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5 Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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11 CONSUMER ADVOCACY GROUP, Inc., in) Case No. BC483256
the public interest,)
12 Plaintiff) **[PROPOSED] CONSENT JUDGMENT**
13 v.)
14 LIFETIME BRANDS, INC., a Delaware)
Corporation, et al.)
15 Defendants.)
16 Department: 74
17 Judge: Hon. T. Sanchez-Gordon
18 (Complaint filed: April 20, 2012)

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1. INTRODUCTION

1.1 Consumer Advocacy Group, Inc. and the Settling Defendant.

This Consent Judgment (“Consent Judgment” or “Settlement”) is entered into by and between, Consumer Advocacy Group, Inc. (“CAG” or “Plaintiff”) and Lifetime Brands, Inc. (the “Settling Defendant” or “Lifetime”), with CAG and Lifetime collectively referred to as the “Parties.” CAG seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Lifetime employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

CAG has alleged that Lifetime has manufactured, distributed and/or sold in the State of California, without the warnings allegedly required by Proposition 65, consumer products containing di(2-ethylhexyl)phthalate (“DEHP”). In addition to DEHP, butyl benzyl phthalate (“BBP”), and di-n-butyl phthalate (“DBP”) are listed under Proposition 65 (and are collectively referred to herein as the “Listed Phthalates”).

1.3 Product Description

The consumer product categories that are covered by this Consent Judgment are hand-held kitchen utensils (including Vasconia scissor tongs) manufactured by or for Lifetime and which are offered for sale in the State of California (“Covered Products”). These shall include such Covered Products whether they are sold in Lifetime’s own names or in the names of others from whom it licenses or for whom it private labels and Covered Products whether sold by Lifetime directly or as sold by retailers doing business in California, including, but not limited to Ross Stores, Inc. (“Ross”). The consumer products covered by this Consent Judgment shall also include Hoan corn strippers as such were described in a 60-day notice letter CAG issued to Lifetime on July 20, 2011, which, in relevant part, alleged that Hoan corn strippers exposed consumers in California to lead.

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1.4 Notices of Violation and Complaint

In addition to the Hoan corn stripper notice, on or about July 25, 2011, CAG served Lifetime, Ross, and all public enforcement agencies required to receive such notices under Proposition 65 with a 60-day notice that provided Lifetime, Ross and such public enforcers with notice that alleged that Lifetime and its other customers who offer the Covered Products for sale in California (including, but not limited to Ross) were in violation of California Health and Safety Code section 25249.6 for failing to warn California consumers that Vasconia Scissor Tongs contained and allegedly exposed users to DEHP. No public enforcer filed suit on or otherwise diligently prosecuted the allegations set forth in the aforementioned Notices. On April 20, 2012, CAG filed the complaint in the above-captioned case against Lifetime and Ross (“Complaint”), which, concurrent with the entry of this Consent Judgment, shall also be deemed amended to include CAG’s previously noticed Proposition 65 claims with regard to lead in the Hoan corn stripper.

1.5 No Admission

Lifetime and Ross each deny the material factual and legal allegations contained in the Notices and Complaint and maintain that all products that they have sold and distributed in California, including the Covered Products, have been and are in compliance with all laws, including Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Lifetime or Ross of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Lifetime or Ross of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by each of them. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of the Settling Defendant under this Consent Judgment.

1.6 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean ten (10) days following receipt of notice of the entry of this Consent Judgment by the Court. This Settlement shall be null and of no effect if not approved and entered by the Court.

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2. INJUNCTIVE RELIEF

2.1 Reformulation Standard and Commitments

For purposes of this Consent Judgment, the term “Reformulation Standard” means a maximum concentration, by weight, of DEHP, BBP and DBP each, of 0.1% (1,000 parts per million) or less, in each a poly vinyl chloride or other soft plastic, vinyl, or synthetic leather component of a Covered Product and a maximum concentration, by weight, of lead of 0.01% (100 parts per million) in a Hoan corn stripper.

2.1.1 Commencing on the Effective Date, Lifetime shall require its suppliers of the Covered Products to comply with the Reformulation Standard for Listed Phthalates.

2.1.2 Commencing on the Effective Date, Lifetime shall not purchase, import, manufacture, or supply to an unaffiliated third party, any Covered Product or Hoan corn stripper intended for sale to California consumers if it knows it exceeds the Reformulation Standard.

3. SETTLEMENT PAYMENTS

3.1 Civil Penalties

Lifetime shall pay a statutory penalty amount of \$4,500 and make a \$4,000 payment to CAG in lieu of penalties, which CAG shall use for such projects and purposes related to environmental protection, worker health and safety, or reduction of human exposure to hazardous substances (including administrative and litigation costs arising from such projects), as CAG may choose. The \$4,500 statutory penalty amount shall be apportioned in accordance with California Health and Safety Code section 25192, with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Consumer Advocacy Group, Inc. as provided by California Health and Safety Code section 25249.12(d). In fulfillment of these obligations, two separate checks shall be issued accordingly (i.e., one for \$3,375 made payable to OEHHA and one for \$5,125 made payable to CAG) and be provided to CAG’s counsel on or before fifteen (15) days following the Effective Date, at the following address:

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2 Reuben Yeroushalmi
3 Yeroushalmi & Associates
4 9100 Wilshire Boulevard, Suite 610E
5 Beverly Hills, CA 90210

6 **3.2 Reimbursement of Attorneys Fees and Costs**

7 The Parties reached an accord on the compensation due to Plaintiff and its counsel under
8 the private attorney general doctrine, California Code of Civil Procedure section 1021.5, and
9 principles of contract law. Under these legal principles, Lifetime shall reimburse Plaintiff's
10 counsel for fees and costs, incurred as a result of investigating, bringing this matter to their
11 attention, and negotiating a settlement in the public interest. Specifically, Lifetime shall pay
12 CAG and its counsel \$38,000 for all attorneys' fees, expert and investigation fees, and related
13 costs incurred and neither it nor Ross shall have any other liability or responsibility for payments
14 for Plaintiff's attorneys fees and costs or expenses associated with this matter. The payment of
15 attorneys fee and cost reimbursement required by this Section shall be issued in a separate check
16 made payable to "Yeroushalmi & Associates" and shall be delivered on or before fifteen (15)
17 days following the Effective Date, at the following address:

18 Reuben Yeroushalmi
19 Yeroushalmi & Associates
20 9100 Wilshire Boulevard, Suite 610E
21 Beverly Hills, CA 90210

22 Yeroushalmi & Associates' tax identification number and a form W-9 shall be furnished to
23 Lifetime's counsel by CAG's counsel at least fourteen (14) calendar days before payment is due.

24 **4. RELEASES OF LIABILITIES**

25 **4.1 Release of Settling Defendant and Its Releasees**

26 In consideration of the promises and commitments herein contained, CAG on behalf of
27 itself and its agents, representatives, attorneys, successors, and/or assignees, and in the public
28 interest, hereby waives and releases Lifetime, its subsidiaries and affiliates, licensors (including,
but not limited to Grupo Vasconia, S.A.B.), licensees, directors, officers, employees, and
attorneys (collectively, "Releasees"); and each entity to whom they directly or indirectly
distribute or sell Covered Products, including but not limited to distributors, wholesalers,

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customers, retailers (including, but not limited to Ross) (collectively, “Downstream Defendant Releasees”), from all claims for violations of Proposition 65 based on exposure to DEHP from the Covered Products arising up through the date on which the Court enters this Consent Judgment. CAG on behalf of itself and its agents, representatives, attorneys, successors, and/or assignees, and in the public interest, also hereby waives and releases Lifetime, Lifetime’s Releasees, and Lifetime’s Downstream Defendant Releasees, from all claims for violations of Proposition 65 based on exposure to lead from Hoan corn strippers arising up through the date on which the Court enters this Consent Judgment. These waivers and releases are limited to those claims that arise under Proposition 65 with respect to DEHP in the Covered Products and lead in Hoan corn strippers as alleged in CAG’s Notices. Within fifteen (15) days of the Effective Date, Plaintiff shall file with the Court a request for dismissal of Ross and its related corporate entities from the Complaint. Compliance with the terms of this Consent Judgment by Lifetime constitutes compliance with Proposition 65 with respect to DEHP in the Covered Products and with respect to lead in Hoan corn strippers.

In addition, CAG on behalf of itself and its agents, representatives, attorneys, but *not* in its role as acting on behalf of the public interest, hereby waives any and all rights and benefits which it now has, or in the future may have with respect to Lifetime’s Covered Products and the Hoan corn stripper conferred upon it by virtue of the provisions of California Civil Code section 1542, which provides as follows:

“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.”

CAG understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if CAG hereafter discovers facts in addition to, or

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2 different from those which it now knows or believes to be true, it will not be able to make any
3 claim against Lifetime, its subsidiaries or affiliates, predecessors, officers, directors, employees,
4 manufacturers, distributors, wholesalers, retailers or customers, and the successors and assigns of
5 any of them who may sell the Settling Defendant's products based on those facts. Furthermore,
6 CAG acknowledges that it intends these consequences for any such claims which may exist as of
7 the date of this release but which CAG does not know exist, and which, if known, would
8 materially affect its decision to enter into this settlement, regardless of whether its lack of
9 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

10 **4.2 Settling Defendant's Release of Plaintiff**

11 Lifetime waives any and all claims against Plaintiff and its attorneys and other
12 representatives, for any and all actions taken or statements made by Plaintiff and/or its attorneys
13 and other representatives, whether in the course of investigating claims or otherwise seeking
14 enforcement of Proposition 65 against it in this matter, and/or with respect to any other
15 application of Proposition 65 to the Covered Products.

16 **5. SEVERABILITY**

17 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
18 Consent Judgment are held by any court to be unenforceable, the validity of the enforceable
19 provisions remaining shall not be adversely affected.

20 **6. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of
22 California and shall apply only within the State of California. In the event that Proposition 65 is
23 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
24 Products specifically, then Lifetime may provide written notice to Plaintiff of any asserted change
25 in the law, and shall have no further obligations pursuant to this Consent Judgment with respect
26 to, and to the extent that, the Covered Products are so affected.

27 **7. NOTICES**

28 Unless specified herein, all correspondence and notices required to be provided pursuant
to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,

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2 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
3 other party at the following addresses:

4 For CAG:

5 Reuben Yeroushalmi
6 Yeroushalmi & Associates
7 9100 Wilshire Boulevard, Suite 610E
8 Beverly Hills, CA 90210

9 For Lifetime:

10 Robert Falk
11 Counsel to Lifetime Brands
12 Morrison & Foerster LLP.
13 425 Market Street, 32nd Floor
14 San Francisco, CA 94105

15 Any Party, from time to time, may specify in writing to the other Party a change of address to
16 which all notices and other communications shall be sent.

17 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

18 This Consent Judgment may be executed in counterparts, by a scan suitable for email or
19 by facsimile, each of which shall be deemed an original, and all of which, when taken together,
20 shall constitute one and the same document.

21 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

22 Plaintiff agrees to report this settlement to the Office of the California Attorney General
23 (“AG”) as required under the AG’s Proposition 65 regulations and to promptly move for the
24 Court to approve and enter the Consent Judgment in accordance with the requirements of Health
25 and Safety Code section 25249.7(f)(4) and its implementing regulations.

26 **10. MODIFICATION**

27 This Consent Judgment may be modified only by stipulation of the Parties and approval
28 thereof of the Court, or as the result of a noticed motion by either Party or an order issued by a
court of competent jurisdiction. The office of the Attorney General shall be served with any
proposed modification of this Consent Judgment at least ten (10) days prior to the scheduling of
any action by the Court thereon.

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11. AUTHORIZATION

The undersigned are authorized to execute this Settlement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

IT IS SO STIPULATED:

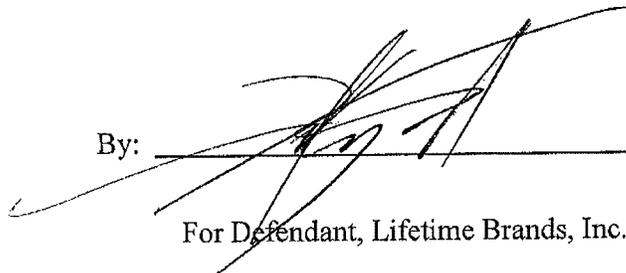
Dated:

By: _____

For Plaintiff Consumer Advocacy Group

Dated: 7-5-12

By: _____



For Defendant, Lifetime Brands, Inc.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated:

Judge of the Superior Court

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11. AUTHORIZATION

The undersigned are authorized to execute this Settlement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

IT IS SO STIPULATED:

Dated: 7-3-12

By:  MICHEL SASSOON

For Plaintiff Consumer Advocacy Group

Dated:

By: _____

For Defendant, Lifetime Brands, Inc.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated:

Judge of the Superior Court