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15 CONSUMER ADVOCACY GROUP, INC.

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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

MAY 15 2009

John A. Clarke, Executive Officer/ Clerk  
By J. SW, Deputy  
I. FLORES

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF LOS ANGELES

17 CONSUMER ADVOCACY GROUP, INC., in )  
18 the public interest, )  
19 )  
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Plaintiff,

v.

MECHANICAL SERVANTS, INC., and DOES )  
1 - 100, )  
Defendants. )

Case No. BC389115

**██████████ CONSENT JUDGMENT**

Health & Safety Code §25249.5 et seq.

1           **1. INTRODUCTION**

2           1.1     On April 16, 2008, plaintiff the Consumer Advocacy Group, Inc.  
3 (“CAG”), a non-profit corporation, filed a complaint in Los Angeles County Superior Court,  
4 entitled *Consumer Advocacy Group v. Mechanical Servants* (the “Action”), for civil penalties  
5 and injunctive relief pursuant to the provisions of Cal. Health & Safety Code §25249.5 *et seq.*  
6 (“Proposition 65”). CAG’s Complaint named Mechanical Servants, Inc. (“Mechanical  
7 Servants”) and unnamed “Does” as defendants.

8           1.2     Mechanical Servants is a corporation that employs 10 or more persons.  
9 Mechanical Servants sells or has sold to California consumers, or has otherwise made  
10 available for distribution in the State of California, convenience-sized and single-use  
11 consumer products including but not limited to a Convenience Valet Battery Terminal Top  
12 Post (the “Products”). The Products contain lead in varying amounts. This Consent  
13 Judgment requires warnings for the Products.

14           1.3     On or about October 2, 2007, CAG served Mechanical Servants and the  
15 appropriate public enforcement agencies with notice that Mechanical Servants was in  
16 violation of Proposition 65. CAG’s notice and the Complaint in this Action allege that  
17 Mechanical Servants exposes people who handle the Products to lead, without providing clear  
18 and reasonable warnings, in violation of Health & Safety Code §25249.6.

19           1.4     For purposes of this Consent Judgment only, the parties stipulate that  
20 this Court has jurisdiction over the allegations of violations contained in CAG’s Complaint  
21 and personal jurisdiction over Mechanical Servants as to the acts alleged in CAG’s  
22 Complaint, that venue is proper in the County of Los Angeles, and that this Court has  
23 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which  
24 were or could have been raised in the Complaint based on the facts alleged therein.

25           1.5     The parties enter into this Consent Judgment pursuant to a settlement of  
26 certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and  
27 costly litigation.

28     ///

1           1.6    Nothing in this Consent Judgment shall be construed as an admission  
2 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall  
3 compliance with the Consent Judgment constitute or be construed as an admission by the  
4 Parties of any fact, conclusion of law, issue of law, or violation of law.

5           1.7    Nothing in this Consent Judgment shall prejudice, waive or impair any  
6 right, remedy, argument or defense the Parties may have in this or any other or future legal  
7 proceeding.

8           1.8    This Consent Judgment is the product of negotiation and compromise  
9 and is accepted by the Parties, for purposes of settling, compromising and resolving issues  
10 disputed in this action, including future compliance by Mechanical Servants with Section 2 of  
11 this Consent Judgment and shall not be used for any other purpose, or in any other matter.

12           **2.    COMPLIANCE - WARNING**

13           2.1    Within 60 days of entry of this Consent Judgment by the Court (the  
14 “Compliance Date”), Mechanical Servants shall not engage in any California sale of the  
15 Products without providing the following warning language:

16                   WARNING: This product contains a chemical known to the State of California  
17 to cause cancer, and birth defects or other reproductive harm.

18 This warning shall: (a) be displayed on the Product’s packaging, shelving or display; (b) be  
19 set out in a text box on a separate line or in a separate paragraph; and (c) be displayed with  
20 such conspicuousness, as compared with other words, statements, or designs as to render it  
21 likely to be read and understood by an ordinary individual.

22           **3.    SETTLEMENT PAYMENT**

23           3.1    Within 30 days of entry of this Consent Judgment by the Court,  
24 Mechanical Servants shall pay total of fifty thousand dollars to CAG at the offices of  
25 Yeroushalmi & Associates. The payment shall be apportioned as follows:

26                   3.1.1   Monetary Payment in Lieu of Penalty: \$8,500 dollars shall be  
27 paid to CAG in lieu of any penalty pursuant to Health and Safety Code  
28 § 25249.7(b). CAG shall use such funds to continue its work protecting people

1 from exposures to toxic chemicals, including those listed under Proposition 65;  
2 protecting the environment; improving human health; and supporting  
3 environmentally sound practices. Payment shall be to "Consumer Advocacy  
4 Group, Inc."

5 3.1.2 Attorneys' Fees and Costs: 41,500 dollars of such payment shall  
6 be used to reimburse CAG and its attorneys for their reasonable investigation  
7 fees and costs, attorneys' fees, and any other costs incurred as a result of  
8 investigating, bringing this matter to Mechanical Servants' attention, litigating  
9 and negotiating a settlement in the public interest. Payment shall be to  
10 "Yeroushalmi & Associates."

11 **4. MODIFICATION OF CONSENT JUDGMENT**

12 4.1 This written Consent Judgment may be modified by written agreement  
13 of CAG and Mechanical Servants upon stipulation and Order of the Court, or after noticed  
14 motion, and upon entry of a consent judgment by the Court thereon, or upon motion of CAG  
15 or Mechanical Servants as provided by law and upon entry of a modified consent judgment by  
16 the Court.

17 **5. ENFORCEMENT OF CONSENT JUDGMENT**

18 5.1 Either party may, by motion or application for an order to show cause  
19 before the Superior Court of the County of Los Angeles, consistent with the terms and  
20 conditions set forth in paragraphs 9.2 and 9.3 of this Consent Judgment, enforce the terms and  
21 conditions contained in this Consent Judgment. The prevailing party shall be entitled to its  
22 reasonable attorneys' fees and costs associated with such motion or application.

23 **6. APPLICATION OF CONSENT JUDGMENT**

24 6.1 This Consent Judgment shall apply to and be binding upon the parties  
25 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of  
26 them.

27 **7. CLAIMS COVERED AND RELEASED**

28 7.1 This Consent Judgment is a full, final and binding resolution between

1 CAG and Mechanical Servants of any violation of Proposition 65 that could have been  
2 asserted against Mechanical Servants in the Complaint based on Mechanical Servants' failure  
3 to warn about exposure to listed chemicals contained in the Products prior to the date of entry  
4 of this judgment. Compliance with the terms of this Consent Judgment shall constitute  
5 compliance with Proposition 65 with respect to exposures to lead by Mechanical Servants,  
6 Inc., or by any retail or distributor customer of Mechanical Servants, Inc., with respect to  
7 Products purchased from Mechanical Servants. This release does not limit or effect the  
8 obligations of any party created under this Consent Judgment.

9 **8. SEVERABILITY**

10 8.1 In the event that any of the provisions of this Consent Judgment are  
11 held by a court to be unenforceable, the validity of the enforceable provisions shall not be  
12 adversely affected.

13 **9. NOTICE AND CURE**

14 9.1 No action to enforce this Consent Judgment may be commenced, and  
15 no notice of violation related to lead may be served or filed against Mechanical Servants by  
16 CAG, unless the party seeking enforcement or alleging violation notifies the other party of the  
17 specific acts alleged to breach this Consent Judgment at least 90 days before serving or filing  
18 any motion, action, or Notice of Violation. Any notice to Mechanical Servants must contain  
19 (a) the name of the product, (b) specific dates when the product was sold in California without  
20 the warning specified in Section 2, and (c) any evidence or other support for the allegations in  
21 the notice.

22 9.2 Within 30 days of receiving the notice described in Section 9.1,  
23 Mechanical Servants shall either (1) withdraw the product or (2) provide for the product the  
24 warning described in Section 2 or (3) refute the information provided under Section 9.1.  
25 Should the parties be unable to resolve the dispute, either party may seek relief under Section  
26 5.

27 **10. GOVERNING LAW**

28 10.1 The terms of this Consent Judgment shall be governed by the laws of

1 the State of California.

2 **11. PROVISION OF NOTICE**

3 11.1 All notices required pursuant to this Consent Judgment and  
4 correspondence shall be sent to the following:

5 For CAG:

6 Reuben Yeroushalmi  
7 Yeroushalmi & Associates  
8 3700 Wilshire Boulevard, Suite 480  
9 Los Angeles, CA 90010

9 For Mechanical Servants:

10 Lisa L. Halko  
11 Greenberg Traurig LLP  
12 1201 K Street, Suite 1100  
13 Sacramento, CA 95814

13 **13. COURT APPROVAL**

14 13.1 If this Consent Judgment is not approved by the Court, it shall be of no  
15 further force or effect.

16 13.2 CAG shall comply with Health and Safety Code section 25249.7(f) and  
17 with Title 11 California Code of Regulations section 3003.

18 **14. EXECUTION AND COUNTERPARTS**

19 14.1 The stipulations to this Consent Judgment may be executed in  
20 counterparts and by means of facsimile, which taken together shall be deemed to constitute  
21 one document. A facsimile or pdf signature shall be as valid as the original.

22 **15. AUTHORIZATION**

23 15.1 Each signer of this Consent Judgment certifies that he or she is fully  
24 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter  
25 into and execute the Consent Judgment on behalf of the party represented and legally bind  
26 that party. The undersigned have read, understand and agree to all of the terms and conditions  
27 of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own  
28 fees and costs.

1 into and execute the Consent Judgment on behalf of the party represented and legally bind  
2 that party. The undersigned have read, understand and agree to all of the terms and conditions  
3 of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own  
4 fees and costs.

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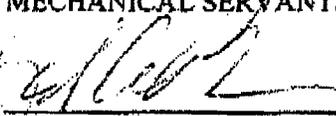
6 CONSUMER ADVOCACY GROUP, INC.

7   
8 Lyn Marcus  
9 President

Dated: \_\_\_\_\_, 2008

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11 MECHANICAL SERVANTS, INC.

12   
13 David A. Baum  
14 Chief Executive Officer

Dated: September 18, 2008

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**ORDER AND JUDGMENT**

1  
2 Based upon the stipulated Consent Judgment between Consumer Advocacy  
3 Group, Inc. and Mechanical Servants, Inc., the settlement is approved and judgment is hereby  
4 entered according to the terms herein.  
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6 Dated: MAY 15 2009, [REDACTED]

7 **ABRAHAM KHAN**

8 Judge, Superior Court of the State of California

9 **ABRAHAM KHAN**

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