Reuben Yeroushalmi (SBN 193981)
Ben Yeroushalmi (SBN 232540)
Peter T. Sato (SBN 238486)
YEROUSHALMI & YEROUSHALMI
An Association of Independent Law Corporations
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, 90212
Telephone: (310) 623-1926
Facsimile: (310) 623-1930

Attorneys for Plaintiff,

Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

Plaintiff,

v.

SOUTHERN EXCHANGE CO., INC. DBA TEXSPORT, a Texas Corporation; KMART CORPORATION, a Michigan Corporation; KMART HOLDING CORPORATION, a Delaware Corporation; SEARS HOLDINGS CORPORATION, a Delaware Corporation; SEIS BROTHER INDUSTRIAL CORP., a business entity form unknown; SEARS BRANDS, LLC, a business entity form unknown; S.B. OUTDOOR GROUP LTD., a business entity form unknown; and DOES 1-20;

Defendants.

CASE NO. RG16836273

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Dept.: 24
Judge: Hon. Frank Roesch

Complaint filed: October 24, 2016
First Amended Complaint filed: November 10, 2016

1. INTRODUCTION

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 defendants KMART CORPORATION ("KMART") KMART HOLDING CORPORATION ("KMART HOLDING"), SEARS HOLDING CORPORATION ("SEARS"), SEARS BRANDS, LLC ("SEARS BRANDS"), and SOUTHERN EXCHANGE CO., INC. DBA TEXSPORT ("TEXSPORT") (collectively, "Defendants"), each a Party to the action and collectively referred to as "Parties." This Consent Judgment is intended to fully resolve all claims, demands, and allegations related to this action and the Notices of Violation referred to herein.

1.2 **Defendants and Products**

1.2.1 Defendant KMART is a Michigan Corporation which employs ten or more persons. For purposes of this Consent Judgment only, KMART is deemed a person in the course of doing business in California and is subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").

1.2.2 Defendant KMART HOLDING is a Delaware Corporation which employs ten or more persons. For purposes of this Consent Judgment only, KMART HOLDING is deemed a person in the course of doing business in California and is subject to the provisions of Proposition 65.

1.2.3 Defendant SEARS is a Delaware Corporation which employs ten or more persons. For purposes of this Consent Judgment only, SEARS is deemed a person in the course of doing business in California and is subject to the provisions of Proposition 65.

1.2.4 Defendant SEARS BRANDS is a business entity form unknown, which employs ten or more persons. For purposes of this Consent Judgment only, SEARS BRANDS is deemed a person in the course of doing business in California and is subject to the provisions of Proposition 65.

1.2.5 Defendant TEXSPORT is a Texas Corporation which employs ten or more persons. For purposes of this Consent Judgment only, TEXSPORT is deemed a person in the course of doing business in California and is subject to the provisions of Proposition 65.

1.2.3 Defendants manufacture, caused to be manufactured, sold, and/or distributed Covered Products as defined in the Notices referred to herein.

1.3 **Chemical of Concern**

Diethyl Hexyl Phthalate, also known as Bis (2-ethylhexyl) phthalate ("DEHP") is known to the State of California to cause cancer and birth defects or other reproductive harm.

1.4 **Notices of Violation**

1.4.1 On or about March 14, 2016, CAG served Kmart Corporation; Kmart Holding Corporation; Sears Holding Corporation; Seis Brother Industrial Corp.; and various public enforcement agencies, with a document entitled "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("March 14, 2016 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures to DEHP alleged to be contained in Rain Ponchos they sell. No public enforcer has commenced or diligently prosecuted the allegations set forth in the March 14, 2016 Notice.

1.4.2 On or about March 14, 2016, CAG served Southern Exchange Co., Inc. dba Texsport; Kmart Corporation; Kmart Holding Corporation; Sears Holding Corporation; and various public enforcement agencies, with a document entitled "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("March 14, 2016 Notice #2") that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures to DEHP alleged to be contained in Rainsuits they sell. No public enforcer has commenced or diligently prosecuted the allegations set forth in the March 14, 2016 Notice #2.

1.4.3 On or about August 19, 2016, CAG served Kmart Corporation; Kmart Holding Corporation; Sears Holding Corporation; Sears Brands, LLC; S.B. Outdoor Group Ltd.;

Seis Brother Industrial Corp.; and various public enforcement agencies, with a document entitled "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("August 19, 2016 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures to DEHP alleged to be contained in Polymer Rainsuits they sell. No public enforcer has commenced or diligently prosecuted the allegations set forth in the August 19, 2016 Notice.

1.5 **Complaint and Answer.**

On October 24, 2016, CAG filed a Complaint for civil penalties and injunctive relief ("Complaint") in Superior Court of California County of Alameda, Case No. RG16836273, against the Defendants. CAG filed a First Amended Complaint ("FAC") on or about November 10, 2016. The Complaint and FAC allege, among other things, that Defendants violated Proposition 65 by failing to give clear and reasonable warnings of alleged exposure to DEHP from the Covered Products.

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 FAC and personal jurisdiction over Defendants as to the acts alleged in the FAC, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations contained in the FAC 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 thereto.

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. Nothing in this Consent Judgment shall be construed as an admission by the Parties of any material allegation of the FAC (each and every

allegation of which Defendants deny), any fact, conclusion of law, issue of law or violation of law, including without limitation, any admission concerning any violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or any admission as to the meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by any Defendant, their officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

2. DEFINITIONS

2.1 "Rain Ponchos" means Rain Ponchos, including but not limited to, 1) Northwest Territory® Lightweight Rain Poncho; Orange; One Size Fits Most; Made in China for Kmart Corporation; DEPT: 89; CAT: 33; KSN:0-05770921-4; UPC #: 4713273830118; 2) Northwest Territory® Lightweight Rain Poncho; Clear; One Size Fits Most; Made in China for Kmart Corporation; DEPT: 89; CAT: 33; KSN:0-05768909-3; UPC #: 4713273839111 that are marketed and/or distributed under a trademark owned by Kmart.

2.2 "Rainsuits" means Rainsuits, including but not limited to, Northwest Territory® Deluxe 3 piece Rainsuit; Includes Jacket with Detachable Hood & Pants; Size L/ XL; Made in China for Kmart Corporation; DEPT: 89; CAT: 33; SKU 0-84015811-7; UPC #: 049794336919 that are marketed and/or distributed under a trademark owned by Kmart.

2.3 "Polymer Rainsuits" means Polymer Rainsuits, including but not limited to, (1) Northwest Territory® Deluxe 3 piece Rainsuit; Includes Jacket with Detachable Hood & Pants; Size L/ XL; Made in / Hecho en China for Kmart Corporation Hoffman Estates, IL 60179; DEPT: 89; CAT: 33; KSN 0-85770933-9; UPC #: 4713273838114 and (2) Northwest Territory®

Lightweight Rain Poncho; Waterproof material; Orange; Made in / Hecho en China for Kmart Corporation Hoffman Estates, IL 60179; DEPT: 89; CAT: 33; KSN 0-05770912-4; UPC #: 4713273830118 that are marketed and/or distributed under a trademark owned by Kmart.

2.4 "Covered Products" means Rain Ponchos, Rainsuits and Polymer Rainsuits as defined in Section 2.1, 2.2 and 2.3 sold by or purchased from TEXSPORT, SB Outdoor Group, Ltd.; and Seis Brother Industrial Corp., or affiliates thereof, that are marketed and/or distributed under a trademark owned by Kmart. Covered Products are limited to products sold by Kmart.

2.5 "Effective Date" means the date that the Court approves this Consent Judgment.

2.6 "DEHP" mean Diethyl Hexyl Phthalate, also known as Bis (2-ethylhexyl) phthalate

2.7 "Notices" refers to Plaintiff's March 14, 2016 Notice, March 14, 2016 Notice #2, and August 19, 2016 Notice.

3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE WARNINGS

3.1 Within thirty (30) days of the Effective Date, Defendants shall not sell, offer for sale, or distribute for sale the Covered Products in California unless they are reformulated to contain less than 0.1% by weight (1,000 parts per million) of DEHP. Defendants are not sellers of, and shall not be responsible under this agreement for, products offered exclusively by third parties on websites hosted by Defendants or their affiliates.

3.2 For any Covered Products still existing in Defendants' inventory as of the Effective Date that have not been reformulated to contain less than 0.1% (1,000 parts per million) DEHP, which Defendants intend to be distributed, sold or offered for sale in California, Defendants shall place a Proposition 65 compliant warning which complies with the then-existing warning requirements of Proposition 65. Any warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products, and be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before or at the time of the sale or purchase. The warning shall be deemed to be in compliance if it states:

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

OR

WARNING: This product can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

OR

WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

4. SETTLEMENT PAYMENT

4.1 **Payment**: Defendants shall pay a total of one hundred and thirty thousand dollars ($130,000.00) within ten (10) days of the Effective Date. Full and complete settlement of any and all monetary claims by CAG related to the Notice in this action shall be divided as follows:

4.1.1 **Civil Penalty**: Defendants shall issue two separate checks totaling fourteen thousand three hundred and 00/100 dollars ($14,300.00) as penalties pursuant to Health & Safety Code § 25249.12:

(a) Defendants will issue one check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of ten thousand seven hundred and twenty five and 00/100 dollars ($10,725.00) representing 75% of the total penalty and Defendants will issue a second check to CAG in the amount of three thousand five hundred and seventy five dollars and 00/100 dollars ($3,575.00) representing 25% of the total penalty;

(b) Separate 1099s shall be issued as follows: Defendants will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of $10,725.00. Defendants will also issue a 1099 to CAG in the amount of $3,575.00 and deliver it to

CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4.1.2 **Additional Settlement Payments:** Defendants shall pay ten thousand seven hundred and 00/100 dollars ($10,700.00) as additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG will use this payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing for Proposition 65 Listed Chemicals in various products, and for expert fees for evaluating exposures through various mediums, including but not limited to consumer product, occupational, and environmental exposures to Proposition 65 Listed Chemicals, and the cost of hiring consulting and retaining experts who assist with the extensive scientific analysis necessary for those files in litigation and to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees; fifteen percent (15%) for administrative costs incurred during investigation and litigation to reduce the public's exposure to Proposition 65 Listed Chemicals by notifying those persons and/or entities believed to be responsible for such exposures and attempting to persuade those persons and/or entities to reformulate their products or the source of exposure to completely eliminate or lower the level of Proposition 65 Listed Chemicals including but not limited to costs of documentation and tracking of products investigated, storage of products, website enhancement and maintenance, computer and software maintenance, investigative equipment, CAG's member's time for work done on investigations, office supplies, mailing supplies and postage. Within thirty (30) days of a request from the Attorney General, CAG shall provide to the Attorney General copies of documentation demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such additional settlement payment.

4.1.3 **Reimbursement of Attorney's Fees and Costs:** Defendants shall pay a total amount of one hundred and five thousand dollars and 00/100 ($105,000.00) to "Yeroushalmi & Yeroushalmi" as reimbursement for reasonable investigation fees and costs, attorneys' fees, and

any other costs incurred as a result of investigating, bringing this matter to Defendants' attention, litigating, and negotiating a settlement in the public interest.

4.2 **Delivery of Payments:**

4.2.1 All payments to OEHHA shall be delivered to: Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Defendants shall provide written confirmation to CAG upon payment to OEHHA; EIN: 68-0284486.

4.2.2 All payments to CAG and Yeroushalmi & Yeroushalmi, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. At least five (5) days before the Effective Date, CAG shall provide Defendants with completed form W9s for CAG and Yeroushalmi & Yeroushalmi.

5. MATTERS COVERED BY THIS CONSENT JUDGMENT

5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on behalf of itself and in the public interest, and Defendants and their officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies, and their successors and assigns ("Defendant Releasees"), and each entity to whom Defendants directly or indirectly distributes or sells the Covered Products, including, but not limited to, downstream distributors, wholesalers, custmers, retailers, franchisees, cooperative members, licensees, and the successors and assigns of each of them, who may use, maintain, distribute or sell the Covered Products ("Downstream Defendant Releasees"), for all claims for violations of Proposition 65 up to the Effective Date based on alleged exposure to DEHP, from Covered Products, as set forth in the Notices. Defendants' and Defendants Releasees' compliance with this Consent Judgment shall constitute compliance with Proposition 65 for the Covered Products with respect to exposure to DEHP from Covered Products. Nothing in this Section affects CAG's right to commence or prosecute an action under Proposition 65 against any person other than Defendants, Defendant Releasees or Downstream Defendant Releasees. Defendants,

Defendant Releasees, and Downstream Defendant Releasees shall collectively be referred to as the "Released Parties."

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

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

CAG understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if CAG suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about alleged 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 able to make any claim for those damages or injunctive relief against the Released

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

6. ENFORCEMENT OF JUDGMENT

6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of California, County of Alameda, giving the notice required by law, enforce the terms and conditions contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment only after that Party first provides sixty (60) days notice to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good faith manner.

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

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

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

(b) Since receiving the NOV Defendant has taken corrective action by either (i) taking all steps necessary to bring the sale of the product into compliance under the terms of this Consent Judgment, or (ii) requesting that its customers or stores in California, as applicable, remove the Covered Products identified in the NOV from sale in California and destroy or return the Covered Products to Defendant or vendor, as applicable, or (iii) refute the information provided in paragraph 6.2.

6.2.2 **Contested NOV.** For NOVs from CAG relating to the Covered Products, Defendants may serve a Notice of Election ("NOE") informing CAG of its election to contest the NOV within thirty (30) days of receiving the NOV.

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

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

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

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

7. ENTRY OF CONSENT JUDGMENT

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

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

8. MODIFICATION OF JUDGMENT

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

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

9. RETENTION OF JURISDICTION

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

10. DUTIES LIMITED TO CALIFORNIA

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

11. SERVICE ON THE ATTORNEY GENERAL

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

12. ATTORNEY FEES

12.1 Except as specifically provided in Sections 4.1.3 and 6.3, each Party shall bear its own attorneys' fees and costs in connection with this action.

13. ENTIRE AGREEMENT

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

14. GOVERNING LAW

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

14.2 The terms of this Consent Judgment shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant subject to this Consent Judgment may provide written notice to CAG of any asserted change in the

law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state or federal law or regulation.

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

15. EXECUTION AND COUNTERPARTS

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

16. NOTICES

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

If to CAG:
Yeroushalmi & Yeroushalmi
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212
(310) 623-1926;
Email: lawfirm@yeroushalmi.com

If to Defendants:

Attn: Legal Department
Kmart Corporation

Dorie Peper
Southern Exchange Co., Inc. dba

3333 Beverly Road
Hoffman Estates, IL 60179

With a copy to:

Michael Steel
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
Email: Msteel@mofo.com

Texsport
1332 Conrad Sauer Drive
Houston, TX 77043

With a copy to:

DANIEL B. HEIDTKE, ESQ.
~~Audra L. Thompson, Esq.~~
DUANE MORRIS LLP
865 S. Figueroa Street, Suite 3100
Los Angeles, California 90017
Email: ~~athompson@duanemorris.com~~
DBHEIDTKE@DUANEMORRIS.COM

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: August 27, 2018

Michael Marcus

Name: Michael Marcus

Title: Director

CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date: _____, 2018

_____

Name: _____

Title: _____

SOUTHERN EXCHANGE CO., INC. DBA TEXSPORT

AGREED TO:

Date: _____, 2018

_____

Name: _____

Title: _____

KMART CORPORATION

AGREED TO:

Date: _____, 2018

_____

Name: _____

Title: _____

KMARTHOLDING CORPORATION

AGREED TO:

Date: _____, 2018

_____

Name: _____

Title: _____

SEARS HOLDINGS CORPORATION

AGREED TO:

Date: _____, 2018

_____

Name: _____

Title: _____

SEARS BRANDS, LLC

IT IS SO ORDERED.

Date: _____

_____

Hon. Frank Roesch
JUDGE OF THE SUPERIOR COURT

AGREED TO:

Date: August 27, 2018

Name: Michael Marcus

Title: Director

CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date: 8-30-18, 2018

Name: Dorie Peper

Title: Import Manager

SOUTHERN EXCHANGE CO., INC. DBA TEXSPORT

AGREED TO:

Date: _____, 2018

Name: _____

Title: _____

KMART CORPORATION

AGREED TO:

Date: _____, 2018

Name: _____

Title: _____

KMARTHOLDING CORPORATION

AGREED TO:

Date: _____, 2018

Name: _____

Title: _____

SEARS HOLDINGS CORPORATION

AGREED TO:

Date: _____, 2018

Name: _____

Title: _____

SEARS BRANDS, LLC

IT IS SO ORDERED.

Date: _____

Hon. Frank Roesch
JUDGE OF THE SUPERIOR COURT

AGREED TO:

Date: _____, 2018

_____

Name: _____

Title: _____
CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date: _____, 2018

_____

Name: _____

Title: _____
SOUTHERN EXCHANGE CO., INC. DBA TEXSPORT

AGREED TO:

Date: September 4, 2018

Lori K. Miller

Name: Lori K Miller

Title: Deputy General Counsel
KMART CORPORATION

AGREED TO:

Date: September 4, 2018

Lori K. Miller

Name: Lori K Miller

Title: Deputy General Counsel
KMARTHOLDING CORPORATION

AGREED TO:

Date: September 4, 2018

Lori K. Miller

Name: Lori K Miller

Title: Deputy General Counsel
SEARS HOLDINGS CORPORATION

AGREED TO:

Date: September 4, 2018

Lori K Miller

Name: Lori K Miller

Title: Deputy General Counsel
SEARS BRANDS, LLC

IT IS SO ORDERED.

Date: _____

_____
Hon. Frank Roesch
JUDGE OF THE SUPERIOR COURT