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9 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Plaintiff,

v.

DONG HE INTERNATIONAL TRADING,
INC., a California Corporation; SMART
COOK, INC., a California Corporation; BIG
LOTS STORES, INC., an Ohio Corporation;
BIG LOTS, INC., an Ohio Corporation;
COST SAVER MARKET, a business entity
form unknown; RALEY'S, a California
Corporation, UNITED POWER GROUP,
INC., a California Corporation; FOOD
SOURCE, a business entity form unknown;
and DOES 1-20;

Defendants.

CASE NO. BC490595

**CONSENT JUDGMENT AS TO
UNIFIED GROCERS, INC., RALEY'S
AND WAREHOUSE CONCEPTS
[PROPOSED]**

Dept: 51
Judge: Hon. Mitchell Beckloff
Complaint filed: August 20, 2012

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between plaintiff Consumer Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and

1 defendants Unified Grocers, Inc., ("Unified Grocers") Raley's, and Warehouse Concepts)
2 (collectively "hereinafter Defendants"), with each a Party and collectively referred to as "Parties."

3 1.2 Defendants employ ten or more persons, are persons in the course of doing business
4 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
5 Safety Code §§ 25249.6 et seq. ("Proposition 65"), and distribute, and sell Cookware
6 manufactured, imported or supplied by Dong He International Trading Co. ("Covered Products").

7 **1.3 Notices of Violation.**

8 1.3.1 On or about April 23, 2012, CAG served Defendants Raley's, Warehouse
9 Concepts, and various public enforcement agencies with a document entitled "60-Day Notice of
10 Violation" (the "April 23, 2012 Notice") that provided the recipients with notice of alleged
11 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
12 exposures to di(2-ethylhexyl)phthalate (DEHP) and di-butyl phthalate (DBP) contained in the
13 Covered Products.

14 1.3.2 On or about February 15, 2013, CAG served Defendant Unified Grocers,
15 Inc., Warehouse Concepts, and various public enforcement agencies with a document entitled "60-
16 Day Notice of Violation" (the "February 15, 2013 Notice") that provided the recipients with notice
17 of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
18 California of exposures to di(2-ethylhexyl)phthalate (DEHP) and di-butyl phthalate (DBP)
19 contained in the Covered Products.

20 1.3.3 No public enforcer has commenced or diligently prosecuted the
21 allegations set forth in the April 23, 2012 Notice, or the February 15, 2013 Notice.

22 **1.4 Complaint.**

23 On August 20, 2012, CAG filed a Complaint for civil penalties and injunctive relief
24 ("Complaint") in Los Angeles Superior Court, Case No. BC490595. The Complaint alleges,
25 among other things, that Defendants violated Proposition 65 by failing to give clear and reasonable
26 warnings of exposure to DEHP and DBP from the Covered Products.

27 On September 27, 2012, Plaintiff filed its First Amended Complaint. On February 14,
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1 2014. the Second Amended Complaint was added. On December 16, 2013, CAG filed its Third
2 (sic) Amended Complaint.

3 **1.5 Consent to Jurisdiction**

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

11 **1.6 No Admission**

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

18 **2. DEFINITIONS**

19 2.1 "Covered Products" means Cookware manufactured, imported, supplied or sold to
20 Defendants by Dong He International Trading Co.

21 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
22 Court.

23 **3. INJUNCTIVE RELIEF/REFORMULATION**

24 3.1 As of the Effective Date Defendants shall not sell, or offer for sale in the future in
25 California, Covered Products that contain DEHP and/or DBP with more than 0.1% DEHP and/or
26 DBP by weight.
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1 **4. SETTLEMENT PAYMENT**

2 Defendants Unified Grocers, Warehouse Concepts, and Raley's, have Express, Implied,
3 and/or Equitable indemnity claims against Dong He and Smart Cook for losses incurred as a result
4 of the sale of the Covered Products, including reimbursement of their attorney's fees and costs in
5 this action. Dong He has failed to indemnify them. Therefore, in lieu of Defendants making any
6 payments, Defendants have assigned their claims for indemnity to CAG, for resolution in the
7 ongoing litigation in this matter against Dong He International Trading, Inc., dba United Power
8 Group, and its related entity Smart Cook, Inc. Accordingly, Plaintiff will litigate these claims
9 against Dong He and Smart Cook, the remaining defendants in this action, and retain any recovery,
10 as a condition of settlement. **Any amount of recovery would be subject to the court's approval**
11 **of CAG's attorney's fees and costs as reasonable under California Law according to**
12 **California Health and Safety Code §25249.7(f) 4(b).**

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

14 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
15 behalf of itself and in the public interest and Defendants and their officers, directors, insurers,
16 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
17 companies and their successors and assigns ("Defendant Releasees"), including but not limited to
18 each of their downstream chain of distribution, customers, distributors, wholesalers, retailers
19 (specifically including but not limited to UKA's Big Saver Foods, Inc. dba Big Saver) or any other
20 person in the downstream course of doing business, and the successors and assigns of any of them,
21 who may use, maintain, distribute or sell Covered Products, ("Downstream Defendant Releasees"),
22 for all claims for violations of Proposition 65 up through the Effective Date based on exposure to
23 DEHP and DBP from Covered Products as set forth in the Notice. Defendants and Defendant
24 Releasees' compliance with this Consent Judgment shall constitute compliance with Proposition
25 65 with respect to DEHP and DBP from Covered Products as set forth in the Notice.

26
27 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
28 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or

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

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

21 CAG understands and acknowledges that the significance and consequence of this waiver of
22 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
23 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from any
24 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
25 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
28 Defendant Releasees or Downstream Defendant Releasees. Furthermore, CAG acknowledges that
it intends these consequences for any such Claims arising from any violation of Proposition 65 or
any other statutory or common law regarding the failure to warn about exposure to DEHP and

1 DBP from Covered Products as may exist as of the date of this release but which CAG does not
2 know exist, and which, if known, would materially affect their decision to enter into this Consent
3 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
4 negligence, or any other cause.

5 **6. ENFORCEMENT OF JUDGMENT**

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

13 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
14 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
15 Violation ("NOV") to Defendants. The NOV shall include for each of the Covered Products: the
16 date(s) the alleged violation(s) was observed and the location at which the Covered Products were
17 offered for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered
18 Products, including an identification of the component(s) of the Covered Products that were tested.

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

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

24 (b) Since receiving the NOV Defendants have taken corrective action
25 by either (i) as to Unified Grocers, requesting that its customers in California remove the
26 Covered Products identified in the NOV from sale in California and destroy or return the
27 Covered Products, (ii) as to Raley's or Warehouse Concepts, discontinuing the sale of the
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1 Covered Products identified in the NOV and destroying or returning the Covered Products
2 to its vendor, or (iii) providing a clear and reasonable warning for the Covered Products
3 identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

4 6.2.2 **Contested NOV.** Defendants may serve an NOE informing CAG of its
5 election to contest the NOV within 30 days of receiving the NOV.

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

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

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

16 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
17 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
18 violation of Proposition 65 or this Consent Judgment.

19 7. **ENTRY OF CONSENT JUDGMENT**

20 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
21 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
22 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint.

23 7.2 If this Consent Judgment is not approved by the Court, the Parties agree to meet
24 and confer and use best efforts to determine how to effectuate their intended settlement agreement,
25 including whether to modify the terms of the Consent Judgment and to resubmit it for approval.
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1 **8. MODIFICATION OF JUDGMENT**

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

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

7 **9. RETENTION OF JURISDICTION**

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

10 **10. DUTIES LIMITED TO CALIFORNIA**

11 This Consent Judgment shall have no effect on Covered Products sold outside the State of
12 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 prior
16 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney
17 General has received the aforementioned copy of this Consent Judgment, and in the absence of
18 any written objection by the Attorney General to the terms of this Consent Judgment, the parties
19 may then submit it to the Court for approval.

20 **12. ATTORNEY FEES**

21 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs and
22 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 deemed
2 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 provisions
6 of California law.

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

16 **15. EXECUTION AND COUNTERPARTS**

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

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

24 If to CAG:

25 Reuben Yeroushalmi, Esq.
26 9100 Wilshire Boulevard, Suite 610E
27 Beverly Hills, CA. 90212
28 (310) 623-1926

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If to Unified Grocers, Inc.:

Harry Demas, General Counsel
Unified Grocers, Inc.
5200 Sheila Street
Commerce, CA 90040

With a copy to:

Renee D. Wasserman
Rogers Joseph O'Donnell
311 California Street, 10th Fl.
San Francisco, CA 94104

If to Raley's or Warehouse Concepts

Raley's
500 W. Capitol Ave.
West Sacramento, CA 95605

With a copy to:

Thomas Evans
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

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: 11-6-14, 2014

Date: _____, 2014

By: 
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: _____
Defendant, UNIFIED GROCERS, INC.

1 If to Unified Grocers, Inc.:

2 Harry Demas, General Counsel
3 Unified Grocers, Inc.
4 5200 Sheila Street
5 Commerce, CA 90040

6 With a copy to:

7 Renee D. Wasserman
8 Rogers Joseph O'Donnell
9 311 California Street, 10th Fl.
10 San Francisco, CA 94104

11 If to Raley's or Warehouse Concepts

12 Raley's
13 500 W. Capitol Ave.
14 West Sacramento, CA 95605

15 With a copy to:

16 Thomas Evans
17 Reed Smith LLP
18 101 Second Street, Suite 1800
19 San Francisco, CA 94105

20 **17. AUTHORITY TO STIPULATE**

21 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
22 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
23 the party represented and legally to bind that party.

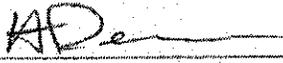
24 AGREE TO:

25 Date: _____, 2014

26 AGREE TO:

27 Date: _____, 2014

28 By: _____
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: 
Defendant, UNIFIED GROCERS, INC.
Harry Demas
General Counsel

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AGREED TO:

AGREED TO:

Date: Nov. 4, 2014

Date: Nov. 4, 2014

By: [Signature]

By: [Signature]

Defendant, WAREHOUSE CONCEPTS, INC.

Defendant, RALEY'S

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT