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

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES**

15 **CONSUMER ADVOCACY GROUP, INC.,**
16 in the public interest,

17 Plaintiff,

18 v.

19 **DOLLAR BOYS INC.,** a California
20 Corporation; **BASA, LLC DBA DOLLAR**
21 **KINGS LLC,** a California Limited Liability
22 Company; **LA DOUBLE 7 INC.,** a California
23 Corporation; **DOLLAR KING,** a business
24 entity form unknown; **SUPER 1 DOLLAR**
25 **KING INC.,** a California Corporation;
26 **DOLLAR KINGS INC.,** a California
27 Corporation; and **DOES 1-20;**

28 Defendants.

CASE NO. BC654386

[Assigned for All Purposes to Dept. 31,
before the Hon. Samantha Jessner]

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Complaint Filed: March 17, 2017

1. INTRODUCTION

1.1 **Parties.** This Consent Judgment is entered into by and between plaintiff, Consumer Advocacy Group, Inc., ("CAG") acting on behalf of itself and in the interest of the public, and Defendant LA Double 7, Inc. ("Defendant"), each a Party to the action and collectively referred to as "Parties." This Consent Judgment is intended to fully resolve all

1 claims, demands, and allegations related to this action and the Notices of Violation referred to
2 herein.

3 **1.2 Defendant and Products**

4 1.2.1 CAG alleges that Defendant is “a person in the course of doing business”
5 in California within the meaning of the Safe Drinking Water and Toxic Enforcement Act of
6 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”).

7 1.2.2 CAG alleges that Defendant either manufactures, caused to be
8 manufactured, sells or sold, and/or distributes or distributed “Covered Products” as defined
9 below in California or to California consumers.

10 1.3 **Chemical of Concern.** Di-n-butyl Phthalate (“DBP”) is listed under Proposition
11 65 as a chemical known to the State of California to cause male reproductive toxicity and female
12 reproductive toxicity.

13 **1.4 Notices of Violation.**

14 1.4.1 By notice dated August 17, 2016 CAG served Defendant and certain
15 public enforcement agencies with a “60-Day Notice of Intent to Sue for Violation of the Safe
16 Drinking Water and Toxic Enforcement Act of 1986” (“2016 Notice”) that provided the
17 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to
18 warn individuals in California of alleged exposures to DBP alleged to be contained in certain
19 “Flip Flops.” No public enforcer has commenced or diligently prosecuted the allegations set
20 forth in the 2016 Notice.

21 1.4.2 CAG served a further notice of violation dated August 22, 2018 on
22 Defendant and certain public enforcement agencies with a “60-Day Notice of Intent to Sue for
23 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“2018 Notice”) that
24 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
25 failing to warn individuals in California of alleged exposures to DBP alleged to be contained in
26 certain “Flip Flops.” No public enforcer has commenced or diligently prosecuted the allegations
27 set forth in the 2018 Notice.

1 **1.5 Complaint and Answer.** On March 17, 2017, CAG filed a Complaint for civil
2 penalties and injunctive relief (“Complaint”) in Superior Court of California County of Los
3 Angeles Case No. BC654386, against Defendant. The Complaint alleges, among other things,
4 that Defendant violated Proposition 65 by failing to give clear and reasonable warnings of
5 alleged exposure to DBP from the Covered Products.

6 **1.6 Consent to Jurisdiction.** For purposes of this Consent Judgment, the Parties
7 stipulate that this Court has jurisdiction over the allegations of violations contained in the
8 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
9 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to enter this
10 Consent Judgment as a full settlement and resolution of the allegations contained in the
11 Complaint and of all claims which were, or could have been raised by, any person or entity based
12 in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
13 related thereto.

14 **1.7 No Admission.** This Consent Judgment resolves claims that are denied and
15 disputed. The Parties enter into this Consent Judgment pursuant to a full and final settlement of
16 any and all claims between the Parties for the purpose of avoiding prolonged litigation. Nothing
17 in this Consent Judgment shall be construed as an admission against interest by any Party,
18 including any material allegation of the Complaint, any fact, conclusion of law, issue of law or
19 violation of law, including without limitation, any admission concerning any violation of
20 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or any
21 admission as to the meaning of the terms “knowingly and intentionally expose” or “clear and
22 reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this
23 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
24 admission against interest by any Party of any fact, conclusion of law, issue of law, or violation
25 of law, or of fault, wrongdoing, or liability by Defendant, its officers, directors, employees, or
26 parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any
27 administrative or judicial proceeding or litigation in any court, agency or forum. Furthermore,
28 nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument,

1 or defense any Party may have in any other or future legal proceeding, except as expressly
2 provided in this Consent Judgment.

3 **2. DEFINITIONS**

4 2.1 "Covered Products" means, "Flip Flops"; "GIRLS SIZE -M (1-2);
5 ITEM#TX1008005; Blue with heart print design and opaque blue polymer strap; RN: 125230;
6 "MADE IN CHINA"; UPC:812226010882 and "FLIP FLOPS GIRLS SIZE (1-2);" "ITEM
7 TX1008005;" "RN125230;" "MADE IN CHINA;" "9 1/2 INCHES X 3 1/2 INCHES X 1/2
8 INCH;" "UPC#8122601882."

9 2.2 "Effective Date" means the date that the Court has approved this Consent
10 Judgment.

11 2.3 "Notices" means the 2016 Notice and the 2018 Notice.

12 **3. INJUNCTIVE RELIEF/REFORMULATION**

13 3.1 After the Effective Date, Defendant shall not sell, offer for sale, or distribute for
14 sale in California any Covered Products manufactured after the Effective Date by or for
15 Defendant, unless such Covered Products are reformulated to contain less than 0.1% by weight
16 (1,000 parts per million) of DBP.

17 3.2 For any Covered Products still existing in Defendant's inventory, Defendant shall
18 destroy the existing inventory within seven (7) days after the Effective Date.

19 **4. SETTLEMENT PAYMENT**

20 4.1 **Payment:** Defendant shall pay a total of one hundred thousand dollars
21 (\$100,000.00) within ten (10) days of the Effective Date in full and complete settlement of any
22 and all monetary claims arising from the Notices and Complaint in this action. The total sum
23 shall be divided as follows:

24 4.1.1 **Civil Penalty:** Defendant shall issue two separate checks totaling
25 \$5,720.00 as a civil penalty pursuant to Health & Safety Code § 25249.12:

26 (a) Defendant will issue one check made payable to the State of California's
27 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of \$4,290.00
28

1 dollars representing 75% of the total civil penalty and Defendant will issue a second check to
2 CAG in the amount of \$1,430.00 dollars representing 25% of the total civil penalty;

3 (b) Defendant will issue a Form 1099 to OEHHA, P.O. Box 4010, Sacramento,
4 CA 95184 (EIN: 68-0284486) in the amount of the OEHHA civil penalty payment. Defendant
5 will also issue a Form 1099 to CAG in the amount of the CAG civil penalty payment and deliver
6 it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly
7 Hills, California 90212.

8 4.1.2 **Additional Settlement Payment:** Defendant shall pay \$4,280.00 as an
9 additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health & Safety
10 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG will use this
11 payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing
12 for Proposition 65 Listed Chemicals in various products, and for expert fees for evaluating
13 exposures through various mediums, including but not limited to consumer product,
14 occupational, and environmental exposures to Proposition 65 Listed Chemicals, and the cost of
15 hiring consulting and retaining experts who assist with the extensive scientific analysis necessary
16 for those files in litigation and to offset the costs of future litigation enforcing Proposition 65, but
17 excluding attorney fees; fifteen percent (15%) for administrative costs incurred during
18 investigation and litigation to reduce the public's exposure to Proposition 65 Listed Chemicals
19 by notifying those persons and/or entities believed to be responsible for such exposures and
20 attempting to persuade those persons and/or entities to reformulate their products or the source of
21 exposure to completely eliminate or lower the level of Proposition 65 Listed Chemicals
22 including but not limited to costs of documentation and tracking of products investigated, storage
23 of products, website enhancement and maintenance, computer and software maintenance,
24 investigative equipment, CAG's member's time for work done on investigations, office supplies,
25 mailing supplies and postage. Within 30 days of a request from the Attorney General, CAG shall
26 provide to the Attorney General copies of documentation demonstrating how the above funds
27 have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such
28 additional settlement payment.

1 4.1.3 **Reimbursement of Attorney's Fees and Costs:** Defendant shall pay a
2 total amount of \$90,000.00 to "Yeroushalmi & Yeroushalmi" as reimbursement for reasonable
3 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
4 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a
5 settlement in the public interest.

6 4.2 **Delivery of Payments:**

7 4.2.1 All payments to OEHHA shall be delivered to: Office of Environmental
8 Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento,
9 California 95812. Defendant shall provide a copy of the payment to CAG concurrently with
10 payment to OEHHA.

11 4.2.2 All payments to CAG and Yeroushalmi & Yeroushalmi shall be delivered
12 to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W,
13 Beverly Hills, CA 90212.

14 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT/RELEASES OF**
15 **CLAIMS**

16 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
17 behalf of itself and in the public interest, and Defendant and its officers, directors, insurers,
18 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
19 companies, and their predecessors, successors and assigns (collectively, the "Defendant
20 Releasees") for all claims by CAG and in the public interest for violations of Proposition 65 up
21 to and including the Effective Date based on alleged exposure to DBP, from Covered Products,
22 as set forth in the Notices and/or Complaint. CAG hereby waives and releases all of the
23 foregoing claims against Defendant and Defendant Releasees up to and including the Effective
24 Date. Collectively, Defendant and Defendant Releasees shall be referred to as the "Released
25 Parties." After the Effective Date, Defendant's compliance with this Consent Judgment shall
26 constitute compliance with Proposition 65 by all Released Parties. Nothing in this Section
27 affects CAG's right to commence or prosecute an action under Proposition 65 against any person
28 who is not a Released Party, including Dollar King and any entity associated with Dollar King.

1 5.2 In addition, CAG on behalf of itself, its past and current agents, representatives,
2 attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in,
3 directly or indirectly, any form of legal action and releases all claims, including, without
4 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
5 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
6 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or
7 unknown, fixed or contingent (collectively "Claims"), against any Released Party arising from
8 any violation of Proposition 65 or any other statutory or common law regarding the failure to
9 warn about exposure to DBP from the Covered Products. In furtherance of the foregoing, as to
10 alleged exposures to DBP from the Covered Products, CAG on behalf of itself only, hereby
11 waives any and all rights and benefits which it now has, or in the future may have, conferred
12 upon it with respect to Claims arising from any violation of Proposition 65 or any other statutory
13 or common law regarding the failure to warn about alleged exposure to DBP from the Covered
14 Products by virtue of the provisions of section 1542 of the California Civil Code, which provides
15 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**
18 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
19 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
 OR HER SETTLEMENT WITH THE DEBTOR.

20 CAG understands and acknowledges that the significance and consequence of this waiver of
21 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
22 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
23 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
24 about alleged exposure to DBP from the Covered Products, including but not limited to any
25 exposure to, or failure to warn with respect to exposure to DBP from the Covered Products, CAG
26 will not be able to make any claim for those damages or injunctive relief against any Released
27 Party. Furthermore, CAG acknowledges that it intends these consequences for any such Claims
28 arising from any violation of Proposition 65 or any other statutory or common law regarding the

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

5 5.3 Notwithstanding anything to the contrary in this Consent Judgment, no defendant
6 named in the Complaint, other than Defendant, shall be deemed a Released Party under this
7 Consent Judgment.

8 **6. ENFORCEMENT OF JUDGMENT**

9 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
10 hereto. Any Party may, by noticed motion or order to show cause before the Superior Court of
11 California, County of Los Angeles, giving the notice required by law, enforce the terms and
12 conditions contained herein. A Party may enforce any of the terms and conditions of this
13 Consent Judgment only after that Party first provides at least 60 days' notice to the Party
14 allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts
15 to resolve such Party's failure to comply in an open and good faith manner.

16 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
17 proceeding to enforce the terms of this Consent Judgment, the Party alleging a violation shall
18 provide written notice ("NOV") to the other Party. Any notice to Defendant must contain (a) the
19 name of the product, (b) specific dates when the product was sold in California, (c) the store or
20 other place at which the product was available for sale to consumers, and (d) any other evidence
21 or other support for the allegations in the notice.

22 6.2.1 **Non-Contested NOV.** For NOVs from CAG relating to the Covered
23 Products, CAG shall take no further action regarding the alleged violation if, within 60
24 days of receiving such NOV, Defendant serves a Notice of Election ("NOE") that meets
25 at least one of the following conditions:

26 (a) The Covered Products were shipped by Defendants for sale in
27 California before the Effective Date, or
28

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

7 6.2.2 **Contested NOV.** For NOVs from CAG relating to the Covered Products,
8 Defendant may serve a "Notice of Contest" informing CAG of its election to contest the
9 NOV within 60 days of receiving the NOV.

10 (a) As part of its Notice of Contest, Defendant may request that the
11 sample(s) of Covered Products tested by CAG be subject to confirmatory testing at an
12 EPA or State of California accredited laboratory.

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

18 (c) If Defendant does not withdraw a Notice of Contest or take action
19 under Section 6.2.1, above, the Parties shall meet and confer for a period of no less than
20 30 days before CAG may seek an order enforcing the terms of this Consent Judgment.

21 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
22 prevailing party shall be entitled to seek recovery of its reasonable attorney's fees and costs.

23 7. ENTRY OF CONSENT JUDGMENT

24 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
25 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
26 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

27 7.2 The Defendant and CAG will make good faith efforts to have this Consent
28 Judgment approved by the Court.

1 7.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
2 Judgment and any and all prior agreements between the parties merged herein shall terminate
3 and become null and void, and the actions shall revert to the status that existed prior to the
4 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
5 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
6 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
7 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
8 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

9 **8. MODIFICATION OF JUDGMENT**

10 8.1 This Consent Judgment may be modified only upon written agreement of the
11 Parties and, if the modification affects a substantive provision of this Consent Judgment, upon
12 entry of a modified Consent Judgment by the Court thereon, or otherwise upon motion of any
13 Party as provided by law and upon entry of a modified Consent Judgment by the Court.

14 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
15 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

16 **9. RETENTION OF JURISDICTION**

17 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
18 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

19 **10. SERVICE ON THE ATTORNEY GENERAL**

20 10.1 CAG shall serve a copy of this Consent Judgment, signed by all Parties, on the
21 California Attorney General so that the Attorney General may review this Consent Judgment for
22 at least forty-five (45) days prior to its submittal to the Court for approval.

23 **11. ATTORNEY FEES**

24 11.1 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.

26 **12. ENTIRE AGREEMENT**

27 12.1 This Consent Judgment contains the sole and entire agreement and understanding
28 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,

1 negotiations, commitments and understandings related hereto. No representations, oral or
2 otherwise, express or implied, other than those contained herein have been made by any party
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
4 deemed to exist or to bind any of the Parties.

5 **13. GOVERNING LAW**

6 13.1 The validity, construction and performance of this Consent Judgment shall be
7 governed by the laws of the State of California, without reference to any conflicts of law
8 provisions of California law.

9 13.2 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
11 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
12 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
13 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
14 subject to this Consent Judgment may provide written notice to CAG of any asserted change in
15 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,
16 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
17 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state
18 or federal law or regulation.

19 13.3 The Parties, including their counsel, have participated in the preparation of this
20 Consent Judgment and this Consent Judgment is the result of the efforts of the Parties. This
21 Consent Judgment was subject to revision and modification by the Parties and has been accepted
22 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
23 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
24 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
25 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
26 resolved against the drafting Party should not be employed in the interpretation of this Consent
27 Judgment and, in this regard, each Party hereby waives California Civil Code § 1654.

1 **14. EXECUTION AND COUNTERPARTS**

2 14.1 This Consent Judgment may be executed in counterparts and by means of
3 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
4 one document and have the same force and effect as original signatures.

5 **15. NOTICES**

6 15.1 Any notices under this Consent Judgment shall be by First Class Mail.

7 If to CAG: Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W,
8 Beverly Hills, CA 90212; (310) 623-1926

9 If to Defendant: (1) Stephen Thomas, Landing Law, 17800 Castleton Street, Suite
10 657, City of Industry, CA 91748; (626) 771-1005; (2) Shangjing Ding, LA Double 7,
11 Inc., 13827 Benson Avenue, Chino, CA 91710; (909) 287-7936

12 **16. AUTHORITY TO STIPULATE**

13 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
14 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
15 of the party represented and legally to bind that party.

16 **AGREED TO:**

AGREED TO:

17 Date: 10/11, 2018

Date: 10/11, 2018

18  

19 Name: Michael Marcus

Name: Shangjing Ding

20 Title: Director

Title: President

21 CONSUMER ADVOCACY
22 GROUP, INC.

LA DOUBLE 7, INC.

23
24 **IT IS SO ORDERED.**

25 Dated: _____

26
27 HON. SAMANTHA P. JESSNER
28 JUDGE OF THE SUPERIOR COURT