

ENDORSED
FILED
San Francisco County Superior Court

NOV 26 2007

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Deputy Clerk

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9 Attorneys for Plaintiff
10 **CENTER FOR ENVIRONMENTAL HEALTH**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**

13 CENTER FOR ENVIRONMENTAL
14 HEALTH,

15 Plaintiff,

16 v.

17 AJG BRANDS, INC., dba ALAN JAMES
18 GROUP, *et al.*; and DEFENDANT DOES 1
19 through 200, inclusive,

20 Defendants.

Case No.: CGC 07-465287

JCR
[PROPOSED] CONSENT JUDGMENT
RE: AJG BRANDS, INC., dba, ALAN
JAMES GROUP

1 **1. INTRODUCTION**

2 **1.1** On July 19, 2007, plaintiff the Center for Environmental Health (“CEH”), a
3 non-profit corporation acting in the public interest, filed a complaint titled *Center for Environmental*
4 *Health v. AJG Brands, Inc., et al.*, San Francisco County Superior Court Case Number CGC 07-
5 465287 (the “Action”), for civil penalties and injunctive relief pursuant to the provisions of Cal.
6 Health & Safety Code §25249.5 *et seq.* (“Proposition 65”) naming AJG Brands, Inc., dba, Alan
7 James Group (“Defendant”) as a defendant. Collectively, CEH and Defendant are referred to as the
8 “Parties.”

9 **1.2** Defendant is a corporation that has employed 10 or more persons and distributed
10 and/or sold an herbal supplement product under the brand name Venastat (the “Products”) that
11 contained Dibutyl Phthalate (“DBP”) in the State of California.

12 **1.3** Beginning on or about February 12, 2007, CEH served Defendant and the appropriate
13 public enforcement agencies with the requisite 60-day notice alleging that Defendant was in
14 violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that Defendant
15 exposes people who use or otherwise handle the Products to DBP, a chemical known to the State of
16 California to cause birth defects and other reproductive harm, without first providing clear and
17 reasonable warning to such persons regarding the reproductive toxicity of DBP. The notice and
18 Complaint allege that Defendant’s conduct violates Health & Safety Code §25249.6, the warning
19 provision of Proposition 65. Defendant disputes such allegations and asserts that all of its products
20 are safe and comply with all applicable laws.

21 **1.4** DBP was listed as a chemical known to cause birth defects or other reproductive harm
22 pursuant to Proposition 65 on December 12, 2005 (“Listing Date”). Accordingly, Proposition 65’s
23 warning requirement took effect on December 12, 2006 (“Effective Warning Date”).

24 **1.5** Defendant warrants that it reformulated the Product to remove DBP prior to the
25 Listing Date and that it stopped selling Products containing DBP prior to the Effective Warning
26 Date. Defendant further warrants that it inadvertently shipped only a small number of Products
27 containing DBP subsequent to the Effective Warning Date, which Defendant believes reached the
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1 California marketplace. CEH relies on Defendant's warranties in reaching the agreement embodied
2 in this Consent Judgment.

3 **1.6** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
4 jurisdiction over the subject matter of the violations alleged in CEH's Complaint and personal
5 jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is proper in the
6 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full
7 and final resolution of all claims which were or could have been raised in the Complaint based on
8 the facts alleged therein.

9 **1.7** The Parties enter into this Consent Judgment pursuant to a settlement of certain
10 disputed claims between the Parties as alleged in the Complaint. By executing this Consent
11 Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that
12 nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,
13 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment
14 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law,
15 or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
16 remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

17 **2. COMPLIANCE - REFORMULATION**

18 **2.1 Removal of DBP.** Defendant has reformulated the Products to remove DBP.
19 Following entry by the Court of this Consent Judgment (the "Compliance Date"), Defendant shall
20 not ship, distribute or otherwise sell in California any Product containing DBP.

21 **2.2 Products in the stream of commerce.** Defendant's Products that have been
22 manufactured, shipped, sold, or that otherwise are in the stream of commerce prior to the
23 Compliance Date shall be released from any claims that were brought or that could have been
24 brought by CEH in its Complaint, and are Covered Claims within the meaning of Section 7.1, below.

25 **3. SETTLEMENT PAYMENTS**

26 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH four thousand
27 two hundred dollars (\$4,200) in lieu of any penalty pursuant to Health and Safety Code §25249.7(b).
28 CEH shall use such funds to continue its work protecting people from exposures to toxic chemicals.

1 **3.2 Attorneys' Fees and Costs.** Defendant shall pay eight thousand three hundred
2 dollars (\$8,300) to reimburse CEH and its attorneys for their reasonable investigation fees and costs,
3 attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to
4 Defendant's attention, litigating and negotiating a settlement in the public interest. The payment
5 required under this section shall be made payable to Lexington Law Group, LLP.

6 **3.3 Timing of payments.** The payments required under Sections 3.1 and 3.2 shall be
7 made payable within 20 days of entry of judgment. All of the payments made pursuant to this
8 Section 3 shall be delivered to the Lexington Law Group, LLP at the address set forth in section
9 12.1.

10 **4. MODIFICATION OF CONSENT JUDGMENT**

11 **4.1** This Consent Judgment may be modified by written agreement of CEH and
12 Defendant, or upon motion of CEH or Defendant as provided by law.

13 **5. ENFORCEMENT OF CONSENT JUDGMENT**

14 **5.1** Either party may, by motion or application for an order to show cause, enforce the
15 terms and conditions contained in this Consent Judgment.

16 **6. APPLICATION OF CONSENT JUDGMENT**

17 **6.1** This Consent Judgment shall apply to and be binding upon the Parties hereto, their
18 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

19 **7. CLAIMS COVERED AND RELEASE**

20 **7.1** This Consent Judgment is a full, final and binding resolution between CEH and
21 Defendant of any violation of Proposition 65 that was or could have been asserted in the Complaint
22 against Defendant (including any claims that could be asserted in connection with any of the
23 Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, shareholders,
24 partners, directors, officers, employees, agents, attorneys, contract manufacturers, wholesalers,
25 retailers, distributors, customers and all other entities to whom it distributes or sells products, and
26 their respective successors or assigns (collectively, "Defendant Releasees") regarding the alleged
27 failure to warn about alleged exposures to DBP resulting from any Products manufactured,
28 distributed or sold by Defendant or any Defendant Releasees on or prior to the date of entry of this

1 Consent Judgment, or any other claim based on the facts or conduct alleged in the Complaint,
2 whether based on actions committed by the Defendant or any Defendant Releasees ("Covered
3 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with
4 Proposition 65 for purposes of DBP exposures from the Products.

5 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health and
6 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
7 Defendant and Defendant Releasees arising from any statutory or common law claims, including
8 claims for violation of Proposition 65, that have been or could have been asserted in the Complaint
9 regarding the alleged failure to warn about exposure to DBP arising in connection with Products
10 manufactured, distributed or sold by Defendant or Defendant Releasees prior to the Compliance
11 Date, or any other claim based on the facts or conduct alleged in the Complaint, or facts similar to
12 those alleged. Nothing in this Section 7 shall be read to limit Defendant's obligations under this
13 Consent Judgment or Plaintiff's right to enforce the terms of this Consent Judgment.

14 **8. SEVERABILITY**

15 8.1 In the event that any of the provisions of this Consent Judgment are held by a court to
16 be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

17 **9. GOVERNING LAW**

18 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California.

20 **10. RETENTION OF JURISDICTION**

21 10.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
22 this Consent Judgment.

23 **11. PROVISION OF NOTICE**

24 11.1 All notices required pursuant to this Consent Judgment and correspondence shall be
25 sent to the following:

26 For CEH:

27 Mark N. Todzo
28 Lexington Law Group, LLP
 1627 Irving Street

San Francisco, CA 94122

For Defendant:

R. Scott Pearson
Weston, Benschopf, Rochefort, Rubalcava & MacCuish, LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, CA 90071

12. COURT APPROVAL

12.1 CEH will comply with the settlement notice provisions of Health and Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

13. EXECUTION AND COUNTERPARTS


13.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

14. AUTHORIZATION

14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green, Executive Director
Center for Environmental Health

Dated: 9/24/07

AJG BRANDS, INC. dba ALAN JAMES GROUP

Woody Kassin
Vice President and General Manager

Dated: _____

San Francisco, CA 94122

For Defendant:

R. Scott Pearson
Weston, Benshoof, Rochefort, Rubalcava & MacCuish, LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, CA 90071

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CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
Center for Environmental Health

Dated: _____

AJG BRANDS, INC. dba ALAN JAMES GROUP



Woody Kassin
Vice President and General Manager

Dated: 10-1-07

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and AJG Brands, Inc., dba Alan James Group, the settlement is approved and judgment is hereby entered according to the terms herein.

DATED: NOV 26 2007

JOHN K. STEWART
Judge, Superior Court of the State of California