the approval of this Consent Judgment.

27 4.4 **Civil Penalty:** Defendant shall issue two separate checks for a total amount of one
28 thousand dollars (\$1,000) as penalties pursuant to Health & Safety Code § 25249.12: (a) one

1 check made payable to the State of California's Office of Environmental Health Hazard
2 Assessment (OEHHA) in the amount of \$750, representing 75% of the total penalty; and (b) one
3 check to Consumer Advocacy Group, Inc. in the amount of \$250, representing 25% of the total
4 penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be
5 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
6 \$750. The second 1099 shall be issued in the amount of \$250 to CAG and delivered to:
7 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
8 90212

9 4.5 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,
10 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

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

12 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
13 behalf of itself and in the public interest and Max Sales and its officers, directors, insurers,
14 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
15 companies and their successors and assigns ("Defendant Releasees") and each of their suppliers,
16 customers, distributors, wholesalers, retailers, or any other person in the course of doing business,
17 and the successors and assigns of any of them who may use, maintain, distribute or sell Covered
18 Products, and all persons and entities who are downstream in the stream of commerce from Max
19 Sales who sell or distribute the Covered Product, including but not limited to Ross Dress For
20 Less, Inc. and Ross Stores, Inc. (collectively referred to as "Ross"), ("Downstream Defendant
21 Releasees"), for all claims for violations of Proposition 65 up through the Effective Date based on
22 exposure to Lead from Covered Product as set forth in the Notice. Max Sales and Defendant
23 Releasees' compliance with this Consent Judgment shall constitute compliance with Proposition
24 65 with respect to Lead from the Covered Product as set forth in the Notice.

25 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
26 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
27 indirectly, any form of legal action and releases all claims, including, without limitation, all
28 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,

1 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
2 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
3 contingent (collectively "Claims"), against Max Sales, Defendant Releasees, and Downstream
4 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
5 common law regarding the failure to warn about exposure to Lead in the Covered Product. In
6 furtherance of the foregoing, as to alleged exposures to Covered Product, CAG hereby waives
7 any and all rights and benefits which it now has, or in the future may have, conferred upon it with
8 respect to the Claims by virtue of the provisions of section 1542 of the California Civil Code,
9 which provides as follows:

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

14 CAG understands and acknowledges that the significance and consequence of this waiver of
15 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
16 resulting from, or related directly or indirectly to, in whole or in part, the Covered Product,
17 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or
18 lead compounds from Covered Product, CAG will not be able to make any claim for those
19 damages against Max Sales the Defendant Releasees, or Downstream Defendant Releasees.
20 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may
21 exist as of the date of this release but which CAG does not know exist, and which, if known,
22 would materially affect their decision to enter into this Consent Judgment, regardless of whether
23 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

24 **6. ENFORCEMENT OF JUDGMENT**

25 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
26 hereto. Subject to Section 6.2, the parties may, by noticed motion or order to show cause before
27 the Superior Court of California, Los Angeles County, giving the notice required by law, enforce
28 the terms and conditions contained herein. A Party may enforce any of the terms and conditions

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

4 **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
5 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
6 Violation ("NOV") to Max Sales. The NOV shall include for each Covered Product: the date(s)
7 the alleged violation(s) was observed and the location at which the Covered Product was offered
8 for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered
9 Product, including an identification of the component(s) of the Covered Product that were tested.

10 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
11 alleged violation if, within 30 days of receiving such NOV, Max Sales serves a Notice of
12 Election ("NOE") that meets one of the following conditions:

13 (a) The Covered Product was shipped by Max Sales for sale in
14 California before the Effective Date, or

15 (b) Since receiving the NOV Max Sales has taken corrective action by
16 either (i) requesting that its customers in California remove the Covered Product identified
17 in the NOV from sale in California and destroy or return the Covered Product to Max
18 Sales, or (ii) providing a clear and reasonable warning for the Covered Product identified
19 in the NOV pursuant to 27 Cal. Code Regs. § 25603.

20 **6.2.2 Contested NOV.** Max Sales may serve an NOE informing CAG of its
21 election to contest the NOV within 30 days of receiving the NOV.

22 (a) In its election, Max Sales may request that the sample(s) Covered
23 Product tested by CAG be subject to confirmatory testing at an EPA-accredited
24 laboratory.

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

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

6 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
7 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
8 violation of Proposition 65 or this Consent Judgment.

9 **7. ENTRY OF CONSENT JUDGMENT**

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

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

21 **8. MODIFICATION OF JUDGMENT**

22 8.1 This Consent Judgment may be modified only upon written agreement of the
23 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
24 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

25 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
26 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

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1 **9. RETENTION OF JURISDICTION**

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

4 **10. DUTIES LIMITED TO CALIFORNIA**

5 10.1 This Consent Judgment shall have no effect on Covered Products sold by Max
6 Sales outside the State of California.

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

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

14 **12. ATTORNEY FEES**

15 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
16 and attorney fees in connection with this action.

17 **13. ENTIRE AGREEMENT**

18 13.1 This Consent Judgment contains the sole and entire agreement and understanding
19 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
20 negotiations, commitments and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any party
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
23 deemed to exist or to bind any of the Parties.

24 **14. GOVERNING LAW**

25 14.1 The validity, construction and performance of this Consent Judgment shall be
26 governed by the laws of the State of California, without reference to any conflicts of law
27 provisions of California law.
28

1 14.2 The Parties, including their counsel, have participated in the preparation of this
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
5 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
6 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
7 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
8 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
9 this regard, the Parties hereby waive California Civil Code § 1654.

10 **15. EXECUTION AND COUNTERPARTS**

11 15.1 This Consent Judgment may be executed in counterparts and by means of
12 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
13 one document.

14 **16. NOTICES**

15 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
16 Class Mail.

17 If to CAG:

18 Reuben Yeroushalmi, Esq.
19 9100 Wilshire Boulevard, Suite 610E
20 Beverly Hills, CA 90212
21 (310) 623-1926

22 If to Max Sales Group, Inc.:

23 Max Sales Group, Inc.
24 2008 Camfield Ave.,
25 Commerce, CA 90040

26 With a copy to:

27 Steven Haney, Esq.
28 Haney Torbett, LLP
 1055 West Seventh Street, Suite 1950
 Los Angeles, CA 90017

1 **17. AUTHORITY TO STIPULATE**

2 17.1 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 of
4 the party represented and legally to bind that party.

5
6 **AGREED TO:**

AGREED TO:

7 Date: March __, 2012

Date: March __, 2012

8
9 Name: _____



10 Title: _____
11 CONSUMER ADVOCACY GROUP,
12 INC.

Name: DINESH SADHWANI
13 Title: PRESIDENT MAX
14 SALES GROUP, INC.

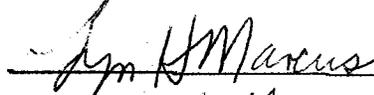
15 **IT IS SO ORDERED.**

16 Date: _____

JUDGE OF THE SUPERIOR COURT

1 **17. AUTHORITY TO STIPULATE**

2 17.1 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 of
4 the party represented and legally to bind that party.

5	AGREED TO:	AGREED TO:
6	Date: March __, 2012	Date: March __, 2012
7		
8	Name: <u>Lynn H. Marcus</u>	_____
9	Title: <u>President</u>	Name: _____
10	CONSUMER ADVOCACY GROUP, 11 INC.	Title: _____ MAX
12		SALES GROUP, INC.

14 **IT IS SO ORDERED.**

15 Date: _____
16 _____ JUDGE OF THE SUPERIOR COURT