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Daniel D. Cho (SBN 105409)
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3 **YEROUSHALMI & ASSOCIATES**
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6 Attorneys for Plaintiffs,
7 Consumer Advocacy Group, Inc.

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

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

14 Plaintiff,

15 v.

16 PILOT AUTOMOTIVE INC., a California
17 Corporation; SEARS HOLDING
18 CORPORATION, a Delaware Corporation;
KMART CORPORATION, a Michigan
19 Corporation; and DOES 1-20
20 Defendants.

CASE NO. BC517434

CONSENT JUDGMENT [PROPOSED]

Dept: 54

Judge: Honorable Ernest Hiroshige
Complaint filed: August 6, 2013

21 **1. INTRODUCTION**

22 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
23 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and
24 defendants Pilot, Inc. ("Pilot), and Does 1-50 ("Defendants"), with each a "Party" and collectively
25 referred to as "Parties."

26 1.2 It is alleged that Defendants employ ten or more persons, are persons in the course
27 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
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1 California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65"), and manufacture,
2 distribute, and/or sell Terminal Kits with Crimp Tool, before the effective date of this Consent
3 Judgment ("Covered Products").

4 **1.3 Notice of Violation.**

5 1.3.1 On or about December 11, 2012, CAG served Defendants and various
6 public enforcement agencies with a document entitled "60-Day Notice of Violation" (the
7 "December 11, 2012 Notice") that provided the recipients with notice of alleged violations
8 of Health & Safety Code § 25249.6 for failing to warn individuals in California of
9 exposures to DEHP and DBP contained in Covered Products.

10 1.3.2 No public enforcer has commenced or diligently prosecuted the allegations
11 set forth in the December 12, 2012 Notice.

12 **1.4 Complaint.**

13 On August 6, 2013, CAG filed a Complaint for civil penalties and injunctive relief
14 ("Complaint") in Los Angeles Superior Court, Case No. BC482586. The Complaint alleges,
15 among other things, that Defendants violated Proposition 65 by failing to give clear and reasonable
16 warnings of exposure to DEHP and DBP from Covered Products.

17 **1.5 Consent to Jurisdiction**

18 While otherwise disputed, for purposes of this Consent Judgment, the parties consent that
19 this Court has jurisdiction over the allegations of violations contained in the Complaint and
20 personal jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper
21 in the City and County of Los Angeles and that this Court has jurisdiction to enter this Consent
22 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of
23 all claims which were or could have been raised by any person or entity based in whole or in part,
24 directly or indirectly, on the prior conduct of the parties or on the facts alleged in the Complaint
25 or arising therefrom or related to.
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1.6 No Admission

This Consent Judgment resolves claims that are denied and disputed. The parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any material allegation of the Complaint, each and every allegation of which Defendants denies including jurisdiction, nor may this Consent Judgment on compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Defendants.

2. DEFINITIONS

2.1 "Covered Products" means Terminal Kits with Crimp Tool manufactured, sold, and/or distributed by only Pilot and Kmart Corporation ("Defendants") prior to Effective Date of this Consent Judgment.

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

3. INJUNCTIVE RELIEF/REFORMULATION

3.1 Within 60 days of the Effective Date Defendants shall not sell or offer for sale in California Covered Products that contain DEHP and DBP with more than 0.1 % by weight. All Covered Products in Pilot's existing inventory shall be affixed with Proposition 65-compliant warnings.

4. SETTLEMENT PAYMENT

Total Payment: Pilot shall mail by certified mail, payments totaling seventy-five thousand dollars (\$75,000.00) as follows:

4.1 **Reimbursement of Attorneys' Fees and Costs:** Pilot shall pay \$68,000.00 to "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs and expenses for all work performed through the approval of this Consent Judgment. A 1099 shall be issued in the amount of \$68,000, to

1 Yeroushalmi & Associates, and delivered to 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,
2 CA 90212.

3 4.2 **Civil Penalties.** Pilot shall issue two separate checks for a total amount of seven
4 thousand dollars (\$7,000) as penalties pursuant to Health & Safety Code § 25249.12: (a) one check
5 made payable to the State of California's Office of Environmental Health Hazard Assessment
6 (OEHHA) in the amount of \$5,250 representing 75% of the total penalty; and (b) one check to
7 Consumer Advocacy Group, Inc. in the amount of \$1,750 representing 25% of the total penalty.
8 Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to
9 OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$5,250.
10 The second 1099 shall be issued in the amount of \$1,750 to CAG and delivered to: Yeroushalmi
11 & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

12 4.3 Payments pursuant to 4.1 and 4.2 shall be delivered to: Reuben Yeroushalmi,
13 Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212 within the
14 time agreed upon by the Parties.

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

16 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
17 behalf of itself and in the public interest and Defendants and its officers, directors, insurers,
18 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
19 companies, agents, contractors, vendors, and their successors and assigns ("Defendant
20 Releasees"), including but not limited to each of their suppliers, customers, distributors,
21 wholesalers, retailers, or any other person in the course of doing business, and the successors and
22 assigns of any of them, who may use, maintain, distribute or sell Covered Products ("Downstream
23 Defendant Releasees"), for all conduct of Defendants prior to the Effective Date based on alleged
24 exposure to DEHP and DBP from Covered Products as set forth in the Notice. Defendants and
25 Defendant Releasees' compliance with this Consent Judgment shall constitute compliance with
26 Proposition 65 with respect to DEHP and DBP from Covered Products.
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1 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
2 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
3 indirectly, any form of legal action and releases all claims, including, without limitation, all
4 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
5 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
6 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
7 contingent (collectively "Claims"), against Defendants, Defendant Releasees, and Downstream
8 Defendant Releasees arising from any allegations of violation of Proposition 65 or any other
9 statutory or common law regarding the failure to warn about exposure to DEHP and DBP from
10 Covered Products manufactured, distributed, or sold by Defendants and Defendant Releasees. In
11 furtherance of the foregoing, as to alleged exposures to DEHP and DBP from Covered Products,
12 CAG hereby waives any and all rights and benefits which it now has, or in the future may have,
13 conferred upon it with respect to the Claims arising from any violation of Proposition 65 or any
14 other statutory or common law regarding the failure to warn about exposure to DEHP and DBP
15 from Covered Products by virtue of the provisions of section 1542 of the California Civil Code,
16 which provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
18 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
19 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
20 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
21 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 Claims arising from any
24 alleged violation of Proposition 65 or any other statutory or common law regarding the failure to
25 warn about exposure to DEHP and DBP from Covered Products, including but not limited to any
26 exposure to, or failure to warn with respect to exposure to DEHP and DBP from the Covered
27 Products, CAG will not be able to make any claim for those damages against Defendants or the
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1 Defendant Releasees or Downstream Defendant Releasees. Furthermore, CAG acknowledges that
2 it intends these consequences for any such Claims arising from any alleged violation of Proposition
3 65 or any other statutory or common law regarding the failure to warn about exposure to DEHP
4 and DBP from Covered Products as may exist as of the date of this release but which CAG does
5 not know exist, and which, if known, would materially affect their decision to enter into this
6 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
7 oversight, error, negligence, or any other cause.

8 **6. ENFORCEMENT OF JUDGMENT**

9 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
10 hereto. Except as otherwise agreed by the Parties, the Parties may, by noticed motion or order to
11 show cause before the Superior Court of California, City and County of Los Angeles, giving the
12 notice required by law, enforce the terms and conditions contained herein. A Party may enforce
13 any of the terms and conditions of this Consent Judgment only after that Party first provides notice
14 to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment
15 and provide 60 days in which the Parties shall attempt to resolve such Party's failure to comply in
16 an open and good faith manner.

17 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
18 proceeding to enforce any alleged violation of Section 3.1 of this Consent Judgment, CAG shall
19 provide a Notice of Violation ("NOV") to Defendants. The NOV shall include for each of the
20 Newly Alleged Products: the date(s) the alleged violation(s) was observed and the location at
21 which the Newly Alleged Products were offered for sale, and shall be accompanied by all test data
22 obtained by CAG regarding the Newly Alleged Products, including an identification of the
23 component(s) of the Newly Alleged Products that were tested. Before any destructive testing of
24 any Newly Alleged Products is conducted by or on behalf of CAG, CAG shall give Defendant(s)
25 an opportunity to inspect and verify at reasonable times and places the authenticity of any Newly
26 Alleged Product in violation of this Consent Judgment.
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1 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
2 alleged violation if, within 60 days of receiving such NOV, a Defendant serves a Notice of
3 Election ("NOE") that meets one of the following conditions:

4 (a) The Newly Alleged Products were shipped by Pilot for sale in
5 California before the Effective Date, or

6 (b) Since receiving the NOV a Defendant has taken corrective action by
7 either (i) requesting that its customers in California remove the Newly Alleged Products
8 identified in the NOV from sale in California and destroy or return the Newly Alleged
9 Products to Defendant, or (ii) providing a clear and reasonable warning for the Newly
10 Alleged Products identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

11 6.2.2 **Contested NOV.** A Defendant may serve an NOE informing CAG of its
12 election to contest the NOV within 60 days of receiving the NOV.

13 (a) In its election, a Defendant may request that the sample(s) Covered
14 Products tested by CAG be subject to additional confirmatory testing at an EPA-accredited
15 laboratory. In the event Pilot challenges an NOV, Pilot may conduct its own testing of any
16 sample of Covered Product it may obtain from the manufacturer of such products. (b)

17 If the confirmatory testing establishes that the Newly Alleged
18 Products do not contain DEHP and DBP in excess of the level allowed in Section 3.1, CAG
19 shall take no further action regarding the alleged violation. If the testing does not establish
20 compliance with Section 3.1, a Defendant may withdraw its NOE to contest the violation
21 and may serve a new NOE pursuant to Section 6.2.1.

22 (c) If a Defendant does not withdraw an NOE to contest the NOV, the
23 Parties shall meet and confer for a period of no less than 30 days before CAG may seek an
24 order enforcing the terms of this Consent Judgment.
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1 6.3 In any proceeding brought by any Party to enforce this Consent Judgment, such
2 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
3 violation of Proposition 65 or this Consent Judgment.

4 **7. ENTRY OF CONSENT JUDGMENT**

5 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
6 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
7 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint.

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

16 **8. MODIFICATION OF JUDGMENT AND RIGHTS THEREUNDER**

17 8.1 This Consent Judgment may be modified only upon written agreement of the
18 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
19 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. Any
20 Party may waive in writing any right it may have under this Consent Judgment.

21 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
22 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

23 **9. RETENTION OF JURISDICTION**

24 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
25 of this Consent Judgment.
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1 **10. DUTIES LIMITED TO CALIFORNIA**

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

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

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

11 **12. ATTORNEY FEES**

12 12.1 Except as specifically provided in Section 4.1 and 6.3, each Party shall bear its own
13 costs and attorney fees in connection with this action.

14 **13. GOVERNING LAW**

15 13.1 The validity, construction and performance of this Consent Judgment shall be
16 governed by the laws of the State of California, without reference to any conflicts of law provisions
17 of California law.

18 13.2 The Parties, including their counsel, have participated in the preparation of this
19 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
20 Consent Judgment was subject to revision and modification by the Parties and has been accepted
21 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
22 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
23 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
24 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
25 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
26 this regard, the Parties hereby waive California Civil Code § 1654.
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1 **14. EXECUTION AND COUNTERPARTS**

2 14.1 This Consent Judgment may be executed in counterparts and by means of facsimile
3 or portable document format (PDF), which taken together shall be deemed to constitute one
4 document.

5 **15. NOTICES**

6 15.1 Any notices under this Consent Judgment shall be by personal delivery or First
7 Class Mail.

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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 Pilot Automotive, Inc.:

15 Calvin Wang, CEO, or
16 Current President/CEO
17 Pilot Automotive Inc.
18 768 S. Turnbull Canyon Rd.
19 City of Industry, CA 91745

20 With a copy to:

21 Lawrence P. House
22 Law Office of Lawrence P. House
23 525 Country Club, Suite C
24 Simi Valley, CA 93065

25 If to Kmart Corporation

26 Law Department
27 Sears Holding Corporation
28 3333 Beverly Road
Hoffman Estates, IL 60179

With a copy to

Michael Steel
Morrison Foerster

425 Market St.
San Francisco, CA 94105

16. AUTHORITY TO STIPULATE

16.1 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.

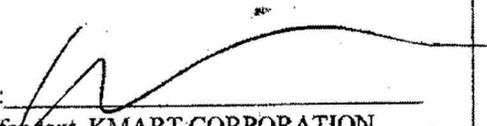
AGREED TO:

Date: _____, 2014

By: _____
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

AGREED TO:

Date: _____, 2014

By: 
Defendant, KMART CORPORATION

AGREED TO:

Date: _____, 2014

By: _____
Defendant, PILOT AUTOMOTIVE, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

425 Market St.
San Francisco, CA 94105

16. AUTHORITY TO STIPULATE

16.1 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:

Date: _____, 2014

AGREED TO:

Date: _____, 2014

By: _____
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: _____
Defendant, KMART CORPORATION

AGREED TO:

Date: September 24, 2014

By: 
Defendant, PILOT AUTOMOTIVE, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

425 Market St.
San Francisco, CA 94105

16. AUTHORITY TO STIPULATE

16.1 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:

Date: 9-30-14, 2014

AGREED TO:

Date: _____, 2014

By: 
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: 
Defendant, KMART CORPORATION

AGREED TO:

Date: _____, 2014

By: _____
Defendant, PILOT AUTOMOTIVE, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT