

NORTON ROSE FULBRIGHT US LLP
JEFFREY B. MARGULIES (BAR NO. 126002)
LAUREN A. SHOOR (BAR NO. 280788)
EVA YANG (BAR NO. 306215)
555 South Flower Street
Forty-First Floor
Los Angeles, California 90071
Telephone: (213) 892-9200
Facsimile: (213) 892-9494
jeff.margulies@nortonrosefulbright.com
lauren.shoor@nortonrosefulbright.com
eva.yang@nortonrosefulbright.com

Attorneys for Defendants
ROSS STORES, INC. dba DD'S DISCOUNTS;
ROSS DRESS FOR LESS, INC.;
ROSS PROCUREMENT, INC.; AND PERFECT
IMAGE, LLC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

v.

ROSS STORES, INC. dba DD's
DISCOUNTS a Delaware Corporation; ROSS
DRESS FOR LESS, INC., a Virginia
Corporation; ROSS PROCUREMENT, INC.,
a Delaware Corporation; NAXA
ELECTRONICS, INC., a California
Corporation; PERFECT IMAGE, LLC, a New
York Limited Liability Company; and DOES
1-20,

Defendants.

Case No. RG19034033

Assigned For All Purposes To The
Honorable Evelio Grillo, Dept. 15

CONSENT JUDGMENT [PROPOSED]

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer
3 Advocacy Group, Inc., (“CAG”) acting on behalf of itself and in the interest of the public, and
4 Defendant Perfect Image, LLC (“Perfect Image”), each a Party to the action and collectively
5 referred to as “Parties.”

6 1.2 CAG is a California corporation that serves as a private enforcer of the Safe
7 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6
8 *et seq.* (“Proposition 65”), as described in Proposition 65 and the regulations of the Attorney
9 General of California at 11 Cal. Code Regs. § 3000 *et seq.*

10 1.3 For purposes of this Consent Judgment only, Perfect Image is deemed a person in
11 the course of doing business in California and is subject to the provisions of Proposition 65.

12 1.4 CAG alleges that Perfect Image manufactured, distributed, or sold handbags,
13 wallets, backpacks, and belts as defined in the Notices of Violation referred to herein.

14 **1.5 Notices of Violation.**

15 1.5.1 On or about June 17, 2019, CAG served Perfect Image, Ross Dress for Less,
16 Inc., Ross Stores, Inc., and various public enforcement agencies, with a document entitled “Sixty-
17 Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act
18 of 1986” (“June 17, 2019 Notice”) that provided the recipients with notice of alleged violations of
19 Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures
20 to DEHP alleged to be contained in Dual Compartment Clear Handbags they sell, including but not
21 limited to “Dual Compartment Clear Handbag with pink edging and straps. Dual compartment bag.
22 SKU 400188245062; ‘Perfect Image New York’; ‘Made in China’.” No public enforcer has
23 commenced or is diligently prosecuted the allegations set forth in the June 17, 2019 Notice.

24 1.5.2 On or about June 28, 2019, CAG served Pegasus Trucking, LLC dba Fallas
25 Discount Stores #0100 and various public enforcement agencies, with a document entitled “Sixty-
26 Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act
27 of 1986” (“June 28, 2019 Notice”) that provided the recipients with notice of alleged violations of
28 Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures

1 to DEHP alleged to be contained in Backpacks they sell, including but not limited to “GLITTER
2 CLR BACKPACK; ‘015-311-710;’ ‘1320925;’ ‘\$ 14.99;’ ‘MADE IN CHINA’.” No public
3 enforcer has commenced or is diligently prosecuted the allegations set forth in the June 28, 2019.

4 1.5.3 On or about July 15, 2019, CAG served Perfect Image, Ross Dress for Less
5 Inc., Ross Stores, Inc. and various public enforcement agencies, with a document entitled “Sixty-
6 Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act
7 of 1986” (“July 15, 2019 Notice”) that provided the recipients with notice of alleged violations of
8 Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures
9 to DEHP alleged to be contained in Handbags they sell, including but not limited to ““PERFECT
10 IMAGE NEW YORK;’ ‘HANDBAG;’ ‘400188245154’.” No public enforcer has commenced or
11 is diligently prosecuted the allegations set forth in the July 15, 2019 Notice.

12 1.5.4 On or about July 17, 2019, CAG served Perfect Image, Ross Dress for Less
13 Inc., Ross Stores, Inc. and various public enforcement agencies, with documents entitled “Sixty-
14 Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act
15 of 1986” (“July 17, 2019 Notice”) that provided the recipients with notice of alleged violations of
16 Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures
17 to DEHP alleged to be contained in Dual Compartment Clear Handbags they sell, including but not
18 limited to ““Dual Compartment Clear Handbag with black edging and straps. Teal-turquoise
19 colored inner bag; Dual compartment bag. SKU 400187505372; ‘Perfect Image New York’; ‘Made
20 in China’.” No public enforcer has commenced or is diligently prosecuted the allegations set forth
21 in the July 17, 2019 Notice.

22 1.5.5 On or about August 21, 2019, CAG served Ross Stores, Inc., Ross Dress for
23 Less, Inc., dd’s Discounts, and various public enforcement agencies, with a document entitled
24 “Sixty-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement
25 Act of 1986” (“August 21, 2019 Notice”) that provided the recipients with notice of alleged
26 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged
27 exposures to DEHP alleged to be contained in Clear Plastic Handbags they sell, including but not
28

1 limited to “‘MADE IN CHINA;’ ‘dd’s DISCOUNTS;’ ‘400187565420’.” No public enforcer has
2 commenced or is diligently prosecuted the allegations set forth in the August 21, 2019 Notice.

3 1.5.6 On or about August 26, 2019, CAG served Perfect Image, dd’s Discount,
4 Ross Stores, Inc., Ross Dress for Less, Inc., and various public enforcement agencies, with a
5 document entitled “Sixty-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and
6 Toxic Enforcement Act of 1986” (“August 26, 2019 Notice”) that provided the recipients with
7 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
8 California of alleged exposures to DINP alleged to be contained in Clear Handbags they sell,
9 including but not limited to “‘Pink Translucent [sic] Handbag ‘Perfect Image New York’;
10 ‘Rainbow Clear Jell’; ‘D5502 C5520’; SKU ‘400187505532’.” No public enforcer has commenced
11 or is diligently prosecuted the allegations set forth in the August 26, 2019 Notice.

12 1.5.7 On or about September 17, 2019, CAG served Perfect Image, dd’s Discount,
13 Ross Stores, Inc., Ross Dress for Less, Inc., Ross Procurement, Inc., and various public
14 enforcement agencies, with a document entitled “Sixty-Day Notice of Intent to Sue for Violation
15 of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“September 17, 2019 Notice”) that
16 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6
17 for failing to warn individuals in California of alleged exposures to DEHP alleged to be contained
18 in Backpacks they sell, including but not limited to “‘Beige Backpack with Wallet. ‘Perfect Image
19 New York’; ‘D5502 CSS19’; ‘400188598861 Stone BP W Heart S’.” No public enforcer has
20 commenced or is diligently prosecuted the allegations set forth in the September 17, 2019 Notice.

21 1.5.8 On or about October 3, 2019, CAG served Perfect Image, dd’s Discount,
22 Ross Stores, Inc., Ross Dress for Less, Inc., Ross Procurement, Inc., and various public
23 enforcement agencies, with a document entitled “Sixty-Day Notice of Intent to Sue for Violation
24 of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“October 3, 2019 Notice”) that
25 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
26 failing to warn individuals in California of alleged exposures to DEHP and/or DINP alleged to be
27 contained in Clear Handbags they sell, including but not limited to “‘Clear Handbag with Black
28 edging. Inner bag is plaid with floral design. ‘Perfect Image New York’; ‘400187562887’; ‘Made

1 in China” and “Clear Handbag with Silver edging. Inner bag is shiny silver. ‘Perfect Image New
2 York;’ ‘400188245239;’ ‘Made in China’.” No public enforcer has commenced or is diligently
3 prosecuted the allegations set forth in the October 3, 2019 Notice.

4 1.5.9 On or about October 31, 2019, CAG served Perfect Image, Ross Stores, Inc.,
5 Ross Dress for Less, Inc., Ross Dress for Less Stores: 0484, and various public enforcement
6 agencies, with a document entitled “Sixty-Day Notice of Intent to Sue for Violation of the Safe
7 Drinking Water and Toxic Enforcement Act of 1986” (“October 31, 2019 Notice”) that provided
8 the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to
9 warn individuals in California of alleged exposures to DEHP alleged to be contained in Wallets
10 they sell, including but not limited to “‘PERFECT IMAGE NEW YORK;’ ‘ROSS;’ ‘LADIES
11 WALLET;’ ‘D1525 C5556;’ ‘400189633677’.” No public enforcer has commenced or is diligently
12 prosecuted the allegations set forth in the October 31, 2019 Notice.

13 1.5.10 On or about May 20, 2020, CAG served Perfect Image, Amazon.com, Inc.,
14 Amazon.com Services, Inc., and various public enforcement agencies, with a document entitled
15 “Sixty-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement
16 Act of 1986” (“May 20, 2020 Notice”) that provided the recipients with notice of alleged violations
17 of Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures
18 to DEHP alleged to be contained in Belts and Wallets they sell, including but not limited to
19 “‘X000OC4AVZ;’ ‘(736246);’ ‘Perfect Image Women’s Belt Black;’ ‘MADE IN CHINA;’ ‘M/L’”
20 and “‘X000OC4AAXD;’ ‘(736246);’ ‘Perfect Image Women’s Wallet Black + Silver;’ ‘MADE IN
21 CHINA;’ Black wallet with Silver Strap and red edges.” No public enforcer has commenced or is
22 diligently prosecuted the allegations set forth in the May 20, 2020 Notice.

23 1.6 Complaints.

24 1.6.1 On September 6, 2019, CAG filed a Complaint for civil penalties and
25 injunctive relief in Superior Court of California County of Alameda, Case No. RG19034033
26 (“Alameda Matter”), against Perfect Image, Ross Stores, Inc., Ross Dress for Less, Inc., Ross
27 Procurement, Inc., and various other defendants. The Complaint alleged that Perfect Image violated
28

1 Proposition 65 by failing to provide clear and reasonable warnings of alleged exposure to DEHP in
2 Dual Compartment Clear Handbags as alleged in the June 17, 2019 Notice.

3 1.6.2 On October 29, 2019, CAG filed a Complaint for civil penalties and
4 injunctive relief in Superior Court of California County of Los Angeles, Case No. 19STCV38610
5 (“Los Angeles Matter I”), against Ross Stores, Inc. and various other defendants. The Complaint
6 alleges that certain Handbags as identified in the July 15, 2019 Notice and July 17, 2019 Notice
7 violated Proposition 65 due to alleged exposure to DEHP.

8 1.6.3 On June 24, 2020, CAG filed a First Amended Complaint for civil penalties
9 and injunctive relief in Superior Court of California County of Los Angeles, Case No.
10 20STCV18693 (“Los Angeles Matter II”), against Ross Stores, Inc. The First Amended Complaint
11 alleges that certain Handbags as identified in the August 21, 2019 Notice, August 26, 2019 Notice,
12 and October 3, 2019 Notice violated Proposition 65 due to alleged exposure to DEHP and/or DINP;
13 that certain Backpacks as identified in the September 17, 2019 Notice violated Proposition 65 due
14 to alleged exposure to DEHP; and that certain Wallets as identified in October 31, 2019 Notice
15 violated Proposition 65 due to alleged exposure to DEHP.

16 **1.7 Consent to Jurisdiction.**

17 1.7.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
18 has jurisdiction over the allegations of violations contained in the above-referenced Complaints and
19 the Notices, and personal jurisdiction over Perfect Image as to the acts alleged in the Complaints,
20 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
21 Consent Judgment as a full settlement and resolution of the allegations contained in the Complaints
22 and the Notices, and of all claims which were, or could have been raised by, any person or entity
23 based in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
24 related thereto.

25 **1.8 No Admission.**

26 1.8.1 This Consent Judgment resolves claims that are denied and disputed. The
27 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
28 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 Complaints or the Notices (each and every allegation of which Perfect Image denies), any fact, conclusion of law, issue of law or violation of law, including without limitation, any admission concerning any violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or any admission as to the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Perfect Image, its officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

2. DEFINITIONS

2.1 “Covered Products” means handbags, wallets, backpacks, and belts manufactured or distributed by Perfect Image, including but not limited to, exemplar products identified in the Notices as defined below.

2.2 “DEHP” means Di(2-ethylhexyl)phthalate, also known as Bis(2-ethylhexyl)phthalate.

2.3 “DINP” means Diisononyl Phthalate.

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

2.5 “Notices” refers to CAG’s June 17, 2019 Notice, June 28, 2019 Notice, July 15, 2019 Notice, July 17, 2019 Notice, August 21, 2019 Notice, August 26, 2019 Notice, September 17, 2019 Notice, October 3, 2019 Notice, October 31, 2019 Notice, and May 20, 2020 Notice.

3. MATTERS COVERED BY THIS CONSENT JUDGMENT

3.1 This Consent Judgment is a full, final, and binding resolution between CAG on behalf of itself and in the public interest, and (i) Perfect Image and its officers, directors, insurers,

1 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, and
2 sister companies, and (ii) their respective successors and assigns (collectively, "Releasees") for all
3 claims for violations of Proposition 65 up through the Effective Date based on exposure to DEHP
4 and/or DINP in Covered Products as set forth in the Notices, through the Effective Date. CAG on
5 behalf of itself and in the public interest, hereby discharges Releasees and each of their downstream
6 distributors, wholesalers, vendors, licensors, licensees, customers, retailers and all downstream
7 entities in the distribution chain of the Covered Products, including but not limited to Ross Stores,
8 Inc., Ross Dress for Less, Inc., Ross Procurement, Inc., and the predecessors, successors, and
9 assigns of any of them, and all of their respective officers, directors, shareholders, members
10 managers, employees, and agents (collectively "Downstream Releasees") from all claims up
11 through the Effective Date for violations of Proposition 65 based on exposure to DEHP and/or
12 DINP from the Covered Products. Compliance with the terms of this Consent Judgment shall be
13 deemed to constitute compliance with Proposition 65 by Releasees and Downstream Releasees with
14 respect to DEHP and/or DINP in the Covered Products as set forth in the Notices.

15 3.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
16 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
17 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
18 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,
19 fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees,
20 and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
21 (collectively "CAG Claims"), against (1) Releasees, and (2) Downstream Releasees arising from
22 any violation of Proposition 65 or any other statutory or common law regarding the failure to warn
23 about exposure to DEHP and/or DINP in Covered Products. In furtherance of the foregoing, only
24 as to alleged exposures to DEHP and/or DINP from the Covered Products, CAG hereby waives any
25 and all rights and benefits which it now has, or in the future may have, conferred upon it with
26 respect to the CAG Claims by virtue of the provisions of section 1542 of the California Civil Code,
27 which provides as follows:
28

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

7 CAG understands and acknowledges that the significance and consequence of this waiver
8 of California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
9 resulting from, or related directly or indirectly to, in whole or in part, from any violation of
10 Proposition 65 or any other statutory or common law regarding exposure or failure to warn about
11 exposure to DEHP and/or DINP in Covered Products, CAG will not be able to make any claim for
12 those damages against Releasees and Downstream Releasees. Furthermore, CAG acknowledges
13 that it intends these consequences for any such CAG Claims as may exist as of the date of this
14 release but which CAG does not know exist, and which, if known, would materially affect its
15 decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the
16 result of ignorance, oversight, error, negligence, or any other cause.


17 4. **INJUNCTIVE RELIEF**

18 4.1 **Covered Products.**


19 4.1.1 After the Effective Date, Perfect Image will not order for manufacture any
20 Covered Products for sale into California with any component that contains DEHP or DINP in
21 excess of 0.1% by weight (1,000 ppm). Any Covered Products that Perfect Image sells, distributes,
22 or ships into California after the Effective Date that were ordered for manufacture prior to the
23 Effective Date must contain a clear and reasonable warning, unless it contains no more than 0.1%
24 by weight (1,000 ppm) DEHP or DINP. Covered Products already distributed to Downstream
25 Releasees prior to the Effective Date may continue to be sold through as is.

26 4.1.2 Any warning provided on Covered Products pursuant to Section 4.1.1 must
27 be prominently placed with such conspicuousness as compared with other words, statements,
28 designs, or devices as to render it likely to be read and understood by an ordinary individual under
customary conditions before purchase or use. For Covered Products requiring a warning pursuant

1 to Section 4.1.1 the following warning statements shall constitute compliance with Proposition 65
2 with respect to the alleged exposure to DEHP or DINP:

3  **WARNING:** This product can exposure you to chemicals including Di(2-
4 ethylhexyl)phthalate (DEHP) which are known to the State of California to cause cancer and birth
5 defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

6 **OR**

7  **WARNING:** This product can exposure you to chemicals including Diisononyl
8 Phthalate (DINP) which are known to the State of California to cause cancer. For more
9 information go to www.P65Warnings.ca.gov.

10 **OR**

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

12 Where the sign, tag, or label for the product is not printed using the color yellow, the
13 warning symbol may be printed in black and white.

14 4.2 **Modifications to Warning Statements.**

15 4.2.1 If modifications or amendments to Proposition 65 or its regulations after the
16 Effective Date are inconsistent with, or provide warning specifications or options different from,
17 the specifications in this Consent Judgment, Perfect Image may modify the content and delivery
18 methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its
19 regulations.

20 5. **SETTLEMENT PAYMENTS**

21 5.1 **Payment:** Perfect Image shall pay a total of \$125,000.00 (one hundred twenty-five
22 thousand dollars and zero cents) in full and complete settlement of all monetary claims by CAG
23 related to the Notices. Full and complete settlement of any and all monetary claims by CAG related
24 to the Notices shall be divided as follows:

25 5.1.1 **Civil Penalty:** Perfect Image shall pay a total of forty-seven thousand four
26 hundred and forty dollars and zero cents (\$47,440.00) as penalties pursuant to Health & Safety
27 Code § 25249.12: (a) Perfect Image will pay a total of thirty-five thousand five hundred and eighty
28 dollars and zero cents (\$35,580.00) to the State of California's Office of Environmental Health

1 Hazard Assessment (“OEHHA”) representing 75% of the total penalty; and (b) Perfect Image will
2 pay a total of eleven thousand eight hundred sixty dollars and zero cents (\$11,860.00) to CAG
3 representing 25% of the total penalty.

4 5.1.1.1 Two separate 1099s shall be issued as follows: Perfect Image will
5 issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount
6 of thirty-five thousand five hundred and eighty dollars and zero cents (\$35,580.00). Perfect Image
7 will also issue a 1099 to CAG in the amount of eleven thousand eight hundred sixty dollars and
8 zero cents (\$11,860.00) and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire
9 Boulevard, Suite 240W, Beverly Hills, California 90212.

10 5.1.2 **Reimbursement of Attorney’s Fees and Costs:** Perfect Image shall pay a
11 total amount of forty two thousand dollars and zero cents (\$42,000.00) to “Yeroushalmi &
12 Yeroushalmi” as reimbursement for reasonable investigation fees and costs, testing costs, expert
13 fees, attorney’s fees, and other litigation costs and expenses for all work performed through the
14 approval of this Consent Judgment.

15 5.1.3 **Additional Settlement Payments:** Perfect Image shall issue one check for
16 thirty-five thousand five hundred sixty dollars and zero cents (\$35,560.00) to “Consumer Advocacy
17 Group, Inc.” pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations,
18 Title 11 § 3203(d). CAG will use this portion of the this additional Settlement Payment as follows,
19 eighty five percent (85%) for fees of investigation, purchasing and testing for Proposition 65 listed
20 chemicals in various products, and for expert fees for evaluating exposures through various
21 mediums, including but not limited to consumer product, occupational, and environmental
22 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retaining experts
23 who assist with the extensive scientific analysis necessary for those files in litigation and to offset
24 the costs of future litigation enforcing Proposition 65 but excluding attorney fees; fifteen percent
25 (15%) for administrative costs incurred during investigation and litigation to reduce the public’s
26 exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to
27 be responsible for such exposures and attempting to persuade those persons and/or entities to
28 reformulate their products or the source of exposure to completely eliminate or lower the level of

1 Proposition 65 listed chemicals including but not limited to costs of documentation and tracking of
2 products investigated, storage of products, website enhancement and maintenance, computer and
3 software maintenance, investigative equipment, CAG's member's time for work done on
4 investigations, office supplies, mailing supplies and postage. Within 30 days of a request from the
5 Attorney General, CAG shall provide to the Attorney General copies of documentation
6 demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring
7 the proper expenditure of such additional settlement payment.

8 5.1.4 In any proceeding brought by either Party to enforce this Consent Judgment,
9 the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

10 **5.2 Delivery of Payments.**

11 5.2.1 All Attorney's Fees payments, CAG's portion of civil penalties, and
12 additional settlement payments, shall be delivered to: Yeroushalmi & Yeroushalmi, 9100 Wilshire
13 Blvd., Suite 240W, Beverly Hills, CA 90212.

14 5.2.2 Payments to OEHHA shall be delivered to: OEHHA, (Memo Line "Prop
15 65 Penalties") at the following addresses:

16 For United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief Office of Environmental Health Hazard Assessment
19 P.O. Box 4010
20 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief Office of Environmental Health Hazard Assessment
24 1001 I Street
25 Sacramento, CA 95814

26 **6. ENFORCEMENT OF JUDGMENT**

27 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
28 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of

1 California, County of Alameda, giving the notice required by law, enforce the terms and conditions
2 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
3 only after that Party first provides 30 days' notice to the Party allegedly failing to comply with the
4 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
5 comply in an open and good faith manner.

6 **7. ENTRY OF CONSENT JUDGMENT**

7 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
8 California Health & Safety Code § 25249.7(f).

9 7.2 Upon entry of an order approving this Consent Judgment, the Complaint in this
10 action (the Alameda Matter) shall be deemed amended to include the claims raised in the Notices
11 as detailed in Section 1.5.

12 7.3 Within two court days of the Effective Date, CAG shall file a request for dismissal
13 of the Fourth and Sixth Cause of Action in the Complaint filed in the Los Angeles County Superior
14 Court, Case No. 19STCV38610 and the Third, Fourth, Tenth, Thirteenth, and Twenty-Third Cause
15 of Action in the First Amended Complaint filed in Los Angeles County Superior Court, Case No.
16 20STCV18693.

17 7.4 If this Consent Judgment is not approved in full by the Court, (a) this Consent
18 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
19 become null and void, and the actions shall revert to the status that existed prior to the execution
20 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
21 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have
22 any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in
23 any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify
24 the terms of the Consent Judgment and to resubmit it for approval.

25 **8. MODIFICATION OF JUDGMENT**

26 8.1 This Consent Judgment may be modified only upon written agreement of the Parties
27 and upon entry of a modified Consent Judgment by the Court thereon, or otherwise upon motion
28 of any party as provided by law and upon entry of a modified Consent Judgment by the Court.

1 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
2 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

3 **9. RETENTION OF JURISDICTION**

4 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
5 of this Consent Judgment under Code of Civil Procedure § 664.6.

6 **10. DUTIES LIMITED TO CALIFORNIA**

7 10.1 This Consent Judgment shall have no effect on Covered Products sold or distributed
8 by Perfect Image outside the State of California.

9 **11. SERVICE ON THE ATTORNEY GENERAL**

10 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
11 California Attorney General so that the Attorney General may review this Consent Judgment prior
12 to its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney
13 General has received the aforementioned copy of this Consent Judgment, and in the absence of any
14 written objection by the Attorney General to the terms of this Consent Judgment, the parties may
15 then submit it to the Court for approval.

16 **12. ATTORNEY'S FEES**

17 12.1 Except as specifically provided in Section 5.1.2, 5.1.3, and 5.1.4, each Party shall
18 bear its own attorney's fees and costs in connection with this action.

19 **13. ENTIRE AGREEMENT**

20 13.1 This Consent Judgment contains the sole and entire agreement and understanding
21 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
22 negotiations, commitments and understandings related hereto. No representations, oral or
23 otherwise, express or implied, other than those contained herein have been made by any party
24 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
25 to exist or to bind any of the Parties.

26 **14. GOVERNING LAW**

27
28

1 14.1 The validity, construction, and performance of this Consent Judgment shall be
2 governed by the laws of the State of California, without reference to any conflicts of law provisions
3 of California law.

4 14.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
5 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
6 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
7 rendered inapplicable by reason of law generally as to the Covered Products, then subject to this
8 Consent Judgment, Perfect Image may provide written notice to CAG of any asserted change in the
9 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and
10 to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall be
11 interpreted to relieve Perfect Image from any obligation to comply with any pertinent state or
12 federal law or regulation.

13 14.3 The Parties, including their counsel, have participated in the preparation of this
14 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
15 Consent Judgment was subject to revision and modification by the Parties and has been accepted
16 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
17 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
18 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
19 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
20 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
21 this regard, the Parties hereby waive California Civil Code § 1654.

22 15. **EXECUTION AND COUNTERPARTS**

23 15.1 This Consent Judgment may be executed in counterparts and by means of electronic
24 signature, which taken together shall be deemed to constitute one document and have the same
25 force and effect as original signatures.

26 16. **NOTICES**

27 16.1 Any notices under this Consent Judgment shall be by First Class Mail (with a
28 courtesy copy by email).

To CAG:

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

To Perfect Image:

Perfect Image, LLC
10 West 33rd Street, Room 1117
New York, New York 10001

With a copy to:

Will Troutman
Norton Rose Fulbright US LLP
555 South Flower Street
41st Floor
Los Angeles, California 90071
Email:
will.troutman@nortonrosefulbright.com

17. **AUTHORITY TO STIPULATE**

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

AGREED TO:

Date: 02/10, 2020

Michael Marcus

Name: Michael Marcus

Title: Director
CONSUMER ADVOCACY
GROUP, INC.

AGREED TO:

Date: 2/01, 2020

Eliot Shalom

Name: Eliot Shalom

Title: OWNER
PERFECT IMAGE, LLC

IT IS SO ORDERED.

Date: _____

Hon. Evelio Grillo
JUDGE OF THE SUPERIOR COURT