

1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 **YEROUSHALMI & ASSOCIATES**
5 9100 Wilshire Boulevard, Suite 240W
6 Beverly Hills, California 90212
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9 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **LOS ANGELES – CENTRAL DISTRICT**

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

15 Plaintiff,

16 v.

17 PANACHE FOR THE BATH, INC., a New
18 York Corporation, BETTER HOME
19 PLASTICS CORP., a New Jersey
20 Corporation, ROSS DRESS FOR LESS,
21 INC., a Delaware Corporation; ROSS
22 STORES, INC., a Delaware Corporation;
23 NATIONAL STORES, INC., a California
24 Corporation; and DOES 1-20;

25 Defendants.

CASE NO. BC501008

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Judge: Hon. Michelle
Rosenblatt

Dept: 40

Complaint Filed: February 14, 2013

26 **1. INTRODUCTION**

27 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
28 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the interest of the
public, and defendant, Better Home Plastics Corp. (hereinafter referred to as “Better Home” or
Defendant), with each referred to as a “Party” and collectively referred to as “Parties.”

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2 **1.2 Defendants and Products**

3 1.2.1 Better Home employs ten or more persons, is a person in the course of
4 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
5 California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”), and causes to be
6 manufactured, distributed, or sells Shower Curtains, including “Panache for the Bath ‘Hotel
7 Collection’ Super Clear Shower Curtain/Liner ‘Size 70 x 72’”, and “Panache for the Bath Vinyl
8 Shower Curtain Liner, ‘HEAVYWEIGHT VINYL’, ‘70 in x 72 in’, barcode: 6 89555 10804 3”;
9 Placemats, including “Domestics Tabletop-Tabletop linens, ‘100% PVC’, ‘700NS’, ‘24/1 BAS
10 G’, ‘9153107’, ‘Made in China’, ‘Other Stores 2.99 Our Price \$1.49’ RN#57936 (shell shaped)”,
11 “Domestics Tabletop-Tabletop linens, ‘100% PVC’, ‘700NS’, ‘24/1 BAS G’, ‘9153107’, ‘Made
12 in China’, ‘Other Stores 2.99 Our Price \$1.49’ RN#57936 (octagon shaped)”, “Black Vinyl
13 Placemat 100% PVC Made in China RN# 57936 Measurements: 17 ¼” x 11 ¼””, and “Yellow
14 Vinyl Placemat Measurements: 17 ½” x 11 ½””; Tablecloth Protectors, including “Better Home
15 Tablecloth Protector, ‘Window Clear Vinyl’, ‘Size 70” Round’, ‘Made in China’, ©2010 Better
16 Home Plastics Corp. Palisades Park, N.J. 07650, barcode: 0 44712 07610 6, dd’s DISCOUNTS
17 tag: ‘N’, ‘0055’, ‘245 D5178 C4325’ ’16 TABLE L’ ‘400087712603”.

18
19 **1.3 Chemical Of Concern**

20 1.3.1 Diethyl hexyl phthalate (“DEHP”) is known to the State of California to
21 cause cancer and/or birth defects or other reproductive harm.

22 **1.4 Notices of Violation.**

23 1.4.1 On or about March 15, 2012, CAG served Panache For The Bath,
24 Inc. (“Panache”), Ross Dress For Less, Inc. (“Ross Dress”), Ross Stores, Inc. (“Ross Stores”) and
25 various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the
26 “March 15, 2012 Notice”) that provided the recipients with notice of alleged violations of Health
27 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP in
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1 Shower Curtains, including but not limited to “Panache for the Bath ‘Hotel Collection’ Super
2 Clear Shower Curtain/Liner ‘Size 70 x 72’”. No public enforcer has commenced or diligently
3 prosecuted the allegations set forth in the March 15, 2012 Notice.

4 1.4.2 On or about June 7, 2012, CAG served Better Home, Uka’s Big Saver
5 Foods, Inc. (“Big Saver”), and various public enforcement agencies with a document entitled
6 “60-Day Notice of Violation” (the “June 7, 2012 Notice”) that provided the recipients with
7 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
8 California of exposures to DEHP in Vinyl Placemats, including but not limited to “Black Vinyl
9 Placemat 100% PVC Made in China RN# 57936 Measurements: 17 ¼” x 11 ¼”” and “Yellow
10 Vinyl Placemat Measurements: 17 ½” x 11 ½””. No public enforcer has commenced or
11 diligently prosecuted the allegations set forth in the June 7, 2012 Notice.

12 1.4.3 On or about November 14, 2012, CAG served Panache, Better Home, and
13 various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the
14 “November 14, 2012 Notice”) that provided the recipients with notice of alleged violations of
15 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
16 DEHP contained in Shower Curtains, including but not limited to “Panache for the Bath ‘Hotel
17 Collection’ Super Clear Shower Curtain/Liner ‘Size 70 x 72’”. No public enforcer has
18 commenced or diligently prosecuted the allegations set forth in the November 14, 2012 Notice.

19 1.4.4 On or about April 4, 2013, CAG served Better Home, National Stores, Inc.
20 (“National Stores”), and various public enforcement agencies with a document entitled dated
21 “60-Day Notice of Violation” (the “April 4, 2013 Notice”) that provided the recipients with
22 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
23 California of exposures to DEHP contained in Placemats, including but not limited to,
24 “Domestics Tabletop-Tabletop liners, ‘100% PVC’, ‘700NS’, ‘24/1 BAS G’, ‘9153107’, ‘Made
25 in China’, ‘Other Stores 2.99 Our Price \$1.49’ RN#57936 (shell shaped)” and “Domestics
26 Tabletop-Tabletop liners, ‘100% PVC’, ‘700NS’, ‘24/1 BAS G’, ‘9153107’, ‘Made in China’,
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1 'Other Stores 2.99 Our Price \$1.49' RN#57936 (octagon shaped)". No public enforcer has
2 commenced or diligently prosecuted the allegations set forth in the April 4, 2013 Notice.

3 1.4.5 On or about May 10, 2013, CAG served Panache, Better Home, Ross
4 Stores, Ross Dress, and various public enforcement agencies with a document entitled "60-Day
5 Notice of Violation" (the "May 10, 2013 Notice") that provided the recipients with notice of
6 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
7 California of exposures to DEHP contained in Shower Curtain Liners including but not limited to
8 "Panache for the Bath Vinyl Shower Curtain Liner, 'HEAVYWEIGHT VINYL', '70 in x 72 in',
9 barcode: 6 89555 10804 3". No public enforcer has commenced or diligently prosecuted the
10 allegations set forth in the May 10, 2013 Notice.

11 1.4.6 On or about August 1, 2013, CAG served Better Home, Ross Stores, Ross
12 Dress, and various public entities with a document entitled "60 Day Notice of Violation" (the
13 "August 1, 2013 Notice") that provided the recipients with notice of alleged violations of Health
14 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP
15 contained in Tablecloth Protectors, including but not limited to, "Better Home Tablecloth
16 Protector, 'Window Clear Vinyl', 'Size 70" Round', 'Made in China', ©2010 Better Home
17 Plastics Corp. Palisades Park, N.J. 07650, barcode: 0 44712 07610 6, dd's DISCOUNTS tag:
18 'N', '0055', '245 D5178 C4325' '16 TABLE L' '400087712603". No public enforcer has
19 commenced or diligently prosecuted the allegations set forth in the August 1, 2013 Notice.
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21 **1.5 Complaint.**

22 On February 14, 2013, CAG filed a Complaint for civil penalties and injunctive relief
23 ("Complaint") in Los Angeles Superior Court, Case No. BC501008. CAG later amended the
24 Complaint filing a First Amended Complaint ("FAC") against Panache, Better Home, Ross
25 Stores, Ross Dress, and National Stores (collectively "Defendants") on or about November 12,
26 2013. Also, CAG filed a Complaint for civil penalties and injunctive relief ("Related
27 Complaint") in Los Angeles Superior Court, Case No. BC503799, against Better Home and Big
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1 Saver. The Complaint, FAC, and Related Complaint allege, among other things, that Defendant
2 violated Proposition 65 by failing to give clear and reasonable warnings of exposure to DEHP
3 from the Covered Products.

4 **1.6 Consent to Jurisdiction**

5 For purposes of this Consent Judgment, the Parties stipulate that this Court has
6 jurisdiction over the allegations of violations contained in the Complaint, FAC, and Related
7 Complaint, and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
8 FAC, and Related Complaint, that venue is proper in the County of Los Angeles and that this
9 Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the
10 allegations contained in the Complaint, FAC, and Related Complaint and of all claims which
11 were or could have been raised by any person or entity based in whole or in part, directly or
12 indirectly, on the facts alleged therein or arising therefrom or related thereto.

13 **1.7 No Admission**

14 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
15 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
16 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
17 shall be construed as an admission by the Parties of any material allegation of the Complaint
18 (each and every allegation of which Defendant denies), any fact, conclusion of law, issue of law
19 or violation of law, including without limitation, any admission concerning any violation of
20 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or the
21 meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as
22 used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor
23 compliance with its terms, shall constitute or be construed as an admission by the Parties of any
24 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
25 any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations,
26 or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in
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1 any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice,
2 waive or impair any right, remedy, argument, or defense the Parties may have in any other or
3 future legal proceeding, except as expressly provided in this Consent Judgment.

4 **2. DEFINITIONS**

5 2.1 "Covered Products" means Shower Curtains, including "Panache for the Bath
6 'Hotel Collection' Super Clear Shower Curtain/Liner 'Size 70 x 72'", and "Panache for the Bath
7 Vinyl Shower Curtain Liner, 'HEAVYWEIGHT VINYL', '70 in x 72 in', barcode: 6 89555
8 10804 3"; Placemats, including "Domestics Tabletop-Tabletop linens, '100% PVC', '700NS',
9 '24/1 BAS G', '9153107', 'Made in China', 'Other Stores 2.99 Our Price \$1.49' RN#57936
10 (shell shaped)" and "Domestics Tabletop-Tabletop linens, '100% PVC', '700NS', '24/1 BAS G',
11 '9153107', 'Made in China', 'Other Stores 2.99 Our Price \$1.49' RN#57936 (octagon shaped)",
12 "Black vinyl Placemat 100% PVC Made in China RN# 57936 Measurements: 17 ¼" x 11 ¼""",
13 and "Yellow Vinyl Placemat Measurements: 17 ½" x 11 ½""; Tablecloth Protectors, including
14 "Better Home Tablecloth Protector, 'Window Clear Vinyl', 'Size 70" Round', 'Made in China',
15 ©2010 Better Home Plastics Corp. Palisades Park, N.J. 07650, barcode: 0 44712 07610 6, dd's
16 DISCOUNTS tag: 'N', '0055', '245 D5178 C4325' '16 TABLE L' '400087712603"
17 manufactured, distributed, or sold only by Better Home. "Covered Products" are limited to those
18 Covered Products sold only by Defendant.

19 2.2 "Effective Date" means the date that this Consent Judgment is signed by all
20 Parties.

21 2.5 "Notices" means the March 15, 2012, June 6, 2012, November 14, 2012, April 4,
22 2013, May 10, 2013, and August 1, 2013 60 Day Notices of Violation sent by CAG as specified
23 in Section 1.4 above.

24 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
25 **WARNINGS.**

26 3.1 As of the Effective Date, Defendant will not manufacture, distribute, or sell the
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1 Covered Products in California unless the Covered Products have been reformulated to contain
2 less than 0.1% by weight of DEHP. Any existing products remaining in Defendant's inventory
3 should have compliant Proposition 65 warnings.

4 **4. SETTLEMENT PAYMENT**

5 **4.1 Payment and Due Date:** Within ten (10) business days of the approval of the
6 Consent Judgment, Defendant shall pay a total of seventy thousand dollars and zero cents
7 (\$70,000) in full and complete settlement of all monetary claims by CAG related to the Notices,
8 as follows:

9 **4.1.1 Civil Penalty:** Defendant shall issue separate checks totaling three
10 thousand dollars (\$3,000) as penalties pursuant to Health & Safety Code § 25249.12:

11 (a) Defendant will issue a check made payable to the State of California's
12 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of two thousand
13 two hundred and fifty dollars (\$2,250) representing 75% of the total penalty and Defendant will
14 issue a check to "Consumer Advocacy Group, Inc." in the amount of seven hundred and fifty
15 dollars (\$750) representing 25% of the total penalty; and

16 (b) Separate 1099s shall be issued for each of the above payments:
17 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
18 0284486) in the amount of \$2,250. Defendant will also issue a 1099 to CAG c/o Yeroushalmi &
19 Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

20 **4.1.2 Payment In Lieu of Civil Penalties:** Defendant shall pay two thousand
21 dollars (\$2,000) in lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG will use
22 this payment for investigation of the public's exposure to Proposition 65 listed chemicals
23 through various means, including laboratory fees for testing for Proposition 65 listed chemicals,
24 administrative costs and fees related to such activities, expert fees for evaluating exposures
25 through various mediums, including but not limited to consumer product, occupational, and
26 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting
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1 and retained experts who assist with the extensive scientific analysis necessary for those files in
2 litigation, as well as administrative costs and fees related to such activities in order to reduce the
3 public's exposure to Proposition 65 listed chemicals by notifying those persons and/or entities
4 believed to be responsible for such exposures and attempting to persuade those persons and/or
5 entities to reformulate their products or the source of exposure to completely eliminate or lower
6 the level of Proposition 65 listed chemicals, thereby addressing the same public harm as
7 allegedly in the instant Action. Further, should the court require it, CAG will submit under seal,
8 an accounting of these funds as described above as to how the funds were used. The check shall
9 be made payable to "Consumer Advocacy Group, Inc." and delivered to Reuben Yeroushalmi,
10 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California
11 90212.

12 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall pay
13 sixty-five thousand dollars (\$65,000) to "Yeroushalmi & Associates" as reimbursement for
14 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
15 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a
16 settlement in the public interest. The check shall be made payable to "Yeroushalmi &
17 Associates" and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire
18 Boulevard, Suite 240W, Beverly Hills, California 90212.

19 **4.2** All payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
20 Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

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

22 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on
23 behalf of itself and in the public interest and Defendant and its officers, directors, insurers,
24 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
25 companies and their successors and assigns ("Defendant Releasees"), including but not limited to
26 each of its suppliers, customers, distributors, wholesalers, retailers, including Panache, Ross
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1 Stores, Ross Dress, National Stores, Big Saver 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 ("Downstream Defendant Releasees"), for all claims for violations of
4 Proposition 65 up through the Effective Date based on exposure to DEHP from Covered
5 Products as set forth in the Notice. Defendant and Downstream Defendant Releasees'
6 compliance with this Consent Judgment shall constitute compliance with Proposition 65 with
7 respect to DEHP from Covered Products as set forth in the Notice. Nothing in this Section
8 affects CAG's right to commence or prosecute an action under Proposition 65 against any person
9 other than Defendant Releasees or Downstream Defendant Releasees.

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

1 KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS
2 OR HER SETTLEMENT WITH THE 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, Claims arising from any
6 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
7 about exposure to DEHP from the Covered Products, including but not limited to any exposure
8 to, or failure to warn with respect to exposure to DEHP from the Covered Products, CAG will
9 not be able to make any claim for those damages against Released Parties. Furthermore, CAG
10 acknowledges that it intends these consequences for any such Claims arising from any violation
11 of Proposition 65 or any other statutory or common law regarding the failure to warn about
12 exposure to DEHP from Covered Products as may exist as of the date of this release but which
13 CAG does not know exist, and which, if known, would materially affect their decision to enter
14 into this Consent Judgment, regardless of whether their lack of knowledge is the result of
15 ignorance, oversight, error, negligence, or any other cause.

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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, Los Angeles County, giving the notice required by law, enforce the terms and
21 conditions contained herein. A Party may enforce any of the terms and conditions of this
22 Consent Judgment only after that Party first provides 90 days notice to the Party allegedly failing
23 to comply with the terms and conditions of this Consent Judgment and attempts to resolve such
24 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 the terms of this Consent Judgment, CAG shall provide a Notice of
27 Violation ("NOV") to Defendant. The NOV shall include for each of the Covered Products: the

1 date(s) the alleged violation(s) was observed and the location at which the Covered Products
2 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
3 Covered Products, including an identification of the component(s) of the Covered Products that
4 were tested.

5 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
6 alleged violation if, within 60 days of receiving such NOV, Defendant serves a Notice of
7 Election (“NOE”) that meets one of the following conditions:

8 (a) The Covered Products were shipped by Defendant for sale in
9 California before the Effective Date, or

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

16 **6.2.2 Contested NOV.** Defendant may serve an NOE informing CAG of its
17 election to contest the NOV within 30 days of receiving the NOV.

18 (a) In its election, Defendant may request that the sample(s) Covered
19 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
20 laboratory.

21 (b) If the confirmatory testing establishes that the Covered Products do
22 not contain DEHP in excess of the levels allowed in Section 3.1, above, CAG shall take
23 no further action regarding the alleged violation. If the testing does not establish
24 compliance with Section 3.1, above, Defendant may withdraw its NOE to contest the
25 violation and may serve a new NOE pursuant to Section 6.2.1.
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1 (c) If Defendant does not withdraw an NOE to contest the NOV, the
2 Parties shall meet and confer for a period of no less than 30 days before CAG may seek
3 an order enforcing the terms of this Consent Judgment.

4 6.3 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 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint,
11 Related Complaint, and FAC.

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

2 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
3 terms of this Consent Judgment.

4 **10. DUTIES LIMITED TO CALIFORNIA**

5 10.1 This Consent Judgment shall have no effect on Covered Products sold by
6 Defendant outside the State of California.

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

8 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
9 California Attorney General so that the Attorney General may review this Consent Judgment
10 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
11 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
12 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
13 the parties may then submit it to the Court for approval.

14 **12. ATTORNEY FEES**

15 12.1 Except as specifically provided in Section 4.1.3, each Party shall bear its own
16 costs and attorney fees in connection with this action.

17 **13. ENTIRE AGREEMENT**

18 13.1 This Consent Judgment contains the sole and entire agreement and understanding
19 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
20 negotiations, commitments and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any party
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
23 deemed to exist or to bind any of the Parties.
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1 **14. GOVERNING LAW**

2 14.1 The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.

5 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of
6 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
7 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
8 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
9 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
10 subject to this Consent Judgment may provide written notice to CAG of any asserted change in
11 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,
12 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
13 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state
14 or federal law or regulation.

15 14.3 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.
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1 **15. EXECUTION AND COUNTERPARTS**

2 15.1 This Consent Judgment may be executed in counterparts and by means of
3 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
4 one document and have the same force and effect as original signatures.

5 **16. NOTICES**

6 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
7 Class Mail.

8
9 If to CAG:

10 Reuben Yeroushalmi
11 9100 Wilshire Boulevard, Suite 240W
12 Beverly Hills, CA 90212
13 (310) 623-1926

14 If to Better Home Plastics, Corp.:

15 Ronald Haboush, Current President or CEO
16 Better Home Plastics, Corp.
17 439 Commercial Ave.
18 Palisade Park, NJ 07650

19 With a copy to:

20 Laura P. Worsinger, Esq.
21 Dykema Gossett, PLLC
22 333 South Grand Avenue, Suite 2100
23 Los Angeles, California 90071

24 **17. AUTHORITY TO STIPULATE**

25 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
26 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
27 of the party represented and legally to bind that party.
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1 AGREED TO:

2 Date: 6-2, 2014

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4 Name: Michael Sisson

5 Title: EXECUTIVE DIRECTOR
6 CONSUMER ADVOCACY GROUP,
7 INC.

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
BETTER HOME PLASTICS, CORP.

13 **IT IS SO ORDERED.**

15 Date: _____

JUDGE OF THE SUPERIOR COURT

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Ronald Haboush, Current President or CEO
Better Home Plastics, Corp.
439 Commercial Ave.
Palisade Park, NJ 07650

With a copy to:

Laura P. Worsinger, Esq.
Dykema Gossett, PLLC
333 South Grand Avenue, Suite 2100
Los Angeles, California 90071

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: _____, 2014

Date: 5-29, 2014

Name: _____

Name: Ronald Haboush

Title: _____
CONSUMER ADVOCACY GROUP,
INC.

Title: PRESIDENT
BETTER HOME PLASTICS, CORP.

IT IS SO ORDERED.