

~~COPY~~



12713171

MAY 20 2015

FILED
ALAMEDA COUNTY

AUG - 5 2015

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

1 REUBEN YEROUSHALMI (SBN 193981)
2 DANIEL D. CHO (SBN 105409)
3 BEN YEROUSHALMI (SBN 232540)
4 **YEROUSHALMI & YEROUSHALMI**
5 AN ASSOCIATION OF INDEPENDENT LAW CORPORATIONS
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, California 90212
8 Telephone: 310.623.1926
9 Facsimile: 310.623.1930
10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

12 STEPHEN L. MARSH (SBN 115959)
13 smarsh@mckennalong.com
14 STEFANIE WARREN (SBN 244038)
15 swarren@mckennalong.com
16 **McKENNA LONG & ALDRIDGE LLP**
17 600 West Broadway, Suite 2600
18 San Diego, California 92101-3372
19 Telephone: 619.236.1414
20 Facsimile: 619.232.8311

21 Attorneys for Defendants POOLMASTER, INC., OREQ CORPORATION,
22 AQUA TRI, CHEM LAB PRODUCTS, INC.,
23 LESLIE'S POOLMART, INC., POOL WATER PRODUCTS,
24 VALTERRA PRODUCTS, INC. and HOME DEPOT U.S.A., INC.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF ALAMEDA

19 CONSUMER ADVOCACY GROUP, INC.,
20 in the public interest,
21 Plaintiff,
22 v.
23 OREQ CORPORATION, et al.,
24 Defendants.

25 CASE NO. RG07331650 Consolidated
26 with Case No. RG08374636
27 Assigned for All Purposes to: Hon. George
28 C. Hernandez
Dept. D-17
CONSENT JUDGMENT [PROPOSED]
Health & Safety Code § 25249.5 *et seq.*
FAC Filed: July 29, 2014

~~CONSENT JUDGMENT [PROPOSED]~~

BY FAX

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
3 Advocacy Group, Inc. (referred to as "CAG" or "Plaintiff"), acting on behalf of itself and in the
4 public interest, and defendants, OREQ CORPORATION ("OREQ"), POOLMASTER, INC.
5 ("POOLMASTER"), and VALTERRA PRODUCTS, INC. ("VALTERRA") (referred to
6 hereafter as the "Settling Defendants"). AQUA TRI ("AQUA"), CHEM LAB PRODUCTS,
7 INC. ("CHEM LAB"), LESLIE'S POOLMART, INC. ("LESLIE'S"), POOL WATER
8 PRODUCTS ("PWP"), and HOME DEPOT U.S.A., INC. ("HOME DEPOT") are also
9 defendants in the Action, and are referred to hereafter as the "Released Defendants." The
10 Settling Defendants and the Released Defendants are sometimes collectively referred to herein as
11 the "Defendants." CAG and the Settling Defendants are sometimes collectively referred to
12 herein as the "Parties."

13 **1.2 Defendants**

14 Defendants are California businesses that each employ 10 or more persons.

15 **1.3 Products**

16 Each Defendant is and at all times mentioned herein was a manufacturer or distributor of
17 consumer products designed for testing the concentration of chlorine in swimming pool water
18 including but not limited to the following:

19

Manufacturer / Distributor	Product
Oreq Corporation	#1 OTO Solution for Chlorine Test ; POOL STYLE TESTING SOLUTIONS
Home Depot U.S.A, Inc.	1 Indicator Solution by Pool Shop®
Poolmaster, Inc.	Poolmaster® Orthotolidine OTO Indicator Solution
Aqua Tri and Pool Water Products	All Clear™ 2-Way Test Kit
Chem Lab Products, Incorporated	KEM-TEK Pool & Spa Accessory Reagent

20
21
22
23
24
25
26
27

	Refill, Product # 485 and KEM-TEK Pool Care System Pool & Spa Accessory 3-Way Test Kit, Product # 439
Leslie's Poolmart, Inc.	Leslie's Pool Test Kit, Indicator Solutions, replacement for dual type test kit, product #18-682
Oreq Corporation	poolpals water maintenance dual test kit, product # TK405C
Valterra Products, Inc.	blue devil™ OTO (Orthotoldine), packaged in a ½ ounce clear plastic dropper container with a yellow cap and blue devil Test Kit Refill Solutions OTO & Phenol Red, 1/2 Oz. Bottles (for 3-Way), Carded, product #B7212C

Hereinafter, the above-mentioned products shall collectively be referred to as "Covered Products."

1.4 Listed Chemicals

1.4.1 3,3'-Dimethylbenzidine (ortho-Tolidine) is listed pursuant to Health and Safety Code sections 25249.5, et seq. ("Proposition 65") as known to the State of California to cause cancer.

1.4.2 3,3'-Dimethylbenzidine dihydrochloride is listed pursuant to Proposition 65 as known to the State of California to cause cancer.

1.5 Notices of Violation

On December 6, 2006, June 28, 2007, October 2, 2007 and/or November 9, 2007, CAG served the Defendants with 60 day notices of alleged violations of Health & Safety Code section 25249.6 concerning OTO and OTO Salt in Covered Products (the Notices"). No public prosecutor is diligently prosecuting the claims set forth in the Notices.

1.6 Complaints

1 issue of law or violation of law, including without limitation, any admission concerning any
2 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,
3 or the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable
4 warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment,
5 nor compliance with its terms, shall constitute or be construed as an admission by the Parties of
6 any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability
7 by any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated
8 corporations, or be offered or admitted as evidence in any administrative or judicial proceeding
9 or litigation in any court, agency, or forum. Defendants expressly maintain that all of their
10 products (including but not limited to the Covered Products), are properly labeled and
11 completely safe for their intended use, a contention which CAG expressly denies. Furthermore,
12 nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument,
13 or defense the Parties or any Defendant may have in any other or future legal proceeding, except
14 as expressly provided in this Consent Judgment.

15 **2. DEFINITIONS**

16 2.1 “Covered Products” means and is limited to the Covered Products as defined in
17 Section 1.3 above.

18 2.2 “Effective Date” means the date that this Consent Judgment is entered by the
19 Court.

20 2.3 “Notices” means the 60-Day Notices of Intent to Sue pursuant to Proposition 65
21 defined above.

22 2.4 “OEHHA” means the State of California’s Office of Environmental Health
23 Hazard Assessement.

24 2.5 “OTO” means 3,3'-Dimethylbenzidine (ortho-Tolidine), which is listed pursuant
25 to Proposition 65 as known to the State of California to cause cancer.
26

1 costs, legal expenses, as well as any additional expenses involved in CAG seeking Court
2 approval of this Consent Judgment, the Settling Defendants shall make payment totaling five
3 hundred thousand dollars (\$500,000) as follows:

4 **4.1.1 Civil Penalties:** The Settling Defendants shall make payment of five
5 thousand dollars (\$5,000), to be apportioned in accordance with Health & Safety Code section
6 25249.12(c)(1) and (d), with 75% of these funds remitted to the State of California's Office of
7 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of these
8 penalty monies remitted to CAG as provided by Health & Safety Code section 25249.12(d).
9 The Settling Defendants shall issue two separate checks for the penalty payment: (a) one check
10 made payable to "OEHHA" in the amount of three thousand seven-hundred fifty dollars
11 (\$3,750) representing 75% of the total penalty; and (b) one check made payable to "Consumer
12 Advocacy Group, Inc." in the amount of one thousand two-hundred and fifty dollars (\$1,250),
13 representing 25% of the total penalty. Two separate 1099s shall be issued for the above
14 payments.

15 **4.1.2 Payment In Lieu of Civil Penalties:** The Settling Defendants shall pay
16 five thousand dollars (\$5,000) in lieu of civil penalties to "Consumer Advocacy Group, Inc."
17 CAG will use this payment for investigation of the public's exposure to Proposition 65 listed
18 chemicals through various means, laboratory fees for testing for Proposition 65 listed chemicals,
19 expert fees for evaluating exposures through various mediums, including but not limited to
20 consumer product, occupational, and environmental exposures to Proposition 65 listed
21 chemicals, and the cost of hiring consulting and retaining experts who assist with the extensive
22 scientific analysis necessary for those files in litigation, as well as administrative costs incurred
23 during the litigation, in order to reduce the public's exposure to Proposition 65 listed chemicals
24 by notifying those persons and/or entities believed to be responsible for such exposures and
25 attempting to persuade those persons and/or entities to reformulate their products or the source of
26 exposure to completely eliminate or lower the level of Proposition 65 listed chemicals, thereby
27 addressing the same public harm as alleged in the instant Action. Further, should the Court
28

1 require it, CAG will submit under seal, an accounting of these funds as described above as to
2 how the funds were used. The checks shall be made payable to "Consumer Advocacy Group,
3 Inc." and delivered to Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire
4 Boulevard, Suite 240W, Beverly Hills, California 90212.

5 **4.1.3 Reimbursement of Attorneys' Fees and Costs:** Four hundred and
6 ninety thousand dollars (\$490,000) shall be paid to Yeroushalmi & Associates, as CAG's
7 attorneys, for expenses incurred, including but not limited to, reasonable investigation fees and
8 costs, attorneys' fees, expert fees, and any other costs incurred as a result of investigating,
9 bringing this matter to trial, contesting the defense judgment on appeal, negotiating a settlement
10 in the public interest, and seeking and obtaining court approval of this Consent Judgment. The
11 check shall be made payable to "Yeroushalmi & Associates" and delivered to Reuben
12 Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly
13 Hills, California 90212. Yeroushalmi & Associates shall provide its federal tax identification
14 number to the Settling Defendants prior to such payment.

15 **5. CLAIMS COVERED AND RELEASED**

16 5.1 CAG, acting on behalf of itself and in the public interest, hereby releases
17 Defendants, their parents, subsidiaries, successors, affiliated entities that are under common
18 ownership, directors, officers, employees, attorneys, shareholders ("Defendant Releasees"), and
19 all of their downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
20 members, licensors, licensees (including without limitation the Released Defendants), and any
21 other person or entity to whom they directly or indirectly distribute or sell the Covered Products
22 ("Downstream Defendant Releasees"), from any alleged or actual violation of Proposition 65
23 that has been asserted by CAG in the public interest in its Notices and FAC regarding the alleged
24 failure to warn about exposure to OTO and/or OTO Salt in the Covered Products manufactured,
25 distributed and/or sold by Defendants prior to the Effective Date. Defendants' compliance with
26 this Consent Judgment constitutes compliance with Proposition 65 with respect to OTO and
27 OTO Salt in the Covered Products.

1 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
2 successors, and/or assignees, and in the public interest, hereby waives all rights to institute or
3 participate in, directly or indirectly, any form of legal action, and releases all claims, including,
4 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
5 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
6 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, fixed or
7 contingent, against Defendants, Defendant Releasees, and Downstream Defendant Releasees
8 arising from any violation or alleged violation of Proposition 65 regarding the failure to warn
9 about exposure to OTO and OTO Salt in the Covered Products manufactured, distributed or sold
10 by Defendants prior to the Effective Date.

11 5.3 CAG also, in its individual capacity only and not in its representative capacity, on
12 behalf of itself, its past and current agents, representatives, attorneys, successors, and/or
13 assignees, provides a general release for all actions, causes of action, obligations, costs,
14 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature,
15 character or kind, known or unknown, suspected or unsuspected, arising out of the Covered
16 Products manufactured, distributed and/or sold by Defendants prior to the Effective Date. CAG
17 acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides
18 as follows:

19
20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
21 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
22 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
23 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
24 THE DEBTOR.

25 CAG, in its individual capacity only, expressly waives and relinquishes any and all rights
26 and benefits which it may have under, or which may be conferred on it by the provisions of
27 Section 1542 of the California Civil Code as well as under any other state or federal statute or
28 common law principle of similar effect, to the fullest extent that it may lawfully waive such

1 rights or benefits pertaining to the released matters. In furtherance of such intention, the release
2 hereby given shall be and remain in effect as a full and complete release notwithstanding the
3 discovery or existence of any such additional or different claims or facts arising out of the
4 released matters.

5 5.4 Upon full payment of the amounts set forth in Section 4 of this Consent Judgment,
6 Plaintiff shall dismiss with prejudice the Released Defendants.

7 **6. ENFORCEMENT OF CONSENT JUDGMENT**

8 6.1 The terms of this Consent Judgment may only be enforced by the Parties hereto
9 and, except as specifically provided herein, shall not create any rights in favor of non-
10 signatories. In the event that a Party hereto thinks that another Party is not complying with this
11 Consent Judgment, it shall serve written notice stating the factual basis of such alleged non-
12 compliance by first class mail and facsimile at the address listed below for the allegedly non-
13 complying Party. The alleged non-complying Party thereafter shall have thirty (30) days from
14 receipt of the written notice to provide a written response contesting the alleged non-
15 compliance and/or to cure the alleged non-compliance without incurring any fines, costs,
16 penalties, or liabilities (including attorneys' fees and or costs related to such alleged non-
17 compliance). Should Defendant provide evidence to CAG that it has directed removal of the
18 product from sale in California within 30 days of CAG's notice identifying such Covered
19 Product, CAG shall take no further action to enforce the terms of this Consent Judgment, and
20 Defendant shall have no further obligation to CAG monetary or otherwise. If the issue of
21 compliance is not resolved to either Party's satisfaction within thirty (30) days following the
22 expiration of the original thirty-day notice period, then the Party may seek to enforce the terms
23 and conditions contained herein by noticed motion or order to show cause before the Superior
24 Court of Alameda County.
25

26 6.2 In any proceeding brought by any Party to enforce this Consent Judgment, such
27 Party may seek whatever fines, costs, penalties, and/or remedies as may be provided under
28

1 applicable law or this Consent Judgment. The prevailing Party in any such proceeding shall be
2 entitled to its reasonable attorneys' fees and costs.

3 **7. ENTRY OF CONSENT JUDGMENT**

4 7.1 CAG shall prepare and file a motion seeking approval of this Consent Judgment
5 pursuant to California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment,
6 CAG and Defendants waive their respective rights to a hearing or trial on the allegations of the
7 FAC.

8 7.2 If this Consent Judgment is not approved by the Court: (a) this Consent Judgment
9 and any and all prior agreements between the Parties merged herein shall terminate and become
10 null and void, and the actions shall revert to the status that existed prior to the execution date of
11 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
12 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
13 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
14 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
15 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

16 **8. MODIFICATION OF JUDGMENT**

17 8.1 This Consent Judgment may be modified only upon written agreement of the
18 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
19 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

20 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
21 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

22 **9. RETENTION OF JURISDICTION**

23 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
24 terms of this Consent Judgment.
25
26
27
28

1 **10. DUTIES LIMITED TO CALIFORNIA**

2 10.1 This Consent Judgment shall have no effect on Covered Products sold by
3 Defendants outside the State of California.

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

5 11.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
6 California Attorney General so that the Attorney General may review this Consent Judgment
7 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
8 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
9 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
10 the parties may then submit it to the Court for approval.

11 **12. ATTORNEY FEES**

12 12.1 Except as specifically provided above, each Party shall bear its own costs and
13 attorney fees in connection with this action.

14 **13. ENTIRE AGREEMENT**

15 13.1 This Consent Judgment contains the sole and entire agreement and understanding
16 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
17 negotiations, commitments and understandings related hereto. No representations, oral or
18 otherwise, express or implied, other than those contained herein have been made by any party
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
20 deemed to exist or to bind any of the Parties.

21 **14. GOVERNING LAW**

22 14.1 The validity, construction and performance of this Consent Judgment shall be
23 governed by the laws of the State of California, without reference to any conflicts of law
24 provisions of California law.

25 14.2 In the event that Proposition 65 is repealed, preëmpted, or is otherwise rendered
26 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
27

1 Yeroushalmi & Yeroushalmi
2 9100 Wilshire Boulevard, Suite 240W
3 Beverly Hills, CA 90212
4 (310) 623-1926

5 If to Oreq Corporation:

6 Jess L. Hetzner
7 Oreq Corporation
8 42306 Remington Ave.
9 Temecula, CA 92590

10 With a copy to:

11 Stephen L. Marsh
12 McKENNA LONG & ALDRIDGE LLP
13 600 West Broadway, Suite 2600
14 San Diego, California 92101-3372
15 Telephone: 619.236.1414

16 If to Poolmaster, Inc.:

17 Lee Tager
18 Poolmaster, Inc.
19 770 Del Paso Rd.
20 Sacramento, CA 95834

21 With a copy to:

22 Stephen L. Marsh
23 McKENNA LONG & ALDRIDGE LLP
24 600 West Broadway, Suite 2600
25 San Diego, California 92101-3372
26 Telephone: 619.236.1414

27 If to Valterra Products, Inc.:

28 George Grengs
Valterra Products, Inc.
15230 San Fernando Mission Blvd., #107
Mission Hills, CA 91345

With a copy to:

Stephen L. Marsh
McKENNA LONG & ALDRIDGE LLP

600 West Broadway, Suite 2600
San Diego, California 92101-3372
Telephone: 619.236.1414

17. **AUTHORITY TO STIPULATE**

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party for which he or she has signed to enter into this Consent Judgment and to execute it on behalf of and bind that Party.

AGREED TO:

AGREED TO:

Date: 05/11/15, 2014

Date: _____, 2014

Name: Michael J. Moran

Name: _____

Title: Director
CONSUMER ADVOCACY GROUP,
INC.

Title: _____
POOLMASTER, INC.,

AGREED TO:

AGREED TO:

Date: _____, 2014

Date: _____, 2014

Name: _____

Name: _____

Title: _____
OREQ CORPORATION

Title: _____
VALTERRA PRODUCTS, INC.

600 West Broadway, Suite 2600
San Diego, California 92101-3372
Telephone: 619.236.1414

17. AUTHORITY TO STIPULATE

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party for which he or she has signed to enter into this Consent Judgment and to execute it on behalf of and bind that Party.

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date: 4-14-2015, ~~2014~~

Name: Lee Tager

Title: PRESIDENT
POOLMASTER, INC.,

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
OREQ CORPORATION

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
VALTERRA PRODUCTS, INC.

600 West Broadway, Suite 2600
San Diego, California 92101-3372
Telephone: 619.236.1414

17. AUTHORITY TO STIPULATE

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party for which he or she has signed to enter into this Consent Judgment and to execute it on behalf of and bind that Party.

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
POOLMASTER, INC.,

AGREED TO:

Date: _____, 2014

Name: _____

Title: _____
OREQ CORPORATION

AGREED TO:

Date: 4-9-15 ~~_____~~, 2014

Name: George Grengs

Title: President
VALTERRA PRODUCTS, INC.

600 West Broadway, Suite 2600
San Diego, California 92101-3572
Telephone: 619.236.1414

17. AUTHORITY TO STIPULATE

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party for which he or she has signed to enter into this Consent Judgment and to execute it on behalf of and bind that Party.

AGREED TO

AGREED TO

Date: _____ 2014

Date: _____ 2014

Name: _____

Name: _____

Title: _____
CONSUMER ADVOCACY GROUP,
INC.

Title: _____
POOLMASTER, INC.

AGREED TO

AGREED TO

Date: April 28 ²⁰¹⁵ / ~~2014~~

Date: _____ 2014

Name: [Signature]

Name: _____

Title: President
OREQ CORPORATION

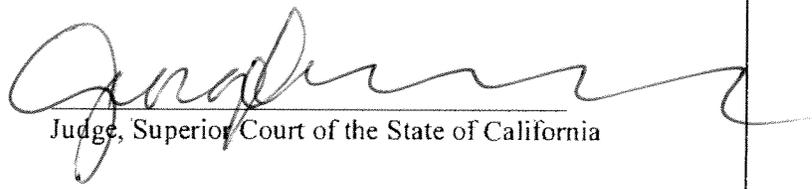
Title: _____
VALLETTA PRODUCTS, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between the Parties, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: 8/5, 2015



Judge, Superior Court of the State of California

GEORGE C. HERNANDEZ, JR.