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10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES

14 CONSUMER ADVOCACY GROUP, INC., in
15 the interest of the Public,

16 Plaintiff,

17 v.

18 ORLY SHOE CORPORATION, a New York
19 Corporation, NATIONAL STORES, INC., a
20 California Corporation , and DOES 1-20;

21 Defendants.

CASE NO. BC483842

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Complaint filed: May 2, 2012

22 **1. INTRODUCTION**

23 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
24 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the interest of the
25 public, and defendant, National Stores, Inc. (hereinafter referred to as “NSI” or Defendant), with
26 each referred to as a “Party” and collectively referred to as “Parties.”

27 **1.2 Defendants and Products**

28 1.2.1 Defendant 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,

1 California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”), and causes to be
2 manufactured, distributed, and/or sells Footwear, including but not limited to Charles Albert
3 Sport Sandals, Style N304, Size 10(hereinafter “Covered Products”).

4 **1.3 Chemicals Of Concern**

5 1.3.1 Di (2-ethylhexyl) phthalate (“DEHP”) is a chemical known to the State of
6 California to cause cancer and/or birth defects or other reproductive harm.

7 1.3.2 Di-n-butyl phthalate (“DBP”) is a chemical known to the State of
8 California to cause reproductive toxicity (type of toxicity: developmental, male, and female).

9 **1.4 Notice of Violation.**

10 1.4.1 On or about July 14, 2011, CAG served NSI, Orly Shoe Corporation
11 (“Orly”) and various public enforcement agencies with a document entitled “60-Day Notice of
12 Violation” (the “July 14, 2011 Notice”) that provided the recipients with notice of alleged
13 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
14 exposures to DEHP and DBP in the Covered Products, including but not limited to the N304
15 Sandals. No public enforcer has commenced or diligently prosecuted the allegations set forth in
16 the July 14, 2011 Notice.

17 **1.5 Complaint.**

18 1.5.1 On May 2, 2012, CAG filed a Complaint for civil penalties and injunctive
19 relief in Los Angeles Superior Court, Case No. BC483842. The Complaint alleges, among other
20 things, that Defendant violated Proposition 65 by failing to give clear and reasonable warnings of
21 exposure to DEHP and DBP from the Covered Products.

22 1.5.2 On July 16, 2013, CAG filed the operative First Amended Complaint
23 (“Complaint”) for civil penalties and injunctive relief in Los Angeles Superior Court, Case No.
24 BC483842. The Complaint alleges, among other things, that Defendant violated Proposition 65
25 by failing to give clear and reasonable warnings of exposure to DEHP and DBP from the
26 Covered Products.
27

1 **1.6 Consent to Jurisdiction**

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

9 **1.7 No Admission**

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

2 2.1 “Covered Products” means all Footwear, including but not limited to Charles
3 Albert Sport Sandals, Style N304, Size 10 (hereinafter “N304 Sandals”). “Covered Products”
4 are limited to those sold, manufactured, and/or distributed by NSI.

5 2.2 “Covered Sandals” means all Sandals, including but not limited to the N304
6 Sandals. Covered Sandals are limited to those sold, manufactured, and/or distributed by NSI.
7 Covered Sandals are a subset of Covered Products as defined in Section 2.1 above.

8 2.3 “Effective Date” means the date that this Consent Judgment is approved by the
9 Court.

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

11 3.1 As of the Effective Date, NSI will not manufacture, distribute, or sell the
12 Covered Products in California unless the Covered Products are reformulated to contain less than
13 0.1% (by weight) of DEHP and DBP.

14 3.2 Further, as of the Effective Date, NSI agrees that it will not manufacture,
15 distribute, or sell any Covered Products designed or intended primarily for children 12 years of
16 age or younger ("Children's Covered Products") throughout the United States of America unless
17 those Children's Covered Products are reformulated to contain less than 0.1 % (by weight) of
18 DEHP and DBP.

19 3.3 The foregoing reformulation standards in §§ 3.1 and 3.2 above also specifically
20 apply to, but are not limited to, all brands of Covered Products specifically owned by NSI.

21 3.2 As of the Effective Date, NSI will notify and require its vendors from whom NSI
22 purchases Covered Products to ensure that all Covered Products that NSI purchases from its
23 vendors and sold in its California stores will not contain more than 0.1% (by weight) of DEHP
24 and DBP.

25 3.3 For any N304 Sandals still existing in NSI’s inventory as of the Effective Date,
26 NSI shall remove them from sale in California or destroy them in accordance with applicable
27 law.
28

1 **4. SETTLEMENT PAYMENT**

2 4.1 **Payment and Due Date:** NSI shall pay a total of four hundred and twenty-five
3 thousand dollars and zero cents (\$425,000) in full and complete settlement of all monetary
4 claims by CAG related to the Notices and Complaint, as follows:

5 4.1.1 **Civil Penalty:** NSI shall issue separate checks totaling fifty thousand
6 dollars (\$50,000) as penalties pursuant to Health & Safety Code § 25249.12:

7 (a) NSI will issue payment made payable to the State of California's
8 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of thirty-seven
9 thousand five hundred dollars (\$37,500) representing 75% of the total penalty and

10 (b) NSI will issue payment to "Consumer Advocacy Group, Inc." in the
11 amount of twelve thousand five hundred dollars (\$12,500) representing 25% of the total penalty;
12 and

13 (b) Separate 1099s shall be issued for each of the above payments: NSI
14 will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) for the
15 amount of \$37,500. NSI will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
16 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212 for the amount of \$12,500.

17 4.1.2 **Payment In Lieu of Civil Penalties:** NSI shall pay twenty-five thousand
18 dollars (\$25,000) in lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG will use
19 this payment for investigation of the public's exposure to Proposition 65 listed chemicals
20 through various means, including laboratory fees for testing for Proposition 65 listed chemicals,
21 administrative costs and fees related to such activities, expert fees for evaluating exposures
22 through various mediums, including but not limited to consumer product, occupational, and
23 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and
24 retained experts who assist with the extensive scientific analysis necessary for those files in
25 litigation, as well as administrative costs and fees related to such activities in order to reduce the
26 public's exposure to Proposition 65 listed chemicals by notifying those persons and/or entities
27 believed to be responsible for such exposures and attempting to persuade those persons and/or
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1 entities to reformulate their products or the source of exposure to completely eliminate or lower
2 the level of Proposition 65 listed chemicals, thereby addressing the same public harm as
3 allegedly in the instant Action. Further, should the court require it, CAG will submit under seal,
4 an accounting of these funds as described above as to how the funds were used. The payment
5 shall be made payable to “Consumer Advocacy Group, Inc.” and delivered to the address at § 4.2
6 below.

7 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Within six (6) months of
8 the Effective Date, NSI shall pay three hundred and fifty thousand dollars (\$350,000) to
9 “Yeroushalmi & Associates,” as reimbursement for reasonable investigation fees and costs,
10 attorneys’ fees, and any other costs incurred as a result of investigating, bringing this matter to
11 NSI’s attention, litigating, and negotiating a settlement in the public interest. The payment shall
12 be made payable to “Yeroushalmi & Associates” and delivered to the address at § 4.2 below.

13 4.2 All payments pursuant to § 4.1 shall be delivered via overnight mail to:
14 Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly
15 Hills, CA 90212.

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

17 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
18 behalf of itself and in the public interest on the one hand, and NSI and its officers, directors,
19 insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners,
20 affiliates, sister companies and their successors and assigns (“Defendant Releasees”) and NSI’s
21 vendor Orly Shoe Corporation (“Upstream Releasee”), on the other hand, for all claims for
22 violations of Proposition 65 up through the Effective Date based on exposure to DEHP and DBP
23 from Covered Products. Nothing in this section shall constitute or effectuate any form of release
24 as between NSI, on the one hand, and Orly Shoe Corporation on, the other hand. NSI’s and
25 Defendant Releasees’ compliance with this Consent Judgment shall constitute compliance with
26 Proposition 65 with respect to DEHP and DBP from Covered Products. Nothing in this Section
27
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1 affects CAG’s right to commence or prosecute an action under Proposition 65 against any person
2 other than NSI, Defendant Releasees or the Upstream Releasee.

3 5.2 CAG, on behalf of itself, its past and current agents, representatives, attorneys,
4 successors, and/or assignees, and in the public interest, hereby waives all rights to institute or
5 participate in, directly or indirectly, any form of legal action and releases all claims, including,
6 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
7 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
8 limited to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether
9 known or unknown, fixed or contingent (collectively “Claims”), against NSI, Defendant
10 Releasees, and Upstream Releasee arising from any violation of Proposition 65 or any other
11 statutory or common law regarding the failure to warn about exposure to DEHP and DBP from
12 the Covered Sandals.

13 5.3 Additionally, CAG on behalf of itself, its past and current agents, representatives,
14 attorneys, successors, and/or assignees, only (i.e., not on behalf of the public), hereby waives all
15 Claims against NSI, Defendant Releasees, and Upstream Releasee arising from any violation of
16 Proposition 65 or any other statutory or common law regarding the failure to warn about
17 exposure to DEHP and DBP from the Covered Products.

18 5.4 The releases in this Section are limited to only those Covered Products that are
19 sold, manufactured, and/or distributed by NSI.

20 5.5 In furtherance of the foregoing, as to alleged exposures to DEHP and DBP from
21 the Covered Products, CAG on behalf of itself only, hereby waives any and all rights and
22 benefits which it now has, or in the future may have, conferred upon it with respect to Claims
23 arising from any violation of Proposition 65 or any other statutory or common law regarding the
24 failure to warn about exposure to DEHP and DBP from the Covered Products as to NSI,
25 Defendant Releasees, and the Upstream Releasee by virtue of the provisions of section 1542 of
26 the California Civil Code, which provides as follows:
27

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

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

18 6. ENFORCEMENT OF JUDGMENT

19 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
20 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
21 California, Los Angeles County, giving the notice required by law, enforce the terms and
22 conditions contained herein. A Party may enforce any of the terms and conditions of this
23 Consent Judgment only after that Party first provides 90 days' notice to the Party allegedly
24 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
25 such Party's failure to comply in an open and good faith manner.

26 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
27 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of
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1 Violation (“NOV”) to NSI. The NOV shall include for each of the Covered Products: the date(s)
2 the alleged violation(s) was observed, the location at which the Covered Products were offered
3 for sale, the receipt of purchase of the violating product, and shall be accompanied by all test
4 data obtained by CAG regarding the Covered Products, including an identification of the
5 component(s) of the Covered Products that were tested.

6 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
7 alleged violation if, within 60 days of receiving such NOV, NSI serves a Notice of
8 Election (“NOE”) that meets one of the following conditions:

9 (a) The Covered Products were received by NSI for sale in California
10 before the Effective Date, or

11 (b) Since receiving the NOV NSI has taken corrective action by either
12 (i) requesting that its stores in California, as applicable, remove the Covered Products
13 identified in the NOV from sale in California and destroy or return the Covered Products
14 to NSI or vendor, as applicable, or (ii) providing a clear and reasonable warning for the
15 Covered Products identified in the NOV pursuant to 27 Cal. Code Regs. § 25603. For the
16 purposes of satisfying the latter warning requirement, a label on or accompanying the
17 Covered Products identified in the NOV and/or its packaging clearly stating in English
18 “WARNING: This product contains a chemical known to the State of California to cause
19 cancer and birth defects or other reproductive harm" shall be sufficient.
20

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

23 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
24 prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs.

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 and
28 NSI waive their respective rights to a hearing or trial on the allegations of the Complaint.

1 7.2 If this Consent Judgment is not approved in its entirety by the Court, (a) this
2 Consent Judgment and any and all prior agreements between the parties merged herein shall
3 terminate and become null and void, and the actions shall revert to the status that existed prior to
4 the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
5 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
6 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
7 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
8 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

9 **8. MODIFICATION OF JUDGMENT**

10 8.1 This Consent Judgment may be modified only upon written agreement of the
11 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
12 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

13 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
14 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

15 **9. RETENTION OF JURISDICTION**

16 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
17 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

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

19 10.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
20 California Attorney General so that the Attorney General may review this Consent Judgment
21 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
22 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
23 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
24 the parties may then submit it to the Court for approval.

25 **11. ATTORNEY FEES**

26 11.1 Except as specifically provided in Section 4.1.3 and Section 6.3, each Party shall
27 bear its own costs and attorneys' fees in connection with this action.
28

1 **12. ENTIRE AGREEMENT**

2 12.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
4 negotiations, commitments and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **13. GOVERNING LAW**

9 13.1 The validity, construction and performance of this Consent Judgment shall be
10 governed by the laws of the State of California, without reference to any conflicts of law
11 provisions of California law.

12 13.2 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California. 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 of this
23 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
24 Consent Judgment was subject to revision and modification by the Parties and has been accepted
25 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
26 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
27 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
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1 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
2 resolved against the drafting Party should not be employed in the interpretation of this Consent
3 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

4 **14. EXECUTION AND COUNTERPARTS**

5 14.1 This Consent Judgment may be executed in counterparts and by means of
6 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
7 one document and have the same force and effect as original signatures.

8 **15. NOTICES**

9 15.1 Any notices under this Consent Judgment shall be by personal delivery of First
10 Class Mail.

11 If to CAG:

12
13 Reuben Yeroushalmi
14 9100 Wilshire Boulevard, Suite 240W
15 Beverly Hills, CA 90212
(310) 623-1926

16 If to National Stores, Inc.:

17
18 Michael Fallas, President, or
19 Current President or CEO
20 National Stores, Inc.
15001 S. Figueroa St.
Gardena 90248

21 With a copy to:

22
23 Michael B. Adreani, Esq.
24 Roxborough Pomerance Nye & Adreani
5820 Canoga Avenue, Suite 250
Woodland Hills, CA 91367

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.

5
6
7 **AGREED TO:**

8 Date: _____, 2015

9
10 _____
11 Name: _____

12 Title: _____

13 CONSUMER ADVOCACY GROUP,
14 INC.

AGREED TO:

8 Date: August 12, 2015

9 Sandra J Menichelli
10 _____
11 Name: SANDRA J MENICHELLI

12 Title: CFO

13 NATIONAL STORES, INC.

15 **IT IS SO ORDERED.**

16
17 Date: _____

18 JUDGE OF THE SUPERIOR COURT

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.

5
6
7 AGREED TO:

AGREED TO:

8 Date: August 12, 2015

Date: _____, 2015

9 

10 Name: Michael Marcus

Name: _____

11 Title: Director

Title: _____

12
13 CONSUMER ADVOCACY GROUP,
INC.

NATIONAL STORES, INC.

14
15 **IT IS SO ORDERED.**

16
17 Date: _____

18 JUDGE OF THE SUPERIOR COURT