

1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
YEROUSHALMI & ASSOCIATES
3 9100 Wilshire Boulevard, Suite 240W
Beverly Hills, California 90212
4 Telephone: (310) 623-1926
Facsimile: (310) 623-1930
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6 Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO

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

Case No. CGC-13-535763

11 Plaintiff,

CONSENT JUDGMENT

12 v.

13 ROSS STORES, INC. dba DD'S
DISCOUNTS, a Delaware Corporation; ROSS
14 DRESS FOR LESS, a Virginia Corporation;
and DOES 1-20;

15 Defendants.

17 CONSUMER ADVOCACY GROUP, INC., in
18 the public interest,

Case No. CGC-14-535987

19 Plaintiff,

20 v.

21 ROSS STORES, INC., a Delaware
Corporation; ROSS DRESS FOR LESS, a
22 Virginia Corporation;
and DOES 1-20;

23 Defendants.

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1 CONSUMER ADVOCACY GROUP, INC., in
2 the public interest,

Case No. CGC-13-534806

3 Plaintiff,

4 v.

5 KENKO CHINA OUTLET, INC., a California
6 Corporation; THINKTANK TECHNOLOGY,
7 INC., a California Corporation; CSS BRANDS,
8 INC., a Delaware Corporation; ROSS
9 STORES, INC., a Delaware Corporation;
10 ROSS DRESS FOR LESS, INC., a Virginia
11 Corporation; ROSS STORES, INC., DBA
12 DD'S DISCOUNTS, INC. a Delaware
13 Corporation; and DOES 1-20;

14 Defendants.

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16 **1. INTRODUCTION**

17 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
18 Advocacy Group, Inc. (referred to as "CAG) acting on behalf of itself and in the interest of the
19 public and defendants Ross Stores, Inc. and Ross Dress for Less, Inc. ("Ross")¹ with each a Party
20 to the action and collectively referred to as "Parties."

21 1.2 CAG is a California corporation that serves as a private enforcer of Proposition 65,
22 as described in Proposition 65 and the regulations of the Attorney General of California at 11 Cal.
23 Code Regs. § 3000 *et seq.*

24 1.3 Ross employs ten or more persons, is a person in the course of doing business for
25 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
26 Safety Code §§ 25249.6 *et seq.* ("Proposition 65"), and distributes and sells Handbags directly or
27 indirectly supplied to Ross by Handbags for All, Shower Curtain Liners directly or indirectly
28 supplied to Ross by Daniel's Bath & Beyond, and Emergency Road Kits directly or indirectly
supplied to Ross by KCO Group, the owner of the brand Think Tank Technology.

29 **1.4 Notices of Violation.**

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¹ Ross Dress for Less, Inc. is a wholly-owned subsidiary of Ross Stores, Inc., which operates the
Ross and dd's DISCOUNTS stores.

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1.4.1 On December 21, 2012, CAG served Ross, and various public enforcement agencies with a document entitled "60-Day Notice of Violation" 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 di(2-ethylhexyl)phthalate ("DEHP") contained in the Handbags it sells, including but not limited to "Young Woman's Handbag, decorated with black and metallic gold and glitter zebra skin print, D5301 C1950, dd's #400082477408" (herein the "December 21, 2012 Notice"). No public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

1.4.2 On January 10, 2014, CAG served Ross, Handbags for All and various public enforcement agencies with a document entitled "60-Day Notice of Violation" 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 di(2-ethylhexyl)phthalate ("DEHP") contained in the Handbags it sells, including but not limited to "Young Woman's Handbag, decorated with black and metallic gold and glitter zebra skin print, D5301 C1950, dd's #400082477408" (herein the "January 10, 2014 Notice"). No public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

1.4.3 On June 20, 2013, CAG served Ross, and various public enforcement agencies with a document entitled "60-Day Notice of Violation" 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 "DEHP contained in the Shower Curtain Liners it sells, including but not limited to "Daniel's Bath Deluxe Quality Vinyl Curtain/Liner, Reinforced Grommets, Magnetic Hem, 70"W x 72"L, "100% Vinyl," Made in China, "Clear", barcode 7 831154 001222" (herein the "June 20, 2013 Notice"). No public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

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1.4.4 On October 19, 2012, CAG served Ross, ThinkTank Technology and various public enforcement agencies with a document entitled "60-Day Notice of Violation" 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 contained in the Emergency Road Kits it sells, including but not limited to "ThinkTank Technology® 31 Piece Roadside Emergency Kit, "KC 10011", UPC 8 53371 10011 0" (herein the "October 19, 2012 Notice"). No public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

1.5 Complaints.

1.5.1 On November 27, 2013, CAG filed a Complaint for civil penalties and injunctive relief in San Francisco, Superior Court, Case No. CGC-13-535763, against Ross. On March 17, 2014, CAG filed a First Amended Complaint in Case No. CGC-13-535763, alleging that Ross violated Proposition 65 by failing to warn individuals in California of exposures to DEHP contained in Handbags, including but not limited to "Young Woman's Handbag, decorated with black and metallic gold and glitter zebra skin print, D5301 C1950, dd's #400082477408."

1.5.2 On October 10, 2013, CAG filed a Complaint in Case No. CGC-13-534806, alleging that Ross violated Proposition 65 by failing to warn individuals in California of exposures to lead contained in Emergency Road Kits, including but not limited to "ThinkTank Technology® 31 Piece Roadside Emergency Kit, "KC 10011", UPC 8 53371 10011 0";

1.5.3 On March 14, 2014, CAG filed a Complaint in Case No. CGC-14-535987, alleging that Ross violated Proposition 65 by failing to warn individuals in California of exposures to DEHP contained in Shower Curtain Liners, including but not limited to "Daniel's Bath Deluxe Quality Vinyl Curtain/Liner, Reinforced Grommets, Magnetic Hem, 70"W x 72"L, "100% Vinyl," Made in China, "Clear", barcode 7 831 154 001222";

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1.5.4 Upon entry of this Consent Judgment, the First Amended Complaint in Case No. CGC-13-535763 shall be deemed amended to include the allegations regarding Shower Curtain Liners in Case No. CGC-14-535987, and Emergency Road Kits in Case No. CGC-13-534806 and within five days of entry of this Consent Judgment, CAG shall file a dismissal without prejudice of Case No. CGC-14-535987 and Case No. CGC-13-534806.

1.6 Consent to Jurisdiction

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

1.7 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 Operative Complaint, each and every allegation of which Ross denies, nor may this Consent Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Ross.

2. DEFINITIONS

2.1 "Covered Products" means DEHP Covered Products and Lead Covered Products, as defined in Sections 2.2 and 2.3.

2.2 "DEHP Covered Products" means:

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1 2.2.1 Handbags directly or indirectly supplied to Ross by Handbags for All,
2 including but not limited to "Young Woman's Handbag, decorated with black and
3 metallic gold and glitter zebra skin print, D5301 C1950, dd's #400082477408," and

4 2.2.2 Shower Curtain Liners directly or indirectly supplied to Ross by Daniel's
5 Bath & Beyond, including but not limited to "Daniel's Bath Deluxe Quality Vinyl
6 Curtain/Liner, Reinforced Grommets, Magnetic Hem, 70"W x 72"L, "100% Vinyl," Made
7 in China, "Clear", barcode 7 831154 001222."

8 2.3 "Lead Covered Products" means Emergency Road Kits directly or indirectly
9 supplied to Ross by KCO Group, the owner of the brand Think Tank Technology, including but
10 not limited to "ThinkTank Technology® 31 Piece Roadside Emergency Kit, "KC 10011", UPC 8
11 53371 10011 0."

12 2.4 "Effective Date" means the date that this Consent Judgment is approved by the
13 Court.

14 2.5 "Notices" means the October 19, 2012 Notice, the December 21, 2012 Notice, the
15 January 10, 2014 Notice, and the June 20, 2013 Notice.

16 2.6 "Operative Complaint" means the First Amended Complaint in Case No. CGC-13-
17 535763, as amended by this Consent Judgment.

18 **3. INJUNCTIVE RELIEF/REFORMULATION**

19 3.1 To the extent that it has not already done so, on or before the Effective Date, Ross
20 shall destroy any inventory of the exemplar Covered Products identified in the Notices remaining
21 in its California stores.

22 3.2 As of the Effective Date, Ross shall not sell or offer for sale in the State of
23 California any DEHP Covered Product that contains DEHP in concentrations of more than 1000
24 parts per million by weight in any component.

25 3.3 As of the Effective Date, Ross shall not sell or offer for sale in the State of
26 California any Lead Covered Product that contains lead in concentrations of more than 100 parts
27 per million by weight in any component.
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1 **4. SETTLEMENT PAYMENTS**

2 4.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from CAG,
3 whichever is later, Ross shall pay a total of \$56,000 as complete settlement of all monetary claims
4 by CAG related to the Notices, as follows.

5 4.2 **Payment In Lieu of Civil Penalties:** Ross shall pay \$500 in lieu of civil penalties
6 to "Consumer Advocacy Group, Inc." CAG will use this payment for investigation of the
7 public's exposure to Proposition 65 listed chemicals through various means, laboratory fees for
8 testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through various
9 mediums, including but not limited to consumer product, occupational, and environmental
10 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained
11 experts who assist with the extensive scientific analysis necessary for those files in litigation, in
12 order to reduce the public's exposure to Proposition 65 listed chemicals by notifying those
13 persons and/or entities believed to be responsible for such exposures and attempting to persuade
14 those persons and/or entities to reformulate their products or the source of exposure to completely
15 eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing the same
16 public harm as allegedly in the instant Action. Further, should the court require it, CAG will
17 submit under seal, an accounting of these funds as described above as to how the funds were
18 used.

19 4.3 **Reimbursement of Attorney's Fees and Costs:** Ross shall pay \$54,000 to
20 "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs,
21 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
22 the approval of this Consent Judgment.

23 4.4 **Civil Penalty:** Ross shall issue two separate checks for a total amount of \$1,500
24 as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the
25 State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the
26 amount of \$1,125, representing 75% of the total penalty; and (b) one check to Consumer
27 Advocacy Group, Inc. in the amount of \$375 representing 25% of the total penalty. Two separate
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1 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O.
2 Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,125. The second
3 1099 shall be issued in the amount of \$875 to CAG and delivered to: Yeroushalmi & Associates,
4 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

5 4.5 All payments to CAG and Yeroushalmi & Associates under this Consent
6 Judgment shall be delivered to: Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W,
7 Beverly Hills, CA 90212.

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

9 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
10 behalf of itself and in the public interest and Ross and its officers, directors, insurers, employees,
11 parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies
12 and their successors and assigns ("Defendant Releasees") and all persons and entities who are
13 downstream in the stream of commerce from Ross who sell or distribute the Covered Products
14 ("Downstream Defendant Releasees"), for all claims for violations of Proposition 65 up through
15 the Effective Date based on exposure to DEHP from DEHP Covered Products and lead from Lead
16 Covered Products, through the Effective Date. Ross's and Defendant Releasees' compliance with
17 this Consent Judgment shall constitute compliance with Proposition 65 with respect to DEHP
18 from DEHP Covered Products and lead from Lead Covered Products as set forth in the Notices.
19 DEHP Covered Products and Lead Covered Products are limited to those sold directly or
20 indirectly to Ross by Handbags for All, KCO Group, and Daniel's Bath and Beyond. This
21 Section 5.1 shall not extend upstream to any entity that manufactured the Covered Products or
22 any component parts thereof, or any distributor or supplier who sold the Covered Products to
23 Ross.

24 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
25 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
26 indirectly, any form of legal action and releases all claims, including, without limitation, all
27 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
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1 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
2 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
3 contingent (collectively "Claims"), against Ross, Defendant Releasees, and Downstream
4 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
5 common law regarding the failure to warn about exposure to DEHP in DEHP Covered Products
6 and lead in Lead Covered Products through the Effective Date. DEHP Covered Products and
7 Lead Covered Products are limited to those sold directly or indirectly to Ross by Handbags for
8 All, KCO Group, and Daniel's Bath and Beyond. In furtherance of the foregoing, as to alleged
9 exposures to Covered Products, CAG hereby waives any and all rights and benefits which it now
10 has, or in the future may have, conferred upon it with respect to the Claims by virtue of the
11 provisions of section 1542 of the California Civil Code, which provides as follows:
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13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
14 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
15 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
16 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
17 DEBTOR.

18 CAG understands and acknowledges that the significance and consequence of this waiver of
19 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
20 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
21 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or
22 lead compounds from Covered Products, CAG will not be able to make any claim for those
23 damages against Ross the Defendant Releasees, or Downstream Defendant Releasees.
24 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may
25 exist as of the date of this release but which CAG does not know exist, and which, if known,
26 would materially affect their decision to enter into this Consent Judgment, regardless of whether
27 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.
28 This Section 5.2 shall not extend upstream to any entity that manufactured the Covered Products
or any component parts thereof, or any distributor or supplier who sold the Covered Products to

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1 Ross.

2 **6. ENFORCEMENT OF JUDGMENT**

3 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
4 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
5 California, San Francisco, giving the notice required by law, enforce the terms and conditions
6 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
7 only after that Party first provides 30 days' notice to the Party allegedly failing to comply with the
8 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
9 comply in an open and good faith manner.

10 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
11 proceeding to enforce Section 3 of this Consent Judgment, CAG shall provide a Notice of
12 Violation ("NOV") to Ross. The NOV shall include for each Covered Product: the date(s) the
13 alleged violation(s) was observed and the location at which the Covered Product was offered for
14 sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Product.

15 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
16 alleged violation if, within 30 days of receiving such NOV, Ross serves a Notice of
17 Election ("NOE") that meets one of the following conditions:

18 (a) The Covered Product was received by Ross for sale in California
19 before the Effective Date, or

20 (b) Since receiving the NOV Ross has taken corrective action by
21 removing the Covered Product identified in the NOV from sale in California, or (ii)
22 providing a clear and reasonable warning for the Covered Product identified in the NOV
23 pursuant to 27 Cal. Code Regs. § 25603.

24 6.2.2 **Contested NOV.** Ross may serve an NOE informing CAG of its election
25 to contest the NOV within 30 days of receiving the NOV.

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1 (a) In its election, Ross may request that the same sample(s) of
2 Covered Product(s) tested by CAG be subject to confirmatory testing at an accredited
3 laboratory.

4 (b) If the confirmatory testing establishes that the Covered Product
5 does not contain lead in excess of the level allowed in Section 3.1 CAG shall take no
6 further action regarding the alleged violation. If the testing does not establish compliance
7 with Section 3.1, Ross may withdraw its NOE to contest the violation and may serve a
8 new NOE pursuant to Section 6.2.1.

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

12 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
13 prevailing party shall be entitled to recover its attorney's fees and costs.

14 **7. ENTRY OF CONSENT JUDGMENT**

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

18 7.2 If this Consent Judgment is not approved by the Court in its entirety, (a) this
19 Consent Judgment and any and all prior agreements between the parties merged herein shall
20 terminate and become null and void, and the actions shall revert to the status that existed prior to
21 the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
22 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
23 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
24 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
25 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.
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1 **8. SUBSEQUENT MODIFICATION OF APPROVED CONSENT JUDGMENT**

2 8.1 Subsequent to entry of this Consent Judgment, should a Party seek modification of
3 this Consent Judgment, such modification shall be in writing and approved by the Court.

4 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
5 meet and confer with the other Party prior to filing a motion to modify the approved Consent
6 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 Ross
12 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'S FEES**

21 12.1 Except as specifically provided in Section 4.3, 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
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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 IN 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.

<p>If to CAG:</p> <p>Reuben Yeroushalmi, Esq. Yeroushalmi & Yeroushalmi 9100 Wilshire Boulevard, Suite 240W Beverly Hills, CA 90212 (310) 623-1926</p>	<p>If to Ross:</p> <p>General Counsel Ross Stores, Inc. 4440 Rosewood Drive Pleasanton, CA 94588</p> <p>With a copy to:</p>
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Jeffrey B. Margulies
Fulbright & Jaworski LLP
555 South Flower Street
41st Floor
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: September 29, 2014

Date: 9.29.14

Michael Marcus

Tracy Meyer

Name: Michael Marcus

Name: Tracy Meyer

Title: Director
CONSUMER ADVOCACY GROUP,
INC.

Title: Corporate Counsel + Senior Director
ROSS STORES, INC. Product Compliance

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT