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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES
17

18 CONSUMER ADVOCACY GROUP, INC., in) Case No. BC389539
19 the public interest,)
20 Plaintiff,) **[PROPOSED] CONSENT JUDGMENT**
21 v.)
22) Health and Safety Code sections 25249.5,
23) et seq.
24) The Honorable John P. Shook
25)
26)
27)
28)

1 **1. INTRODUCTION**

2 1.1 On April 22, 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, Inc. v. Ezon, Inc., et al.* (the "Action"), for civil penalties
5 and injunctive relief pursuant to the provisions of Health & Safety Code sections 25249.5, et
6 seq. ("Proposition 65"). CAG's Complaint named Ezon, Inc. ("Ezon") and unnamed "Does"
7 as defendants.

8 1.2 Ezon is a corporation that employs 10 or more persons. Ezon sells or
9 has sold to California consumers, or has otherwise made available for distribution in the State
10 of California, lead-containing battery terminals, cables and accessories. Examples of the
11 general category of battery terminals, cables and accessories include, but are not limited to: E-
12 Tron Battery Cables (Product 9-6); E-Tron Battery Cables (Product 12-6); E-Tron Battery
13 Cables (Product A12-4); Battery Bolt Extenders (L866L-2I); Battery Adapter (ST-2A);
14 Battery Adaptor Post (STCP-2); Marine Terminal (12MBT); Side Battery Terminal (13BT);
15 Starter To Switch Cable (SS18-4); and Starter To Switch Cable (SS32-4). Collectively, the
16 products mentioned in this paragraph are "Covered Products."

17 1.3 On or about February 8, 2008, CAG served Ezon and the appropriate
18 public enforcement agencies with notice that Ezon was in violation of Proposition 65. CAG's
19 notice and the Complaint in this Action allege that Ezon exposes people who handle the
20 Covered Products to lead, without providing clear and reasonable warnings, in violation of
21 Health and Safety Code section 25249.6.

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

28 1.5 The parties enter into this Consent Judgment pursuant to a settlement of

1 certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and
2 costly litigation.

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

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

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

13 2. COMPLIANCE - WARNING

14 2.1 Ezon agrees, promises, and represents that upon execution of this
15 Consent Judgment it will provide Proposition 65 compliant warnings on the packaging for
16 any containers of Covered Products sold or distributed in California indicating that the
17 product contains lead:

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

20 3. SETTLEMENT PAYMENT

21 3.1 Within ten days of entry of judgment, Ezon shall pay forty six thousand
22 five hundred dollars to CAG at the offices of Yeroushalmi & Associates. The payment shall
23 be apportioned as follows:

24 3.1.1 Monetary Payment in Lieu of Penalty: Six thousand dollars
25 shall be paid to CAG in lieu of any penalty pursuant to Health and Safety Code
26 section 25249.7, subdivision (b). CAG shall use such funds to continue its
27 work protecting people from exposures to toxic chemicals, including those
28 listed under Proposition 65; protecting the environment; improving human

1 health; and supporting environmentally sound practices. Payment shall be to
2 "Consumer Advocacy Group, Inc."

3 3.1.2 Attorney Fees and Costs: Forty thousand five hundred dollars of
4 such payment shall be used to reimburse CAG and its attorneys for their
5 reasonable investigation fees and costs, attorney fees, and any other costs
6 incurred as a result of investigating, bringing this matter to Ezon's attention,
7 litigating and negotiating a settlement in the public interest. Payment shall be
8 to "Yeroushalmi & Associates."

9 **4. MODIFICATION OF CONSENT JUDGMENT**

10 4.1 This written Consent Judgment may be modified by written agreement
11 of CAG and Ezon upon stipulation and Order of the Court, or after noticed motion, and upon
12 entry of a consent judgment by the Court thereon, or upon motion of CAG or Ezon as
13 provided by law and upon entry of a modified consent judgment by the Court.

14 **5. ENFORCEMENT OF CONSENT JUDGMENT**

15 5.1 Either party may, by motion or application for an order to show cause
16 before the Superior Court of the County of Los Angeles, consistent with the terms and
17 conditions set forth in paragraphs 9.2 and 9.3 of this Consent Judgment, enforce the terms and
18 conditions contained in this Consent Judgment. The prevailing party shall be entitled to its
19 reasonable attorney fees and costs associated with such motion or application.

20 **6. APPLICATION OF CONSENT JUDGMENT**

21 6.1 This Consent Judgment shall apply to and be binding upon the parties
22 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
23 them.

24 **7. CLAIMS COVERED AND RELEASED**

25 7.1 This Consent Judgment is a full, final and binding resolution between
26 CAG and Ezon of any violation of Proposition 65 that could have been asserted against Ezon
27 in the Complaint based on Ezon's failure to warn about exposure to listed chemicals
28 contained in the Covered Products prior to the date of entry of this judgment. Compliance

1 with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with
2 respect to exposures to lead by Ezon, Inc. This release does not limit or effect the obligations
3 of any party created under this Consent Judgment.

4 **8. SEVERABILITY**

5 8.1 In the event that a court finds any provision of this Consent Judgment
6 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

7 **9. NOTICE AND CURE**

8 9.1 No action to enforce this Consent Judgment may be commenced, and
9 no notice of violation related to lead may be served or filed against Ezon by CAG, unless the
10 party seeking enforcement or alleging violation notifies the other party of the specific acts
11 alleged to breach this Consent Judgment at least 90 days before serving or filing any motion,
12 action, or Notice of Violation. Any notice to Ezon must contain (a) the name of the product,
13 (b) specific dates when the product was sold in California without the warning specified in
14 Section 2, and (c) any evidence or other support for the allegations in the notice.

15 9.2 Within 30 days of receiving the notice described in Section 9.1, Ezon
16 shall either (1) withdraw the product or (2) provide for the product the warning described in
17 Section 2 or (3) refute the information provided under Section 9.1. Should the parties be
18 unable to resolve the dispute, either party may seek relief under Section 5.

19 **10. GOVERNING LAW**

20 10.1 The terms of this Consent Judgment shall be governed by the laws of
21 the State of California.

22 **11. PROVISION OF NOTICE**

23 11.1 All notices required pursuant to this Consent Judgment and
24 correspondence shall be sent to the following:

25 For CAG:

26 Reuben Yeroushalmi
27 Yeroushalmi & Associates
28 3700 Wilshire Boulevard, Suite 480
Los Angeles, CA 90010

1 For Ezon:

2 Malcolm Weiss, Esq.
3 Hinton & Williams LLP
4 550 South Hope Street, Suite 2000
5 Los Angeles, CA 90071-2627

6 **13. COURT APPROVAL**

7 13.1 If this Consent Judgment is not approved by the Court, it shall be of no
8 further force or effect.

9 13.2 CAG shall comply with Health and Safety Code section 25249.7,
10 subdivision (f) and with Title 11 California Code of Regulations section 3003.

11 **14. EXECUTION AND COUNTERPARTS**

12 14.1 The stipulations to this Consent Judgment may be executed in
13 counterparts and by means of facsimile, which taken together shall be deemed to constitute
14 one document. A facsimile or pdf signature shall be as valid as the original.

15 **15. AUTHORIZATION**

16 15.1 Each signer of this Consent Judgment certifies that he or she is fully
17 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter
18 into and execute the Consent Judgment on behalf of the party represented and legally bind
19 that party. The undersigned have read, understand and agree to all of the terms and conditions
20 of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own
21 fees and costs.

22 CONSUMER ADVOCACY GROUP, INC.

23 
24 Lynn Marcus
25 President

Dated: 7-15, 2008

26 EZON, INC.

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Dated: 7-16, 2008

ORDER AND JUDGMENT

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2 Based upon the stipulated Consent Judgment between Consumer Advocacy
3 Group, Inc. and Ezon, Inc., the settlement is approved and judgment is hereby entered
4 according to the terms herein.
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6 Dated: _____, 2008

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9 Judge, Superior Court of the State of California
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