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

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 MIDLAND HARDWARE COMPANY NO.
16 4, a Missouri Corporation;
17 KITTRICH CORPORATION, a California
18 Corporation;
19 and DOES 1-10,

20 Defendants.

CASE NO. 21STCV02859

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Complaint Filed: January 22, 2021

21 **1. INTRODUCTION**

22 1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer
23 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the public interest,
24 and Defendant Kittrich Corporation (“Kittrich” or “Settling Defendant”), each a party to the
25 action and collectively referred to as “Parties” or individually referred to as “Party.”

26 **1.2 Defendants and Covered Products**

27 1.2.1 CAG alleges that Kittrich is a California Corporation which employs ten or more
28 persons. For purposes of this Consent Judgment only, Kittrich is deemed a person in the course

1 of doing business in California and subject to the provisions of the Safe Drinking Water and
2 Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
3 (“Proposition 65”).

4 1.2.3 CAG alleges that Settling Defendant manufactures, sells, and/or distributes
5 consumer products in California.

6 1.2 Listed Chemicals

7 1.2.1 Diisononyl Phthalate (“DINP”) has been listed by the State of California as a
8 chemical known to cause cancer.

9 1.3 Notices of Violation

10 1.3.1 On or about October 28, 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# 2020-02906)
12 (“Notice”) that provided Kittrich with notice of alleged violations of Health & Safety Code §
13 25249.6 for failing to warn individuals in California of exposures to DINP contained in certain
14 Bath Mat with PVC Components that Kittrich sells. No public enforcer has commenced or
15 diligently prosecuted the allegations set forth in the Notice.

16 1.4 Complaint

17 1.4.1 On January 22, 2021, CAG filed a Complaint for civil penalties and injunctive
18 relief (“Complaint”) in Los Angeles County Superior Court, Case No. 21STCV02859.
19 Complaint alleges, among other things, that defendants to that action violated Proposition 65 for
20 allegedly failing to give clear and reasonable warnings of alleged exposure to Listed Chemicals
21 from Covered Products.

22 1.5 Consent to Jurisdiction

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over the allegations of violations contained in the Complaints, personal jurisdiction
25 over Kittrich as to the acts alleged in the Complaints, that venue is proper in the County of Los
26 Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
27 and resolution of the allegations against Kittrich contained in the Complaint, and of all claims
28 which were or could have been raised by any person or entity based in whole or in part, directly

1 or indirectly, on the facts alleged therein or arising therefrom or related thereto.

2 1.6 No Admission

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

19 **2. DEFINITIONS**

20 2.1 “Covered Products” means Bath Mat with PVC Components.

21 2.2 “Bath Mat with PVC Components” means “Bath Mat with PVC Components”
22 including but not limited to “Bath Mat”; “Decorative bath mat softly massages your feet while
23 providing cushion, saety and comfort”; “Gentle to skin, drains easily, machine washable”;
24 “Con.Tact Brand ® Enjoy a moment of comfort”; “29.5 in. x 14 in”; “74,9 cm x 35,5 cm”;
25 “BMAT-C02495-01 Nautical Blue 29.5 x14”; “X001PGT6OZ”; “Contact BMAT-C02495-04 2
26 14” Blue Pebble Bath Mat”; “Kittrich Corporation ®”; “UPC 7 90444 02495 2”; “Made in
27 China”.

1 2.3 “Effective Date” means the date that this Consent Judgment is approved by the
2 Court.

3 2.4 “DINP” means Diisononyl Phthalate.

4 2.5 “Listed Chemical” means DINP.

5 **3. INJUNCTIVE RELIEF/REFORMULATION**

6 3.1 After the Effective Date, Kittrich shall not order any Covered Products for sale
7 into California, with any component that contains the Listed Chemical(s) in excess of 0.1%
8 (1,000 parts per million) by weight.

9 3.2 Any Covered Products that Kittrich sells, distributes, or ships into California after
10 the Effective Date that were ordered prior to the Effective Date, must contain a clear and
11 reasonable warning for cancer, consistent with 27 CCR section 25600 *et seq.*, unless it contains
12 no more than 0.1% by weight (1,000 ppm) of the Listed Chemical. Any warnings provided
13 pursuant to this Section 3.2 shall be affixed to the packaging of, or directly on, or attached to the
14 Covered Products, and be prominently placed with such conspicuousness as compared with other
15 words, statements, designs, or devices as to render it likely to be read and understood by an
16 ordinary individual under customary conditions before purchase or use. Defendant will not sell
17 or distribute the Covered Product in existing inventory for sale over the internet without
18 providing a warning in the manner provided for with respect to internet sales, as provided for in
19 27 CCR sections 25601 and 25602, as they may be subsequently amended. Where a label used
20 for a Covered Product in existing inventory that exceeds 0.1% of the Listed Chemical includes
21 consumer information as defined by California Code of Regulations Title 27 Section 25600.1(c)
22 in a language other than English, the warning must be provided in that language in addition to
23 English.

24 3.3 Covered Products already distributed to Downstream Releasees prior to the
25 Effective Date may continue to be sold through as is.

26 **4. SETTLEMENT PAYMENT**

27 4.1 Payment and Due Date: Kittrich shall pay a total of four hundred and twenty five
28 thousand dollars (\$425,000.00) in full and complete settlement of any and all claims against any

1 and all named Defendants in this case, for civil penalties, damages, attorney’s fees, expert fees or
2 any other claim for costs, expenses or monetary relief of any kind for claims that were or could
3 have been asserted in the Notices or Complaints identified in Sections 1.4 and 1.5, as follows:

4 **4.1.1 Civil Penalty:** Kittrich shall issue two separate checks totaling fifty-seven
5 thousand and one hundred fifty-six dollars (\$57,156.00) as follows for alleged civil penalties
6 pursuant to Health & Safety Code § 25249.12:

7 (a) Kittrich will issue one check made payable to the State of California’s Office of
8 Environmental Health Hazard Assessment (“OEHHA”) in the amount of forty-two thousand and
9 eight hundred sixty-seven dollars (\$42,867.00) representing 75% of the total civil penalty and
10 Kittrich will issue a second check to CAG in the amount of fourteen thousand and two hundred
11 eighty-nine dollars (\$14,289.00) representing 25% of the total civil penalty;

12 (b) Separate 1099s shall be issued for each of the above payments: Kittrich will issue a
13 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95812-4010 (EIN: 68-0284486) in the
14 amount of \$42,867.00. Kittrich will also issue a 1099 to CAG in the amount of \$14,289.00 and
15 deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W,
16 Beverly Hills, California 90212.

17 **4.1.2 Additional Settlement Payments:** Kittrich shall issue one check for forty-two
18 thousand and eight hundred forty-four dollars (\$42,844.00) to “Consumer Advocacy Group,
19 Inc.” pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title
20 11 § 3203(d). CAG will use this portion of the Total Settlement Payment as follows, eighty
21 percent (80%) for fees of investigation, purchasing and testing for the Proposition 65 Listed
22 Chemical in various products, and for expert fees for evaluating exposures through various
23 mediums, including but not limited to consumer product, occupational, and environmental
24 exposures to the Proposition 65 Listed Chemical, and the cost of hiring consulting and retaining
25 experts who assist with the extensive scientific analysis necessary for those files in litigation and
26 to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees;
27 twenty percent (20%) for administrative costs incurred during investigation and litigation to
28 reduce the public’s exposure to the Proposition 65 Listed Chemical by notifying those persons

1 and/or entities believed to be responsible for such exposures and attempting to persuade those
2 persons and/or entities to reformulate their products or the source of exposure to completely
3 eliminate or lower the level of the Proposition 65 Listed Chemical including but not limited to
4 costs of documentation and tracking of products investigated, storage of products, website
5 enhancement and maintenance, computer and software maintenance, investigative equipment,
6 CAG's member's time for work done on investigations, office supplies, mailing supplies and
7 postage Within 30 days of a request from the Attorney General, CAG shall provide to the
8 Attorney General copies of documentation demonstrating how the above funds have been spent.
9 CAG shall be solely responsible for ensuring the proper expenditure of such additional
10 settlement payment.

11 4.1.3 **Reimbursement of Attorney Fees and Costs:** Kittrich shall issue a check in the
12 amount of three hundred and twenty-five thousand dollars (\$325,000.00) payable to
13 "Yeroushalmi & Yeroushalmi" as complete reimbursement for any and all reasonable
14 investigation fees and costs, attorneys' fees, expert fees, and any and all other costs and expenses
15 incurred as a result of investigating, bringing this matter to the Settling Defendant's attention,
16 litigating, negotiating a settlement in the public interest, and seeking and obtaining court
17 approval of this Consent Judgment.

18 4.2 Other than the payment to OEHHA described above, all payments referenced in
19 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
20 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
21 payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard
22 Assessment, OEHHA, 1001 I Street, Mail Stop 12-B Sacramento, California 95812, Attn: Mike
23 Gyurics. Kittrich shall provide written confirmation to CAG of the payment to OEHHA.

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

25 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
26 behalf of itself and in the public interest, and Kittrich and its owners, officers, directors, insurers,
27 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
28 companies, predecessors, and their successors and assigns (collectively, "Defendant Releasees"),

1 and all entities to whom Kittrich directly or indirectly distributes or sells Covered Products,
2 including, but not limited to, downstream distributors, downstream wholesalers, customers,
3 retailers, marketplace hosts, franchisees, cooperative members, licensees, and the successors and
4 assigns of any of them, who may use, maintain, distribute or sell Covered Products
5 (“Downstream Defendant Releasees”), of all claims for alleged or actual violations of
6 Proposition 65 for alleged exposures to Listed Chemical from Covered Products manufactured,
7 distributed or sold by Kittrich up through the Effective Date as set forth in the Notices and
8 Complaints. To be clear, Downstream Releasees include Midland Hardware Company No. 4.
9 Kittrich and Defendant Releasees’ compliance with this Consent Judgment shall constitute
10 compliance with Proposition 65 with respect to alleged exposures to Listed Chemical from
11 Covered Products sold by Defendant Releasees or Downstream Defendant Releasees after the
12 Effective Date. Nothing in this Section affects CAG’s right to commence or prosecute an action
13 under Proposition 65 against any person other than Settling Defendant, Defendant Releasees, or
14 Downstream Defendant Releasees.

15 5.2 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
18 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
19 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
20 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,
21 fixed or contingent (collectively “Claims”), against Defendant Releasees and Downstream
22 Defendant Releasees arising from any actual or alleged violation of Proposition 65 or any other
23 statutory or common law claim regarding the Covered Products manufactured, distributed or sold
24 by the Defendant Releasees through the Effective Date regarding any actual or alleged failure to
25 warn about exposure to Listed Chemical from Covered Products. In furtherance of the
26 foregoing, CAG on behalf of itself only, hereby waives any and all rights and benefits which it
27 now has, or in the future may have, conferred upon it with respect to Claims regarding the
28 Covered Products manufactured, distributed or sold by Defendant Releasees through the

1 Effective Date arising from any violation of Proposition 65 or any other statutory or common
2 law regarding the failure to warn about exposure to the Listed Chemical from the Covered
3 Products by virtue of the provisions of section 1542 of the California Civil Code, which provides
4 as follows:

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

9 CAG understands and acknowledges that the significance and consequence of this waiver of
10 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
11 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
12 violation of Proposition 65 or any other statutory or common law regarding the Covered
13 Products manufactured, distributed or sold by the Released Parties through the Effective Date
14 regarding the failure to warn about actual or alleged exposure to the Listed Chemical from the
15 Covered Products, CAG will not be able to make any claim for those damages, penalties or other
16 relief against Defendant Releasees and Downstream Defendant Releasees. Furthermore, CAG
17 acknowledges that it intends these consequences for any such Claims arising from any violation
18 of Proposition 65 or any other statutory or common law regarding the failure to warn about
19 exposure to the Listed Chemical from the Covered Products as may exist as of the date of this
20 release but which CAG does not know exist, and which, if known, would materially affect their
21 decision to enter into this Consent Judgment, regardless of whether their lack of knowledge is the
22 result of ignorance, oversight, error, negligence, or any other cause.

23 **6. ENTRY OF CONSENT JUDGMENT**

24 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
25 California Health & Safety Code § 25249.7(f).

1 6.2 Upon entry of an order approving this Consent Judgment, the Complaint in this
2 action shall be deemed amended to include all the claims raised in the Notices outlined in
3 Section 1.3.

4 6.3 If this Consent Judgment is not approved in full by the Court: (a) this Consent
5 Judgment and any and all prior agreements between the Parties merged herein shall terminate
6 and become null and void, and the actions shall revert to the status that existed prior to the
7 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
8 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
9 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
10 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
11 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

12 **7. MODIFICATION OF JUDGMENT**

13 7.1 This Consent Judgment may be modified only upon written agreement of the
14 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
15 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

16 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
17 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

18 **8. ENFORCEMENT OF JUDGMENT**

19 8.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
20 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
21 California, County of Los Angeles, giving the notice required by law, enforce the terms and
22 conditions contained herein.

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.
28

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. The hearing on CAG’s motion to approve this
5 Consent Judgment shall be no sooner than forty-five (45) days after the Attorney General has
6 received the aforementioned copy of this Consent Judgment.

7 **11. ATTORNEY FEES**

8 11.1 Except as specifically provided in Sections 4.1.3 and 9.1 and 9.2, each Party shall
9 bear its own attorneys’ fees and costs in connection with the claims resolved in this Consent
10 Judgment.

11 **12. GOVERNING LAW**

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

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

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

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 14.1.1 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 14.1.2 If to Defendant Kittrich Corporation

18 David Koerner
19 Kittrich Corporation
20 davidk@kittrich.com
21 1585 W. Mission Blvd
22 Pomona, CA 91766
23 Tel: (714) 736-2039

24 **15. AUTHORITY TO STIPULATE**

25 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
26 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf
27 of the Party represented and legally to bind that party.
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AGREED TO:

AGREED TO:

Date: 02/26, 2024

Date: 02/22, 2024

Michael Marcus

[Signature]

Name: Michael Marcus

Name: ROBERT FRIEDLAND

Title: Director

Title: PRESIDENT

CONSUMER ADVOCACY GROUP, INC.

KITTRICH CORPORATION

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT