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

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

12 **COUNTY OF ALAMEDA**

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

15 Plaintiff,

16 v.

17 ROSS STORES, INC., a Delaware
18 Corporation; ROSS STORES, INC., dba
19 DD'S DISCOUNTS, a Delaware
20 Corporation; 4U APPAREL
21 CORPORATION, a California Corporation;
22 and DOES 1-20;

23 Defendants.

CASE NO. RG17881654

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Dept.: 18

Judge: Hon. Judge Jo-Lynne Q. Lee

Complaint filed: November 8, 2018

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 and in the interest of the
27 public, and defendant 4U APPAREL CORPORATION ("Defendant" or "4U APPAREL"), each
28 a Party to the action and collectively referred to as "Parties." Further, Ross Stores, Inc. and Ross
Stores, Inc. dba DD's Discounts ("Ross Stores") will be released by CAG as set forth in section 5,
below. 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. DEFINITIONS**

2 2.1 “Covered Products” means Clutch Purses with Plastic Exterior, including but not
3 limited to: “Black clutch purse with gold colored accents; textured plastic surface; dd’s
4 DISCOUNTS; 400136141699; \$8.99; DV14; D5502; C5506.” The Covered Products are limited
5 to those sold by or supplied by Defendant.

6 2.2 “Effective Date” means the date that the Court approves this Consent Judgment.

7 2.3 “DEHP” mean Diethylhexyl Phthalate, also known as Bis (2-ethylhexyl) phthalate.


8 2.4 “Listed Chemical” means DEHP.

9 2.5 “Notice” refers to Plaintiff’s March 7, 2017 Notice.

10 **3. INJUNCTIVE RELIEF**

11 3.1 After the Effective Date, Defendant shall not sell, offer for sale, or distribute for
12 sale the Covered Products in California unless they are reformulated to contain less than 0.1% by
13 weight (1,000 parts per million) of DEHP.

14 3.2 For any Covered Products still existing in Defendant inventory as of the Effective
15 Date that have not been reformulated to contain less than 0.1% (1,000 parts per million) DEHP,
16 which Defendant intend to be distributed, sold or offered for sale in California, Defendant shall
17 place a Proposition 65 compliant warning which complies with the then-existing warning
18 requirements of Proposition 65. Any warning provided pursuant to this section shall be affixed to
19 the packaging of, or directly on, the Covered Products, and be prominently placed with such
20 conspicuousness as compared with other words, statements, designs, or devices as to render it
21 likely to be read and understood by an ordinary individual under customary conditions before
22 purchase or use. The pictogram shall be in yellow with a black exclamation mark; provided
23 however, the pictogram may be in white instead of yellow if the Covered Product label does not
24 contain the color yellow. The warning shall state:

25  **WARNING:** This product can expose you to chemicals including Di(2-
26 ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer
27

1 and birth defects or other reproductive harm. For more information go to
2 www.P65Warnings.ca.gov.

3 **4. SETTLEMENT PAYMENT**

4 4.1 **Payment:** Defendant shall pay a total of sixty-five thousand dollars (\$65,000.00)
5 within ten (10) business days of the Effective Date. Full and complete settlement of any and all
6 monetary claims by CAG related to the Notice in this action shall be divided as follows:

7 4.1.1 **Civil Penalty:** For each Payment, Defendant shall issue two separate
8 checks totaling seven-thousand, four-hundred and thirty dollars and zero cents as (\$7,430.00)
9 penalties pursuant to Health & Safety Code § 25249.12:

10 (a) Defendant will issue one check made payable to the State of California's Office
11 of Environmental Health Hazard Assessment ("OEHHA") in the amount of five thousand five
12 hundred and seventy-two dollars and fifty cents (\$5,572.50) representing 75% of the total penalty
13 and Defendant will issue a second check to CAG in the amount of one-thousand eight-hundred
14 and fifty-seven dollars and fifty cents (\$1,857.50) representing 25% of the total penalty;

15 (b) Separate 1099s shall be issued as follows: Defendant will issue a 1099 to
16 OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of five
17 thousand five hundred and seventy-two dollars and fifty cents (\$5,572.50). Defendant will also
18 issue a 1099 to CAG in the amount of one thousand eight hundred and fifty-seven dollars and fifty
19 cents (\$1,857.50) and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire
20 Boulevard, Suite 240W, Beverly Hills, California 90212.

21 4.1.2 **Additional Settlement Payments:** Defendant shall pay five-thousand five-
22 hundred and seventy dollars and zero cents (\$5,570.00) as additional settlement payment to
23 "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California
24 Code of Regulations, Title 11 § 3203(d). CAG will use this payment as follows, eighty five percent
25 (85%) for fees of investigation, purchasing and testing for Proposition 65 Listed Chemicals in
26 various products, and for expert fees for evaluating exposures through various mediums, including
27

1 but not limited to consumer product, occupational, and environmental exposures to Proposition 65
2 Listed Chemicals, and the cost of hiring consulting and retaining experts who assist with the
3 extensive scientific analysis necessary for those files in litigation and to offset the costs of future
4 litigation enforcing Proposition 65 but excluding attorney fees; fifteen percent (15%) for
5 administrative costs incurred during investigation and litigation to reduce the public's exposure to
6 Proposition 65 Listed Chemicals by notifying those persons and/or entities believed to be
7 responsible for such exposures and attempting to persuade those persons and/or entities to
8 reformulate their products or the source of exposure to completely eliminate or lower the level of
9 Proposition 65 Listed Chemicals including but not limited to costs of documentation and tracking
10 of products investigated, storage of products, website enhancement and maintenance, computer
11 and software maintenance, investigative equipment, CAG's member's time for work done on
12 investigations, office supplies, mailing supplies and postage. Within 30 days of a request from the
13 Attorney General. CAG shall provide to the Attorney General copies of documentation
14 demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring
15 the proper expenditure of such additional settlement payment.

16
17 **4.1.3 Reimbursement of Attorney's Fees and Costs:** Defendant shall pay a
18 total amount of fifty-two thousand dollars and zero cents (\$52,000.00) to "Yeroushalmi &
19 Yeroushalmi" as reimbursement for reasonable investigation fees and costs, attorneys' fees, and
20 any other costs incurred as a result of investigating, bringing this matter to Defendant' attention,
21 litigating, and negotiating a settlement in the public interest.

22 **4.2 Delivery of Payments:**

23 **4.2.1** All payments to OEHHA shall be delivered to: Office of Environmental
24 Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento,
25 California 95812. Defendant shall provide written confirmation to CAG upon payment to
26 OEHHA.

1 contingent (collectively “Claims”), against the Released Parties arising from any violation of
2 Proposition 65 or any other statutory or common law regarding the failure to warn about exposure
3 to DEHP from the Covered Products. In furtherance of the foregoing, as to alleged exposures to
4 DEHP from the Covered Products, CAG on behalf of itself only, hereby waives any and all rights
5 and benefits which it now has, or in the future may have, conferred upon it with respect to Claims
6 arising from any violation of Proposition 65 or any other statutory or common law regarding the
7 failure to warn about alleged exposure to DEHP from the Covered Products by virtue of the
8 provisions of section 1542 of the California Civil Code, which provides as follows:

9
10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

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

1 **6. ENFORCEMENT OF JUDGMENT**

2 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
3 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
4 California, County of Alameda, giving the notice required by law, enforce the terms and conditions
5 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
6 only after that Party first provides 30 days’ notice to the Party allegedly failing to comply with the
7 terms and conditions of this Consent Judgment and attempts to resolve such Party’s failure to
8 comply in an open and good faith manner.

9 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
10 proceeding to enforce the terms of this Consent Judgment, the Party alleging a violation shall
11 provide written notice (“NOV”) to the other Party. The NOV shall include information sufficient
12 for the Party alleged to be in violation to be able to understand and correct the violation. With
13 respect to NOVs from CAG relating to the Covered Products, for each of the Covered Products:
14 Any notice to Defendant must contain (a) the name of the product, (b) specific dates when the
15 product was sold in California, (c) the store or other place at which the product was available for
16 sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

17 6.2.1 **Non-Contested NOV.** For NOVs from CAG relating to the Covered
18 Products, CAG shall take no further action regarding the alleged violation if, within 60
19 days of receiving such NOV, Defendant serves a Notice of Election (“NOE”) that meets
20 one of the following conditions:

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

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

3 6.2.2 **Contested NOV.** For NOVs from CAG relating to the Covered Products,
4 Defendant may serve a Notice of Election (“NOE”) informing CAG of its election to
5 contest the NOV within 30 days of receiving the NOV.

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

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

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

16 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
17 prevailing party shall be entitled to recover its reasonable attorney’s fees and costs.

18 **7. ENTRY OF CONSENT JUDGMENT**

19 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
20 California Health & Safety Code § 25249.7(f). The Parties agree to act in good faith to obtain
21 Court approval of the Consent Judgment. Upon entry of the Consent Judgment, CAG, and
22 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

23 7.2 If this Consent Judgment is not approved in full by the Court, (a) this Consent
24 Judgment and any and all prior agreements between the parties merged herein shall terminate and
25 become null and void, and the actions shall revert to the status that existed prior to the execution
26 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
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1 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
2 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,
3 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
4 modify the terms of the Consent Judgment and to resubmit it for approval.

5 **8. MODIFICATION OF JUDGMENT**

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

10 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
11 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

12 **9. RETENTION OF JURISDICTION**

13 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
14 of this Consent Judgment under Code of Civil Procedure § 664.6.

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

16 10.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
17 California Attorney General so that the Attorney General may review this Consent Judgment prior
18 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney
19 General has received the aforementioned copy of this Consent Judgment, and in the absence of
20 any written objection by the Attorney General to the terms of this Consent Judgment, the parties
21 may then submit it to the Court for approval.

22 **11. ATTORNEY FEES**

23 11.1 Except as specifically provided in Sections 4.1.3 and 6.3, each Party shall bear its
24 own attorneys' fees and costs in connection with this action.
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1 **12. ENTIRE AGREEMENT**

2 12.1 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 deemed
7 to exist or to bind any of the Parties.

8 **13. GOVERNING LAW**

9 13.1 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 provisions
11 of California law.

12 13.2 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 the
18 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and
19 to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall
20 be interpreted to relieve a Defendant from any obligation to comply with any pertinent state or
21 federal law or regulation.

22 13.3 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 or
26 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
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1 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
2 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
3 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
4 this regard, the Parties hereby waive California Civil Code § 1654.

5 **14. EXECUTION AND COUNTERPARTS**

6 14.1 This Consent Judgment may be executed in counterparts and by means of facsimile
7 or portable document format (pdf), which taken together shall be deemed to constitute one
8 document and have the same force and effect as original signatures.

9 **15. NOTICES**

10 15.1 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
16 (310) 623-1926;
17 Email: lawfirm@yeroushalmi.com

18 If to Defendant 4U APPAREL CORPORATION:

19 Mark E. Elliott
20 PILLSBURY WINTHROP SHAW PITTMAN LLP
21 725 S. Figueroa St., Suite 2800
22 Los Angeles, CA 90017
23 Email: mark.elliott@pillsburylaw.com

24 Rebecca M. Lee
25 PILLSBURY WINTHROP SHAW PITTMAN LLP
26 725 S. Figueroa St., Suite 2800
27 Los Angeles, CA 90017
28 Email: rebecca.lee@pillsburylaw.com

1 **16. AUTHORITY TO STIPULATE**

2 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
4 the party represented and legally to bind that party.

5
6 **AGREED TO:**

7 Date: 02/13, 2019

AGREED TO:

7 Date: 2/12, 2019

8
9 Name: Michael Marcus

9 Name: YOSHIYUKI NAGAYAMA

10 Title: Director
11 CONSUMER ADVOCACY
GROUP, INC.

10 Title: PRESIDENT & CEO
11 4U APPAREL CORPORATION

12
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14 **IT IS SO ORDERED.**

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16 Date: _____

17 Hon. Judge Jo-Lynne Q. Lee
18 JUDGE OF THE SUPERIOR COURT
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