

1 Reuben Yeroushalmi (SBN 193981)
2 Shannon E. Royster (SBN 314126)
3 **YERUSHALMI & YERUSHALMI***
4 9100 Wilshire Boulevard, Suite 240W
5 Beverly Hills, CA 90212
6 Telephone: (310) 623-1926
7 Facsimile: (310) 623-1930

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 USA MINISO DEPOT, INC., a Delaware
17 Corporation, *et al.*,
18 Defendants.

CASE NO. 20STCV45524

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

19 **1. INTRODUCTION**

20 1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer
21 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the public interest,
22 and Defendant MINISO DEPOT CA, INC. (“Settling Defendant”) with each a Party to the action
23 and collectively referred to as “Parties.”

24 **1.2 Defendant**

25 1.2.1 CAG alleges that MINISO DEPOT CA, INC., is a Delaware Corporation which
26 employs ten or more persons. For purposes of this Consent Judgment only, MINISO DEPOT
27 CA, INC. does not dispute that it is a “person in the course of doing business” in California
28

1 within the meaning of California Health and Safety Code section 25249.5 *et seq.* (“Proposition
2 65”) and subject to the provisions of 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 as a chemical known
8 to cause cancer and birth defects or other reproductive harm.

9 1.4 Notices of Violation

10 1.4.1 On or about May 11, 2020, 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# 2020-01190”)
12 (“May 11, 2020 Notice”) that provided Defendant with notice of alleged violations of Health &
13 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP
14 contained in certain Sports Armbands sold, manufacturer, and/or distributed by Defendant in
15 California. No public enforcer has commenced or diligently prosecuted the allegations set forth
16 in the May 11, 2020 Notice.

17 1.4.2 On or about May 14, 2020, CAG served a “60-Day Notice of Intent to Sue for
18 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-01225”)
19 (“May 14, 2020 Notice”) that provided Defendant with notice of alleged violations of Health &
20 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP
21 contained in certain Sports Armbands sold, manufacturer, and/or distributed by Defendant in
22 California. No public enforcer has commenced or diligently prosecuted the allegations set forth
23 in the May 14, 2020 Notice.

24 1.5 Complaints

25 1.5.1 On November 30, 2020 CAG filed a Complaint for civil penalties and injunctive
26 relief (“Complaint 2”) in Los Angeles County Superior Court, Case No. 20STCV45524 against
27 USA MINISO DEPOT, INC.; and MINISO DEPOT CA, INC. Complaint 2 alleges, among
28 other things, that Proposition 65 was violated for failure to allegedly give clear and reasonable

1 warnings of alleged exposure to DEHP in certain Sports Armbands Defendant distributed and/or
2 sold.

3 **1.6 Consent to Jurisdiction**

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

11 **1.7 No Admission**

12 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
13 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
14 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
15 shall be construed as an admission by the Parties of any material allegation in the Notice or the
16 Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind,
17 including without limitation, any admission concerning any alleged or actual violation of
18 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, including
19 but not limited to the meaning of the terms “knowingly and intentionally expose” or “clear and
20 reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this
21 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
22 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of
23 fault, wrongdoing, or liability by Settling Defendant, their officers, directors, employees, or
24 parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any
25 administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore,
26 nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument,
27 or defense the Parties may have in any other or future legal proceeding, except as expressly
28

1 provided in this Consent Judgment.

2 **2. DEFINITIONS**

3 2.1 “Covered Products” means the Sports Armbands as specifically identified in the
4 Notices outlined in Section 1.4.

5 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
6 Court.

7 2.3 “DEHP” means Di (2-ethylhexyl) Phthalate, also known as Diethyl Hexyl
8 Phthalate and Bis (2-ethylhexyl) Phthalate

9 2.4 “Listed Chemicals” means: DEHP

10 2.5 “Notices” means the Notices named in paragraph 1.4 of this Consent Judgment.

11 **3. INJUNCTIVE RELIEF/REFORMULATION**

12 3.1 After the Effective Date, Settling Defendant shall not order for manufacture and
13 then distribute for sale or offer for sale any Covered Products as specifically identified by style
14 number, SKU number or UPC code in the Notices with any component that contains the Listed
15 Chemical(s) in excess of 0.1% (1,000 parts per million) by weight.

16 3.2 Any Covered Products that Settling Defendant manufactures for sale, distributes
17 for sale, or ships for sale in California after the Effective Date that were ordered for manufacture
18 prior to the Effective Date must contain a clear and reasonable warning, consistent with 27 CCR
19 section 25600 *et seq.* unless it contains no more than 0.1% by weight (1,000 ppm) of the Listed
20 Chemical(s). In consideration of the fact that Defendants have agreed to only order for
21 manufacture reformulated Covered products, parties agree to the following language for Covered
22 Products in existing inventory that contain more than 0.1% DEHP by weight:

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

26 Or:

27 ⚠ WARNING: Cancer and Reproductive Harm www.P65Warnings.ca.gov.

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

8 3.4 Covered Products already distributed to Downstream Releasees prior to the
9 Effective Date, including those already being offered to sale as of the Effective Date, may
10 continue to be sold through as is.

11 **4. SETTLEMENT PAYMENT**

12 4.1 **Payment and Due Date:** Within ten (10) business days of receiving Notice that
13 this Consent Judgment has been entered by the Court and receiving the appropriate tax payer
14 information from CAG, Defendant shall pay a total of Two hundred thousand dollars and zero
15 cents (\$200,000) in full and complete settlement of any and all claims for civil penalties,
16 damages, attorney's fees, expert fees or any other claim for costs, expenses or monetary relief of
17 any kind for claims that were or could have been asserted in the Notices or Complaint identified
18 in Sections 1.5.1 through 1.5.9, as follows:

19 4.1.1 **Civil Penalty:** In consideration of the fact that Proposition 65 requires warnings,
20 and the Defendant has agreed to reformulate certain Covered Products, in lieu of warnings,
21 Plaintiff has agreed to a lower penalty amount totaling twenty-two thousand and eight hundred
22 and sixty dollars (\$22,860) as follows for alleged civil penalties pursuant to Health & Safety
23 Code § 25249.12:

24 (a) Settling Defendant will issue one check made payable to the State of California's
25 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of seventeen
26 thousand one hundred and forty-five dollars (\$17,145) representing 75% of the total civil penalty
27

1 and Settling Defendant will issue a second check to CAG in the amount of five thousand seven
2 hundred and fifteen dollars (\$5,715) representing 25% of the total civil penalty;

3 (b) Separate 1099s shall be issued for each of the above payments: Settling Defendant
4 will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the
5 amount of \$17,145. Settling Defendant will also issue a 1099 to CAG in the amount of \$5,715
6 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W,
7 Beverly Hills, California 90212.

8 4.1.2 **Additional Settlement Payments:** Settling Defendant shall issue one check for
9 seventeen thousand one hundred and forty dollars (\$17,140) to “Consumer Advocacy Group, Inc.”
10 pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 §
11 3203(d). CAG will use this portion of the Total Settlement Payment as follows, eighty five
12 percent (85%) for fees of investigation, purchasing and testing for the Proposition 65 Listed
13 Chemical in various products, and for expert fees for evaluating exposures through various
14 mediums, including but not limited to consumer product, occupational, and environmental
15 exposures to the Proposition 65 Listed Chemical, and the cost of hiring consulting and retaining
16 experts who assist with the extensive scientific analysis necessary for those files in litigation and
17 to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees; fifteen
18 percent (15%) for administrative costs incurred during investigation and litigation to reduce the
19 public’s exposure to the Proposition 65 Listed Chemicals by notifying those persons and/or
20 entities believed to be responsible for such exposures and attempting to persuade those persons
21 and/or entities to reformulate their products or the source of exposure to completely eliminate or
22 lower the level of the Proposition 65 Listed Chemicals including but not limited to costs of
23 documentation and tracking of products investigated, storage of products, website enhancement
24 and maintenance, computer and software maintenance, investigative equipment, CAG’s member’s
25 time for work done on investigations, office supplies, mailing supplies and postage Within 30
26 days of a request from the Attorney General, CAG shall provide to the Attorney General copies of
27
28

1 documentation demonstrating how the above funds have been spent. CAG shall be solely
2 responsible for ensuring the proper expenditure of such additional settlement payment.

3 **4.1.3 Reimbursement of Attorney Fees and Costs:** Settling Defendant shall issue a
4 check in the amount of one hundred and sixty thousand dollars (\$160,000) payable to
5 “Yeroushalmi & Yeroushalmi” as complete reimbursement for any and all reasonable
6 investigation fees and costs, attorneys’ fees, expert fees, and any and all other costs and expenses
7 incurred as a result of investigating, bringing this matter to the Settling Defendant’ attention,
8 litigating, negotiating a settlement in the public interest, and seeking and obtaining court
9 approval of this Consent Judgment.

10 4.2 Other than the payment to OEHHA described above, all payments referenced in
11 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
12 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
13 payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard
14 Assessment, OEHHA, 1001 I Street, Mail Stop 12-B Sacramento, California 95812, Attn: Mike
15 Gyurics. Settling Defendant shall provide written confirmation to CAG of the payment to
16 OEHHA.

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

18 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
19 behalf of itself and in the public interest, and Settling Defendant and their owners, officers,
20 directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries,
21 partners, affiliates, sister companies, predecessors, and their successors and assigns, including
22 but not limited to USA MINISO DEPOT, INC. and MINISO DEPOT FINANCIAL, INC.
23 (collectively “Defendant Releasees” which includes Settling Defendant), and all entities to whom
24 Defendant Releasees, including Settling Defendant, directly or indirectly distribute or sell
25 Covered Products, including, but not limited to, downstream distributors, downstream
26 wholesalers, customers, retailers, marketplace hosts, franchisees, cooperative members,
27 licensees, and the successors and assigns of any of them, who may use, maintain, distribute or
28

1 sell Covered Products, including MINISO DEPOT FINANCIAL INC. (“Downstream
2 Releasees”), of all claims for alleged or actual violations of Proposition 65 for alleged exposures
3 to the Listed Chemicals from the Covered Products manufactured, distributed or sold by Settling
4 Defendant up through the Effective Date as set forth in the Notices and Complaints. Settling
5 Defendant’s compliance with this Consent Judgment shall constitute compliance with
6 Proposition 65 with respect to alleged exposures to the Listed Chemicals from the Covered
7 Products sold by Defendant Releasees or Downstream Releasees after the Effective Date.
8 Nothing in this Section affects CAG’s right to commence or prosecute an action under
9 Proposition 65 against any person other than Defendant Releasees, or Downstream Releasees.

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

7 CAG understands and acknowledges that the significance and consequence of this waiver of
8 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, Claims arising from any
10 violation of Proposition 65 or any other statutory or common law regarding the Covered
11 Products manufactured, distributed or sold by the Defendant Releasees and Downstream
12 Releasees through the Effective Date regarding the failure to warn about actual or alleged
13 exposure to the Listed Chemicals from the Covered Products, CAG will not be able to make any
14 claim for those damages, penalties or other relief against Defendant Releasees and Downstream
15 Releasees. Furthermore, CAG acknowledges that it intends these consequences for any such
16 Claims arising from any violation of Proposition 65 or any other statutory or common law
17 regarding the failure to warn about exposure to the Listed Chemicals from the Covered Products
18 as may exist as of the date of this release but which CAG does not know exist, and which, if
19 known, would materially affect their decision to enter into this Consent Judgment, regardless of
20 whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any
21 other cause.

22 5.3 Compliance with the terms of this Consent Judgment shall be deemed to
23 constitute compliance with Proposition 65 by any of the Defendant Releasees and Downstream
24 Releasees regarding alleged exposures to the Listed Chemicals in the Covered Products as set
25 forth in the Notices and Complaint.

26 **6. ENTRY OF CONSENT JUDGMENT**

27 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
28 California Health & Safety Code § 25249.7(f).

1 6.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent
2 Judgment and any and all prior agreements between the Parties merged herein shall terminate
3 and become null and void, and the actions shall revert to the status that existed prior to the
4 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
5 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
6 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
7 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
8 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

9 **7. MODIFICATION OF JUDGMENT**

10 7.1 This Consent Judgment may be modified only upon written agreement of the
11 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
12 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

13 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
14 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

15 **8. ENFORCEMENT OF JUDGMENT**

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

23 **9. RETENTION OF JURISDICTION**

24 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
25 terms of this Consent Judgment under Code of Civil Procedure section 664.6.

26 9.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
27 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

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

2 10.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
3 California Attorney General so that the Attorney General may review this Consent Judgment
4 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the
5 Attorney General has received the aforementioned copy of this Consent Judgment, CAG may
6 then submit it to the Court for approval.

7 **11. ATTORNEY FEES**

8 11.1 Except as specifically provided in Section 4.1.3 and 9.2, each Party shall bear its
9 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

10 **12. GOVERNING LAW**

11 12.1 The validity, construction, terms, and performance of this Consent Judgment shall
12 be governed by the laws of the State of California, without reference to any conflicts of law
13 provisions of California law.

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

23 12.3 The Parties, including their counsel, have participated in the preparation of this
24 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
25 Consent Judgment was subject to revision and modification by the Parties and has been accepted
26 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
27 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result

28

1 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
2 agrees that any statute or rule of construction providing that ambiguities are to be resolved
3 against the drafting Party should not be employed in the interpretation of this Consent Judgment
4 and, in this regard, the Parties hereby waive California Civil Code section 1654.

5 **13. EXECUTION AND COUNTERPARTS**

6 13.1 This Consent Judgment may be executed in counterparts and by means of
7 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
8 one document and have the same force and effect as original signatures.

9 **14. NOTICES**

10 14.1 Any notices under this Consent Judgment shall be by delivery of First-Class Mail.

11 If to CAG:

12 Reuben Yeroushalmi
13 reuben@yeroshalmi.com
14 Yeroushalmi & Yeroushalmi
15 9100 Wilshire Boulevard, Suite 240W
16 Beverly Hills, CA 90212

17 If to Defendant MINISO DEPOT CA, INC.:

18 Paulina Carlos
19 Paulina.c@miniso-na.com
20 Miniso USA
21 Attn: Legal Department
22 200 S. Los Robles Ave., Suite 200
23 Pasadena, CA 91101

24 With a copy to:

25 Lauren M. Michals
26 lmichals@nixonpeabody.com
27 Nixon Peabody, LLP
28 One Embarcadero Center, 32nd Floor
San Francisco, CA 94111
Ph: (415) 984-8200

Modification of the person and/or address to whom notices are to be sent can be made
upon written direction sent via first class mail by the Party making that change.

1 **15. AUTHORITY TO STIPULATE**

2 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf
4 of the Party represented and legally to bind that party.

5
6 **AGREED TO:**

AGREED TO:

7
8 Date: April 29, 2022

Date: April 29, 2022

9
10 Michael Marcus

Bobby Choy

11
12 Name: Michael Marcus

Name: Bobby Choy

13
14 Title: Director

Title: CEO

15 CONSUMER ADVOCACY GROUP, MINISO DEPOT CA, INC.
16 INC.

17
18
19
20
21 **IT IS SO ORDERED.**

22
23 Date: _____

24 JUDGE OF THE SUPERIOR COURT