

1 YEROUSHALMI & ASSOCIATES  
2 Reuben Yeroushalmi (SBN 193981)  
3 9100 Wilshire Boulevard, Suite 240W  
4 Beverly Hills, California 90212  
Telephone: 310) 623-1926  
Facsimile: (310) 623-1930

5 Attorneys for Plaintiff  
6 CONSUMER ADVOCACY GROUP, INC.

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

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10  
11 CONSUMER ADVOCACY GROUP,  
12 Plaintiff,  
13 v.  
14 WISE BUYS LIQUIDATORS, INC., a  
15 Delaware Corporation; MEADWESTVACO  
16 CORP., a Delaware corporation; AMERICAN  
17 FAVORITE TOOLS, INC., a California  
18 Corporation; A.D. SUTTON & SONS, a New  
19 York Corporation; and DOES 1-50,  
20 Defendant.

Case No. BC495382  
Assigned For All Purposes To The  
Honorable Kevin Brazile  
UNLIMITED JURISDICTION  
[PROPOSED] CONSENT JUDGMENT

21 1. INTRODUCTION

22 1.1 This Consent Judgment is entered into by and between plaintiff Consumer  
23 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and  
24 defendant ACCO Brands Corporation, as successor-in-interest to MeadWestvaco Corporation  
25 ("ACCO"), with each a Party and collectively referred to as "Parties."

26 1.2 ACCO employs ten or more persons, is a person in the course of doing business  
27 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
28 & Safety Code §§ 25249.6 et seq. ("Proposition 65") that distributes or sells daily organizers.  
Di(2-ethylhexyl)phthalate ("DEHP") is known to the State of California to cause birth defects or  
other reproductive harm.

1           1.3    **Notice.** On or about March 15, 2012, CAG served ACCO and various public  
2 enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that  
3 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
4 failing to warn individuals in California of exposures to DEHP contained in daily organizers sold  
5 by ACCO. No public enforcer has commenced or diligently prosecuted the allegations set forth  
6 in the Notice.

7           1.4    **Complaint.** On November 8, 2012, CAG filed a Complaint for civil penalties and  
8 injunctive relief ("Complaint") in Los Angeles, Superior Court, Case No. BC495382, against  
9 ACCO and other defendants. The Complaint alleges, among other things, that ACCO violated  
10 Proposition 65 by failing to give clear and reasonable warnings of exposure to DEHP from daily  
11 organizers. Upon entry of this Consent Judgment, the Complaint shall be deemed amended to  
12 name ACCO as successor-in-interest to MeadWestvaco Corporation.

13           1.5    **Consent to Jurisdiction** For purposes of this Consent Judgment, the parties  
14 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
15 Complaint and personal jurisdiction over ACCO as to the acts alleged in the Complaint, that  
16 venue is proper in the County of Los Angeles and that this Court has jurisdiction to enter this  
17 Consent Judgment as a full settlement and resolution of the allegations contained in the  
18 Complaint and of all claims which were or could have been raised by any person or entity based  
19 in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or  
20 related to.

21           1.6    **No Admission.** This Consent Judgment resolves claims that are denied and  
22 disputed. The parties enter into this Consent Judgment pursuant to a full and final settlement of  
23 any and all claims between the parties for the purpose of avoiding prolonged litigation. This  
24 Consent Judgment shall not constitute an admission with respect to any material allegation of the  
25 Complaint, each and every allegation of which ACCO denies, nor may this Consent Judgment or  
26 compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on  
27 the part of ACCO.

28

1    **2.    DEFINITIONS**

2            2.1    “Accessible Component” means a component of a Covered Product that could be  
3 touched by a person during normal and reasonably foreseeable use.

4            2.2    “Covered Products” means daily organizers sold only by ACCO.

5            2.3    “Effective Date” means the date that this Consent Judgment is approved by the  
6 Court.

7    **3.    INJUNCTIVE RELIEF/REFORMULATION.**

8            3.1    On or after the Effective Date, ACCO shall not purchase, import, manufacture,  
9 distribute, sell, or offer for sale Covered Products intended for sale to California consumers if the  
10 Covered Product contains more than 1,000 per million (“ppm”) DEHP by weight.

11   **4.    SETTLEMENT PAYMENT**

12            4.1    **Settlement Amount:** ACCO shall pay the total sum of \$30,000 as a settlement  
13 payment in full and complete settlement of all monetary claims by CAG related to the Notice, as  
14 follows.

15                    4.1.1   **Reimbursement of Attorney’s Fees and Costs:** ACCO shall pay \$28,000  
16 to “Yeroushalmi & Associates” as reimbursement for the investigation fees and costs,  
17 testing costs, expert fees, attorney fees, and other litigation costs and expenses for all work  
18 performed through the approval of this Consent Judgment.

19                    4.1.2   **Civil Penalty:** Defendant shall issue two separate checks for a total  
20 amount of \$1,000 as penalties pursuant to Health & Safety Code § 25192: (a) one check  
21 made payable to the State of California’s Office of Environmental Health Hazard  
22 Assessment (OEHHA) in the amount of \$750.00, representing 75% of the total penalty;  
23 and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$250.00,  
24 representing 25% of the total penalty. Two separate 1099s shall be issued for the above  
25 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA  
26 95184 (EIN: 68-0284486) in the amount of \$750.00. The second 1099 shall be issued in  
27 the amount of \$250.00 to CAG and delivered to: Yeroushalmi & Associates, 9100  
28 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

1           4.1.3 **Payment In Lieu of Civil Penalties:** ACCO shall pay \$1,000 in lieu of  
2 civil penalties to "Consumer Advocacy Group, Inc." CAG will use the payments for such  
3 projects and purposes related to environmental protection, worker health and safety, or  
4 reduction of human exposure to hazardous substances , including but not limited to,  
5 administrative and litigation costs and fees (excluding attorneys' fees), laboratory fees for  
6 testing samples for Proposition 65 listed chemicals, expert fees for evaluating exposures  
7 and merit to each potential violation of Proposition 65, and the substantial cost of hiring  
8 consulting and retained experts who assist with the extensive scientific analysis necessary  
9 for those files in litigation.

10           4.2 **Delivery of Payments:** Payments shall be delivered within 10 days of the  
11 Effective Date to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite  
12 610E, Beverly Hills, CA 90212.

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

14           5.1 This Consent Judgment is a full, final, and binding resolution between CAG on  
15 behalf of itself and in the public interest and ACCO and its officers, directors, insurers,  
16 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
17 companies and their predecessors, successors, and assigns including but not limited to  
18 MeadWestvaco Corporation ("Defendant Releasees") and each of their suppliers, customers,  
19 distributors, wholesalers, retailers, or any other person in the course of doing business, and the  
20 successors and assigns of any of them, who may use, maintain, distribute or sell Covered  
21 Products ("Downstream Defendant Releasees"), for all claims for violations of Proposition 65 up  
22 through the Effective Date based on exposure to DEHP from Covered Products as set forth in the  
23 Notice. ACCO's and Defendant Releasees' compliance with this Consent Judgment shall  
24 constitute compliance with Proposition 65 with respect to DEHP from the Covered Products as  
25 set forth in the Notices.

26           5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
27 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
28 indirectly, any form of legal action and releases all claims, including, without limitation, all

1 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
2 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert  
3 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or  
4 contingent (collectively "Claims"), against ACCO, Defendant Releasees, and Downstream  
5 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
6 common law regarding the failure to warn about exposure to DEHP in Covered Products. In  
7 furtherance of the foregoing, as to alleged exposures to Covered Products, CAG hereby waives  
8 any and all rights and benefits which it now has, or in the future may have, conferred upon it with  
9 respect to the Claims by virtue of the provisions of section 1542 of the California Civil Code,  
10 which provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
13 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
14 KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS  
15 SETTLEMENT WITH THE DEBTOR.

16 CAG understands and acknowledges that the significance and consequence of this waiver of  
17 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
18 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,  
19 including but not limited to any exposure to, or failure to warn with respect to exposure to, DEHP  
20 or DEHP compounds from Covered Products, CAG will not be able to make any claim for those  
21 damages against ACCO, Defendant Releasees, or Downstream Defendant Releasees.  
22 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may  
23 exist as of the date of this release but which CAG does not know exist, and which, if known,  
24 would materially affect its decision to enter into this Consent Judgment, regardless of whether its  
25 lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

## 26 6. ENFORCEMENT OF JUDGMENT

27 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
28 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
California, Los Angeles County, giving the notice required by law, enforce the terms and  
conditions contained herein. A Party may enforce any of the terms and conditions of this Consent

1 Judgment only after that Party first provides 30 days' notice to the Party allegedly failing to  
2 comply with the terms and conditions of this Consent Judgment and attempts to resolve such  
3 Party's failure to comply in an open and good faith manner.

4 6.2 In any proceeding brought by either Party to enforce this Consent Judgment, such  
5 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
6 violation of Proposition 65 or this Consent Judgment.

7 **7. ENTRY OF CONSENT JUDGMENT**

8 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
9 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
10 ACCO waive their respective rights to a hearing or trial on the allegations of the Complaint, and  
11 CAG shall dismiss MeadWestvaco Corporation from the complaint with prejudice.

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

20 **8. MODIFICATION OF JUDGMENT**

21 8.1 This Consent Judgment may be modified only upon written agreement of the  
22 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
23 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

24 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
25 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

26 **9. RETENTION OF JURISDICTION**

27 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
28 terms of this Consent Judgment.

1 **10. DUTIES LIMITED TO CALIFORNIA**

2 10.1 This Consent Judgment shall have no effect on Covered Products sold by ACCO  
3 outside the State of California.

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

5 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, and the  
6 motion for approval of this Consent Judgment on the California Attorney General in accordance  
7 with 11 C.C.R. § 3003.

8 **12. ATTORNEY FEES**

9 12.1 Except as specifically provided in Section 4.1.1, each Party shall bear its own costs  
10 and attorney fees in connection with this action.

11 **13. ENTIRE AGREEMENT**

12 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
13 of the parties with respect to the entire subject matter hereof and any and all prior discussions,  
14 negotiations, commitments and understandings related hereto. No representations, oral or  
15 otherwise, express or implied, other than those contained herein have been made by any party  
16 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
17 deemed to exist or to bind any of the parties.

18 **14. GOVERNING LAW**

19 14.1 The validity, construction and performance of this Consent Judgment shall be  
20 governed by the laws of the State of California, without reference to any conflicts of law  
21 provisions of California law.

22 14.2 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 or  
26 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
27 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
28 agrees that any statute or rule of construction providing that ambiguities are to be resolved against

1 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
2 this regard, the Parties hereby waive California Civil Code § 1654.

3 **15. EXECUTION AND COUNTERPARTS**

4 15.1 This Consent Judgment may be executed in counterparts and by means of  
5 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
6 one document.

7 **16. NOTICES**

8 16.1 Any notices under this Consent Judgment shall be by personal delivery, overnight  
9 courier, or First Class Mail.

10 If to CAG:

11 Reuben Yeroushalmi, Esq.  
12 Yeroushalmi & Associates  
13 9100 Wilshire Boulevard, Suite 240W  
14 Beverly Hills, CA 90212  
15 Tel: (310) 623-1926

16 If to ACCO:

17 General Counsel  
18 ACCO Brands Corporation  
19 300 Tower Parkway  
20 Lincolnshire, IL 60069

21 With a copy to:

22 Jeffrey B. Margulies, Esq.  
23 Fulbright & Jaworski LLP  
24 555 South Flower Street, 41<sup>st</sup> Floor  
25 Los Angeles, CA 90071  
26 Tel: (213) 892-9286

27 **17. AUTHORITY TO STIPULATE**

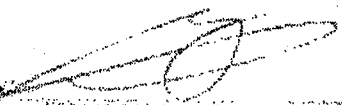
28 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
the party represented and legally to bind that party.



1 AGREED TO:

2 Date: January 13, 2014

3 Feb

4 By:   
5 Plaintiff CONSUMER ADVOCACY  
6 GROUP, INC.

AGREED TO:

Date: January 2014

By:  
Defendant ACCO BRANDS CORPORATION

7 IT IS SO ORDERED.

8 Date:

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date: January \_\_, 2014

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

IT IS SO ORDERED.

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

AGREED TO:

Date: <sup>February 12</sup> January \_\_, 2014

By: Paralel R. Schmeider  
Defendant ACCO BRANDS CORPORATION

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT