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8 Attorneys for Plaintiff,  
9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 THE TJX COMPANIES, INC., *a Delaware*  
17 *Corporation;*  
18 MYSTIC APPAREL, LLC, *a New York*  
19 *Limited Liability Company;*  
20 *and DOES 1-90,*  
21 Defendants.

CASE NO. 20STCV32288

**[PROPOSED] CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

[Assigned for All Purposes to the Hon. Jon Takasugi, Dept. 17]

Complaint Date: August 24, 2020

Trial Date: November 07, 2022

22 **1. INTRODUCTION**

23 1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer  
24 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the public interest,  
25 and Defendant B.R.E Industries, Inc. (“Settling Defendant”) with each a Party to the action and  
26 collectively referred to as “Parties.”

27 **1.2 Defendant and Covered Products**

28 1.2.1 CAG alleges that B.R.E Industries, Inc. is a California Corporation which  
employs ten or more persons. For purposes of this Consent Judgment only, B.R.E Industries, Inc.

1 is deemed a person in the course of doing business in California and subject to the provisions of  
2 the Proposition 65.

3 1.2.2 CAG alleges that Settling Defendant manufactures, sells, and/or distributes  
4 consumer products in California.

5 **1.3 Listed Chemicals**

6 1.3.1 Di (2-ethylhexyl) Phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate  
7 and Bis (2-ethylhexyl) Phthalate, has been listed by the State of California under Proposition 65  
8 as a chemical known to cause cancer and birth defects or other reproductive harm.

9 1.3.2 Diisononyl Phthalate (“DINP”) has been listed by the State of California under  
10 Proposition 65 as a chemical known to cause cancer.

11 **1.4 Notices of Violation**

12 1.4.1 On or about August 12, 2019, CAG served a “60-Day Notice of Intent to Sue for  
13 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2019-01530”)  
14 (“August 12, 2019 Notice”) that provided Settling Defendant with notice of alleged violations of  
15 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to  
16 DEHP contained in certain backpacks sold, manufactured, and/or distributed by Settling  
17 Defendant in California. No public enforcer has commenced or diligently prosecuted the  
18 allegations set forth in the August 12, 2019 Notice.

19 1.4.2 On or about September 6, 2019, CAG served a “60-Day Notice of Intent to Sue for  
20 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2019-01731”)  
21 (“September 6, 2019 Notice”) that provided Settling Defendant with notice of alleged violations  
22 of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to  
23 DEHP contained in certain cosmetic bags/travel bags sold, manufactured, and/or distributed by  
24 Settling Defendant in California. No public enforcer has commenced or diligently prosecuted  
25 the allegations set forth in the September 6, 2019 Notice.

26 1.4.3 On or about November 12, 2019, CAG served a “60-Day Notice of Intent to Sue for  
27 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2019-02123”)  
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1 (“November 12, 2019 Notice”) that provided Settling Defendant with notice of alleged violations  
2 of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to  
3 DINP contained in certain cosmetic cases sold, manufactured, and/or distributed by Settling  
4 Defendant in California. No public enforcer has commenced or diligently prosecuted the  
5 allegations set forth in the November 12, 2019 Notice.

6 1.4.4 On or about November 15, 2019, CAG served a “60-Day Notice of Intent to Sue  
7 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2019-  
8 02155”) (“November 15, 2019 Notice”) that provided Settling Defendant with notice of alleged  
9 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
10 exposures to DEHP contained in certain cosmetic cases sold, manufactured, and/or distributed by  
11 Settling Defendant in California. No public enforcer has commenced or diligently prosecuted  
12 the allegations set forth in the November 15, 2019 Notice.

13 1.4.5 On or about November 19, 2019, CAG served a “60-Day Notice of Intent to Sue  
14 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2019-  
15 02163”) (“November 19, 2019 Notice”) that provided Settling Defendant with notice of alleged  
16 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
17 exposures to DEHP contained in certain satchel bags sold, manufactured, and/or distributed by  
18 Settling Defendant in California. No public enforcer has commenced or diligently prosecuted  
19 the allegations set forth in the November 19, 2019 Notice.

20 1.4.6 On or about December 9, 2019, CAG served a “60-Day Notice of Intent to Sue  
21 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2019-  
22 02282”) (“December 9, 2019 Notice”) that provided Settling Defendant with notice of alleged  
23 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
24 exposures to DEHP contained in certain cosmetic cases sold, manufactured, and/or distributed by  
25 Settling Defendant in California. No public enforcer has commenced or diligently prosecuted  
26 the allegations set forth in the December 9, 2019 Notice.

1           1.4.7 On or about February 10, 2020, CAG served a “60-Day Notice of Intent to Sue  
2 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-  
3 00323”) (“February 10, 2020 Notice”) that provided Settling Defendant with notice of alleged  
4 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
5 exposures to DEHP and DINP contained in certain cosmetic bags/travel bags sold,  
6 manufactured, and/or distributed by Settling Defendant in California. No public enforcer has  
7 commenced or diligently prosecuted the allegations set forth in the February 10, 2020 Notice.

8           1.4.8 On or about May 18, 2020, CAG served a “60-Day Notice of Intent to Sue for  
9 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-01299”)  
10 (“May 18, 2020 Notice”) that provided Settling Defendant with notice of alleged violations of  
11 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to  
12 DEHP contained in certain wallets sold, manufactured, and/or distributed by Settling Defendant  
13 in California. No public enforcer has commenced or diligently prosecuted the allegations set  
14 forth in the May 18, 2020 Notice.

15           1.4.9 On or about March 11, 2021, CAG served a “60-Day Notice of Intent to Sue for  
16 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2021-00633”)  
17 (“March 11, 2021 Notice”) that provided Settling Defendant with notice of alleged violations of  
18 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to  
19 DEHP contained in certain makeup cases sold, manufactured, and/or distributed by Settling  
20 Defendant in California. No public enforcer has commenced or diligently prosecuted the  
21 allegations set forth in the March 11, 2021 Notice.

22           1.4.10 On or about November 20, 2020, CAG served a “60-Day Notice of Intent to Sue  
23 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-  
24 03151”) (“November 20, 2020 Notice”) that provided Settling Defendant with notice of alleged  
25 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
26 exposures to DEHP contained in certain wallets sold, manufactured, and/or distributed by  
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1 Settling Defendant in California. No public enforcer has commenced or diligently prosecuted  
2 the allegations set forth in the November 20, 2020 Notice.

3 1.4.11 On or about July 9, 2021, CAG served a “60-Day Notice of Intent to Sue for  
4 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2021-01678”)  
5 (“July 9, 2021 Notice”) that provided Settling Defendant with notice of alleged violations of  
6 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to  
7 DEHP contained in certain wallets sold, manufactured, and/or distributed by Settling Defendant  
8 in California. No public enforcer has commenced or diligently prosecuted the allegations set  
9 forth in the July 9, 2021 Notice.

10 1.4.12 On or about July 16, 2021, CAG served a “60-Day Notice of Intent to Sue for  
11 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2021-01769”)  
12 (“July 16, 2021 Notice”) that provided Settling Defendant with notice of alleged violations of  
13 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to  
14 DEHP contained in certain satchel bags sold, manufacturer, and/or distributed by Settling  
15 Defendant in California. No public enforcer has commenced or diligently prosecuted the  
16 allegations set forth in the July 16, 2021 Notice.

17 **1.5 Complaints**

18 1.5.1 On May 15, 2020, CAG filed a Complaint for civil penalties and injunctive relief  
19 (“Complaint 1”) in Los Angeles County Superior Court, Case No. 20STCV18693 against Ross  
20 Stores, Inc. Complaint 1 alleges, among other things, that Proposition 65 was violated for alleged  
21 failure to give clear and reasonable warnings of alleged exposure to DEHP in backpacks and  
22 cosmetic bags distributed and/or sold by Ross Stores, Inc.

23 1.5.2 On August 20, 2020, CAG filed a Complaint for civil penalties and injunctive  
24 relief (“Complaint 2”) in Los Angeles County Superior Court, Case No. 20STCV32288 against  
25 The TJX Companies, Inc. Complaint 2 alleges, among other things, that Proposition 65 was  
26 violated for alleged failure to give clear and reasonable warnings of alleged exposure to DEHP  
27 and DINP in cosmetic cases and/or bags distributed and/or sold by The TJX Companies, Inc.  
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1           1.5.3 On September 4, 2020, CAG filed a Complaint for civil penalties and injunctive  
2 relief (“Complaint 3”) in Los Angeles County Superior Court, Case No. 20STCV34003 against  
3 Ross Stores, Inc. Complaint 3 alleges, among other things, that Proposition 65 was violated for  
4 alleged failure to give clear and reasonable warnings of alleged exposure to DEHP in satchel  
5 bags and wallets distributed and/or sold by Ross Stores, Inc.

6           1.5.4 On August 17, 2020, CAG filed a Complaint for civil penalties and injunctive  
7 relief (“Complaint 4”) in Los Angeles County Superior Court, Case No. 20STCV31340 against  
8 Ross Stores, Inc. Complaint 4 alleges, among other things, that Proposition 65 was violated for  
9 failure to allegedly give clear and reasonable warnings of alleged exposure to DEHP in cosmetic  
10 bags distributed and/or sold by Ross Stores, Inc.

11           1.5.5 On June 24, 2021 CAG filed a Complaint for civil penalties and injunctive relief  
12 (“Complaint 5”) in Los Angeles County Superior Court, Case No. 21STCV23590 against Ross  
13 Stores, Inc. Complaint 5 alleges, among other things, that Proposition 65 was violated for alleged  
14 failure to give clear and reasonable warnings of alleged exposure to DEHP in wallets distributed  
15 and/or sold by Ross Stores, Inc.

16           **1.6 Consent to Jurisdiction**

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

25           **1.7 No Admission**

26           Settling Defendant denies the material allegations contained in the Notices and Complaints,  
27 and maintains that it has not violated Proposition 65, and that all of the products that it has sold or  
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1 distributed for sale in California, including the Covered Products, have been, and are, in  
2 compliance with all laws. This Consent Judgment resolves claims that are denied and disputed.  
3 The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all  
4 claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this  
5 Consent Judgment shall be construed as an admission by the Parties of any material allegation in  
6 the Notice or the Complaint, or of any fact, finding, conclusion of law, issue of law, or violation  
7 of law of any kind, including without limitation, any admission concerning any alleged or actual  
8 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,  
9 including but not limited to the meaning of the terms “knowingly and intentionally expose” or  
10 “clear and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in  
11 this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an  
12 admission by the Parties of any fact, finding, conclusion of law, issue of law, or violation of law,  
13 or of any fault, wrongdoing, or liability by Settling Defendant, or any of its officers, directors,  
14 employees, or parent, subsidiary or affiliated corporations. Neither this Consent Judgment itself,  
15 nor any portion of this Consent Judgment, nor the fact that the Parties have entered into a settlement  
16 to resolve all claims between them may be offered or admitted as evidence in any administrative  
17 or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this  
18 Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the  
19 Parties may have in any other or future legal proceeding, except as expressly provided in this  
20 Consent Judgment.

21 **2. DEFINITIONS**

22 2.1 “**Covered Products**” means (1) **backpacks**, (2) **cosmetic/travel bags and/or**  
23 **cosmetic cases**, (3) **satchel/tote bags**, and (3) **wallets/ wallet key chain**, including but  
24 not limited to the exemplar products identified in the Notices outlined in Section 1.4.

25 2.2 “**Effective Date**” means the date that this Consent Judgment is approved and  
26 entered by the Court.  
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1 2.3 “DEHP” means Di (2-ethylhexyl) Phthalate, also known as Diethyl Hexyl  
2 Phthalate and Bis (2-ethylhexyl) Phthalate

3 2.4 “DINP” means Diisononyl Phthalate.

4 2.5 “Listed Chemicals” means DEHP and/or DINP.


5 2.6 “Notices” means the Notices named in Section 1.4.

6 2.7 “Complaints” means the Complaints identified in Section 1.5.


7 **3. INJUNCTIVE RELIEF/REFORMULATION**

8 3.1 After the Effective Date, Settling Defendant shall not order for manufacture any  
9 Covered Products with any component that contains the Listed Chemical(s) in excess of 0.1%  
10 (1,000 parts per million) by weight.

11 3.2 Any Covered Products that Settling Defendant manufactures, distributes or ships  
12 for sale after the Effective Date that were ordered for manufacture prior to the Effective Date,  
13 must contain a clear and reasonable warning, consistent with 27 CCR section 25600 *et seq.*  
14 unless it contains no more than 0.1% by weight (1,000 ppm) of the Listed Chemical(s). For  
15 products containing DEHP the warnings shall state:

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

19 For products that contain DINP the warnings shall state:

20  WARNING: This product can expose you to chemicals including  
21 Diisononyl Phthalate (DINP) which is known to the State of California to cause  
22 cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

23 3.3 Any warnings provided pursuant to this Section 3.2 shall be affixed to the packaging  
24 of, or directly on, or attached to the Covered Products, and be prominently placed with such  
25 conspicuousness as compared with other words, statements, designs, or devices as to render it  
26 likely to be read and understood by an ordinary individual under customary conditions before  
27 purchase or use. The equilateral triangle pictogram shall be in yellow with a black exclamation  
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1 mark; provided however, the pictogram may be in black and white instead of yellow if the  
2 Covered Product label does not contain the color yellow.

3 3.4 Covered Products already manufactured, distributed, or shipped to Downstream  
4 Releasees prior to the Effective Date may continue to be sold through as is.

5 **4. SETTLEMENT PAYMENT**

6 4.1 **Total Settlement Payment and Due Date:** Settling Defendant shall pay a total  
7 of one hundred and eighty thousand dollars and zero cents (\$180,000.00) in full and complete  
8 settlement of any and all claims for civil penalties, damages, attorney’s fees, expert fees or any  
9 other claim for costs, expenses or monetary relief of any kind for claims that were or could have  
10 been asserted in the Notices or Complaints, as set forth in Sections 1.5.1 through 1.5.9, below.

11 4.1.1 **Civil Penalty:** BRE shall pay twenty-eight thousand five hundred and eighty  
12 dollars (\$28,580.00) as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to  
13 be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these  
14 funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to CAG, as  
15 provided by California Health & Safety Code § 25249.12(d).

16 Within ten (10) days of the Effective Date, Settling Defendant shall issue two separate  
17 checks for the civil penalty payment to (a) the State of California’s Office of Environmental  
18 Health Hazard Assessment (“OEHHA”) in the amount of twenty-one thousand four hundred and  
19 thirty-five dollars (\$21,435.00) representing 75% of the total civil penalty and (b) to CAG in the  
20 amount of seven thousand one hundred and forty-five dollars (\$7,145.00) representing 25% of  
21 the total civil penalty. Separate 1099s shall be issued for each of the above payments: (a) to  
22 OEHHA, P.O. Box 4010, Sacramento, CA 95812 (EIN: 68-0284486) in the amount of  
23 \$21,435.00 Settling Defendant will also issue a 1099 to CAG in the amount of \$7,145.00 and  
24 deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W,  
25 Beverly Hills, California 90212.

26 4.1.2 **Additional Settlement Payments:** Within ten (10) days of the Effective Date,  
27 Settling Defendant shall also issue one check for to twenty-one thousand four hundred and twenty  
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1 dollars (\$21,420.00) to “Consumer Advocacy Group, Inc.” pursuant to Health & Safety Code §  
2 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG intends and agrees to  
3 use this portion of the Total Settlement Payment as follows, (a) eighty five percent (85%) for fees  
4 CAG allegedly incurred related to the investigation, purchase, testing, and related expert  
5 evaluation for of the Covered Products and to offset the costs of future litigation enforcing  
6 Proposition 65 but excluding attorney fees; and (b) fifteen percent (15%) for administrative costs  
7 incurred during investigation and litigation to reduce the public’s exposure to the Proposition 65  
8 Listed Chemicals by notifying those persons and/or entities believed to be responsible for such  
9 exposures and attempting to persuade those persons and/or entities to reformulate their products or  
10 the source of exposure to completely eliminate or lower the level of the Proposition 65 Listed  
11 Chemicals, including but not limited to costs of documentation and tracking of products  
12 investigated, storage of products, website enhancement and maintenance, computer and software  
13 maintenance, investigative equipment, CAG’s member’s time for work done on investigations,  
14 office supplies, mailing supplies and postage. Within 30 days of a request from the Attorney  
15 General, CAG shall provide to the Attorney General copies of documentation demonstrating how  
16 the above funds have been spent. CAG shall be solely responsible for ensuring the proper  
17 expenditure of such additional settlement payment.

18       **4.1.3 Reimbursement of Attorney Fees and Costs:** Settling Defendant shall issue a  
19 payment in the amount of one hundred and thirty thousand dollars (\$130,000) payable to  
20 “Yeroushalmi & Yeroushalmi” as complete reimbursement for any and all reasonable  
21 investigation fees and costs, attorneys’ fees, expert fees, and any and all other costs and expenses  
22 incurred as a result of investigating, bringing this matter to Settling Defendant’s attention,  
23 litigating, negotiating a settlement in the public interest, and seeking and obtaining court  
24 approval of this Consent Judgment.

25       4.2 Other than the payment to OEHHA described above, all payments referenced in  
26 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,  
27 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The  
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1 payment to OEHHA shall be delivered directly to OEHHA, either at (a) 1001 I Street, Mail Stop  
2 12-B, Sacramento, California 95814, Attn: Mike Gyurics; (b) P.O. Box. 4010, Sacramento, CA  
3 95812, Attn: Mike Gyurics. A copy of the check payable to OEHHA shall be mailed to  
4 Yeroushalmi & Yeroushalmi at the address set forth above as proof of payment to OEHHA.

5 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT &**  
6 **RELEASE OF ALL CLAIMS**

7 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on  
8 behalf of itself and in the public interest, and Settling Defendant and its owners, officers,  
9 directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries,  
10 partners, affiliates, sister companies, predecessors, and their successors and assigns (“Defendant  
11 Releasees”), and all entities to whom Settling Defendant directly or indirectly distributes, ships  
12 or sells Covered Products to, including, but not limited to, downstream distributors, downstream  
13 wholesalers, customers, retailers, marketplace hosts, franchisees, cooperative members,  
14 licensees, including but not limited to, The TJX Companies Inc., The TJX Operating Companies,  
15 Inc., Ross Stores, Inc., Ross Dress for Less, Inc., Ross Procurement, Inc., Burlington Coat  
16 Factory Direct Corporation, and each of their parents, shareholders, members, directors, officers,  
17 managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries,  
18 partners, sister companies, and affiliates, and their predecessors, successors and assigns  
19 (“Downstream Releasees”), of all claims for alleged or actual violations of Proposition 65 based  
20 on exposures to: (a) DEHP in Backpacks, Cosmetic Bags and/or Cases, Wallets, or Satchel Bags;  
21 and (b) DINP in Cosmetic Bags and/or Cases, any of which are manufactured, distributed or sold  
22 by Settling Defendant up through the Effective Date as set forth in the Notices and Complaints.  
23 Settling Defendant and Defendant Releasees’ compliance with this Consent Judgment shall  
24 constitute compliance with Proposition 65 with respect to alleged exposures to: (a) DEHP in  
25 Backpacks, Cosmetic Bags and/or Cases, Wallets, or Satchel Bags; and (b) DINP in Cosmetic  
26 Bags and/or Cases, any of which are sold by Settling Defendant, Defendant Releasees, or  
27 Downstream Releasees after the Effective Date. Nothing in this Section affects CAG’s right to  
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1 commence or prosecute an action under Proposition 65 against any person other than Settling  
2 Defendant, Defendant Releasees, or Downstream Releasees.

3         5.2     CAG, on behalf of itself, its past and current agents, representatives, attorneys,  
4 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
5 indirectly, any form of legal action and releases all claims, including, without limitation, all  
6 manner of actions, causes of action, charges, rights, promises, suits, liabilities, demands,  
7 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,  
8 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, in law or in equity,  
9 whether known or unknown, fixed or contingent (collectively "Claims"), against Settling  
10 Defendant, Defendant Releasees, and Downstream Defendant Releasees related to or arising  
11 from any actual or alleged violation of Proposition 65 or any other statutory or common law  
12 claim regarding the Covered Products manufactured, distributed or sold by the Settling  
13 Defendant or Defendant Releasees through the Effective Date, regarding any actual or alleged  
14 failure to warn about exposure to the Listed Chemicals from the Covered Products. In  
15 furtherance of the foregoing, CAG on behalf of itself only, hereby waives any and all rights and  
16 benefits which it now has, or in the future may have, conferred upon it with respect to Claims  
17 regarding the Covered Products manufactured, distributed, or sold by Settling Defendant or  
18 Defendant Releasees through the Effective Date arising from any violation of Proposition 65 or  
19 any other statutory or common law regarding the failure to warn about exposure to the Listed  
20 Chemicals from the Covered Products by virtue of the provisions of section 1542 of the  
21 California Civil Code, which provides as follows:

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

28 CAG understands and acknowledges that the significance and consequence of this waiver of  
California Civil Code section 1542 is that even if CAG suffers future damages arising out of or

1 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any  
2 violation of Proposition 65 or any other statutory or common law regarding the Covered  
3 Products manufactured, distributed, or sold by Settling Defendant, Defendant Releasees, or  
4 Downstream Releases through the Effective Date regarding the failure to warn about actual or  
5 alleged exposure to the Listed Chemicals from the Covered Products, CAG will not be able to  
6 make any claim for those damages, penalties or other relief against Settling Defendant,  
7 Defendant Releasees or Downstream Releasees. Furthermore, CAG acknowledges that it intends  
8 these consequences for any such Claims arising from any violation of Proposition 65 or any  
9 other statutory or common law regarding the failure to warn about exposure to the Listed  
10 Chemicals from the Covered Products as may exist as of the Effective Date but which CAG does  
11 not know exist, and which, if known, would materially affect their decision to enter into this  
12 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,  
13 oversight, error, negligence, or any other cause.

14 **6. ENTRY OF CONSENT JUDGMENT**

15 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
16 California Health & Safety Code § 25249.7(f).

17 6.2 Upon entry of an order approving this Consent Judgment, the Complaint in this  
18 action shall be deemed amended to include defendant B.R.E Industries, Inc. and the claims raised  
19 in the Notices as detailed in Section 1.4.

20 6.3 Within five (5) days of the payments of all amounts outlined in Section 4, CAG  
21 will file a Request for Dismissal without prejudice for the causes of action or claims asserted in  
22 the Complaints, outlined in Section 1.5.

23 6.4 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  
25 and become null and void, and the actions shall revert to the status that existed prior to the  
26 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
27 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
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1 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
2 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to  
3 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

4 **7. MODIFICATION OF JUDGMENT**

5 7.1 This Consent Judgment may be modified only upon written agreement of the  
6 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
7 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

8 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
9 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

10 **8. ENFORCEMENT OF JUDGMENT**

11 8.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties  
12 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
13 California, County of Los Angeles, giving the notice required by law, enforce the terms and  
14 conditions contained herein. A Party may enforce any of the terms and conditions of this  
15 Consent Judgment only after that Party first provides 30 days' notice to the Party allegedly  
16 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve  
17 such Party's failure to comply in an open and good faith manner.

18 **9. RETENTION OF JURISDICTION**

19 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
20 terms of this Consent Judgment under Code of Civil Procedure section 664.6.

21 9.2 In any proceeding brought by either Party to enforce this Consent Judgment, the  
22 prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.

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

24 10.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
25 California Attorney General so that the Attorney General may review this Consent Judgment  
26 prior to its submittal to the Court for approval. After forty-five (45) days after the Attorney  
27  
28

1 General has received the aforementioned copy of this Consent Judgment, CAG may submit it to  
2 the Court for approval.

3 **11. ATTORNEY FEES**

4 11.1 Except as specifically provided in Sections 4.1.3 and 8.2, each Party shall bear its  
5 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

6 **12. GOVERNING LAW**

7 12.1 The validity, construction, terms, and performance of this Consent Judgment shall  
8 be governed by the laws of the State of California, without reference to any conflicts of law  
9 provisions of California law.

10 12.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
11 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
12 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
13 rendered inapplicable by reason of law generally as to the Covered Products or Listed  
14 Chemicals, then Settling Defendant may provide written notice to CAG of any asserted change  
15 in the law, and shall have no further obligations pursuant to this Consent Judgment with respect  
16 to, and to the extent that, the Covered Products are so affected. Nothing in this Consent  
17 Judgment shall be interpreted to relieve Settling Defendant from any obligation to comply with  
18 any other pertinent state or federal law or regulation.

19 12.3 The Parties, including their counsel, have participated in the preparation of this  
20 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
21 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
22 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty  
23 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a  
24 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent  
25 Judgment agrees that any statute or rule of construction providing that ambiguities are to be  
26 resolved against the drafting Party should not be employed in the interpretation of this Consent  
27 Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.  
28

1 **13. EXECUTION AND COUNTERPARTS**

2 13.1 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 **14. NOTICES**

6 14.1 Any notices under this Consent Judgment shall be by delivery of First-Class Mail.

7 If to CAG:

8 Reuben Yeroushalmi  
9 [reuben@yeraushalmi.com](mailto:reuben@yeraushalmi.com)  
10 Yeroushalmi & Yeroushalmi  
11 9100 Wilshire Boulevard, Suite 240W  
12 Beverly Hills, CA 90212

13 If to Defendant B.R.E Industries Inc.:

14 Kendra Lounsberry  
15 Barnes & Thornburg LLP  
16 2029 Century Park E., Suite 300  
17 Los Angeles, CA, 90067-2904  
18 [kendra.lounsberry@btlaw.com](mailto:kendra.lounsberry@btlaw.com)

19 **15. AUTHORITY TO STIPULATE**

20 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
21 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf  
22 of the Party represented and legally to bind that party.  
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AGREED TO:

AGREED TO:

Date: 6/27, 2022

Date: 6/17, 2022

Michael Marcus

Ramin Mehrara

Name: Michael Marcus

Name: RAMIN MEHRARA

Title: Director

Title: President.

CONSUMER ADVOCACY GROUP, INC.

B.R.E INDUSTRIES, INC.

**IT IS SO ORDERED.**

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

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JUDGE OF THE SUPERIOR COURT