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3 9100 Wilshire Boulevard, Suite 240W  
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6 Attorneys for Plaintiff  
7 Consumer Advocacy Group, Inc.  
8  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES

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

14 Plaintiff,

15 v.

16  
17 TRIPLE T TRADING LTD., a Washington  
Corporation, TRIPLE T FOOTWEAR, an  
18 Oregon Corporation, THE KROGER CO., an  
Ohio Corporation, RALPH'S GROCERY  
19 COMPANY, an Ohio Corporation, FOOD 4  
20 LESS HOLDINGS, INC., a Delaware  
Corporation, and DOES 1-20;

21 Defendants.  
22

CASE NO. BC482740

**CONSENT JUDGMENT [PROPOSED]**

Dept: 34  
Judge: Michael P. Linfield  
Complaint filed: April 12, 2012

23 **1. INTRODUCTION**

24 1.1 This Consent Judgment is entered into by and between plaintiff Consumer  
25 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and  
26 defendant TRIPLE T TRADING LTD. ("hereinafter Defendant"), with each a Party and  
27 collectively referred to as "Parties."  
28

1           1.2     Defendant employs ten or more persons, is a person in the course of doing  
2 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
3 California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”), and imports, distributes,  
4 and sells Beach Basics Flip Flops for children and kids containing polyvinylchloride.

5           **1.3     Notice of Violation.**

6           1.3.1    On or about August 15, 2011, CAG served Defendant, Triple T Footwear,  
7 Ralphs Grocery Company (“Ralphs”), The Kroger Co. (“Kroger”), and various public  
8 enforcement agencies with a document entitled “60-Day Notice of Intent to Sue” (the  
9 “August 15, 2011 Notice”) that provided the recipients with notice of alleged violations  
10 of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
11 exposures to Di-*n*-butyl Phthalate (DBP) contained in Beach Basics Kids Flip Flops Size  
12 11/12.

13           1.3.2    On or about October 25, 2011, CAG served Triple T Footwear, Kroger,  
14 Food 4 Less Holdings, Inc. (“Food 4 Less”), and various public enforcement agencies  
15 with a document entitled “60-Day Notice of Intent to Sue” (the “October 25, 2011  
16 Notice”) that provided the recipients with notice of alleged violations of Health & Safety  
17 Code § 25249.6 for failing to warn individuals in California of exposures to DBP  
18 contained in Beach Basics Children’s Flip Flops Size 11/12.

19           1.3.3    On or about March 13, 2014, CAG served Defendant and various public  
20 enforcement agencies with a document entitled “60-Day Notice of Intent to Sue” (the  
21 “March 13, 2014 Notice”) that provided the recipients with notice of alleged violations of  
22 Health & Safety Code § 25249.6 for failing to warn individuals in California of prior  
23 exposures to DBP contained in Beach Basic Flip Flops for children and kids containing  
24 polyvinylchloride.  
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26           1.3.4    No public enforcer has commenced or diligently prosecuted the  
27 allegations set forth in the August 15, 2011, October 25, 2011 or March 13, 2014 Notices.

28           **1.4     Complaint.**

1 On April 12, 2012, CAG filed a Complaint for Penalty, Injunction, and Restitution  
2 (“Complaint”) in Los Angeles Superior Court, Case No. BC482740.

3 A First Amended Complaint (“FAC”) was filed on November 15, 2012. The FAC  
4 alleges, among other things, that Defendant violated Proposition 65 by failing to give clear and  
5 reasonable warnings of exposure to DBP from the Covered Products.

6 As of the Effective Date, the FAC shall be deemed amended to incorporate the March 13,  
7 2014 Notice, and CAG’s claims relating to Covered Products as defined in this Consent  
8 Judgment, so long as no public enforcer has commenced prosecuting the allegations set forth in  
9 the March 13, 2014 Notice.

10 **1.5 Consent to Jurisdiction**

11 For purposes of this Consent Judgment, the parties stipulate that this Court has  
12 jurisdiction over the allegations of violations contained in the FAC and personal jurisdiction over  
13 Defendant as to the acts alleged in the FAC, that venue is proper in the City and County of Los  
14 Angeles and that this Court has jurisdiction to enter this Consent Judgment as a full settlement  
15 and resolution of the allegations contained in the FAC and of all claims which were or could  
16 have been raised by any person or entity based in whole or in part, directly or indirectly, on the  
17 facts alleged therein or arising therefrom or related to.

18 **1.6 No Admission**

19 This Consent Judgment resolves claims that are denied and disputed. The parties enter  
20 into this Consent Judgment pursuant to a full and final settlement of any and all claims between  
21 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not  
22 constitute an admission with respect to any material allegation of the FAC, each and every  
23 allegation of which Defendant denies, nor may this Consent Judgment or compliance with it be  
24 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of  
25 Defendant.  
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1 **2. DEFINITIONS**

2 2.1 "Covered Products" means Beach Basics Flip Flops for children and kids  
3 containing PVC Components, imported, distributed, or sold by Defendant, Triple T Trading Ltd.

4 2.2 "Effective Date" means the date that this Consent Judgment is approved by the  
5 Court.

6 2.3 "PVC Components" means parts or portions of the Covered Products made of  
7 polyvinylchloride.

8 2.4 "DBP" means Di-*n*-butyl Phthalate.

9 2.5 "Notices" means the August 15, 2011 and October 25, 2011 Notices.

10 **3. INJUNCTIVE RELIEF/REFORMULATION**

11 3.1 Within 30 days of the Effective Date, Defendant shall only import, distribute, or  
12 sell Covered Products that have PVC Components containing less than 0.1% DBP (1,000 parts  
13 per million) by weight.

14 3.2 Defendant shall randomly test the PVC Components of Covered Products sold or  
15 offered for sale in California to ensure compliance with Section 3.1. Such random testing shall  
16 be performed in the United States by an accredited laboratory.

17 **4. SETTLEMENT PAYMENT**

18 4.1 Defendant shall pay a total of \$170,000 in full and complete settlement of all  
19 monetary claims by CAG related to the Notices, as follows:

20 4.2 **Reimbursement of Attorneys' Fees and Costs:** Defendant shall pay \$160,000  
21 to "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing  
22 costs, expert fees, attorney fees, and other litigation costs and expenses for all work performed  
23 through the approval of this Consent Judgment.

24 4.3 **Civil Penalties.** Defendant shall issue two separate checks for a total amount of  
25 six thousand dollars (\$6,000) as penalties pursuant to Health & Safety Code § 25249.12: (a) one  
26 check made payable to the State of California's Office of Environmental Health Hazard  
27 Assessment (OEHHA) in the amount of \$4,500, representing 75% of the total penalty; and (b)  
28

1 one check to Consumer Advocacy Group, Inc. in the amount of \$1,500, representing 25% of the  
2 total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be  
3 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of  
4 \$4,500. The second 1099 shall be issued in the amount of \$1,500 to CAG.

5       **4.4 Payment In Lieu of Civil Penalties:** Defendant shall pay \$4,000 in lieu of civil  
6 penalties payable to "Consumer Advocacy Group, Inc." CAG will use this payment for  
7 investigation of the public's exposure to Proposition 65 listed chemicals through various means,  
8 laboratory fees for testing for Proposition 65 listed chemicals, expert fees for evaluating  
9 exposures through various mediums, including but not limited to consumer product,  
10 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of  
11 hiring consulting and retained experts who assist with the extensive scientific analysis necessary  
12 for those files in litigation, in order to reduce the public's exposure to Proposition 65 listed  
13 chemicals by notifying those persons and/or entities believed to be responsible for such  
14 exposures and attempting to persuade those persons and/or entities to reformulate their products  
15 or the source of exposure to completely eliminate or lower the level of Proposition 65 listed  
16 chemicals, thereby addressing the same public harm as allegedly in the instant Action. Further,  
17 should the court require it, CAG will submit under seal, an accounting of these funds as  
18 described above as to how the funds were used.  
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20       **4.5** All Payments in Paragraphs 4.2, 4.3, and 4.4 above shall be delivered to: Reuben  
21 Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA  
22 90212.

## 23 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

24       **5.1** This Consent Judgment is a full, final, and binding resolution between CAG, on  
25 behalf of itself and in the public interest, and Defendant and its officers, directors, insurers,  
26 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
27 companies, and their successors and assigns ("Defendant Releasees"), and each of its suppliers,  
28 customers, distributors, wholesalers, retailers, including Ralphs Grocery Company, The Kroger

1 Co., and Food 4 Less Holdings, Inc., or any other person in the course of doing business, and the  
2 successors and assigns of any of them, who may use, maintain, distribute or sell Covered  
3 Products ("Downstream Defendant Releasees"), for all claims for violations of Proposition 65 up  
4 through the Effective Date based on exposure to DBP from Covered Products as set forth in the  
5 Notices. Defendant and Defendant Releasees' compliance with this Consent Judgment shall  
6 constitute compliance with Proposition 65 with respect to exposure to DBP from Covered  
7 Products.

8           5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
9 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
10 indirectly, any form of legal action and releases all claims, including, without limitation, all  
11 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
12 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
13 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,  
14 fixed or contingent (collectively "Claims"), against Defendant, Defendant Releasees, and  
15 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other  
16 statutory or common law regarding the failure to warn about exposure to DBP from the Covered  
17 Products imported, distributed, or sold by Defendant and Defendant Releasees. CAG represents  
18 that it has no knowledge of any other claim or claims against Defendant relating to DBP or any  
19 other phthalate listed under Proposition 65, in any flip flops imported, distributed, or sold by  
20 Defendant and Defendant Releasees. In furtherance of the foregoing, as to alleged exposures to  
21 DBP from the Covered Products, CAG hereby waives any and all rights and benefits which it  
22 now has, or in the future may have, conferred upon it with respect to the Claims arising from any  
23 violation of Proposition 65 or any other statutory or common law regarding the failure to warn  
24 about exposure to DBP from the Covered Products by virtue of the provisions of section 1542 of  
25 the California Civil Code, which provides as follows:  
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27           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
28           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT  
              THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,

1 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
2 DEBTOR.

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

17 **6. ENFORCEMENT OF JUDGMENT**

18 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
19 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
20 California, City and County of Los Angeles, giving the notice required by law, enforce the terms  
21 and conditions contained herein. A Party may enforce any of the terms and conditions of this  
22 Consent Judgment only after that Party first provides 30 days' notice to the Party allegedly  
23 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve  
24 such Party's failure to comply in an open and good faith manner.

25 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
26 proceeding to enforce Section 3 of this Consent Judgment, CAG shall provide a Notice of  
27 Violation ("NOV") to Defendant. The NOV shall include for each Covered Product: the date(s)  
28 the alleged violation(s) was observed and the location at which the Covered Product was offered

1 for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered  
2 Product, including an identification of the PVC component(s) of the Covered Product that were  
3 tested.

4           6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the  
5 alleged violation if, within 30 days of receiving such NOV, Defendant serves a Notice of  
6 Election (“NOE”) that meets one of the following conditions:

7           (a) The Covered Product was shipped by Defendant for sale in  
8 California before the Effective Date, or

9           (b) Since receiving the NOV Defendant has taken corrective action by  
10 either (i) requesting that its customers in California remove the Covered Product  
11 identified in the NOV from sale in California and destroy or return the Covered Product  
12 to Defendant, or (ii) providing a clear and reasonable warning for the Covered Product  
13 identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

14           6.2.2 **Contested NOV.** Defendant may serve an NOE informing CAG of its  
15 election to contest the NOV within 30 days of receiving the NOV.

16           (a) In its election, Defendant may request that the same sample(s) of  
17 Covered Product(s) tested by CAG be subject to confirmatory testing at an EPA-  
18 accredited laboratory.

19           (b) If the confirmatory testing establishes that the Covered Product  
20 does not contain DBP in excess of the level allowed in Section 3.1 CAG shall take no  
21 further action regarding the alleged violation. If the testing does not establish compliance  
22 with Section 3.1, Defendant may withdraw its NOE to contest the violation and may  
23 serve a new NOE pursuant to Section 6.2.1.

24           (c) If Defendant does not withdraw an NOE to contest the NOV, the  
25 Parties shall meet and confer for a period of no less than 30 days before CAG may seek  
26 an order enforcing the terms of this Consent Judgment.  
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1           6.3. In any proceeding brought by either Party to enforce this Consent Judgment,  
2 the prevailing party shall be entitled to recover its attorney's fees and costs.

3 **7. ENTRY OF CONSENT JUDGMENT**

4           7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
5 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
6 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

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

15 **8. MODIFICATION OF JUDGMENT**

16           8.1 This Consent Judgment may be modified only upon written agreement of the  
17 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
18 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

19           8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
20 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

21 **9. RETENTION OF JURISDICTION**

22           9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
23 terms of this Consent Judgment.

24 **10. DUTIES LIMITED TO CALIFORNIA**

25           This Consent Judgment shall have no effect on Covered Products sold outside the State of  
26 California.  
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1 **11. SERVICE ON THE ATTORNEY GENERAL**

2 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
3 California Attorney General so that the Attorney General may review this Consent Judgment  
4 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the  
5 Attorney General has received the aforementioned copy of this Consent Judgment, and in the  
6 absence of any written objection by the Attorney General to the terms of this Consent Judgment,  
7 the parties may then submit it to the Court for approval.

8 **12. ATTORNEY FEES**

9 12.1 Except as specifically provided in Section 4.2, each Party shall bear its own costs  
10 and attorney fees in connection with this action.

11 **13. GOVERNING LAW**

12 13.1 The validity, construction and performance of this Consent Judgment shall be  
13 governed by the laws of the State of California, without reference to any conflicts of law  
14 provisions of California law.

15 13.2 The Parties, including their counsel, have participated in the preparation of this  
16 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
17 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
18 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty  
19 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a  
20 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent  
21 Judgment agrees that any statute or rule of construction providing that ambiguities are to be  
22 resolved against the drafting Party should not be employed in the interpretation of this Consent  
23 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

24 **14. EXECUTION AND COUNTERPARTS**

25 14.1 This Consent Judgment may be executed in counterparts and by means of  
26 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
27 one document.  
28

1 **15. NOTICES**

2 15.1 Any notices under this Consent Judgment shall be by personal delivery or First  
3 Class Mail.

4  
5 If to CAG:

6 Reuben Yeroushalmi, Esq.  
7 9100 Wilshire Boulevard, Suite 240W  
8 Beverly Hills, CA 90212  
9 (310) 623-1926

10 If to Triple T Trading Ltd.:

11 Jack Wolfen, President  
12 Triple T Trading Ltd.  
13 P.O. Box 124  
14 Marysville, WA 98270

15 With a copy to:

16 Jeffrey Margulies  
17 Fulbright & Jaworski LLP  
18 555 South Flower Street, Forty-First Floor  
19 Los Angeles, CA 90071

20 **16. AUTHORITY TO STIPULATE**

21 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
22 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf  
23 of the party represented and legally to bind that party.

24 **AGREED TO:**

25 Date: \_\_\_\_\_, 2014

**AGREED TO:**

26 Date: March 13, 2014

27 By: \_\_\_\_\_  
28 Plaintiff, CONSUMER ADVOCACY  
GROUP, INC.

By: [Signature]  
Defendant, TRIPLE T TRADING LTD.

1 **15. NOTICES**

2 15.1 Any notices under this Consent Judgment shall be by personal delivery or First  
3 Class Mail.

4  
5 If to CAG:

6 Reuben Yeroushalmi, Esq.  
7 9100 Wilshire Boulevard, Suite 240W  
8 Beverly Hills, CA 90212  
9 (310) 623-1926

10 If to Triple T Trading Ltd.:

11 Jack Wolfen, President  
12 Triple T Trading Ltd.  
13 P.O. Box 124  
14 Marysville, WA 98270

15 With a copy to:

16 Jeffrey Margulies  
17 Fulbright & Jaworski LLP  
18 555 South Flower Street, Forty-First Floor  
19 Los Angeles, CA 90071

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23 of the party represented and legally to bind that party.

24 AGREED TO:

25 Date: March 13, 2014

26 AGREED TO:

27 Date: \_\_\_\_\_, 2014

28 By: Michael Marcus  
Plaintiff, CONSUMER ADVOCACY  
GROUP, INC.

By: \_\_\_\_\_  
Defendant, TRIPLE T TRADING LTD.

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**IT IS SO ORDERED.**

Date: \_\_\_\_\_

JUDGE OF THE SUPERIOR COURT