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10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF ALAMEDA**

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

16 Plaintiff,

17 v.

18 DOWIN ENTERPRISES (USA), INC., an
19 Illinois Corporation; DOWIN
20 ENTERPRISES, INC., a business entity from
21 unknown; DOWIN PLASTIC
22 PRODUCTION CO., LTD., a business entity
23 from unknown; SUPER 99 CENT
24 DISCOUNT, INC., a California Corporation;
25 and DOES 1-20;

26 Defendants.

CASE NO. RG16810210

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Dept.: 303

Judge: Hon. Dennis Hayashi

Complaint filed: April 5, 2016

27 **1. INTRODUCTION**

28 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
Advocacy Group, Inc., (referred to as “CAG”) acting on behalf of itself and in the interest of the
public, and defendant, Dowin Enterprises (USA), Inc. (erroneously sued as Dowin) (“DOWIN”
or “Defendant”), each a Party to the action and collectively referred to as “Parties.” This Consent

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1 Judgment is intended to fully resolve all claims, demands, and allegations related to this action
2 and the Notices of Violation referred to herein.

3 **1.2 Defendants and Products**

4 1.2.1 Defendant DOWIN is an Illinois corporation which CAG alleges employs
5 ten or more persons. For purposes of this Consent Judgment only, DOWIN is deemed a person
6 in the course of doing business in California and is subject to the provisions of the Safe Drinking
7 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
8 (“Proposition 65”).

9 1.2.2 CAG alleges that DOWIN manufactured, caused to be manufactured, sold,
10 and/or distributed Vinyl Waffle Placemats as defined in the Notice.

11 **1.3 Chemical Of Concern**

12 Diisononyl Phthalate (“DINP”) is known to the State of California to cause cancer.

13 **1.4 Notices of Violation.**

14 1.4.1 On July 1, 2015, CAG served DOWIN, Dowin Enterprises, Inc., Dowin
15 Plastic Production Co. Ltd., 99 Cent Discount, Super 99 Cent Discount and various public
16 enforcement agencies with a document entitled “60-Day Notice of Intent to Sue for Violation of
17 the Safe Drinking Water and Toxic Enforcement Act of 1986” (“July 1, 2015 Notice”) that
18 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
19 failing to warn individuals in California of alleged exposures to DINP alleged to be contained in
20 Vinyl Waffle Placemats. No public enforcer has commenced or diligently prosecuted the
21 allegations set forth in the July 1, 2015 Notice.

22 **1.5 Complaint and Answer.**

23 On April 5, 2016, CAG filed a Complaint for civil penalties and injunctive relief
24 (“Complaint”) in Superior Court of California County of Alameda, Case No. RG16810210,
25 against the Defendant. The Complaint alleges, among other things, that Defendant violated
26 Proposition 65 by failing to give clear and reasonable warnings of alleged exposure to DINP
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1 from the Covered Products. On May 19, 2016, Defendant filed an answer denying all of the
2 allegations in the Complaint asserting all relative affirmative defenses.

3 **1.6 Consent to Jurisdiction**

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

11 **1.7 No Admission**

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

3 **2. DEFINITIONS**

4 2.1 “Covered Products” means Vinyl Waffle Placemats, including but not limited to
5 “Do Do Win® 2PK Waffle Placemats; Orange; ITEM #2314; made in China; Distributed by:
6 Dowin Enterprise Inc., Chicago, IL 60609; UPC# 8 97288 02314 8”, sold by or purchased from
7 DOWIN.

8 2.2 “Effective Date” means the date that CAG mails Notice of Entry of an Order by
9 the Court approving this Consent Judgment or otherwise notifies the Defendant that the Court
10 approved this Consent Judgment.

11 2.3 “DINP” means Diisononyl Phthalate.

12 2.4 “Notice” means the July 1, 2015 Notice.

13 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
14 **WARNINGS / DISMISSAL WITHOUT PREJUDICE.**

15 3.1 Within 30 days of the Effective Date, DOWIN shall not sell, offer for sale, or
16 distribute for sale the Covered Products in California unless they are reformulated to contain less
17 than 0.1% by weight (1,000 parts per million) of DINP.

18 3.2 After the Effective Date, DOWIN shall place a Proposition 65 compliant warning
19 on any Covered Products remaining in DOWIN’s inventory as of the Effective Date. Any
20 warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the
21 Covered Products, and be prominently placed with such conspicuousness as compared with other
22 words, statements, designs, or devices as to render it likely to be read and understood by an
23 ordinary individual under customary conditions before purchase or use. The warning shall state:

24 **WARNING:** This product contains DINP, a chemical known to the
25 State of California to cause cancer.

1 **4. SETTLEMENT PAYMENT**

2 4.1 **Payment and Due Date:** DOWIN shall pay a total of seventy-five thousand
3 dollars and zero cents (\$75,000) in full and complete settlement of all monetary claims by CAG
4 related to the Notice in this action, divided as follows:

5 4.1.1 **Civil Penalty:** DOWIN shall issue two separate checks totaling five
6 thousand seven-hundred and twenty dollars (\$5,720.00) as penalties pursuant to Health & Safety
7 Code § 25249.12:

8 (a) DOWIN will issue one check made payable to the State of California’s Office
9 of Environmental Health Hazard Assessment (“OEHHA”) in the amount of four thousand two-
10 hundred and ninety dollars (\$4,290.00) representing 75% of the total penalty and DOWIN will
11 issue a second check to CAG in the amount of one thousand four-hundred and thirty dollars
12 (\$1,430.00) representing 25% of the total penalty;

13 (b) Separate 1099s shall be issued for each of the above payments: DOWIN will
14 issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the
15 amount of \$4,290. DOWIN will also issue a 1099 to CAG in the amount of \$1,430 and deliver it
16 to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,
17 California 90212.

18 4.1.2 **Payments In Lieu of Civil Penalties:** DOWIN shall pay four thousand
19 two-hundred and eighty dollars (\$4,280), in lieu of civil penalties, payable to “Consumer
20 Advocacy Group, Inc.” CAG will use this payment as follows, seventy percent (70%) for fees of
21 investigation, purchasing and testing for Proposition 65 listed chemicals in various products, and
22 for expert fees for evaluating exposures through various mediums, including but not limited to
23 consumer product, occupational, and environmental exposures to Proposition 65 listed
24 chemicals, and the cost of hiring consulting and retained experts who assist with the extensive
25 scientific analysis necessary for those files in litigation; twenty percent (20%) for administrative
26 costs incurred during the investigation and litigation to reduce the public’s exposure to
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1 Proposition 65 listed chemicals by notifying those persons and/or entities believed to be
2 responsible for such exposures and attempting to persuade those persons and/or entities to
3 reformulate their products or the source of exposure to completely eliminate or lower the level of
4 Proposition 65 listed chemicals including but not limited to costs of documentation and tracking
5 of products investigated, storage of products, website enhancement and maintenance, computer
6 and software maintenance, investigative equipment, CAG's member's time for work done on
7 investigations, office supplies, mailing supplies and postage; and ten percent (10%) to offset the
8 costs of future litigation enforcing Proposition 65 but excluding attorney fees, thereby addressing
9 the same public harm as allegedly in the instant Action. Within 30 days of a request from the
10 Attorney General, CAG shall provide to the Attorney General copies of documentation
11 demonstrating how the above funds have been spent.

12 **4.1.3 Reimbursement of Attorney's Fees and Costs:** DOWIN shall pay a
13 total amount of sixty-five thousand dollars (\$65,000) to "Yeroushalmi & Associates" as
14 reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs
15 incurred as a result of investigating, bringing this matter to DOWIN's attention, litigating, and
16 negotiating a settlement in the public interest.

17 **4.2 Delivery of Payments:**

18 **4.2.1** All payments to OEHHA shall be delivered to: Office of Environmental
19 Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento,
20 California 95812. DOWIN shall provide written confirmation to CAG upon payment to
21 OEHHA.

22 **4.2.2** All payments to CAG and Yeroushalmi & Associates, shall be delivered
23 to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W,
24 Beverly Hills, CA 90212.
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1 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

2 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
3 behalf of itself and in the public interest, and DOWIN and its officers, directors, insurers,
4 employees, parents, owners, shareholders, divisions, subdivisions, subsidiaries, partners,
5 affiliates, sister companies, agents, and their successors and assigns (“Defendants Releasees”), or
6 any other person in the course of doing business, and the successors and assigns of any of them,
7 who may use, maintain, distribute or sell Covered Products, including but not limited to
8 distributors or retailers, (“Downstream Defendants Releasees”), for all claims for violations of
9 Proposition 65 through the Effective Date based on alleged exposure to DINP, from Covered
10 Products, as set forth in the Notice. DOWIN’s and Defendants Releasees’ compliance with this
11 Consent Judgment shall constitute compliance with Proposition 65 for the Covered Products with
12 respect to exposure to DINP from Covered Products. DOWIN, Defendants Releasees, and
13 Downstream Defendant Releasees shall collectively be referred to as the “Released Parties.”

14 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
15 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
16 indirectly, any form of legal action and releases all claims, including, without limitation, all
17 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
18 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
19 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,
20 fixed or contingent (collectively “Claims”), against the Released Parties arising from any
21 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
22 about exposure to DINP from the Covered Products. In furtherance of the foregoing, as to
23 alleged exposures to DINP from the Covered Products, CAG on behalf of itself only, hereby
24 waives any and all rights and benefits which it now has, or in the future may have, conferred
25 upon it with respect to Claims arising from any violation of Proposition 65 or any other statutory
26 or common law regarding the failure to warn about alleged exposure to DINP from the Covered
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1 Products by virtue of the provisions of section 1542 of the California Civil Code, which provides
2 as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
5 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
6 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
7 OR HER SETTLEMENT WITH THE DEBTOR.

8 CAG understands and acknowledges that the significance and consequence of this waiver of
9 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
10 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
11 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
12 about alleged exposure to DINP from the Covered Products, including but not limited to any
13 exposure to, or failure to warn with respect to exposure to DINP from the Covered Products,
14 CAG will not be able to make any claim for those damages or injunctive relief against the
15 Released Parties. Furthermore, CAG acknowledges that it intends these consequences for any
16 such Claims arising from any violation of Proposition 65 or any other statutory or common law
17 regarding the failure to warn about alleged exposure to DINP from Covered Products as may
18 exist as of the date of this release but which CAG does not know exist, and which, if known,
19 would materially affect their decision to enter into this Consent Judgment, regardless of whether
20 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other
21 cause.

21 **6. ENFORCEMENT OF JUDGMENT**

22 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
23 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
24 California, County of Alameda, giving the notice required by law, enforce the terms and
25 conditions contained herein. A Party may enforce any of the terms and conditions of this
26 Consent Judgment only after that Party first provides 90 days' notice to the Party allegedly
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1 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
2 such Party's failure to comply in an open and good faith manner.

3 **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
4 proceeding to enforce the terms of this Consent Judgment, the Party alleging a violation shall
5 provide written notice ("NOV") to the other Party. The NOV shall include information
6 sufficient for the Party alleged to be in violation to be able to understand and correct the
7 violation. With respect to NOV's from CAG relating to the Covered Products, for each of the
8 Covered Products: Any notice to Defendant must contain (a) the name of the product, (b)
9 specific dates when the product was sold in California, (c) the store or other place at which the
10 product was available for sale to consumers, and (d) any other evidence or other support for the
11 allegations in the notice, including all test data obtained by CAG regarding the Covered
12 Products.

13 **6.2.1 Non-Contested NOV.** For NOV's from CAG relating to the Covered Products,
14 CAG shall take no further action regarding the alleged violation if, within 60 days of receiving
15 such NOV, Defendant serves a Notice of Election ("NOE") that meets one of the following
16 conditions:

17 (a) The Covered Products were shipped by Defendant for sale in California before the
18 Effective Date, or

19 (b) Since receiving the NOV Defendant has taken corrective action by either (i)
20 taking all steps necessary to bring the sale of the product into compliance under the terms of this
21 Consent Judgment, or (ii) requesting that its customers or stores in California, as applicable,
22 remove the Covered Products identified in the NOV from sale in California and destroy or return
23 the Covered Products to Defendant or vendor, as applicable, or (iii) refute the information
24 provided in paragraph 6.2.
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1 6.2.2 **Contested NOV.** For NOVs from CAG relating to the Covered Products,
2 Defendant may serve a Notice of Election (“NOE”) informing CAG of its election to contest the
3 NOV within 30 days of receiving the NOV.

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

6 (b) If the confirmatory testing establishes that the Covered Products do not contain
7 DINP in excess of the levels allowed in Section 3.1, above, CAG shall take no further action
8 regarding the alleged violation. If the testing does not establish compliance with Section 3.1,
9 above, Defendant may withdraw its NOE to contest the violation and may serve a new NOE
10 pursuant to Section 6.2.1.

11 (c) If Defendant does not withdraw an NOE to contest the NOV or take action under
12 Section 6.2.1, above, the Parties shall meet and confer for a period of no less than 30 days before
13 CAG may seek an order enforcing the terms of this Consent Judgment.

14 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
15 prevailing party shall be entitled to recover its reasonable attorney’s fees and costs.

16 **7. ENTRY OF CONSENT JUDGMENT**

17 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
18 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG, and
19 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.
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21 7.2 If this Consent Judgment is not approved in full by the Court, (a) this Consent
22 Judgment and any and all prior agreements between the parties merged herein shall terminate
23 and become null and void, and the actions shall revert to the status that existed prior to the
24 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
25 thereof, or of the negotiation, documentation, or other part or aspect of the Parties’ settlement
26 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
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1 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
2 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

3 **8. MODIFICATION OF JUDGMENT**

4 8.1 This Consent Judgment may be modified only upon written agreement of the
5 Parties and, if the modification affects a substantive provision of this Consent Judgment, upon
6 entry of a modified Consent Judgment by the Court thereon, or otherwise upon motion of any
7 party as provided by law and upon entry of a modified Consent Judgment by the Court.

8 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
9 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

10 **9. RETENTION OF JURISDICTION**

11 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
12 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

13 **10. DUTIES LIMITED TO CALIFORNIA**

14 10.1 This Consent Judgment shall have no effect on Covered Products sold or
15 distributed by Defendant outside the State of California.

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

17 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
18 California Attorney General so that the Attorney General may review this Consent Judgment
19 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
20 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
21 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
22 the parties may then submit it to the Court for approval.

23 **12. ATTORNEY FEES**

24 12.1 Except as specifically provided in Sections 4.1.3 and 6.3, each Party shall bear its
25 own attorneys' fees and costs in connection with this action.
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1 **13. ENTIRE AGREEMENT**

2 13.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
4 negotiations, commitments and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **14. GOVERNING LAW**

9 14.1 The validity, construction and performance of this Consent Judgment shall be
10 governed by the laws of the State of California, without reference to any conflicts of law
11 provisions of California law.

12 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
14 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
15 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
16 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
17 subject to this Consent Judgment may provide written notice to CAG of any asserted change in
18 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,
19 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
20 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state
21 or federal law or regulation.

22 14.3 The Parties, including their counsel, have participated in the preparation of this
23 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
24 Consent Judgment was subject to revision and modification by the Parties and has been accepted
25 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
26 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
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1 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
2 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
3 resolved against the drafting Party should not be employed in the interpretation of this Consent
4 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

5 **15. EXECUTION AND COUNTERPARTS**

6 15.1 This Consent Judgment may be executed in counterparts and by means of
7 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
8 one document and have the same force and effect as original signatures.

9 **16. NOTICES**

10 16.1 Any notices under this Consent Judgment shall be by First Class Mail (with a
11 courtesy copy by email).

12 If to CAG:

13 Yeroushalmi & Yeroushalmi
14 9100 Wilshire Boulevard, Suite 240W
15 Beverly Hills, CA 90212
(310) 623-1926

16 Email: lawfirm@yeroushalmi.com

17
18 If to Defendant:

19 Melissa Jones
20 STOEL RIVES LLP
21 500 Capitol Mall, Suite 1600
22 Sacramento, CA 95814
(916) 319-4649
Email: melissa.jones@stoel.com

23 **17. AUTHORITY TO STIPULATE**

24 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
26 of the party represented and legally to bind that party.

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7 AGREED TO:

8 Date: 06/21, 2017

9 *Michael Marcus*

10 Name: Michael Marcus

11 Title: Director
12 CONSUMER ADVOCACY
13 GROUP, INC.

AGREED TO:

Date: _____, 2017

Name: _____

Title: _____
DOWIN ENTERPRISES (USA), INC.

14 **IT IS SO ORDERED.**

15 Date: _____

16 Hon. Dennis Hayashi
17 JUDGE OF THE SUPERIOR COURT

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CONSENT JUDGMENT [PROPOSED]

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7 AGREED TO:

8 Date: _____, 2017

10 Name: _____

11 Title: _____
12 CONSUMER ADVOCACY
13 GROUP, INC.

14 **IT IS SO ORDERED.**

15 Date: _____

7 AGREED TO:

8 Date: 6/14, 2017

10 Name: _____

11 Title: Thomas Gu
12 General Manager
13 DOWIN ENTERPRISES (USA), INC.

16 Hon. Dennis Hayashi
17 JUDGE OF THE SUPERIOR COURT

28 _____
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