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5 Attorneys for Plaintiff
6 CONSUMER ADVOCACY GROUP, INC.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10
11 CONSUMER ADVOCACY GROUP, INC., in
the public interest,
12 Plaintiff,
13
14 v.
15 ANNA'S LINENS, INC., a Delaware
Corporation, CREATIVE BATH PRODUCTS,
INC., a New York Corporation, and DOES 1-
16 20,
17 Defendants.

Case No. CGC 12-525079

**STIPULATED CONSENT JUDGMENT
AND ORDER**

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: October 11, 2012
TRIAL DATE: None set

18 **1. INTRODUCTION**

19 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
20 Advocacy Group, Inc. (referred to as "CAG) acting on behalf of itself and in the interest of the
21 public and defendant, Creative Bath Products, Inc. (referred to as "Creative") with each a Party to
22 the action and collectively referred to as "Parties."

23 1.2 Creative employs ten or more persons, is a person in the course of doing business
24 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
25 & Safety Code §§ 25249.6 *et seq.* ("Proposition 65"), and manufacture, distribute, and sell Tub
26 Mats, Shower Curtains, and Vinyl Bath Tub Appliques. DEHP is known to the State of
27 California to cause cancer and/or birth defects or other reproductive harm.
28

1 **1.3 Notices of Violation.**

2 On August 1, 2011, CAG served Creative, and various public enforcement agencies with a
3 document entitled "60-Day Notice of Violation" ("August 1, 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 DEHP contained in Tub Mats sold by Creative Bath. No
6 public enforcer has commenced or diligently prosecuted the allegations set forth in the August 1,
7 2011 Notice.

8 On April 10, 2012, CAG served Creative, and various public enforcement agencies with a
9 document entitled "60-Day Notice of Violation" ("August 1, 2011 Notice") that provided the
10 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
11 individuals in California of exposures to DEHP contained in Shower Curtains sold by Creative.
12 No public enforcer has commenced or diligently prosecuted the allegations set forth in the April
13 10, 2012 Notice.

14 On April 23, 2012, CAG served Creative, and various public enforcement agencies with a
15 document entitled "60-Day Notice of Violation" ("April 23, 2012 Notice") that provided the
16 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
17 individuals in California of exposures to DEHP contained in Vinyl Bath Tub Appliques sold by
18 Creative. No public enforcer has commenced or diligently prosecuted the allegations set forth in
19 the April 23, 2012 Notice.

20 **1.4 Complaint.**

21 On October 11, 2012, CAG filed a Complaint for civil penalties and injunctive relief
22 ("Complaint") in San Francisco, Superior Court, Case No. CGC-12-525079, against Creative and
23 other entities. The Complaint alleges, among other things, that Creative violated Proposition 65
24 by failing to give clear and reasonable warnings of exposure to DEHP from Tub Mats, Shower
25 Curtains, and Vinyl Bath Tub Appliques.

26 **1.5 Consent to Jurisdiction**

27 For purposes of this Consent Judgment, the Parties stipulate that this Court has
28 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction

1 over Creative as to the acts alleged in the Complaint, that venue is proper in the County of San
2 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
3 and resolution of the allegations contained in the Complaint and of all claims which were or could
4 have been raised by any person or entity based in whole or in part, directly or indirectly, on the
5 facts alleged therein or arising therefrom or related to.

6 **1.6 No Admission**

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

13 **2. DEFINITIONS**

14 2.1 "Covered Products" sold by Creative means Tub Mats, Shower Curtains, and
15 Vinyl Bath Tub Appliques. This consent judgment is limited to the products only sold by
16 Creative.

17 2.2 "Effective Date" means 10 days from the date that this Consent Judgment is
18 approved by the Court.

19 2.3 "DEHP" means Di (2-ethylhexyl) Phthalate

20 2.4 "Notices" means the August 1, 2011, April 10, 2012, and April 23, 2012 Notices.

21 **3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE**
22 **WARNINGS.**

23 3.2 Creative shall not sell the Covered Products in California unless it is reformulated
24 to contain less than 0.01% DEHP.

25 **4. SETTLEMENT PAYMENT**

26 4.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from CAG,
27 whichever is later, Creative shall pay a total of \$85,000 in full and complete settlement of all
28 monetary claims by CAG related to the Notices, as follows.

1 4.2 **Payment In Lieu of Civil Penalties:** Creative shall pay \$8,000 in lieu of civil
2 penalties to "Consumer Advocacy Group, Inc." CAG will use the payments for such projects and
3 purposes related to environmental protection, worker health and safety, or reduction of human
4 exposure to hazardous substances , including but not limited to, administrative and litigation
5 costs and fees (excluding attorneys' fees), laboratory fees for testing samples for Proposition 65
6 listed chemicals, expert fees for evaluating exposures and merit to each potential violation of
7 Proposition 65, and the substantial cost of hiring consulting and retained experts who assist with
8 the extensive scientific analysis necessary for those files in litigation.

9 4.3 **Reimbursement of Attorneys Fees and Costs:** Creative shall pay \$65,000 to
10 "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs,
11 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
12 the approval of this Consent Judgment.

13 4.4 **Civil Penalty:** Defendant shall issue two separate checks for a total amount of
14 \$12,000 as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable
15 to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the
16 amount of \$8,000, representing 75% of the total penalty; and (b) one check to Consumer
17 Advocacy Group, Inc. in the amount of \$4,000, representing 25% of the total penalty. Two
18 separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA,
19 P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$8,000. The second
20 1099 shall be issued in the amount of \$4,000 to CAG and delivered to: Yeroushalmi &
21 Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212

22 4.5 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,
23 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

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

25 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
26 behalf of itself and in the public interest and Creative and its officers, directors, insurers,
27 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
28 companies and their successors and assigns ("Defendant Releasees") and each of their suppliers,

1 customers, distributors, wholesalers, retailers, including or any other person in the course of doing
2 business, and the successors and assigns of any of them who may use, maintain, distribute or sell
3 Covered Products, and all persons and entities who are downstream in the stream of commerce
4 from Creative who sell or distribute the Covered Products, and all their affiliates ("Downstream
5 Defendant Releasees"), for all claims for violations of Proposition 65 up through the Effective
6 Date based on exposure to DEHP from Covered Products as set forth in the Notices. Creative and
7 Defendant Releasees' compliance with this Consent Judgment shall constitute compliance with
8 Proposition 65 with respect to DEHP from the Covered Products as set forth in the Notices.

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

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

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
resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,

1 including but not limited to any exposure to, or failure to warn with respect to exposure to DEHP
2 from Covered Products, CAG will not be able to make any claim for those damages against
3 Creative, the Defendant Releasees, or Downstream Defendant Releasees. Furthermore, CAG
4 acknowledges that it intends these consequences for any such Claims as may exist as of the date
5 of this release but which CAG does not know exist, and which, if known, would materially affect
6 their decision to enter into this Consent Judgment, regardless of whether their lack of knowledge
7 is the result of ignorance, oversight, error, negligence, or any other cause.

8 **6. ENFORCEMENT OF JUDGMENT**

9 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
10 hereto. Subject to Section 6.2, the parties may, by noticed motion or order to show cause before
11 the Superior Court of California, San Francisco County, giving the notice required by law,
12 enforce the terms and conditions contained herein. A Party may enforce any of the terms and
13 conditions of this Consent Judgment only after that Party first provides 30 days notice to the Party
14 allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts
15 to resolve such Party's failure to comply in an open and good faith manner.

16 6.2 Notice of Violation. Prior to bringing any motion, order to show cause, or other
17 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
18 Violation ("NOV") to Creative. The NOV shall include for each of the Covered Products: the
19 date(s) the alleged violation(s) was observed and the location at which the Covered Products were
20 offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
21 Covered Products, including an identification of the component(s) of the Covered Products that
22 were tested.

23 6.2.1 Non-Contested NOV. CAG shall take no further action regarding the
24 alleged violation if, within 30 days of receiving such NOV, Creative serves a Notice of
25 Election ("NOE") that meets one of the following conditions:

26 (a) The Covered Products were shipped by Creative for sale in
27 California before the Effective Date, or
28

1 (b) Since receiving the NOV Creative has taken corrective action by
2 either (i) requesting that its customers in California remove the Covered Products
3 identified in the NOV from sale in California and destroy or return the Covered Products
4 to Creative, or (ii) providing a clear and reasonable warning for the Covered Products
5 identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

6 6.2.2 Contested NOV. Creative may serve an NOE informing CAG of its
7 election to contest the NOV within 30 days of receiving the NOV.

8 (a) In its election, Creative may request that the sample(s) Covered
9 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
10 laboratory.

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

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

19 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
20 prevailing party shall be entitled to recover its attorney's fees and costs.

21 7. ENTRY OF CONSENT JUDGMENT

22 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
23 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
24 Creative waive their respective rights to a hearing or trial on the allegations of the Complaint.
25 Upon entry of the Consent Judgment, Anna's Linens, Inc. will be dismissed by Plaintiff.

26 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
27 and any and all prior agreements between the parties merged herein shall terminate and become
28 null and void, and the actions shall revert to the status that existed prior to the execution date of

1 null and void, and the actions shall revert to the status that existed prior to the execution date of
2 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
3 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
4 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
5 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
6 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

7 **8. MODIFICATION OF JUDGMENT**

8 8.1 This Consent Judgment may be modified only upon written agreement of the
9 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
10 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

11 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
12 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

13 **9. RETENTION OF JURISDICTION**

14 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
15 terms of this Consent Judgment.

16 **10. DUTIES LIMITED TO CALIFORNIA**

17 10.1 This Consent Judgment shall have no effect on Covered Products sold by Creative
18 outside the State of California.

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

20 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
21 California Attorney General so that the Attorney General may review this Consent Judgment
22 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
23 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
24 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
25 the parties may then submit it to the Court for approval.

26 **12. ATTORNEY FEES**

27 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
28 and attorney fees in connection with this action.

1 **13. ENTIRE AGREEMENT**

2 13.1 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 **14. GOVERNING LAW**

9 14.1 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 14.2 The Parties, including their counsel, have participated in the preparation of this
13 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
14 Consent Judgment was subject to revision and modification by the Parties and has been accepted
15 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
16 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
17 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
18 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
19 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
20 this regard, the Parties hereby waive California Civil Code § 1654.

21 **15. EXECUTION AND COUNTERPARTS**

22 15.1 This Consent Judgment may be executed in counterparts and by means of
23 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
24 one document.

25 **16. NOTICES**

26 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
27 Class Mail.

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If to CAG:
Reuben Yeroushalmi
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212
(310) 623-1926

If to Creative:
Creative Bath Products, Inc.
250 Creative Drive
Central Islip, NY 11722

With a copy to:
Christopher Elliott
Hart, King & Coldren
4 Hutton Centre Drive, Suite 900
Santa Ana, CA 92707

17. AUTHORITY TO STIPULATE

17.1 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: January __, 2014

Date: January __, 2014

Name: _____

Name: _____

Title: _____
CONSUMER ADVOCACY GROUP,
INC.

Title: _____
CREATIVE BATH PRODUCTS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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If to CAG:

Reuben Yeroushalmi
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212
(310) 623-1926

If to Creative:

Creative Bath Products, Inc.
250 Creative Drive
Central Islip, NY 11722

With a copy to:

Christopher Elliott
Hart, King & Coldren
4 Hutton Centre Drive, Suite 900
Santa Ana, CA 92707

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AGREED TO:

Date: January 13, 2014

Name: Michel Sassoun
Title: Executive Director
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date: January 7, 2014

Name: Robert M. Viano
Title: Chief Operating Officer
CREATIVE BATH PRODUCTS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT