

1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 **YEROUSHALMI & ASSOCIATES**
5 9100 Wilshire Boulevard, Suite 240W
6 Beverly Hills, California 90212
7 Telephone: 310.623.1926
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9 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF MARIN**

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

15 Plaintiff,

16 v.

17 BILLABONG RETAIL INC., now known
18 as GSM RETAIL, INC., a California
19 Corporation; BURLEIGH POINT, LTD, a
20 California Corporation; GSM ONLINE
21 RETAIL, INC., a California Corporation;
22 and DOES 1-20;

23 Defendants.

CASE NO. CIV1402013

**CONSENT JUDGMENT
[PROPOSED]**

Health & Safety Code § 25249.5 *et seq.*

Judge: Hon. Roy O. Chernus
Dept: B
Complaint Filed: May 28, 2014
SAC Filed: August 19, 2014

24 **1. INTRODUCTION**

25 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
26 Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself, its past and current
27 agents, representatives, attorneys, successors, and/or assignees and in the interest of the public,
28 and defendant, BILLABONG RETAIL INC., now known as GSM (RETAIL), INC. (hereinafter
referred to as "BILLABONG"), defendant BURLEIGH POINT, LTD (hereinafter referred to as
"BURLEIGH"), and defendant GSM ONLINE RETAIL, INC. (hereinafter referred to as "GSM

1 ONLINE”) (BILLABONG, BURLEIGH and GSM ONLINE collectively referred to as
2 “Defendants”), with each referred to as a “Party” and collectively referred to as “Parties.”
3

4 1.2 Defendants and Products

5 1.2.1 Defendants employ ten or more persons, are persons in the course of
6 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
7 California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”), and cause to be
8 manufactured, distributed, or sold Footwear, which includes but is not limited to “KUSTOM,
9 “STYLE NAME: KAD TIDE”, Men’s US Size 10, Men’s UK Size 9 “D1013 C707”, Ross Tag
10 Code: 400084108406” (hereinafter “Covered Products”).

11 1.3 Chemical Of Concern

12 1.3.1 Diethyl hexyl phthalate (“DEHP”) is known to the State of California to
13 cause cancer and/or birth defects or other reproductive harm (DEHP is referred to herein as
14 “Listed Chemical.”).

15 1.4 Notices of Violation.

16 1.4.1 On or about November 20, 2013, CAG served Defendant BILLABONG
17 and various public enforcement agencies with a document entitled “SIXTY-DAY NOTICE OF
18 INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER AND TOXIC
19 ENFORCEMENT ACT OF 1986” (the “November 20, 2013 Notice”) that provided the
20 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to
21 warn individuals in California of exposures to DEHP in Footwear, which includes but is not
22 limited to ““KUSTOM, “STYLE NAME: KAD TIDE”, Men’s US Size 10, Men’s UK Size 9
23 “D1013 C707”, Ross Tag Code: 400084108406”” No public enforcer has commenced or
24 diligently prosecuted the allegations set forth in the November 20, 2013 Notice.

25 1.4.2 On or about May 28, 2014, CAG served Defendant BILLABONG and
26 BURLEIGH and various public enforcement agencies with a document entitled “SIXTY-DAY
27 NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER AND
28 TOXIC ENFORCEMENT ACT OF 1986” (the “May 28, 2014 Notice”) that provided the

1 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to
2 warn individuals in California of exposures to DEHP in Footwear, which includes but is not
3 limited to ““KUSTOM, “STYLE NAME: KAD TIDE”, Men’s US Size 10, Men’s UK Size 9
4 “D1013 C707”, Ross Tag Code: 400084108406”” No public enforcer has commenced or
5 diligently prosecuted the allegations set forth in the May 28, 2014 Notice.

6 1.4.3 On or about July 14, 2014, CAG served Defendant GSM ONLINE and
7 various public enforcement agencies with a document entitled “SIXTY-DAY NOTICE OF
8 INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER AND TOXIC
9 ENFORCEMENT ACT OF 1986” (the “July 14, 2014 Notice”) that provided the recipients
10 with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
11 individuals in California of exposures to DEHP in Footwear, which includes but is not limited
12 to ““KUSTOM, “STYLE NAME: KAD TIDE”, Men’s US Size 10, Men’s UK Size 9 “D1013
13 C707”, Ross Tag Code: 400084108406”” No public enforcer has commenced or diligently
14 prosecuted the allegations set forth in the July 14, 2014 Notice.

15 1.5 **Complaint.**

16 1.5.1 On May 28, 2014, CAG filed a Complaint for civil penalties and
17 injunctive relief (“Complaint”) in Marin County Superior Court, Case No.CIV1402013. The
18 Complaint alleges, among other things, that Defendant BILLABONG violated Proposition 65
19 by failing to give clear and reasonable warnings of exposure to DEHP from the Covered
20 Products.

21 1.5.2 On August 19, 2014, CAG filed a Second Amended Complaint for civil
22 penalties and injunctive relief (“SAC”) in Marin County Superior Court, Case No.CIV1402013.
23 The SAC alleges, among other things, that Defendants BILLABONG and Defendant
24 BURLEIGH violated Proposition 65 by failing to give clear and reasonable warnings of
25 exposure to DEHP from the Covered Products.

26 1.5.3 On October 8, 2014, 2014, CAG filed a Third Amended Complaint for
27 civil penalties and injunctive relief (“TAC”) in Marin County Superior Court, Case
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1 No.CIV1402013. The TAC alleges, among other things, that Defendants BILLABONG,
2 BURLEIGH and GSM ONLINE violated Proposition 65 by failing to give clear and reasonable
3 warnings of exposure to DEHP from the Covered Products.
4

5 **1.6 Consent to Jurisdiction**

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

13 **1.7 No Admission**

14 This Consent Judgment resolves Claims that are denied and disputed. The Parties enter
15 into this Consent Judgment pursuant to a full and final settlement of any and all Claims between
16 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
17 shall be construed as an admission by the Parties of any allegation of the TAC (each and every
18 allegation of which Defendants deny), any fact, conclusion of law, issue of law or violation of
19 law, including without limitation, any admission concerning any violation of Proposition 65 or
20 any other statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
21 “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and
22 Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms,
23 shall constitute or be construed as an admission by the Parties of any fact, conclusion of law,
24 issue of law, or violation of law, or of fault, wrongdoing, or liability by any of the Defendants,
25 or their owners, officers, directors, employees, parents, subsidiaries, employees, shareholders,
26 directors, insurers, attorneys, successors and assigns, past and present, their heirs, assigns and
27 successors in interest, predecessor or successor entities, affiliated entities or corporations, or
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1 entities absorbed by merger or acquisition, or be offered or admitted as evidence in any
2 administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore,
3 nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument,
4 or defense the Parties may have in any other or future legal proceeding, except as expressly
5 provided in this Consent Judgment.

6 **2. DEFINITIONS**

7 2.1 "Covered Products" means Footwear, which includes but is not limited to
8 "KUSTOM, "STYLE NAME: KAD TIDE", Men's US Size 10, Men's UK Size 9 "D1013
9 C707", Ross Tag Code: 400084108406"". "Covered Products" are limited to the products sold,
10 manufactured, shipped and/or otherwise distributed for California sale only by Defendants and
11 all companies related to the Defendants.

12 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
13 Court.

14 2.5 "Notices" means the November 20, 2013, May 28, 2014, and July 14, 2014
15 Notices.

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

17 3.1 Commencing on the Effective Date, Defendants shall not manufacture or import
18 for distribution or sale to California customers, or cause to be manufactured or imported for
19 California sale, any Covered Products that contain more than 0.1% DEHP.

20 3.2 Defendants agree, promise, and represent that, as of the Effective Date, to the
21 extent it ships or sells any Covered Products for sale to California customers from its existing
22 inventory that do not comply with Section 3.1, it will provide warnings on such Covered
23 Products that comply with Proposition 65. "Existing inventory" excludes Covered Products
24 shipped, sold and/or otherwise distributed on or prior to the Effective Date, even if sold by
25 Downstream Releasees after the Effective Date. The warnings shall be provided in such a
26 conspicuously and prominent manner that will assure the message is made available and likely
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1 to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase. The
2 Parties agree that product labeling stating that:

3
4 **“WARNING: This product contains chemicals known to the State of
5 California to cause cancer, or birth defects, or other reproductive harm”**

6 Shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the
7 Covered Products for any Covered Products in existing inventory that do not comply with
8 Section 3.1 and were distributed and/or sold by Releasees or Downstream Releasees after the
9 Effective Date.

10 **4. SETTLEMENT PAYMENT**

11 4.1 **Payment and Due Date:** Within twenty (20) days of the approval of the
12 Effective Date, Defendants shall pay Sixty-Five Thousand Dollars (\$65,000.00) in full and
13 complete settlement of all monetary claims by CAG related to the Notices, as follows:

14 4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling Fifteen
15 thousand dollars (\$15,000.00) as penalties pursuant to Health & Safety Code § 25249.12:

16 (a) Defendant will issue a check made payable to the State of California’s
17 Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of Eleven
18 thousand, two-hundred and fifty dollars (\$11,250.00) representing 75% of the total penalty and
19 Defendant will issue a check to “Consumer Advocacy Group, Inc.” in the amount of three
20 thousand and seven-hundred and fifty dollars (\$3,750) representing 25% of the total penalty;
21 and

22 (b) Separate 1099s shall be issued for each of the above payments:
23 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
24 0284486) in the amount of \$11,250.00. Defendant will also issue a 1099 to CAG c/o
25 Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California
26 90212 in the amount of \$3,750.00.

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

19 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall issue a
20 check in the amount of forty-five thousand (\$45,000.00) made payable to “Yeroushalmi &
21 Associates” as reimbursement for reasonable investigation fees and costs, attorneys’ fees, and
22 any other costs incurred as a result of investigating, bringing this matter to Defendant’s
23 attention, litigating, and negotiating a settlement in the public interest. The check shall be made
24 payable to “Yeroushalmi & Associates” and delivered to Reuben Yeroushalmi, Yeroushalmi &
25 Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

26 **4.2** All checks described in Section 4.1 shall be delivered to: Reuben
27 Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills,
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1 CA 90212. By the Effective Date, Yeroushalmi & Yeroushalmi shall provide Defendant with the
2 Employer Identification Numbers' of the Consumer Advocacy Group, Inc, Yeroushalmi & Associates
3 and OEHHA.

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

5 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
6 behalf of itself, its past and current agents, representatives, attorneys, successors, and/or
7 assignees and in the public interest, on the one hand, and (a) Defendants and their respective
8 owners, officers, directors, insurers, attorneys, employees, parents, shareholders, divisions,
9 subdivisions, subsidiaries, partners, affiliates, sister and related companies, entities absorbed by
10 merger or acquisition, their predecessor or successor entities, and their heirs, assigns and
11 successors in interest, past or present, which shall specifically include without limitation
12 Kustom Shoes, Ltd., Billabong Group, and Billabong Holdings USA, Inc. (collectively,
13 "Defendant Releasees") and (b) any other person or entity who may directly or indirectly use,
14 provide, maintain, distribute or sell Covered Products in the course of doing business, including
15 but not limited to each of the Defendant Releasees' suppliers, customers, distributors,
16 wholesalers, retailers, company-owned stores, franchisees, cooperative members, licensees, and
17 the owners, parents, subsidiaries, affiliates, sister and related companies, employees,
18 shareholders, officers, directors, insurers, attorneys, precedecessors, successors and assigns, past
19 and present, and their heirs, assigns and successors in interest of any of these
20 entities(collectively, "Downstream Defendant Releasees"), on the other hand, for all violations
21 or claimed violations of Proposition 65 up through the Effective Date based on exposure to
22 DEHP or the failure to warn about exposure to DEHP arising in connection with the Covered
23 Products sold, manufactured, shipped and/or otherwise distributed for California sale on or
24 before the Effective Date. ("Released Claims"). Defendant and Downstream Defendant
25 Releasees' compliance with this Consent Judgment shall constitute compliance with Proposition
26 65 with respect to DEHP from Covered Products. Nothing in this Section affects CAG's right to
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1 commence or prosecute an action under Proposition 65 against any person other than Defendant
2 Releasees or Downstream Defendant Releasees.

3 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
4 successors, and/or assignees, hereby waives, releases and forever discharges with respect to the
5 Covered Products all rights to institute or participate in, directly or indirectly, any form of legal
6 action, including, without limitation, all actions, and causes of action, in law or in equity, suits,
7 claims, controversies, liabilities, demands, obligations, damages, costs, fines, penalties, losses,
8 and expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees)
9 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively,
10 "Claims"), against the Defendants, Defendant Releasees, and Downstream Defendant Releasees
11 arising from or relating to any Released Claims. In furtherance of the foregoing, as to the
12 Released Claims, CAG on behalf of itself, its past and current agents, representatives, attorneys,
13 successors, and/or assignees, hereby expressly waives any and all rights and benefits which it
14 now has, or in the future may have, conferred upon it with respect to the Released Claims by
15 virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:

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

21 as well as under any other state or federal statute or common law principle of similar effect, to
22 the fullest extent that it may lawfully waive such rights or benefits pertaining to the released
23 matters. CAG is familiar with California Civil Code section 1542 and understands and
24 acknowledges that the significance and consequence of this waiver of California Civil Code
25 section 1542 is that even if CAG suffers future damages arising out of or resulting from, or
26 related directly or indirectly to, in whole or in part, Claims arising from any violation of
27 Proposition 65 or any other statutory or common law regarding the failure to warn about
28 exposure to DEHP from the Covered Products, including but not limited to any exposure to, or
failure to warn with respect to exposure to DEHP from the Covered Products, CAG will not be

1 able to make any claim for those damages against Defendant Releasees or Downstream
2 Releasees. Furthermore, CAG acknowledges that it intends these consequences for any such
3 Claims arising from any violation of Proposition 65 or any other statutory or common law
4 regarding the failure to warn about exposure to DEHP from Covered Products as may exist as of
5 the date of this release but which CAG does not know exist, and which, if known, would
6 materially affect their decision to enter into this Consent Judgment, regardless of whether their
7 lack of knowledge is the result of ignorance, 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 insofar as the Court has jurisdiction to enforce as set forth in Section 9. The
11 Parties may, by noticed motion or order to show cause before the Superior Court of California,
12 Marin County, giving the notice required by law, enforce the terms and conditions contained
13 herein. No action to enforce any of the terms and conditions of this Consent Judgment may be
14 commenced or maintained, and no notice of violation related to the Covered Products may be
15 served or filed against the Defendant Releasees or the Downstream Releasees by or on behalf of
16 CAG, unless the Party seeking enforcement or alleging violation first provides 90 days notice to
17 the Party allegedly failing to comply with the terms and conditions of this Consent Judgment
18 (which notice shall include the specific acts alleged to breach this Consent Judgment as
19 detailed in Section 6.2 below), and attempts to resolve such Party's failure to comply in an open
20 and good faith manner (including by complying with the requirements of Section 6.2 below).

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
23 Violation ("NOV") to the Defendant or Defendants it asserts is in violation with a term of this
24 Consent Judgment. The NOV shall include for each of the Covered Products: the name of the
25 product, the date(s) the alleged violation(s) was observed and the location at which the Covered
26 Products were offered for sale, and shall be accompanied by all test data obtained by CAG
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1 regarding the Covered Products, including an identification of the component(s) of the Covered
2 Products that were tested.

3 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
4 alleged violation if, within 60 days of receiving such NOV, the Defendant or Defendants
5 serves a Notice of Election (“NOE”) that states that Defendants meet one of the
6 following conditions:

7 (a) The Covered Products were manufactured, shipped and/or
8 otherwise offered for sale on or before the Effective Date, or

9 (b) Since receiving the NOV Defendant or Defendants has taken
10 corrective action by either (i) requesting that its customers or stores in California, as
11 applicable, remove the Covered Products identified in the NOV from sale in California
12 and destroy or return the Covered Products to Defendant or Defendants or vendor, as
13 applicable, or (ii) requesting that its customers provide a clear and reasonable warning
14 for the Covered Products identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

15 **6.2.2 Contested NOV.** The Defendant or Defendants who receive the NOV
16 may serve an NOE informing CAG of its election to contest the NOV within 30 days of
17 receiving the NOV.

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

21 (b) If the confirmatory testing establishes that the Covered Products
22 do not contain DEHP in excess of the levels allowed in Section 3.1, above, CAG shall
23 take no further action regarding the alleged violation. If the testing does not establish
24 compliance with Section 3.1, above, the Defendant or Defendants may withdraw its
25 NOE to contest the violation and may serve a new NOE pursuant to Section 6.2.1.
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1 (c) If the Defendant or Defendants does not withdraw an NOE to
2 contest the NOV, the Parties shall meet and confer for a period of no less than 60 days
3 before CAG may seek an order enforcing the terms of this Consent Judgment.

4 6.3 In any proceeding brought by either Party to enforce this Consent Judgment in
5 compliance with the terms hereof, such party may seek whatever fines, costs, penalties or
6 remedies as may be provided by law for any violation of Proposition 65 or this Consent
7 Judgment.

8 **7. ENTRY OF CONSENT JUDGMENT**

9 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
10 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
11 Defendants waive their respective rights to a hearing or trial on the allegations of the TAC.

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

21 **8. MODIFICATION OF JUDGMENT**

22 8.1 This Consent Judgment may be modified only upon written agreement of the
23 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
24 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

25 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith
26 to 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 **14. GOVERNING LAW**

25 14.1 The validity, construction and performance of this Consent Judgment shall be
26 governed by the laws of the State of California, without reference to any conflicts of law
27 provisions of California law.

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

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

20 **15. EXECUTION AND COUNTERPARTS**

21 15.1 This Consent Judgment may be executed in counterparts and by means of
22 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
23 one document and have the same force and effect as original signatures.

24 **16. NOTICES**

25 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
26 Class Mail.

27
28 If to CAG:

1 Reuben Yeroushalmi
2 9100 Wilshire Boulevard, Suite 240W
3 Beverly Hills, CA 90212
4 (310) 623-1926

5 If to Billabong Retail Inc., Now Known As GSM (Retail), Inc.:

6 Libby Stockstill
7 Senior Corporate Counsel (US)
8 117 Waterworks Way
9 Irvine, CA 92618

10 Dennis E. Raglin, Esq.
11 SEDGWICK LLP
12 333 Bush Street, 30th Floor
13 San Francisco, CA 94104-2806

14 If to Burleigh Point, Ltd:

15 Libby Stockstill
16 Senior Corporate Counsel (US)
17 117 Waterworks Way
18 Irvine, CA 92618

19 Dennis E. Raglin, Esq.
20 SEDGWICK LLP
21 333 Bush Street, 30th Floor
22 San Francisco, CA 94104-2806

23 If to GSM Online Retail, Inc.:

24 Libby Stockstill
25 Senior Corporate Counsel (US)
26 117 Waterworks Way
27 Irvine, CA 92618

28 Dennis E. Raglin, Esq.
SEDGWICK LLP
333 Bush Street, 30th Floor
San Francisco, CA 94104-2806

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:

Date: 1-20, 2014~~5~~



Name: Michael Sisson

Title: Executive Director
CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date: 1/15, 2014~~5~~



Name: Edward Clark Leasure

Title: President, Quiet Flight Division
BILLABONG RETAIL INC., now known as GSM (RETAIL), INC.

AGREED TO:

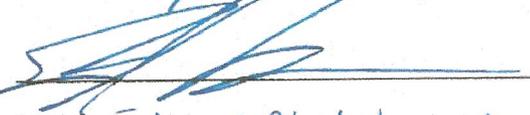
Date: _____, 2014

Name: _____

Title: _____
CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date: 1/15, 2014~~5~~



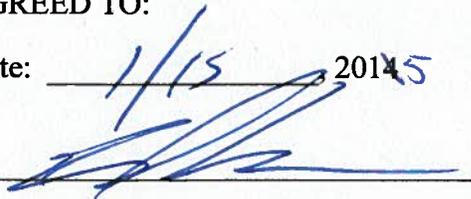
Name: Edward Clark Leasure

Title: CFO + Secretary
BURLEIGH POINT, LTD

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AGREED TO:
Date: _____, 2014

Name: _____
Title: _____
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:
Date: 1/15, 20145

Name: Edward Clark Leasure
Title: CFO + Secretary
GSM ONLINE RETAIL, INC.)

1 **IT IS SO ORDERED.**

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3 Date: _____

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JUDGE OF THE SUPERIOR COURT

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