

1 Reuben Yeroushalmi (SBN 193981)  
Daniel D. Cho (SBN 105409)  
2 Ben Yeroushalmi (SBN 232540)  
YEROUSHALMI & ASSOCIATES  
3 9100 Wilshire Boulevard, Suite 610E  
Beverly Hills, California 90212  
4 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 ALAMEDA

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

12 Plaintiff,

13 v.

14 SPRINGS GLOBAL US, INC., a Delaware  
15 Corporation, ROSS DRESS FOR LESS, INC.,  
a Virginia Corporation, ROSS STORES, INC.,  
16 an Delaware Corporation, and DOES 1-50,  
Defendants

Case No RG13664087

**STIPULATED CONSENT JUDGMENT  
AND ORDER**

Health & Safety Code § 25249.5 *et seq*

ACTION FILED: January 18, 2013  
TRIAL DATE: None set

17  
18  
19 **1. INTRODUCTION**

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

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

1           **1.3 Notice of Violation**

2           On July 12, 2012, CAG served Defendant, and various public enforcement agencies with  
3 a document entitled "60-Day Notice of Violation" ("July 12, 2012 Notice") that provided the  
4 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
5 individuals in California of exposures to DEHP contained in Covered Products sold by  
6 Defendant. No public enforcer has commenced or diligently prosecuted the allegations set forth  
7 in the July 12, 2012 Notice

8           **1.4 Complaint.**

9           On January 18, 2013, CAG filed a Complaint for civil penalties and injunctive relief  
10 ("Complaint") in Alameda Superior Court, Case No. RG13664087, against Defendant and other  
11 entities. The Complaint alleges, among other things, that Defendant violated Proposition 65 by  
12 failing to give clear and reasonable warnings of exposure to DEHP from Covered Products

13           **1.5 Consent to Jurisdiction**

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

21           **1.6 No Admission**

22           This Consent Judgment resolves claims that are denied and disputed. The Parties enter  
23 into this Consent Judgment pursuant to a full and final settlement of any and all claims between  
24 the parties for the purpose of avoiding prolonged litigation. Defendant reserves all of its rights  
25 and defenses with regard to any claim by any person under Proposition 65 or otherwise.  
26 Nothing in this Stipulated Consent Judgment shall be construed as an admission by the Parties of  
27 any fact, conclusion of law, issue of law or violation of law, including without limitation, any  
28 admission concerning any violation of Proposition 65 or any other statutory, regulatory, common

1 law, or equitable doctrine, or the meaning of the terms "knowingly and intentionally expose" or  
2 "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in  
3 this Stipulated Consent Judgment, nor compliance with its terms, shall constitute or be construed  
4 as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or  
5 of fault, wrongdoing, or liability by Defendant, or its respective officers, directors, employees, or  
6 parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any  
7 administrative or judicial proceeding or litigation in any court, agency, or forum.

## 8 2. DEFINITIONS

9 2.1 "Covered Products" sold by Springs Global means Vinyl Shower Curtains. This  
10 consent judgment is limited to the products only sold by Springs Global.

11 2.2 "Effective Date" means 10 days from the date that this Consent Judgment is  
12 approved by the Court.

13 2.3 "DEHP" means Di (2-ethylhexyl) Phthalate.

14 2.4 "Notice" means the July 12, 2012 Notice.

## 15 3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE 16 WARNINGS.

17 3.1 As of the Effective Date, Defendant agrees to reformulate Products its Covered  
18 Products sold in California to contain less than one-tenth of one percent (.001) DEHP

19 3.2 As of the Effective Date, Defendant agrees to affix any Covered Products already in  
20 the market with appropriate Proposition 65 warning labels.

## 21 4. SETTLEMENT PAYMENT

22 4.1 Within 14 days of the Effective Date or receipt of Forms W-9 from CAG,  
23 whichever is later, Defendant shall pay a total of \$55,000 in full and complete settlement of all  
24 monetary claims by CAG related to the Notices, as follows.

25 4.2 **Payment In Lieu of Civil Penalties:** Defendant shall pay \$7,000 in lieu of civil  
26 penalties to "Consumer Advocacy Group, Inc." CAG will use the payment for such projects and  
27 purposes related to environmental protection, worker health and safety, or reduction of human  
28

1 exposure to hazardous substances (including administrative and litigation costs arising from such  
2 projects), as CAG may choose.

3       **4.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall pay \$38,000 to  
4 “Yeroushalmi & Associates” as reimbursement for the investigation fees and costs, testing costs,  
5 expert fees, attorney fees, and other litigation costs and expenses for all work performed through  
6 the approval of this Consent Judgment

7       **4.4 Civil Penalty:** Defendant shall issue two separate checks for a total amount of ten  
8 thousand dollars (\$10,000) as penalties pursuant to Health & Safety Code § 25249 12: (a) one  
9 check made payable to the State of California’s Office of Environmental Health Hazard  
10 Assessment (OEHHA) in the amount of \$7,500, representing 75% of the total penalty; and  
11 (b) one check to Consumer Advocacy Group, Inc. in the amount of \$2,500, representing 25% of  
12 the total penalty Two separate 1099s shall be issued for the above payments: The first 1099 shall  
13 be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount  
14 of \$7,500. The second 1099 shall be issued in the amount of \$2,500 to CAG and delivered to:  
15 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California  
16 90212.

17       **4.5 Payments shall be delivered to:** Reuben Yeroushalmi, Yeroushalmi & Associates,  
18 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

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

20       **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on  
21 behalf of itself and in the public interest and Defendant and its officers, directors, insurers,  
22 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
23 companies and their successors and assigns (“Defendant Releasees”) and each of their suppliers,  
24 customers, distributors, wholesalers, retailers, including or any other person in the course of doing  
25 business, and the successors and assigns of any of them who may use, maintain, distribute or sell  
26 Covered Products, and all persons and entities who are downstream in the stream of commerce  
27 from Creative who sell or distribute the Covered Products, and all their affiliates (“Downstream  
28 Defendant Releasees”), for all claims for violations of Proposition 65 up through the Effective

1 Date based on exposure to DEHP from Covered Products as set forth in the Notices. Defendant  
2 and Defendant Releasees' compliance with this Consent Judgment shall constitute compliance  
3 with Proposition 65 with respect to DEHP from the Covered Products as set forth in the Notices

4 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
5 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
6 indirectly, any form of legal action and releases all claims, including, without limitation, all  
7 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
8 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert  
9 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or  
10 contingent (collectively "Claims"), against Defendant, Defendant Releasees, and Downstream  
11 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
12 common law regarding the failure to warn about exposure to DEHP in the Covered Products. In  
13 furtherance of the foregoing, as to alleged exposures to Covered Products, CAG hereby waives  
14 any and all rights and benefits which it now has, or in the future may have, conferred upon it with  
15 respect to the Claims by virtue of the provisions of section 1542 of the California Civil Code,  
16 which provides as follows:

17  
18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
20 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS  
SETTLEMENT WITH THE DEBTOR

21 CAG understands and acknowledges that the significance and consequence of this waiver of  
22 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
23 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,  
24 including but not limited to any exposure to, or failure to warn with respect to exposure to DEHP  
25 from Covered Products, CAG will not be able to make any claim for those damages against  
26 Defendant, the Defendant Releasees, or Downstream Defendant Releasees. Furthermore, CAG  
27 acknowledges that it intends these consequences for any such Claims as may exist as of the date  
28 of this release but which CAG does not know exist, and which, if known, would materially affect

1 their decision to enter into this Consent Judgment, regardless of whether their lack of knowledge  
2 is the result of ignorance, oversight, error, negligence, or any other cause

3 **6. ENFORCEMENT OF JUDGMENT**

4 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
5 hereto. Subject to Section 6.2, the parties may, by noticed motion or order to show cause before  
6 the Superior Court of California, Alameda County, giving the notice required by law, enforce the  
7 terms and conditions contained herein. A Party may enforce any of the terms and conditions of  
8 this Consent Judgment only after that Party first provides 30 days notice to the Party allegedly  
9 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve  
10 such Party's failure to comply in an open and good faith manner.

11 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
12 proceeding to enforce Section 3 of this Consent Judgment, CAG shall provide a Notice of  
13 Violation ("NOV") to Defendant. The NOV shall include for each of the Covered Products: the  
14 date(s) the alleged violation(s) was observed and the location at which the Covered Products were  
15 offered for sale, and shall be accompanied by all test data obtained by CAG regarding the  
16 Covered Products, including an identification of the component(s) of the Covered Products that  
17 were tested.

18 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the  
19 alleged violation if, within 30 days of receiving such NOV, Defendant serves a Notice of  
20 Election ("NOE") that meets one of the following conditions:

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

(b) If the confirmatory testing establishes that the Covered Products do not contain DEHP in excess of the level allowed in Section 3.1 CAG shall take no further action regarding the alleged violation. If the testing does not establish compliance with Section 3.1, Defendant may withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 6.2 1.

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

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

**7. ENTRY OF CONSENT JUDGMENT**

7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to California Health & Safety Code § 25249 7(f). Upon entry of the Consent Judgment, CAG and Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

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

1 **8. MODIFICATION OF JUDGMENT**

2 8.1 This Consent Judgment may be modified only upon written agreement of the  
3 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
4 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

5 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
6 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

7 **9. RETENTION OF JURISDICTION**

8 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
9 terms of this Consent Judgment

10 **10. DUTIES LIMITED TO CALIFORNIA**

11 10.1 This Consent Judgment shall have no effect on Covered Products sold by  
12 Defendant outside the State of California.

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

14 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
15 California Attorney General so that the Attorney General may review this Consent Judgment  
16 prior to its submittal to the Court for approval No sooner than forty five (45) days after the  
17 Attorney General has received the aforementioned copy of this Consent Judgment, and in the  
18 absence of any written objection by the Attorney General to the terms of this Consent Judgment,  
19 the parties may then submit it to the Court for approval.

20 **12. ATTORNEY FEES**

21 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs  
22 and attorney fees in connection with this action

23 **13. ENTIRE AGREEMENT**

24 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
25 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,  
26 negotiations, commitments and understandings related hereto. No representations, oral or  
27 otherwise, express or implied, other than those contained herein have been made by any party

28

1 hereto No other agreements not specifically referred to herein, oral or otherwise, shall be  
2 deemed to exist or to bind any of the Parties

3 **14. GOVERNING LAW**

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

7 14.2 The Parties, including their counsel, have participated in the preparation of this  
8 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
9 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
10 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
11 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
12 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
13 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
14 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
15 this regard, the Parties hereby waive California Civil Code § 1654.

16 **15. EXECUTION AND COUNTERPARTS**

17 15.1 This Consent Judgment may be executed in counterparts and by means of  
18 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
19 one document.

20 **16. NOTICES**

21 16.1 Any notices under this Consent Judgment shall be by personal delivery of First  
22 Class Mail.

23 If to CAG:

24 Reuben Yeroushalmi  
25 9100 Wilshire Boulevard, Suite 610E  
26 Beverly Hills, CA 90212  
(310) 623-1926

27 If to Defendant:  
28

1 Attn: Legal Department  
2 Springs Global US, Inc.  
3 205 N White St  
4 Fort Mill, SC 29716

5 With a copy to:

6 Meredith Jones McKeown  
7 Sheppard Mullin Richter & Hampton LLP  
8 Four Embarcadero Center, 17<sup>th</sup> Floor  
9 San Francisco, CA 94111

10 **17. AUTHORITY TO STIPULATE**

11 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
12 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
13 the party represented and legally to bind that party.

14 AGREED TO:

AGREED IO:

15 Date: July \_\_, 2013

Date: July 31, 2013

16 For CONSUMER ADVOCACY GROUP,  
17 INC., by:

For SPRINGS GLOBAL US, INC., by:



18 Name: \_\_\_\_\_

Name: Delbridge E. NARRON

19 Title: \_\_\_\_\_

Title: SVP + General Counsel

20  
21 **IT IS SO ORDERED.**

22  
23 Date: \_\_\_\_\_

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Attn: Legal Department  
Springs Global US, Inc.  
205 N White St  
Fort Mill, SC 29716

With a copy to:

Meredith Jones McKeown  
Sheppard Mullin Richter & Hampton LLP  
Four Embarcadero Center, 17<sup>th</sup> Floor  
San Francisco, CA 94111

**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: July \_\_, 2013

Date: July \_\_, 2013

For CONSUMER ADVOCACY GROUP, INC., by:

For SPRINGS GLOBAL US, INC., by:

  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Name: Michel Sassoon

Name: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

**IT IS SO ORDERED.**

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

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