

1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Chio (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
YEROUSHALMI & ASSOCIATES
3 9100 Wilshire Boulevard, Suite 240W
Beverly Hills, California 90212
4 Telephone: 310.623.1926
5 Facsimile: 310.623.1930

6 Attorneys for Plaintiffs,
Consumer Advocacy Group, Inc.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF MARIN**

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

13 Plaintiff,

14 v.

15 DAS DISTRIBUTORS, INC., an Ohio
16 Corporation; and DOES 1-20;

17 Defendants.

CASE NO. CIV1303385

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Judge: Hon. Mark Talamantes
Dept: L
Complaint Filed: August 14, 2013

21 **1. INTRODUCTION**

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

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CONSENT JUDGMENT [PROPOSED]

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1.2 Defendants and Products

1.2.1 DAS employs ten or more persons, is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65"), and causes to be manufactured, distributed, or sells Steering Wheel Covers, which includes but is not limited to "ROAD PRO® Professional Driver Series Steering Wheel Cover, RPSW-3003, "ROADPRO® Professional Driver Series Cushioned Steering Wheel Cover (fits 20"/22") RPSWD-4002, SKU 454640020, and "ROADPRO® Professional Driver Series 18" Comfort Grip Steering Wheel Cover RPSW-3004", CB Radio Chargers, including but not limited to "ROAD PRO® Truck Spec® CB Power Cord 3-Pin, 3-Wire, TSPSCBH-3CP", and Electrical Tape, including but not limited to "RoadPro® Electrical Tape 3/4" x 60' (7MIL), RPHH-808, SKU# 4546429808" (hereinafter "Covered Products").

1.3 Chemical Of Concern

1.3.1 Diethyl hexyl phthalate ("DEHP"), Di-butyl phthalate ("DBP"), and Lead are known to the State of California to cause cancer and/or birth defects or other reproductive harm.

1.4 Notices of Violation.

1.4.1 On or about October 5, 2012, CAG served DAS and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "October 5, 2012 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead in Steering Wheel Covers, which includes but is not limited to "ROAD PRO® Professional Driver Series Steering Wheel Cover, RPSW-3003. No public enforcer has commenced or diligently prosecuted the allegations set forth in the October 5, 2012 Notice.

1.4.2 On or about November 2, 2012, CAG served DAS and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "November 2,

1 2012 Notice") that provided the recipients with notice of alleged violations of Health & Safety
2 Code § 25249.6 for failing to warn individuals in California of exposures to DEHP and DBP in
3 Steering Wheel Covers, including but not limited to "ROADPRO® Professional Driver Series
4 Cushioned Steering Wheel Cover (fits 20"/22") RPSWD-4002, SKU 454640020. No public
5 enforcer has commenced or diligently prosecuted the allegations set forth in the November 2, 2012
6 Notice.

7 1.4.3 On or about November 16, 2012, CAG served DAS and various public
8 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "November 16,
9 2012 Notice") that provided the recipients with notice of alleged violations of Health & Safety
10 Code § 25249.6 for failing to warn individuals in California of exposures to DEHP and DBP in
11 Steering Wheel Covers, including but not limited to "ROADPRO® Professional Driver Series 18"
12 Comfort Grip Steering Wheel Cover RPSW-3004". No public enforcer has commenced or
13 diligently prosecuted the allegations set forth in the November 16, 2012 Notice.

14 1.4.4 On or about November 16, 2012, CAG served DAS and various public
15 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "November 16,
16 2012 Notice") that provided the recipients with notice of alleged violations of Health & Safety
17 Code § 25249.6 for failing to warn individuals in California of exposures to Lead in CB Chargers,
18 including but not limited to "ROAD PRO® Truck Spec® CB Power Cord 3-Pin, 3-Wire,
19 TSPSCBH-3CP". No public enforcer has commenced or diligently prosecuted the allegations set
20 forth in the November 16, 2012 Notice.

21 1.4.5 On or about January 11, 2013, CAG served DAS and various public
22 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "January 11,
23 2013 Notice") that provided the recipients with notice of alleged violations of Health & Safety
24 Code § 25249.6 for failing to warn individuals in California of exposures to Lead in Electrical
25 Tape, including but not limited to "RoadPro® Electrical Tape ¾" x 60' (7MIL), RPHH-808, SKU#
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1 4546429808". No public enforcer has commenced or diligently prosecuted the allegations set forth
2 in the January 11, 2013 Notice.

3 **1.5 Complaint.**

4 On August 14, 2013, CAG filed a Complaint for civil penalties and injunctive relief
5 ("Complaint") in Marin County Superior Court, Case No. CIV1303385. The Complaint alleges,
6 among other things, that Defendant violated Proposition 65 by failing to give clear and reasonable
7 warnings of exposure to DEHP, DBP, and Lead from the Covered Products.

8 **1.6 Consent to Jurisdiction**

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

16 **1.7 No Admission**

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

7 **2. DEFINITIONS**

8 2.1 "Covered Products" means Steering Wheel Covers, which includes but is not
9 limited to "ROAD PRO® Professional Driver Series Steering Wheel Cover, RPSW-3003,
10 "ROADPRO® Professional Driver Series Cushioned Steering Wheel Cover (fits 20"/22")
11 RPSWD-4002, SKU 454640020, and "ROADPRO® Professional Driver Series 18" Comfort Grip
12 Steering Wheel Cover RPSW-3004", CB Radio Chargers, including but not limited to "ROAD
13 PRO® Truck Spec® CB Power Cord 3-Pin, 3-Wire, TSPSCBH-3CP", and Electrical Tape,
14 including but not limited to "RoadPro® Electrical Tape ¾" x 60' (7MIL), RPHH-808, SKU#
15 4546429808" "Covered Products" are limited to the products sold only by DAS.

16 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
17 Court.

18 2.5 "Notices" means the October 5, 2012, November 2, 2012, October 16, 2012, and
19 January 11, 2013 Notices.

20 **3. INJUNCTIVE RELIEF / CLEAR AND REASONABLE WARNINGS.**

21 3.1 As of the Effective Date, Defendant will not manufacture, distribute, or sell the
22 Covered Products in California unless the Covered Products have been affixed with Proposition
23 65 compliant warnings that state:

24 "WARNING: PURSUANT TO THE PROVISIONS OF THE CALIFORNIA
25 HEALTH AND SAFETY CODE, THESE PRODUCTS CONTAIN/PRODUCE
26 CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE
27 CANCER AND/OR BIRTH DEFECTS OR OTHER REPRODUCTIVE
28 HARM."

1 Further, Defendant shall agree to enforce their compliance system for reformulation of their
2 products to a practicable level within one month of the date that judgment is entered.

3 **4. SETTLEMENT PAYMENT**

4 **4.1 Payment and Due Date:** Within ten (10) days of the approval of the Effective
5 Date, Defendant shall pay one hundred ten thousand dollars and zero cents (\$110,000) in full and
6 complete settlement of all monetary claims by CAG related to the Notices, as follows:

7 **4.1.1 Civil Penalty:** Defendant shall issue separate checks totaling ten thousand
8 dollars (\$10,000) as penalties pursuant to Health & Safety Code § 25249.12:

9 (a) Defendant will issue a check made payable to the State of California's
10 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of seven thousand
11 five hundred dollars (\$7,500) representing 75% of the total penalty and Defendant will issue a
12 check to "Consumer Advocacy Group, Inc." in the amount of two-thousand five hundred dollars
13 (\$2,500.00) representing 25% of the total penalty; and

14 (b) Separate 1099s shall be issued for each of the above payments:
15 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
16 0284486) in the amount of \$7,500. Defendant will also issue a 1099 to CAG c/o Yeroushalmi &
17 Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212 in the amount
18 of \$2,500.

19 **4.1.2 Payment In Lieu of Civil Penalties:** Defendant shall pay five thousand
20 dollars (\$5,000) in lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG will use this
21 payment for investigation of the public's exposure to Proposition 65 listed chemicals through
22 various means, including laboratory fees for testing for Proposition 65 listed chemicals,
23 administrative costs and fees related to such activities, expert fees for evaluating exposures through
24 various mediums, including but not limited to consumer product, occupational, and environmental
25 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained experts
26 who assist with the extensive scientific analysis necessary for those files in litigation, as well as
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1 administrative costs and fees related to such activities in order to reduce the public's exposure to
2 Proposition 65 listed chemicals by notifying those persons and/or entities believed to be
3 responsible for such exposures and attempting to persuade those persons and/or entities to
4 reformulate their products or the source of exposure to completely eliminate or lower the level of
5 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the instant
6 Action. Further, should the court require it, CAG will submit under seal, an accounting of these
7 funds as described above as to how the funds were used. The check shall be made payable to
8 "Consumer Advocacy Group, Inc." and delivered to Reuben Yeroushalmi, Yeroushalmi &
9 Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

10 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall pay
11 ninety-five thousand dollars (\$95,000) to "Yeroushalmi & Associates" as reimbursement for
12 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
13 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a settlement
14 in the public interest. The check shall be made payable to "Yeroushalmi & Associates" and
15 delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite
16 240W, Beverly Hills, California 90212.

17 **4.2** All payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
18 Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

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

21 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on
22 behalf of itself and in the public interest and Defendant and its officers, directors, insurers,
23 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
24 companies and their successors and assigns ("Defendant Releasees"), including but not limited to
25 each of its suppliers, customers, distributors, wholesalers, retailers, or any other person in the
26 course of doing business, and the successors and assigns of any of them, who may use, maintain,
27 distribute or sell Covered Products ("Downstream Defendant Releasees"), for all claims for
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1 violations of Proposition 65 up through the Effective Date based on exposure to DEHP, DBP, and
2 Lead from Covered Products as set forth in the Notices. Defendant and Downstream Defendant
3 Releasees' compliance with this Consent Judgment shall constitute compliance with Proposition
4 65 with respect to DEHP, DBP, and Lead from Covered Products as set forth in the Notices.
5 Nothing in this Section affects CAG's right to commence or prosecute an action under Proposition
6 65 against any person other than Defendant Releasees or Downstream Defendant Releasees:

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

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23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
25 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
26 BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER
27 SETTLEMENT WITH THE DEBTOR.

28 CAG understands and acknowledges that the significance and consequence of this waiver of
California Civil Code section 1542 is that even if CAG suffers future damages arising out of or

1 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
2 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
3 about exposure to DEHP, DBP, and Lead from the Covered Products, including but not limited to
4 any exposure to, or failure to warn with respect to exposure to DEHP, DBP, and Lead from the
5 Covered Products, CAG will not be able to make any claim for those damages against Released
6 Parties. Furthermore, CAG acknowledges that it intends these consequences for any such Claims
7 arising from any violation of Proposition 65 or any other statutory or common law regarding the
8 failure to warn about exposure to DEHP, DBP, and Lead from Covered Products as may exist as
9 of the date of this release but which CAG does not know exist, and which, if known, would
10 materially affect their decision to enter into this Consent Judgment, regardless of whether their
11 lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

12 **6. ENFORCEMENT OF JUDGMENT**

13 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
14 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
15 California, Marin County, giving the notice required by law, enforce the terms and conditions
16 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
17 only after that Party first provides 90 days notice to the Party allegedly failing to comply with the
18 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
19 comply in an open and good faith manner.
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21 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
22 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of Violation
23 ("NOV") to Defendant. The NOV shall include for each of the Covered Products: the date(s) the
24 alleged violation(s) was observed and the location at which the Covered Products were offered for
25 sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Products,
26 including an identification of the component(s) of the Covered Products that were tested.
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1 **7. ENTRY OF CONSENT JUDGMENT**

2 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
3 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
4 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

5 7.2 If this Consent Judgment is not approved in its entirety by the Court, (a) this
6 Consent Judgment and any and all prior agreements between the parties merged herein shall
7 terminate and become null and void, and the actions shall revert to the status that existed prior to
8 the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
9 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
10 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
11 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
12 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

13 **8. MODIFICATION OF JUDGMENT**

14 8.1 This Consent Judgment may be modified only upon written agreement of the
15 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
16 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

17 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
18 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

19 **9. RETENTION OF JURISDICTION**

20 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
21 of this Consent Judgment.

22 **10. DUTIES LIMITED TO CALIFORNIA**

23 10.1 This Consent Judgment shall have no effect on Covered Products sold by Defendant
24 outside the State of California.
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1 **11. SERVICE ON THE ATTORNEY GENERAL**

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

8 **12. ATTORNEY FEES**

9 12.1 Except as specifically provided in Section 4.1.3, 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 deemed
17 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 provisions
21 of California law.

22 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
24 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
25 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
26 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
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1 subject to this Consent Judgment may provide written notice to CAG of any asserted change in the
2 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and
3 to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall
4 be interpreted to relieve a Defendant from any obligation to comply with any pertinent state or
5 federal law or regulation.

6 14.3 The Parties, including their counsel, have participated in the preparation of this
7 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
8 Consent Judgment was subject to revision and modification by the Parties and has been accepted
9 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
10 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
11 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
12 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
13 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
14 this regard, the Parties hereby waive California Civil Code § 1654.

15. EXECUTION AND COUNTERPARTS

16 15.1 This Consent Judgment may be executed in counterparts and by means of facsimile
17 or portable document format (pdf), which taken together shall be deemed to constitute one
18 document and have the same force and effect as original signatures.

16. NOTICES

19 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
20 Class Mail.

21 If to CAG:

22 Reuben Yeroushalmi
23 9100 Wilshire Boulevard, Suite 240W
24 Beverly Hills, CA 90212
25 (310) 623-1926

26 If to DAS Distributors, Inc.:

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Michael Abel, President, or Current President/CEO
DAS Distributors, Inc.
724 Lawn Road
Palmyra, PA 17078

With a copy to:

Robert Schuda
McKenna Long & Aldridge LLP
300 South Grand Ave, 14th Floor
Los Angeles, CA 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: _____, 2014

Name: _____

Name: _____

Title: _____
CONSUMER ADVOCACY GROUP,
INC.

Title: _____
DAS DISTRIBUTORS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1 AGREED TO:

2 Date: 7-2, 2014

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4 Name: Michel Sassoon
5 Title: Executive Director
6 CONSUMER ADVOCACY GROUP,
7 INC.

AGREED TO:

Date: July 2, 2014


Name: John W Borst
Title: CFO
DAS DISTRIBUTORS, INC.

9 **IT IS SO ORDERED.**

11 Date: _____

12 _____
13 JUDGE OF THE SUPERIOR COURT