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6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10
11 CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

12 Plaintiff,

13
14 v.

15 EUROSTAR, INC., a California Corporation,
and Does 1-20;

16 Defendants.
17
18

CASE NO. BC463475

[PROPOSED] STIPULATED CONSENT
JUDGMENT AND [PROPOSED]
ORDER

Complaint filed: June 15, 2011
Dept.: 24
Judge: Hon. Robert L. Hess

19 **1. INTRODUCTION**

20 1.1 On June 15, 2011, Plaintiff, Consumer Advocacy Group, Inc. (“CAG”), filed a
21 complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v.*
22 *Eurostar, Inc.*, Case No. BC463475 (the “Action”), for civil penalties and injunctive relief
23 pursuant to the provisions of California Health & Safety Code § 25249.5, *et seq.* (“Proposition
24 65”) against Eurostar, Inc. (“Defendant”). CAG and Defendant are collectively referred to
25 hereinafter as “Parties.”

26 1.2 Defendant is a corporation that employs 10 or more persons. In the Action, CAG
27 alleges that Defendant made available for sale and distribution in the State of California the
28 following products: (1) Cobra Black Fisherman Sandals Item #000465197 (SKU #465197)

1 which allegedly contains lead, a chemical known to the State of California to cause cancer and
2 birth defects or other reproductive harm; (2) Cobra Sporty Soccer Sandals “Size 6” Item No.
3 00268853 which allegedly contains Diethyl Hexyl Phthalate (“DEHP”) a chemical known to the
4 State of California to cause cancer and birth defects or other reproductive harm and Di-n-butyl
5 Phthalate (“DBP”) a chemical known to the State of California to developmental, female, and
6 male reproductive toxicity; (3) Pink Flip Flops, “Celia Collections”, “All Man Made Materials,”
7 “Item# 000123453,” “Style: HGR061810-8 PNK W,” “PO Code BCXM121175030” which
8 allegedly contains DBP a chemical known to the State of California to developmental, female,
9 and male reproductive toxicity; and (4) White Flip Flops with gold glitter toe strap, “Celia
10 Collections”, “All Man Made Materials,” “Item# 000192462,” “Style: 2-100-1 GLD GLT,”
11 “PO Code BCXM121177940” which allegedly contains DBP a chemical known to the State of
12 California to developmental, female, and male reproductive toxicity (all of the four foregoing
13 products herein referred to as the “Covered Products”). (Lead, DEHP, and DBP are hereinafter
14 referred to as the “Noticed Chemicals.”)

15 1.3 On or about December 23, 2010, CAG served Defendant and the appropriate
16 public enforcement agencies with a notice claiming that Defendant was in violation of
17 Proposition 65 in regard to the Cobra Black Fisherman Sandals Item #000465197 (SKU
18 #465197). CAG's notice and the Complaint in this Action allege that Defendant exposed people
19 who handle the Cobra Black Fisherman Sandals Item #000465197 (SKU #465197) to lead,
20 without first providing clear and reasonable warnings, in violation of California Health & Safety
21 Code § 25249.6.

22 1.4 On or about February 17, 2012, CAG served Defendant and the appropriate public
23 enforcement agencies with a notice claiming that Defendant was in violation of Proposition 65 in
24 regard to the Cobra Sporty Soccer Sandals “Size 6” Item No. 00268853. CAG's notice and the
25 Complaint in this Action allege that Defendant exposed people who handle the Cobra Sporty
26 Soccer Sandals “Size 6” Item No. 00268853 to DEHP and DBP, without first providing clear and
27 reasonable warnings, in violation of California Health & Safety Code § 25249.6.
28

1 1.5 On or about May 8, 2012, CAG served Defendant and the appropriate public
2 enforcement agencies with a notice claiming that Defendant was in violation of Proposition 65 in
3 regard to (1) Pink Flip Flops, “Celia Collections”, “All Man Made Materials”, “Item#
4 000123453”, “Style: HGR061810-8 PNK W”, “PO Code BCXM121175030” and (2) White Flip
5 Flops with Gold Glitter Toe Strap, “Celia Collections”, “All Man Made Materials”, “Item#
6 000192462,” “Style: 2-100-1 GLD GLT,” “PO Code BCXM121177940”. CAG’s notice and the
7 Complaint in this Action allege that Defendant exposed people who handle (1) Pink Flip Flops,
8 “Celia Collections”, “All Man Made Materials”, “Item# 000123453”, “Style: HGR061810-8
9 PNK W”, “PO Code BCXM121175030” and (2) White Flip Flops with Gold Glitter Toe Strap,
10 “Celia Collections”, “All Man Made Materials”, “Item# 000192462,” “Style: 2-100-1 GLD
11 GLT,” “PO Code BCXM121177940” to DBP, without first providing clear and reasonable
12 warnings, in violation of California Health & Safety Code § 25249.6.

13 1.6 Defendant denies all of CAG’s the material allegations, including allegations
14 averred in the notices and the Complaint, and denies liability for the cause of action alleged in
15 the Complaint and in connection with the Action. By executing this Stipulated Consent
16 Judgment and agreeing to provide the relief and remedies specified herein, Defendant does not
17 admit that it has committed any violations of Proposition 65, or any other law or legal duty and
18 specifically denies that it has committed any such violations and no such admission shall be
19 deemed to have occurred as a result of Defendant’s agreement to settle and compromise the
20 Action. Defendant maintains that all Covered Products distributed, marketed and/or sold by
21 Defendant in California have at all times been in compliance with Proposition 65.

22 1.7 For purposes of this Stipulated Consent Judgment only, the Parties stipulate that
23 this Court has jurisdiction over the allegations of violations contained in CAG’s Complaint and
24 personal jurisdiction over Defendant with respect to the matters set forth in the Stipulated
25 Consent judgment, that venue is proper in the County of Los Angeles, and that this Court has
26 jurisdiction to enter this Stipulated Consent Judgment as a full and final resolution of all claims
27 which were or could have been raised in the Complaint based on the facts alleged therein.
28

1 1.8 The parties enter into this Stipulated Consent Judgment pursuant to a settlement
2 of certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and
3 costly litigation.

4 1.9 Neither this Stipulated Consent Judgment nor any of its provisions shall be
5 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation
6 of law, including without limitation, any admission concerning any violation of Proposition 65 or
7 any other statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
8 "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and
9 Safety Code section 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with
10 its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion
11 of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Defendant, its
12 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or
13 admitted as evidence in any administrative or judicial proceeding or litigation in any court,
14 agency, or forum.

15 1.10 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any
16 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
17 except as expressly provided in this Stipulated Consent Judgment. By executing this Consent
18 Judgment and agreeing to provide the relief and remedies specified herein, Defendant does not
19 admit that this Action or any other action that may be filed against it in the future under
20 Proposition 65 or any other cause of action is not preempted by Federal law. Defendant reserves
21 all of their rights and defenses with regard to any claim by any person under Proposition 65 or
22 otherwise, including the defense of federal preemption.

23 **2. COMPLIANCE – INJUNCTIVE RELIEF**

24 2.1 Defendant will cease selling the Covered Products.

25 **3. SETTLEMENT PAYMENT**

26 3.1 Within fifteen (15) days of approval of this Consent Judgment by the Court,
27 Defendant shall pay a total of fifty-three thousand dollars (\$53,000.00) (herein "Settlement
28 Payment") by separate checks apportioned as follows:

1 3.1.1 Monetary Payment in Lieu of Civil Penalty: one thousand dollars (\$1,000)
2 shall be paid to CAG in lieu of any civil penalty pursuant to California Health and Safety
3 Code § 25249.7(b). CAG will use this payment for investigation of the public’s exposure
4 to Proposition 65 listed chemicals through various means, laboratory fees for testing for
5 Proposition 65 listed chemicals, expert fees for evaluating exposures through various
6 mediums, including but not limited to consumer product, occupational, and
7 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring
8 consulting and retained experts who assist with the extensive scientific analysis necessary
9 for those files in litigation, in order to reduce the public’s exposure to Proposition 65
10 listed chemicals by notifying those persons and/or entities believed to be responsible for
11 such exposures and attempting to persuade those persons and/or entities to reformulate
12 their products or the source of exposure to completely eliminate or lower the level of
13 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in
14 the instant Action. Further, should the court require it, CAG will submit under seal, an
15 accounting of these funds as described above as to how the funds were used. The check
16 shall be made payable to “Consumer Advocacy Group, Inc.” and delivered to Reuben
17 Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly
18 Hills, California 90212.

19 3.1.2 Attorneys' Fees and Costs: Fifty thousand dollars (\$50,000) of such
20 payment shall be paid to Yeroushalmi & Associates, as CAG’s attorneys, for reasonable
21 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
25 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

26 3.1.3 Civil Penalty: Defendant shall issue two separate checks for a total
27 amount of two thousand dollars (\$2,000) as penalties pursuant to Health & Safety Code §
28 25192: (a) one check made payable to the State of California’s Office of Environmental

1 Health Hazard Assessment (OEHHA) in the amount of one thousand five-hundred dollars
2 (\$1,500.00), representing 75% of the total penalty; and (b) one check to Consumer
3 Advocacy Group, Inc. in the amount of five-hundred dollars (\$500.00), representing 25%
4 of the total penalty. Two separate 1099s shall be issued for the above payments: The first
5 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
6 0284486) in the amount of \$1,500. The second 1099 shall be issued in the amount of
7 \$500 to "Consumer Advocacy Group, Inc." and delivered to: Yeroushalmi & Associates,
8 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

9 3.1.4 Defendant does not approve nor oppose the division of Settlement
10 Payment.

11 **4. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

12 4.1 This written Stipulated Consent Judgment may only be modified by written
13 agreement of CAG and Defendant upon stipulation and Order of the Court, or after noticed
14 motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion
15 of CAG or Defendant as provided by law and upon entry of a modified Stipulated Consent
16 Judgment by the Court.

17 4.2 The Attorney General shall be served with notice of any proposed modification to
18 this Consent Judgment at least 15 days in advance of its consideration by the Court.

19 **5. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT**

20 5.1 Either party may, by motion or application for an order to show cause before the
21 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth
22 in paragraphs 8.1 and 8.2 of this Stipulated Consent Judgment, enforce the terms and conditions
23 contained in this Stipulated Consent Judgment. The prevailing party shall be entitled to its
24 reasonable attorneys' fees and costs associated with such motion or application.

25 5.2 The Parties may enforce the terms and conditions of this Consent Judgment
26 pursuant to paragraph 5.1 only after the party seeking to enforce the Stipulated Consent
27 Judgment has first given 30 days notice to the Party allegedly failing to comply with the terms
28 and conditions of the Stipulated Consent Judgment (the Notice of Non-Compliance) and has

1 attempted, in an open and good faith manner, to resolve such Party's alleged failure to comply.
2 The Notice of Non-Compliance shall identify the specific provision that the party seeking
3 enforcement alleges was violated as well as sufficient information to put the party accused of the
4 violation on notice of the scope, nature, timing and substance of the alleged violation.

5 **6. APPLICATION OF STIPULATED CONSENT JUDGMENT**

6 6.1 This Stipulated Consent Judgment shall apply to and be binding upon the
7 Parties hereto, their divisions, subdivisions and subsidiaries, officers, directors, employees,
8 agents and their successors or assigns, and to the extent allowed by law, on the general public.

9 **7. CLAIMS COVERED AND RELEASED**

10 7.1 CAG, on behalf of itself and in the public interest, hereby releases and discharges
11 Defendant, its related subsidiaries, affiliates, predecessors, successors, assigns, distributors,
12 vendors, and manufacturers, and all officers, directors, employees, and shareholders of them
13 (collectively, "Released Parties") from any and all claims asserted, or that could have been
14 asserted, in this litigation arising from the alleged failure to provide Proposition 65 warnings
15 only for the Covered Products regarding the exposure of individuals to the Noticed Chemicals in
16 the Covered Products. CAG, on behalf of itself only, hereby releases and discharges the
17 Released Parties from any and all known and unknown past, present, and future rights, claims,
18 causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and
19 attorney fees, costs, and expenses only related to or arising out of the facts and claims asserted,
20 or that could have been asserted, under state or federal law or the facts alleged in Plaintiff's
21 Proposition 65 Notices or the Complaint relating only to any and all claims concerning exposure
22 of any person to the Noticed Chemicals in the Covered Products. Compliance with the terms of
23 this Stipulated Consent Judgment shall constitute compliance by the Released Parties with
24 Proposition 65 with respect to exposures to the Noticed Chemicals contained in the Covered
25 Products. This release does not limit or affect the obligations of any party created under this
26 Stipulated Consent Judgment.

27 7.2 Unknown Claims. It is possible that other injuries, damages, liability, or claims
28 not now known to the Parties arising out of the facts alleged in the Complaint and relating to the

1 exposure of individuals to the Noticed Chemicals in the Covered Products will develop or be
2 discovered, and this Stipulated Consent Judgment is expressly intended to cover and include all
3 such injuries, damages, liability, and claims, including all rights of action therefor. CAG has full
4 knowledge of the contents of Section 1542 of the Civil Code. CAG, on behalf of itself only,
5 acknowledges that the claims released in paragraph 7.1 above may include unknown claims and
6 waives Section 1542 as to any such unknown claims. Section 1542 reads as follows:

7 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**
8 **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**
9 **OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**
10 **WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
11 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR"**

12 CAG acknowledges and understands the significance and consequences of this specific waiver of
13 Civil Code Section 1542.

14 **8. NOTICE AND CURE**

15 8.1 No action to enforce this Stipulated Consent Judgment may be commenced, and
16 no notice of violation related to the Covered Products may be served or filed against Defendant
17 by CAG, unless the party seeking enforcement or alleging violation notifies the other party of the
18 specific acts alleged to breach this Stipulated Consent Judgment at least 90 days before serving
19 or filing any motion, action, or Notice of Violation. Any notice to Defendant must contain (a) the
20 name of the product, (b) specific dates when the product was sold in California, (c) the store or
21 other place at which the product was available for sale to consumers, and (d) any other evidence
22 or other support for the allegations in the notice.

23 8.2 Within 30 days of receiving the notice described in paragraph 8.1, Defendant shall
24 either (1) take all steps necessary to bring the sale of the product into compliance under the terms
25 of this Stipulate Consent Judgment, (2) withdraw the product, or (3) refute the information
26 provided under paragraph 8.1. Should the parties be unable to resolve the dispute, either party
27 may seek relief under Section 5.

28 **9. GOVERNING LAW**

1 9.1 The terms of this Stipulated Consent Judgment shall be governed by the laws of
2 the State of California.

3 **10. PROVISION OF NOTICE**

4 10.1 All notices required pursuant to this Stipulated Consent Judgment and
5 correspondence shall be sent to the following:

6 For Consumer Advocacy Group, Inc.	For Eurostar, Inc.
7 Reuben Yeroushalmi	David Feldman
8 YEROUSHALMI & ASSOCIATES	Law Office of David Feldman
9 9100 Wilshire Boulevard, Suite 610E	100 Wilshire Blvd., Suite 950
10 Beverly Hills, CA 90212	Santa Monica, CA 90401
T: 310-623-1926	T: 310-578-7171
F: 310-623-1930	F: 310-578-7731

11 The contacts and/or addresses above may be amended by giving notice to all Parties to this
12 Consent Judgment.

13 **11. ENTIRE AGREEMENT**

14 11.1 This Stipulated Consent Judgment constitutes the sole and entire agreement and
15 understanding between the Parties with respect to the subject matter hereof, and any prior
16 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
17 merged herein and therein. There are no warranties, representations or other agreements
18 between the Parties, except as expressly set forth herein. No representations, oral or otherwise,
19 express or implied, other than those specifically referred to herein, shall be deemed to exist or
20 bind any of the Parties hereto. No supplementation, modification, waiver, or termination of this
21 Stipulated Consent Judgment shall be binding unless executed in writing by the Party to be
22 bound thereby.

23 **12. ATTORNEY GENERAL REVIEW AND COURT APPROVAL**

24 12.1 The Court shall either approve or disapprove of this Stipulated Consent Judgment
25 in its entirety, without alteration, deletion or amendment, unless otherwise so stipulated by the
26 Parties and their counsel. If this Stipulated Consent Judgment is not approved by the Court, it
27 shall be of no further force or effect.

1 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title
2 11 California Code of Regulations section 3003.

3 **13. EXECUTION AND COUNTERPARTS**

4 13.1 This Stipulated Consent Judgment may be executed in counterparts and by means
5 of facsimile, which taken together shall be deemed to constitute one document. Facsimile or pdf
6 signatures shall be construed as valid as the original.

7 **14. AUTHORIZATION**

8 14.1 Each signer of this Stipulated Consent Judgment certifies that he or she is fully
9 authorized by the party he or she represents to stipulate to the terms and conditions of this
10 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on
11 behalf of the party represented and legally bind that party. The undersigned have read,
12 understand and agree to all of the terms and conditions of this Stipulated Consent Judgment.
13 Except as explicitly provided herein, each party is to bear its own fees and costs.

14 Dated: 10-15-2012

CONSUMER ADVOCACY GROUP, INC.

Michael Marcus

16 Printed Name: Michael Marcus

17 Title: Director

18
19
20
21
22 Dated: _____

EUROSTAR, INC.

23
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25 Printed Name: _____

26 Title: _____

1 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title
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11 behalf of the party represented and legally bind that party. The undersigned have read,
12 understand and agree to all of the terms and conditions of this Stipulated Consent Judgment.
13 Except as explicitly provided herein, each party is to bear its own fees and costs.

14
15 Dated: _____


CONSUMER ADVOCACY GROUP, INC.

16
17 _____
18 Printed Name: _____

19 Title: _____

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22 Dated: 10/5/12

EUROSTAR, INC.

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25 Printed Name: ROY EINDAR

26 Title: VICE PRESIDENT

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ORDER AND JUDGMENT

Based upon the Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and Eurostar, Inc., the Consent Judgment is approved and judgment is hereby entered according to the terms herein.

Dated: _____

Judge, Superior Court of the State of California