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

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

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

13 Plaintiff,

14 v.

15 FORTUNE DYNAMIC, INC., a California
16 Corporation; ROSS DRESS FOR LESS,
17 INC., a Virginia Corporation; ROSS
18 STORES, INC., a Delaware Corporation; and
DOES 1-20;

19
20 Defendants.

CASE NO. RG13697300

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Dept. 24

Judge: Hon. Frank Roesch

Complaint filed: September 27, 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, Fortune Dynamic, Inc. (hereinafter "Defendant"), with each referred to as
25 a "Party" and collectively referred to as "Parties."
26

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

8 **1.7 No Admission**

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

2 2.1 "Covered Products" means Soda® Black Flip Flop with Floral and Chain Strap,
3 Size 7 ½ and all footwear manufactured, distributed, or sold by Fortune Dynamic, Inc. "Covered
4 Products" are limited to only those products which were actually sold through or by Fortune
5 Dynamic, Inc.

6 2.2 "Effective Date" means the date that this Consent Judgment is signed by all
7 Parties.

8 2.3 "Notice" means the October 19, 2012, 60 Day Notice of Violation sent by CAG
9 as specified in Section 1.4 above.

10 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
11 **WARNINGS.**

12 3.1 As of the Effective Date, Defendant will not manufacture, distribute, or sell the
13 Covered Products in California unless the Covered Products have been reformulated to contain
14 less than 0.1% by weight of DEHP and less than 0.1% by weight of DBP. Any Covered
15 Products remaining in Defendant's existing inventory as of the Effective Date, with the
16 exception of those having less than 0.1% of DEHP AND less than 0.1% of DBP, shall not be
17 sold in California unless they have compliant Proposition 65 warnings.

18 **4. SETTLEMENT PAYMENT**

19 4.1 **Payment and Due Date:** Within ten (10) business days of the approval of the
20 Consent Judgment, Defendant shall pay a total of sixty-five thousand dollars and zero cents
21 (\$65,000) in full and complete settlement of all monetary claims by CAG related to the Notices,
22 as follows:

23 4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling five
24 thousand dollars (\$5,000.00) as penalties pursuant to Health & Safety Code § 25249.12:

25 (a) Defendant will issue a check made payable to the State of California's
26 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of three
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1 thousand seven hundred and fifty dollars (\$3,750.00) representing 75% of the total penalty and
2 Defendant will issue a check to “Consumer Advocacy Group, Inc.” in the amount of one
3 thousand two hundred and fifty dollars (\$1,250.00) representing 25% of the total penalty; and

4 (b) Separate 1099s shall be issued for each of the above payments:

5 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
6 0284486) in the amount of \$3,750.00. Defendant will also issue a 1099 to CAG c/o Yeroushalmi
7 & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212 in the
8 amount of \$1,250.00.

9 4.1.2 **Payment In Lieu of Civil Penalties:** Defendant shall pay five thousand
10 dollars (\$5,000.00) in lieu of civil penalties to “Consumer Advocacy Group, Inc.” CAG will use
11 this payment for investigation of the public’s exposure to Proposition 65 listed chemicals
12 through various means, including laboratory fees for testing for Proposition 65 listed chemicals,
13 administrative costs and fees related to such activities, expert fees for evaluating exposures
14 through various mediums, including but not limited to consumer product, occupational, and
15 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting
16 and retained experts who assist with the extensive scientific analysis necessary for those files in
17 litigation, as well as administrative costs and fees related to such activities in order to reduce the
18 public’s exposure to Proposition 65 listed chemicals by notifying those persons and/or entities
19 believed to be responsible for such exposures and attempting to persuade those persons and/or
20 entities to reformulate their products or the source of exposure to completely eliminate or lower
21 the level of Proposition 65 listed chemicals, thereby addressing the same public harm as
22 allegedly in the instant Action. Further, should the court require it, CAG will submit under seal,
23 an accounting of these funds as described above as to how the funds were used. The check shall
24 be made payable to “Consumer Advocacy Group, Inc.” and delivered to Reuben Yeroushalmi,
25 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California
26 90212.
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1 4.1.3 **Reimbursement of Attorneys Fees and Costs:** Defendant shall pay
2 fifty-five thousand dollars (\$55,000.00) to “Yeroushalmi & Associates” as reimbursement for
3 reasonable investigation fees and costs, attorneys’ fees, and any other costs incurred as a result of
4 investigating, bringing this matter to Defendant’s attention, litigating, and negotiating a
5 settlement in the public interest. The check shall be made payable to “Yeroushalmi &
6 Associates” and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire
7 Boulevard, Suite 240W, Beverly Hills, California 90212.

8 4.2 All payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
9 Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

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

11 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
12 behalf of itself and in the public interest and Defendant and its officers, directors, insurers,
13 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
14 companies and their successors and assigns (“Defendant Releasees”), also including but not
15 limited to each of its suppliers, customers, distributors, wholesalers, retailers, including Ross
16 Stores, Inc., Ross Dress for Less, Inc., or any other person in the course of doing business, and
17 the successors and assigns of any of them, who may use, maintain, distribute or sell Covered
18 Products (“Downstream Defendant Releasees”), for all claims for violations of Proposition 65 up
19 through the Effective Date based on exposure to DEHP and DBP from Covered Products as set
20 forth in the Notice. Defendant’s compliance with this Consent Judgment shall constitute
21 compliance with Proposition 65 with respect to DEHP and DBP from Covered Products as set
22 forth in the Notice.

23 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
24 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
25 indirectly, any form of legal action and releases all claims, including, without limitation, all
26 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
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1 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
2 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
3 fixed or contingent (collectively "Claims"), against Defendant, Defendant Releasees, and
4 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
5 statutory or common law regarding the failure to warn about exposure to DEHP and DBP from
6 Covered Products manufactured, distributed, or sold by Defendant and Defendant Releasees. In
7 furtherance of the foregoing, as to alleged exposures to DEHP and DBP from Covered Products,
8 CAG hereby waives any and all rights and benefits which it now has, or in the future may have,
9 conferred upon it with respect to the Claims arising from any violation of Proposition 65 or any
10 other statutory or common law regarding the failure to warn about exposure to DEHP and DBP
11 from Covered Products by virtue of the provisions of section 1542 of the California Civil Code,
12 which provides as follows:

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

19 CAG understands and acknowledges that the significance and consequence of this waiver of
20 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
21 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from
22 any violation of Proposition 65 or any other statutory or common law regarding the failure to
23 warn about exposure to DEHP and DBP from Covered Products, including but not limited to any
24 exposure to, or failure to warn with respect to exposure to DEHP and DBP from the Covered
25 Products, CAG will not be able to make any claim for those damages against Defendant or the
26 Defendant Releasees or Downstream Defendant Releasees. Furthermore, CAG acknowledges
27 that it intends these consequences for any such Claims arising from any violation of Proposition
28 65 or any other statutory or common law regarding the failure to warn about exposure to DEHP
and DBP from Covered Products as may exist as of the date of this release but which CAG does

1 not know exist, and which, if known, would materially affect their decision to enter into this
2 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
3 oversight, error, negligence, or any other cause.

4 **6. ENFORCEMENT OF JUDGMENT**

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

12 6.2 After the Effective Date, if CAG discovers any Covered Products that are not in
13 compliance with Section 3 of this Consent Judgment, CAG shall provide a Notice of Violation
14 ("NOV") to Defendant. The NOV shall include for each of the Covered Products: the date(s) the
15 alleged violation(s) was observed and the location at which the Covered Products were offered
16 for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered
17 Products. CAG shall make available the Covered Products that are the subject of the NOV for
18 testing by Defendant upon Defendant's request. Multiple units of Covered Products sold in
19 California by Downstream Defendant Releasees that were part of the same batch or shipment
20 received by Defendant shall only support one NOV.

21 Within thirty (30) days of receiving the NOV, Defendant shall provide written notice to
22 CAG stating whether it elects to contest the allegations contained in the NOV ("Notice of
23 Election"). Failure to provide a Notice of Election shall be deemed an election not to contest the
24 NOV.

25 (a) **Non-Contested NOV:** If the NOV is not contested, Defendant shall issue a check
26 in the amount of three thousand dollars (\$3,000.00) payable to "Consumer Advocacy Group,
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1 Inc.” and take immediate steps to ensure compliance with the terms of Section 3.0 of this
2 Consent Judgment.

3 (b) **Contested NOV:** If the Notice of Violation is contested, the parties shall meet
4 and confer to attempt to resolve their dispute. Should such attempts at meeting and conferring
5 fail, CAG may file an enforcement motion or other application as set forth herein. If Defendant
6 withdraws its Notice of Election to contest the NOV before any motion concerning the violations
7 alleged in the NOV is heard by the court, Defendant shall issue a check in the amount of ten
8 thousand dollars (\$10,000.00) payable to “Consumer Advocacy Group, Inc.” and take immediate
9 steps to ensure compliance with the terms of Section 3.1 of this Consent Judgment. CAG shall
10 thereafter withdraw the motion or application.

11 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
12 prevailing party shall be entitled to its reasonable attorneys’ fees and costs.

13 7. ENTRY OF CONSENT JUDGMENT

14 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
15 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
16 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint.

17 7.2 Upon approval of the Consent Judgment by the Court, and payment of the
18 settlement sums by Fortune Dynamic, CAG shall dismiss the Complaint without prejudice as
19 against all other defendants (other than Fortune Dynamic) within 10 calendar days.

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 Defendants 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.
24

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.
24

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 Fortune Dynamic, Inc.:

15 Current President or CEO
16 Fortune Dynamic, Inc.
17 21923 Ferrero Parkway
18 City of Industry, CA 91789

19 With a copy to:

20 Danton K. Mak, Esq.
21 Sheldon Mak & Anderson PC
22 100 Corson Street, Ste 300
23 Pasadena, CA 91103

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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AGREED TO:

Date: 7-3, 2014

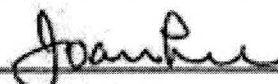


Name: Mitchell Sassoon

Title: EXECUTIVE DIRECTOR
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date: July 2, 2014



Name: Joan Lee

Title: Chief Financial Officer
FORTUNE DYNAMIC, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT