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5 An Association of Independent Law Corporations
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10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CONSUMER ADVOCACY GROUP, INC.,
in the interest of the Public,

Plaintiff,

v.

BED BATH & BEYOND INC., a New York
Corporation; BED BATH & BEYOND OF
CALIFORNIA, LLC, a Delaware
Corporation; LIBERTY PROCUREMENT
CO. INC, a New York Corporation.;
PACIFIC WORLD CORPORATION, a
California Corporation; LEVINE
LEICHTMAN CAPITAL PARTNERS, Inc,
a California Corporation.; and DOES 1-10;

Defendants.

CASE NO. BC694786

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

[Assigned for All Purposes to Honorable
William F. Fahey, Dept. 69]

Complaint filed: February 20, 2018

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between Plaintiff, CONSUMER
ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") acting on behalf of itself and in the interest
of the public, and settling Defendant PACIFIC WORLD CORPORATION ("PACIFIC" or
"Defendant") with each a Party to the action and collectively referred to as "Parties."

1 **1.2 Defendant and Covered Products**

2 1.2.1 CAG alleges that PACIFIC is a California Corporation which employs ten
3 or more persons. For purposes of this Consent Judgment only, PACIFIC is deemed a person in
4 the course of doing business in California and subject to the provisions of the Safe Drinking
5 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
6 (“Proposition 65”).

7 1.2.2 CAG alleges that PACIFIC manufactures, causes to be manufactured, sells,
8 or distributes certain Eye Kits with Polymer Components in California.

9 **1.3 Listed chemical**

10 1.3.1 DEHP has been listed by the State of California as known to cause cancer
11 and reproductive toxicity.

12 **1.4 Notice of Violation.**

13 1.4.1 On or about May 19, 2017, CAG served PACIFIC and various public
14 enforcement agencies with a document titled “60-Day Notice of Intent to Sue for Violation of the
15 Safe Drinking Water and Toxic Enforcement Act of 1986” that alleged violations of Health &
16 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP,
17 contained in certain Eye Kits with Polymer Components, sold/distributed by Defendant in
18 California. No public enforcer has commenced or diligently prosecuted the allegations set forth
19 in the May 19, 2017 Notice.

20 **1.5 Complaint.**

21 On February 20, 2018, CAG filed a Complaint against Defendant for civil penalties and
22 injunctive relief (the “Complaint”) in Los Angeles County Superior Court, Case No. BC694786,
23 alleging that Defendant violated Proposition 65 for allegedly failing to give clear and reasonable
24 warnings of alleged exposure to DEHP in certain Eye Kits with Polymer Components, Defendant
25 distributed and/or sold in California.

26 **1.6 Consent to Jurisdiction**

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

8 **1.7 No Admission**

9 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
10 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
11 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
12 shall be construed as an admission by the Parties of any material allegation in the Notices or the
13 Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind,
14 including without limitation, any admission concerning any alleged or actual violation of
15 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, including
16 but not limited to the meaning of the terms “knowingly and intentionally expose” or “clear and
17 reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this
18 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
19 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of
20 fault, wrongdoing, or liability by any Defendant, its officers, directors, employees, or parent,
21 subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative
22 or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this
23 Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the
24 Parties may have in any other or future legal proceeding, except as expressly provided in this
25 Consent Judgment.
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1 **2. DEFINITIONS**

2 2.1 "Covered Products" means Eye Kits with Polymer Components, sold or supplied
3 by PACIFIC, including but not limited to "Harmon"; "Face Values"; "Professional Quality Eye
4 Care"; "5-Piece Total Eye Kit"; "Distributed by Harmon Stores, Inc."; "www.facevalues.com";
5 "HM321"; "R392"; 07160314189. The Covered Products are limited to those sold and/or
6 supplied by PACIFIC.

7 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
8 Court.

9 2.3 "DEHP" means Diethyl Hexyl Phthalate.

10 2.4 "Listed Chemical" means DEHP.

11 2.5 "Notice" means Plaintiff's May 19, 2017 "60-Day Notice of Intent to Sue for
12 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986".

13 **3. INJUNCTIVE RELIEF, REFORMULATION & CLEAR AND REASONABLE**
14 **WARNINGS.**

15 3.1 After the Effective Date, PACIFIC shall not sell, offer for sale, or ship for sale, in
16 California, any Covered Products, unless the level of DEHP does not exceed 0.1% (1,000 parts
17 per million).

18 3.2 For any Covered Products still existing in Defendant's inventory within 60 days
19 after the Effective Date, PACIFIC shall place a Proposition 65 compliant warning on the
20 products. Any warning provided pursuant to this section shall be affixed to the packaging of, or
21 directly on, the Covered Products, and be prominently placed with such conspicuousness as
22 compared with other words, statements, designs, or devices as to render it likely to be read and
23 understood by an ordinary individual under customary conditions before purchase or use. The
24 Parties agree that the following warning language shall constitute compliance with Proposition
25 65 with respect to the alleged Listed Chemical in the Covered Products existing in Defendant's
26 inventory as of the Effective Date:
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1  **WARNING:** This product can expose you to chemicals including DEHP, which is
2 known to the State of California to cause cancer and birth defects or other reproductive
3 harm. For more information, go to www.P65Warnings.ca.gov.

4 **4. SETTLEMENT PAYMENT**

5 4.1 **Payment and Due Date:** No later than seven (7) days after the Effective Date,
6 PACIFIC shall pay a total of fifty-five thousand dollars, and zero cents (\$55,000.00) in full and
7 complete settlement of any and all claims for civil penalties, damages, attorney's fees, expert
8 fees or any other claim for costs, expenses or monetary relief of any kind, for claims that were or
9 could have been asserted in the Notice or Complaint, as follows:

10 4.1.1 **Civil Penalty:** PACIFIC shall issue two separate checks totaling
11 \$9,715.00 as follows for alleged civil penalties pursuant to Health & Safety Code § 25249.12:

12 (a) PACIFIC will issue one check made payable to the State of California's Office
13 of Environmental Health Hazard Assessment ("OEHHA") in the amount of \$7,286.25
14 representing 75% of the total civil penalty and PACIFIC will issue a second check to CAG in the
15 amount of \$2,428.75 representing 25% of the total civil penalty and deliver it to CAG c/o
16 Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California
17 90212;

18 (b) Separate 1099s shall be issued for each of the above payments: PACIFIC will
19 issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the
20 amount of \$7,286.25. PACIFIC will also issue a 1099 to CAG in the amount of \$2,423.75 and
21 deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W,
22 Beverly Hills, California 90212.

23 4.1.2 **Additional Settlement Payments:** PACIFIC shall pay \$7,285.00 as
24 additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health & Safety
25 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG will use this
26 payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing
27 for Proposition 65 Listed Chemicals in various products, and for expert fees for evaluating
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1 exposures through various mediums, including but not limited to consumer product,
2 occupational, and environmental exposures to Proposition 65 Listed Chemicals, and the cost of
3 hiring consulting and retaining experts who assist with the extensive scientific analysis necessary
4 for those files in litigation and to offset the costs of future litigation enforcing Proposition 65 but
5 excluding attorney fees; fifteen percent (15%) for administrative costs incurred during
6 investigation and litigation to reduce the public's exposure to Proposition 65 Listed Chemicals
7 by notifying those persons and/or entities believed to be responsible for such exposures and
8 attempting to persuade those persons and/or entities to reformulate their products or the source of
9 exposure to completely eliminate or lower the level of Proposition 65 Listed Chemicals
10 including but not limited to costs of documentation and tracking of products investigated, storage
11 of products, website enhancement and maintenance, computer and software maintenance,
12 investigative equipment, CAG's member's time for work done on investigations, office supplies,
13 mailing supplies and postage. Within 30 days of a request from the Attorney General, CAG shall
14 provide to the Attorney General copies of documentation demonstrating how the above funds
15 have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such
16 additional settlement payment.

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18 **4.1.3 Reimbursement of Attorney Fees and Costs:** PACIFIC shall issue a
19 check in the amount of \$38,000.00 payable to "Yeroushalmi & Yeroushalmi" as complete
20 reimbursement for any and all reasonable investigation fees and costs, attorneys' fees, expert
21 fees, and any and all other costs and expenses incurred as a result of investigating, bringing this
22 matter to the Defendant(s)' attention, litigating, negotiating a settlement in the public interest,
23 and seeking and obtaining court approval of this Consent Judgment.

24 **4.2** Other than the payment to OEHHA described above, all payments referenced in
25 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
26 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
27 payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard
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1 Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812.
2 PACIFIC shall provide written confirmation to CAG upon payment to OEHHA.

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

4 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
5 behalf of itself and in the public interest, and Defendant and its officers, directors, insurers,
6 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
7 companies, and their successors and assigns ("Defendant Releasees"), all entities to whom
8 Defendant directly or indirectly distribute or sell Covered Products, including, but not limited to,
9 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
10 licensees, and the successors and assigns of any of them, who may use, maintain, distribute or
11 sell Covered Products ("Downstream Defendant Releasees"), for all claims for violations of
12 Proposition 65 up to the Effective Date based on alleged exposure to DEHP, from Covered
13 Products, as set forth in the Notice. Defendant's and Defendant Releasees' compliance with this
14 Consent Judgment shall constitute compliance with Proposition 65 for the Covered Products with
15 respect to exposure to DEHP from Covered Products. Nothing in this Section affects CAG's
16 right to commence or prosecute an action under Proposition 65 against any person other than
17 Defendant, Defendant Releasees or Downstream Defendant Releasees. Defendant, Defendant
18 Releasees, and Downstream Defendant Releasees shall collectively be referred to as the
19 "Released Parties".
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21 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
22 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
23 indirectly, any form of legal action and releases all claims, including, without limitation, all
24 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
25 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
26 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
27 fixed or contingent (collectively "Claims"), against the Released Parties arising from any actual
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1 or alleged violation of Proposition 65 or any other statutory or common law claim regarding the
2 Covered Products manufactured, distributed or sold by the Released Parties through the Effective
3 Date regarding any actual or alleged failure to warn about exposure to the Listed Chemical from
4 the Covered Products. In furtherance of the foregoing, CAG on behalf of itself only, hereby
5 waives any and all rights and benefits which it now has, or in the future may have, conferred
6 upon it with respect to Claims regarding the Covered Products manufactured, distributed or sold
7 by the Released Parties through the Effective Date arising from any violation of Proposition 65
8 or any other statutory or common law regarding the failure to warn about exposure to the Listed
9 Chemical from the Covered Products by virtue of the provisions of section 1542 of the California
10 Civil Code, which provides as follows:

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

15 CAG understands and acknowledges that the significance and consequence of this waiver of
16 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
17 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
18 violation of Proposition 65 or any other statutory or common law regarding the Covered
19 Products manufactured, distributed or sold by the Released Parties through the Effective Date
20 regarding the failure to warn about actual or alleged exposure to the Listed Chemical from the
21 Covered Products, CAG will not be able to make any claim for those damages, penalties or other
22 relief against the Released Parties. Furthermore, CAG acknowledges that it intends these
23 consequences for any such Claims arising from any violation of Proposition 65 or any other
24 statutory or common law regarding the failure to warn about exposure to the Listed Chemical
25 from the Covered Products as may exist as of the date of this release but which CAG does not
26 know exist, and which, if known, would materially affect their decision to enter into this Consent
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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, Los Angeles County, 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 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, CAG shall provide a Notice of Violation ("NOV") to PACIFIC. The NOV shall include for each of the Covered Products: (a) the name of the Covered Products; (b) specific dates when the Covered Product was sold by PACIFIC in California; (c) the store or other place at which the Covered Product was available for sale to consumers; and (d) any other evidence or support for the allegations in the NOV.

6.2.1 **Non-Contested NOV.** CAG shall take no further action of any kind regarding the alleged violation if, within 60 days of receiving such NOV, PACIFIC serves a Notice of Election ("NOE") not to contest the NOV that meets one of the following conditions:

(a) A statement that the Covered Product was manufactured or shipped by PACIFIC for sale in California before the Effective Date; or

(b) A statement that since receiving the NOV PACIFIC 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 Product identified in

1 the NOV from sale in California and destroy or return the Covered Product to PACIFIC
2 or vendor, as applicable; or (iii) refute the information provided in the NOV.

3 6.2.2 **Contested NOV.** PACIFIC may serve a Notice of Election ("NOE")
4 informing CAG of its election to contest the NOV within 60 days of receiving the NOV.

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

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

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

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

19 7. ENTRY OF CONSENT JUDGMENT

20 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
21 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
22 PACIFIC waive their respective rights to a hearing and trial on the allegations in the Notice and
23 Complaint.
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25 7.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent
26 Judgment and any and all prior agreements between the Parties merged herein shall terminate
27 and become null and void, and the actions shall revert to the status that existed prior to the
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1 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
2 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
3 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
4 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
5 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

6 **8. MODIFICATION OF JUDGMENT**

7 8.1 This Consent Judgment may be modified only upon written agreement of the
8 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
9 any Party 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
14 terms 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
18 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the
19 Attorney General has received the aforementioned copy of this Consent Judgment, CAG may
20 then submit it to the Court for approval.

21 **11. ATTORNEY FEES**

22 11.1 Except as specifically provided in Sections 4.1.3 and 6.3, each Party shall bear its
23 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

24 **12. ENTIRE AGREEMENT**

25 12.1 This Consent Judgment contains the sole and entire agreement and understanding
26 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
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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 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
10 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
11 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
12 rendered inapplicable by reason of law generally as to the Covered Products, then PACIFIC may
13 provide written notice to CAG of any asserted change in the law, and shall have no further
14 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
15 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
16 PACIFIC from any obligation to comply with any other pertinent state or federal law or
17 regulation.

18 13.3 The Parties, including their counsel, have participated in the preparation of this
19 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
20 Consent Judgment was subject to revision and modification by the Parties and has been accepted
21 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
22 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
23 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
24 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
25 resolved against the drafting Party should not be employed in the interpretation of this Consent
26 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.
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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 delivery of First Class Mail.

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8 If to CAG:

9 Reuben Yeroushalmi, Esq.
10 Yeroushalmi & Yeroushalmi
11 9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

12 If to PACIFIC WORLD CORPORATION:

13 Garth N. Ward, Esq.
14 Lewis Brisbois
15 701 B Street, Suite 1900
San Diego, CA 92101

16 **16. AUTHORITY TO STIPULATE**

17 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
18 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf
19 of the Party represented and legally to bind that Party.

1 AGREED TO:

AGREED TO:

2 Date: 08/13, 2018

Date: AUGUST 10th, 2018

3
4
5 Name: Michael M...

Name: [Signature]

6
7 Title: Director
8 CONSUMER ADVOCACY
9 GROUP, INC.

Title: PRESIDENT & CEO
PACIFIC WORLD CORPORATION

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11 IT IS SO ORDERED.

12 Date: _____

JUDGE OF THE SUPERIOR COURT