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9 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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

Plaintiff,

v.

KIMAYA USA, INC., a New Jersey
Corporation, ROSS STORES, INC. dba dd's
Discounts, a Delaware Corporation, ROSS
DRESS FOR LESS, INC., dba dd's
Discounts, a Virginia Corporation, and
DOES 1-20;

Defendants.

CASE NO. CGC-12-519454

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Complaint filed: March 23, 2012

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 Kimaya USA, Inc. (referred to as "Defendant") with each a Party to the action and collectively referred to as "Parties."

1.2 Defendants and Products

1.2.1 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

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

3 **1.3 Chemicals Of Concern**

4 1.3.1 Lead and Lead Compounds are known to the State of California to cause
5 cancer and/or birth defects or other reproductive harm.

6 **1.4 Notices of Violation.**

7 1.4.1 On July 17, 2011, CAG served Defendant, and various public enforcement
8 agencies with a document entitled “60-Day Notice of Violation” (“July 17, 2011 Notice”) that
9 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
10 failing to warn individuals in California of exposures to lead contained in AM/FM Radios sold
11 by Defendant. No public enforcer has commenced or diligently prosecuted the allegations set
12 forth in the July 17, 2011 Notice.

13 1.4.2 On May 11, 2012, CAG served Defendant, and various public
14 enforcement agencies with a document entitled “60-Day Notice of Violation” (“May 11, 2012
15 Notice”) that provided the recipients with notice of alleged violations of Health & Safety Code §
16 25249.6 for failing to warn individuals in California of exposures to lead contained in Wireless
17 Transmitters sold by Defendant. No public enforcer has commenced or diligently prosecuted the
18 allegations set forth in the May 11, 2012 Notice.

19 1.4.3 On January 15, 2013, CAG served Defendant, and various public
20 enforcement agencies with a document entitled “60-Day Notice of Violation” (“January 15, 2013
21 Notice”) that provided the recipients with notice of alleged violations of Health & Safety Code §
22 25249.6 for failing to warn individuals in California of exposures to lead contained in Notebook
23 Travel Kits sold by Defendant. No public enforcer has commenced or diligently prosecuted the
24 allegations set forth in the January 15, 2013 Notice.

25 **1.5 Complaint.**

26 On March 23, 2012, CAG filed a Complaint for civil penalties and injunctive relief
27 (“Complaint”) in San Francisco Superior Court, Case No. CGC-12-519454, against Defendant.
28

1 CAG filed a First Amended Complaint ("FAC") against Defendant on or about September 13,
2 2012. CAG filed a Second Amended Complaint ("SAC") against Defendant on or about July 22,
3 2013. The Complaints allege, among other things, that Defendant violated Proposition 65 by
4 failing to give clear and reasonable warnings of exposure to lead, from AM/FM Radios, Wireless
5 Transmitters, and Notebook Travel Kits ("Covered Products").

6 **1.6 Consent to Jurisdiction**

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

14 **1.7 No Admission**

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

4 2. DEFINITIONS

5 2.1 "Covered Products" means AM/FM Radios, Wireless Transmitters, and Notebook
6 Travel Kits sold only by Defendant, Kimaya USA, Inc.

7 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
8 Court.

9 2.3 "Lead" means lead and lead compounds.

10 2.4 "Notices" means the July 17, 2011, May 11, 2012, and January 15, 2013 Notices
11 served on Defendant.

12 3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE 13 WARNINGS.

14 3.1 Defendants shall not import for sale the Covered Products in California unless
15 they are reformulated to contain less than 100 parts per million of lead.

16 4. SETTLEMENT PAYMENT

17 4.1 **Payment:** Defendant shall pay a total of seventy thousand dollars and zero cents
18 (\$70,000) in full and complete settlement of all monetary claims by CAG related to the Notices.

19 4.2 **Civil Penalty:** Defendant shall issue separate checks totaling one thousand
20 dollars (\$1,000) as penalties pursuant to Health & Safety Code § 25249.12:

21 (a) Defendant will issue a check made payable to the State of California's Office
22 of Environmental Health Hazard Assessment (OEHHA) in the amount of seven hundred and
23 fifty dollars (\$750) representing 75% of the total penalty and Defendant will issue a check to
24 CAG in the amount of two hundred and fifty dollars (\$250) representing 25% of the total
25 penalty; and
26

27 (b) Separate 1099s shall be issued for each of the above payments: Defendant will
28 issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the

1 amount of \$750. Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Associates, 9100
2 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212 in the amount of \$250.

3 **4.1.2 Payment In Lieu of Civil Penalties:** Defendant shall pay \$1,000 in lieu
4 of civil penalties to "Consumer Advocacy Group, Inc.". CAG will use this payment for
5 investigation of the public's exposure to Proposition 65 listed chemicals through various means,
6 laboratory fees for testing for Proposition 65 listed chemicals, expert fees for evaluating
7 exposures through various mediums, including but not limited to consumer product,
8 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
9 hiring consulting and retained experts who assist with the extensive scientific analysis necessary
10 for those files in litigation, in order to reduce the public's exposure to Proposition 65 listed
11 chemicals by notifying those persons and/or entities believed to be responsible for such
12 exposures and attempting to persuade those persons and/or entities to reformulate their products
13 or the source of exposure to completely eliminate or lower the level of Proposition 65 listed
14 chemicals, thereby addressing the same public harm as allegedly in the instant Action. Further,
15 should the court require it, CAG will submit under seal, an accounting of these funds as
16 described above as to how the funds were used. The check shall be made payable to "Consumer
17 Advocacy Group, Inc." and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100
18 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

19 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall pay
20 sixty-eight thousand dollars (\$68,000) to "Yeroushalmi & Associates" as reimbursement for
21 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
22 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a
23 settlement in the public interest. The check shall be made payable to "Yeroushalmi &
24 Associates" and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire
25 Boulevard, Suite 610E, Beverly Hills, California 90212.

26 **4.2** Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
27 Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.
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CONSENT JUDGMENT [PROPOSED]

1 5. MATTERS COVERED BY THIS CONSENT JUDGMENT

2 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
3 behalf of itself and in the public interest and Defendants, and their officers, directors, insurers,
4 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
5 companies and their successors and assigns ("Defendant Releasees"), for all claims for violations
6 of Proposition 65 up through the Effective Date based on exposure to Lead from the Covered
7 Products as set forth in the Notices. Defendant and Defendant Releasees' compliance with this
8 Consent Judgment shall constitute compliance with Proposition 65 with respect to Lead from the
9 Covered Products as set forth in the Notices. Upon approval of the Consent Judgment, Ross
10 Stores, Inc. and Ross Dress for Less, Inc. will be dismissed from the action without prejudice.

11 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
12 successors, and/or assignees, and in the public interest, hereby waives all rights to institute or
13 participate in, directly or indirectly, any form of legal action and releases all claims, including,
14 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
15 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
16 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
17 known or unknown, fixed or contingent (collectively "Claims"), against Defendants, and
18 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
19 common law regarding the failure to warn about exposure to Lead in the Covered Products. In
20 furtherance of the foregoing, as to alleged exposures to Covered Products, CAG, on behalf of
21 itself only, hereby waives any and all rights and benefits which it now has, or in the future may
22 have, conferred upon it with respect to the Claims by virtue of the provisions of section 1542 of
23 the California Civil Code, which provides as follows:
24

25 **A general release does not extend to claims which the creditor does**
26 **not know or suspect to exist in his or her favor at the time of**
27 **executing the release, which if known by him or her, must have**
28 **materially affected his or her settlement with the debtor.**

CAG understands and acknowledges that the significance and consequence of this waiver

1 of California Civil Code section 1542 is that even if CAG suffers future damages arising out of
2 or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
3 including but not limited to any exposure to, or failure to warn with respect to exposure to Lead
4 from Covered Products, CAG will not be able to make any claim for those damages against
5 Defendant or the Defendant Releasees. Furthermore, CAG acknowledges that it intends these
6 consequences for any such Claims as may exist as of the date of this release but which CAG does
7 not know exist, and which, if known, would materially affect their decision to enter into this
8 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
9 oversight, error, negligence, or any other cause.

10 6. ENFORCEMENT OF JUDGMENT

11 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
12 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
13 California, San Francisco County, giving the notice required by law, enforce the terms and
14 conditions contained herein. A Party may enforce any of the terms and conditions of this
15 Consent Judgment only after that Party first provides 90 days notice to the Party allegedly failing
16 to comply with the terms and conditions of this Consent Judgment and attempts to resolve such
17 Party's failure to comply in an open and good faith manner.

18 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
19 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of
20 Violation ("NOV") to Defendants. The NOV shall include for each of the Covered Products: the
21 date(s) the alleged violation(s) was observed and the location at which the Covered Products
22 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
23 Covered Products, including an identification of the component(s) of the Covered Products that
24 were tested.

25 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
26 alleged violation if, within 60 days of receiving such NOV, Defendants serves a Notice of
27 Election ("NOE") that meets one of the following conditions:
28

1 (a) The Covered Products were shipped by Defendants for sale in
2 California before the Effective Date, or

3 (b) Since receiving the NOV Defendants have taken corrective action
4 by either (i) requesting that its customers or stores in California, as applicable, remove
5 the Covered Products identified in the NOV from sale in California and destroy or return
6 the Covered Products to Defendants or vendor, as applicable, or (ii) providing a clear and
7 reasonable warning for the Covered Products identified in the NOV pursuant to 27 Cal.
8 Code Regs. § 25603.

9 6.2.2 **Contested NOV.** Defendants may serve an NOE informing CAG of its
10 election to contest the NOV within 30 days of receiving the NOV.

11 (a) In its election, Defendants may request that the sample(s) Covered
12 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
13 laboratory.

14 (b) If the confirmatory testing establishes that the Covered Products do
15 not contain lead in excess of the levels allowed in Section 3.1, above, CAG shall take no
16 further action regarding the alleged violation. If the testing does not establish compliance
17 with Section 3.1, above, Defendants may withdraw its NOE to contest the violation and
18 may serve a new NOE pursuant to Section 6.2.1.

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

22 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
23 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
24 violation of Proposition 65 or this Consent Judgment.

25 7. ENTRY OF CONSENT JUDGMENT

26 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
27 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG,
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1 Defendant waives their respective rights to a hearing or trial on the allegations of the Complaints.

2 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
3 and any and all prior agreements between the parties merged herein shall terminate and become
4 null and void, and the actions shall revert to the status that existed prior to the execution date of
5 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
6 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
7 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
8 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
9 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

10 8. MODIFICATION OF JUDGMENT

11 8.1 This Consent Judgment may be modified only upon written agreement of the
12 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
13 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

14 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
15 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

16 9. RETENTION OF JURISDICTION

17 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
18 terms of this Consent Judgment.

19 10. DUTIES LIMITED TO CALIFORNIA

20 10.1 This Consent Judgment shall have no effect on Covered Products sold by
21 Defendants outside the State of California.

22 11. SERVICE ON THE ATTORNEY GENERAL

23 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
24 California Attorney General so that the Attorney General may review this Consent Judgment
25 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
26 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
27 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
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1 the parties may then submit it to the Court for approval.

2 12. ATTORNEY FEES

3 12.1 Except as specifically provided in Section 4.1.3, each Party shall bear its own
4 costs and attorney fees in connection with this action.

5 13. ENTIRE AGREEMENT

6 13.1 This Consent Judgment contains the sole and entire agreement and understanding
7 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
8 negotiations, commitments and understandings related hereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any party
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
11 deemed to exist or to bind any of the Parties.

12 14. GOVERNING LAW

13 14.1 The validity, construction and performance of this Consent Judgment shall be
14 governed by the laws of the State of California, without reference to any conflicts of law
15 provisions of California law.

16 14.2 The Parties, including their counsel, have participated in the preparation of this
17 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
18 Consent Judgment was subject to revision and modification by the Parties and has been accepted
19 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
20 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
21 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
22 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
23 resolved against the drafting Party should not be employed in the interpretation of this Consent
24 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

25 26 15. EXECUTION AND COUNTERPARTS

27 15.1 This Consent Judgment may be executed in counterparts and by means of
28 facsimile or portable document format (pdf), which taken together shall be deemed to constitute

1 one document and have the same force and effect as original signatures.

2 16. NOTICES

3 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
4 Class Mail.

5 If to CAG: Reuben Yeroushalmi
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, CA 90212
8 (310) 623-1926

8 If to Kimaya: Kimaya USA, Inc.
9 700 Penhorn Avenue, Unit #3
10 Secaucus, New Jersey 07094

10 With a copy to: Leon Small
11 Law Offices Of Leon Small
12 16530 Ventura Blvd., Ste. 306
13 Encino, CA 91436

13 17. AUTHORITY TO STIPULATE

14 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
15 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
16 of the party represented and legally to bind that party.

18 AGREED TO:

AGREED TO:

19 Date: 4-24, 2014

Date: _____, 2014

20 

21 Name: Michel Sasseoon

Name: _____

22 Title: Executive director
23 CONSUMER ADVOCACY GROUP,
24 INC.

Title: _____
KIMAYA USA, INC.

25 IT IS SO ORDERED.

26 Date: _____

27 _____
28 JUDGE OF THE SUPERIOR COURT

1 one document and have the same force and effect as original signatures.

2 16. NOTICES

3 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
4 Class Mail.

5 If to CAC: Reena Yeroshalmi
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, CA 90212
(310) 423-1926

8 If to Kimaya: Kimaya USA, Inc.
9 700 Penhorn Avenue, Unit #3
Secaucus, New Jersey 07094

10 With a copy to: Leon Small
11 Law Offices Of Leon Small
12 15530 Ventura Blvd., Ste. 306
Encino, CA 91436

13 17. AUTHORITY TO STIPULATE

14 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
15 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
16 of the party represented and legally to bind that party.

18 AGREED TO:

AGREED TO:

19 Date: _____, 2014

Date: APRIL 17th, 2014

21 Name: _____

Name: RAJU CHUGANI

22 Title: _____
23 CONSUMER ADVOCACY GROUP,
24 INC.

Title: PRESIDENT
KIMAYA USA, INC.

25 IT IS SO ORDERED.

26 Date: _____

JUDGE OF THE SUPERIOR COURT