

Reuben Yeroushalmi (SBN 193981)  
**YEROUSHALMI & YEROUSHALMI**  
An Association of Independent Law Corporations  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, California 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.

ROSS STORES, INC., a Delaware  
Corporation;  
ROSS DRESS FOR LESS, INC., a Virginia  
Corporation;  
ROSS STORES, INC., DBA DD'S  
DISCOUNTS, a Delaware Corporation;  
ROSS PROCUREMENT, INC., a Delaware  
Corporation;  
ROSS ACQUISITION, INC., a Virginia  
Corporation;  
and DOES 1-190;

Defendants.

CASE NO. RG19012558

**CONSENT JUDGMENT [PROPOSED]**

Health & Safety Code § 25249.5 *et seq.*

**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 defendant, MERIDIAN INTERNATIONAL CO., LTD, USA. (hereinafter referred to as "Defendant"), with each a Party to the action collectively referred to as "Parties."

## 1.2 Defendant and Products

1.2.1 CAG alleges that Defendant is a California corporation which employs ten or more persons. CAG further alleges that Defendant sold or distributed for sale in California Tools with Vinyl/PVC Grip including but not limited to:

(i) “125mm (5 in.)” Plier contained in 5 piece Toolkit: “TACTIX;” “BH0731;” “#204903;” “MERIDIAN INTERNATIONAL CO., LTD.;” “ROSS;” “D1068 C6565;” “COMPARABLE VALUE \$25.00;” “HARDWARE;” “MADE IN CHINA;” “400167820020;” “6 942629 282181;”

(ii) “150mm (6 in.)” Plier contained in 5 piece Toolkit: “TACTIX;” “BH0731;” “#204903;” “MERIDIAN INTERNATIONAL CO., LTD.;” “ROSS;” “D1068 C6565;” “COMPARABLE VALUE \$25.00;” “HARDWARE;” “MADE IN CHINA;” “400167820020;” “6 942629 282181;” and

(iii) “150mm (6in.)” Wrench contained in 5 piece Toolkit: “TACTIX;” “BH0731;” “#204903;” “MERIDIAN INTERNATIONAL CO., LTD.;” “ROSS;” “D1068 C6565;” “COMPARABLE VALUE \$25.00;” “HARDWARE;” “MADE IN CHINA;” “400167820020;” “6 942629 282181”.

1.2.2 For purposes of this Consent Judgment only, Defendant is deemed a person in the course of doing business in California and are 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”).

## 1.3 Chemicals of Concern

1.3.3 Di (2-ethylhexyl) Phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) Phthalate, has been listed by the State of California as a chemical known to cause cancer and birth defects or other reproductive harm.

## 1.4 Notices of Violation

1.4.1 On or about August 28, 2018, CAG served Defendant 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” (AG# 2018-01649) (hereinafter “Notice”) that provided the Defendant with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of potential exposures to DEHP contained in Tools with Vinyl/PVC Grip sold and/or distributed by Defendant. No other public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

### **1.5 Complaint**

1.5.1 On March 27, 2019, CAG filed a Complaint for civil penalties and injunctive relief (hereinafter “Complaint”) in Alameda County Superior Court, Case No. RG19012558, and thereafter filed an amended complaint on December 16, 2019 against several parties. The Complaint alleges, among other things, that Defendant violated Proposition 65 by failing to give clear and reasonable warnings of exposure to DEHP from Covered Products.

### **1.6 Consent to Jurisdiction**

1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, 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 first cause of action of the Complaint 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**

1.7.1 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 Complaint (each and every allegation of which Defendant denies), or of any fact, conclusion of law, issue of law or violation of law, including without limitation, any admission concerning any

1 alleged or actual violation of Proposition 65 or any other statutory, regulatory, common law, or  
2 equitable doctrine, or the meaning of the terms “knowingly and intentionally expose” or “clear and  
3 reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent  
4 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by the  
5 Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or  
6 liability by any Defendant, its officers, directors, employees, or parent, subsidiary, affiliated  
7 corporations, or Defendant’s downstream retailers, or be offered or admitted as evidence in any  
8 administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore,  
9 nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or  
10 defense the Parties may have in any other or future legal proceeding, except as expressly provided  
11 in this Consent Judgment.

## 12 **2. DEFINITIONS**

13 2.1 “Covered Products” means products specifically identified in Paragraph 1.2.1 sold  
14 or supplied by Defendant, along with the downstream retailers as referenced in the releases  
15 contained herein.

16 2.2 “Effective Date” means the date that this Consent Judgment is approved by the  
17 Court.

18 2.3 “DEHP” means Di (2-ethylhexyl) Phthalate (“DEHP”), also known as Diethyl  
19 Hexyl Phthalate and Bis (2-ethylhexyl) Phthalate.

20 2.4 “Listed Chemical” means DEHP.

21 ///

22 ///

23 ///


24 ///

1 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**  
2 **WARNINGS.**

3 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in  
4 California, or ship for sale in California any Covered Products with any component that contains  
5 the Listed Chemical in excess of 0.1% (1,000 parts per million) by weight.

6 3.2 Any Covered Products that Defendant sells, distributes, or ships into California  
7 after the Effective Date that were ordered prior to the Effective Date, Defendant must provide a  
8 Proposition 65 compliant warning for the Covered Products for cancer and reproductive toxicity  
9 compliant with 27 CCR 25600 *et seq* , unless it contains no more than 0.1% by weight (1,000 ppm)  
10 of the Listed Chemical. Any warning provided pursuant to this section shall be affixed to the  
11 packaging of, or directly on, the Covered Products, and be prominently placed with such  
12 conspicuousness as compared with other words, statements, designs, or devices as to render it  
13 likely to be read and understood by an ordinary individual under customary conditions before  
14 purchase or use. The warning must be set off from other surrounding information, enclosed in a  
15 box. Where the packaging of the Covered Product in existing inventory includes consumer  
16 information as defined by California Code of Regulations title 27 §25600.1(c) in a language other  
17 than English, the warning must also be provided in that language in addition to English. Should  
18 Defendant sell or distribute any Covered Product in existing inventory through the internet the  
19 warning will be posted in the manner provided for with respect to internet sales, as provided for in  
20 27 CCR sections 25601 and 25602, as they may be subsequently amended.

21 3.3 The Parties agree that product labeling stating that:

22  **WARNING:** This product can expose you to chemicals including Di(2-  
23 ethylhexyl)phthalate (DEHP) which is known to the State of California to cause cancer  
24 and birth defects or other reproductive harm. For more information go to  
25 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

26 shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered  
27 Products for any Covered Products in existing inventory that had not been reformulated and were  
28 distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

3.4 Covered Products already distributed to Downstream Defendant Releasees prior to the Effective Date may continue to be sold through as is.

#### 4. SETTLEMENT PAYMENT

4.1 **Payment and Due Date:** Within thirty (30) days of the Effective Date, Defendant shall pay a total of one hundred fifty thousand dollars (\$150,000.00) in full and complete settlement of all monetary claims by CAG related to the Notices, as follows:

4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling twenty thousand and twenty dollars (\$20,020.00) as penalties pursuant to Health & Safety Code § 25249.12:

(a) Defendant will issue a check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of fifteen thousand and fifteen dollars (\$15,015.00) representing 75% of the total penalty and Defendant will issue a separate check to CAG in the amount of five thousand and five dollars (\$5,005.00) representing 25% of the total penalty; and

(b) Separate 1099s shall be issued for each of the above payments: Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95812-4010, Attn: Mike Gyurics (EIN: 68-0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4.1.2 **Additional Settlement Payments:** Defendant shall make a separate payment, in the amount of fourteen thousand nine hundred and eighty dollars (\$14,980.00) as an 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). Defendant will issue a separate check to CAG for the Additional Settlement Payment. CAG will use this payment as follows, eighty percent (80%) 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

1 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retaining experts  
2 who assist with the extensive scientific analysis necessary for those files in litigation and to offset  
3 the costs of future litigation enforcing Proposition 65 but excluding attorney fees; twenty percent  
4 (20%) for administrative costs incurred during investigation and litigation to reduce the public's  
5 exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to  
6 be responsible for such exposures and attempting to persuade those persons and/or entities to  
7 reformulate their products or the source of exposure to completely eliminate or lower the level of  
8 Proposition 65 listed chemicals including but not limited to costs of documentation and tracking  
9 of products investigated, storage of products, website enhancement and maintenance, computer  
10 and software maintenance, investigative equipment, CAG's member's time for work done on  
11 investigations, office supplies, mailing supplies and postage. Within 30 days of a request from the  
12 Attorney General, CAG shall provide to the Attorney General copies of documentation  
13 demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring  
14 the proper expenditure of such additional settlement payment.

15  
16 **4.1.3 Reimbursement of Attorney's Fees and Costs:** Defendant shall pay one  
17 hundred fifteen thousand dollars (\$115,000.00) to "Yeroushalmi & Yeroushalmi" as  
18 reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs  
19 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating, and  
20 negotiating a settlement in the public interest.

21 **4.2** Other than the payment to OEHHA described above, all payments referenced in  
22 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi  
23 & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to  
24 OEHHA shall be delivered to Office of Environmental Health Hazard Assessment, Attn: Mike  
25 Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently with  
26 payment to OEHHA, Defendant shall provide written confirmation to CAG of the payment to  
27 OEHHA.

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

2             5.1 This Consent Judgment is a full, final, and binding resolution between CAG on behalf  
3 of itself and in the public interest and Defendant and its owners, officers, officers, directors,  
4 insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
5 affiliates, sister companies, predecessors, and their successors and assigns for alleged failure to  
6 provide Proposition 65 warning of potential consumer exposure to DEHP from the Covered  
7 Products as set forth in the Notice, and fully resolves all claims that have been or could have been  
8 asserted against Defendant in this action up through the Effective Date for failure to provide  
9 Proposition 65 warnings for the Covered Products regarding DEHP. CAG, on behalf of itself and  
10 in the public interest, hereby discharges Defendant, and their respective officers, directors,  
11 insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, and their  
12 successors and assigns (“Defendant Releasees”) and all customers, retailers, and downstream  
13 entities in the distribution chain of the Covered Products to whom Defendant distributed or sold  
14 Covered Products, including but not limited to Ross Stores, Inc., Ross Procurement, Inc, Ross  
15 Dress For Less, Inc. Ross Acquisition, Inc., their parents, subsidiaries, and affiliated entities, and  
16 the predecessors, successors and assigns of any of them, and all of their respective officers,  
17 directors, shareholders, members, managers, employees, agents only as to Covered Products sold  
18 by the Defendant (collectively, “Downstream Releasees”), for all Covered Products placed into  
19 the stream of commerce up through the Effective Date for violations of Proposition 65 based on  
20 exposure to DEHP from the Covered Products. Defendant and Defendant Releasee’s compliance  
21 with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition  
22 65 regarding alleged exposures to DEHP from the Covered Products. Nothing in this Section  
23 affects CAG’s right to commence or prosecute an action under Proposition 65 against any person  
24 after the Effective Date, other than Defendant Releasees or Downstream Releasees..

26             5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
27 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
28



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

13  
14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
16 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.

17 CAG understands and acknowledges that the significance and consequence of this waiver of  
18 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
19 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any  
20 violation of Proposition 65 or any other statutory or common law regarding the failure to warn  
21 about exposure to DEHP from the Covered Products, including but not limited to any exposure to,  
22 or failure to warn with respect to exposure to DEHP from the Covered Products, CAG will not be  
23 able to make any claim for those damages against Released Parties. Furthermore, CAG  
24 acknowledges that it intends these consequences for any such Claims arising from any violation  
25 of Proposition 65 or any other statutory or common law regarding the failure to warn about  
26 exposure to DEHP from Covered Products as may exist as of the date of this release but which  
27 CAG does not know exist, and which, if known, would materially affect their decision to enter  
28

1 into this Consent Judgment, regardless of whether their lack of knowledge is the result of  
2 ignorance, oversight, error, negligence, or any other cause.

### 3 **6. ENTRY OF CONSENT JUDGMENT**

4 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
5 California Health & Safety Code § 25249.7(f).

6 6.2 Upon entry of the Consent Judgment, CAG and Defendant waive their respective  
7 rights to a hearing or trial on the allegations of the Complaint.

8 6.3 Within five business days of the Effective Date, CAG shall file requests for  
9 dismissal without prejudice for the claims contained in the Notice as alleged in the Complaint.

10 6.4 If this Consent Judgment is not approved in full by the Court, (a) this Consent  
11 Judgment and any and all prior agreements between the Parties merged herein shall terminate and  
12 become null and void, and the actions shall revert to the status that existed prior to the execution  
13 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the  
14 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall  
15 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,  
16 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to  
17 modify the terms of the Consent Judgment and to resubmit it for approval.

### 18 **7. MODIFICATION OF JUDGMENT**

19 7.1 This Consent Judgment may be modified only upon written agreement of the  
20 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
21 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

22 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
23 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

### 24 **8. RETENTION OF JURISDICTION**

25 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms  
26 of this Consent Judgment under Code of Civil Procedure § 664.6.  
27

8.2 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.

## 9. SERVICE ON THE ATTORNEY GENERAL

9.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the California Attorney General so that the Attorney General may review this Consent Judgment prior to its approval by the Court. 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, may the Court approve this Consent Judgment.

## 10. ATTORNEY FEES

10.1 Except as specifically provided in Section 4.1.3 and 8.2, each Party shall bear its own costs and attorney fees in connection with this action.

## 11. GOVERNING LAW

11.1 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.

11.2 In the event that Proposition 65 is amended, 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 amendment, repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered Products or Listed Chemical at issue, 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.

11.3 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.

## 12. EXECUTION AND COUNTERPARTS

12.1 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.

## 13. NOTICES

13.1 Any notice under this Consent Judgment shall be by First-Class Mail or E-mail.

If to CAG:

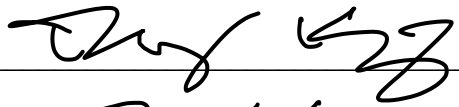
Reuben Yeroushalmi  
YEROUSHALMI & YEROUSHALMI  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212  
(310) 623-1926  
Email: [lawfirm@yeroushalmi.com](mailto:lawfirm@yeroushalmi.com)

If to Defendant Meridian International Co., Ltd, USA

Ryan Landis  
GORDON REES SCULLY MANSUKHANI  
5 Park Plaza, Suite 1100  
Irvine, CA 92614  
Tel: (213) 321-6704  
Email: [rlandis@grsm.com](mailto:rlandis@grsm.com)

14. **AUTHORITY TO STIPULATE**

14.1 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:	AGREED TO:
Date: _____, 2023	Date: <u>DECEMBER 29</u> , 2023
_____ Name: _____	 _____ Name: <u>TONY KUTZ</u>
Title: _____	Title: <u>PRESIDENT</u>
CONSUMER ADVOCACY GROUP, INC.	MERIDIAN INTERNATIONAL CO., LTD, USA

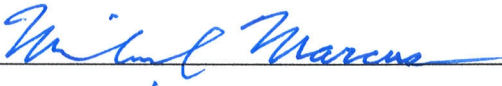

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

14. AUTHORITY TO STIPULATE

14.1 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:	AGREED TO:
Date: <u>December 29</u> , 2023	Date: <u>DECEMBER 29</u> , 2023
	
Name: <u>Michael Marcus</u>	Name: <u>Bob Kutz</u>
Title: <u>Director</u>	Title: <u>President</u>
CONSUMER ADVOCACY GROUP, INC.	MERIDIAN INTERNATIONAL CO., LTD, USA

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT