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11 3700 Wilshire Blvd., Suite 480  
12 Los Angeles, CA 90010  
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15 Attorneys for Plaintiff  
16 CONSUMER ADVOCACY GROUP, INC.

ENDORSED  
FILED  
ALAMEDA COUNTY

JAN 08 2010

CLERK OF THE SUPERIOR COURT  
By LINDNELL WILLIAMS

Deputy

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF LOS ALAMEDA

17 CONSUMER ADVOCACY GROUP, INC., )

18 Plaintiff, )

19 v. )

20 )  
21 COLOMER U.S.A., INC., )

22 Defendant. )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

Case No. RG08427904

[PROPOSED] 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 Alameda County Superior Court,  
4     entitled *Consumer Advocacy Group v. Colomer U.S.A., Inc.* (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 Colomer U.S.A., Inc. ("Colomer U.S.A.") and  
7     unnamed "Does" as defendants. On February 13, 2009, Colomer U.S.A. answered on behalf  
8     of itself and its affiliates.

9           1.2     Colomer U.S.A. is a corporation that employs 10 or more persons.  
10    Colomer U.S.A. sells or has sold to California consumers, or has otherwise made available for  
11    distribution in the State of California, hair color and other cosmetics or consumer products  
12    containing o-phenylphenol (the "Product"). The plaintiff alleges, and Colomer U.S.A. denies,  
13    that the sale of hair color products containing o-phenylphenol exposed consumers to a listed  
14    Proposition 65 chemical without adequate warning, in violation of Health & Safety Code §  
15    25249.6. The parties agree to this consent judgment to avoid costly and time-consuming  
16    litigation. This consent judgment requires Colomer U.S.A. to reformulate the Product so that  
17    they will not contain o-phenylphenol.

18           1.3     For purposes of this Consent Judgment only, the parties stipulate that  
19    this Court has jurisdiction over the allegations of violations contained in CAG's Complaint  
20    and personal jurisdiction over Colomer U.S.A. as to the acts alleged in CAG's Complaint, that  
21    venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this  
22    Consent Judgment as a full and final resolution of all claims which were or could have been  
23    raised in the Complaint based on the facts alleged therein.

24           1.4     The parties enter into this Consent Judgment pursuant to a settlement of  
25    certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and  
26    costly litigation.

27    ///

28    ///

1           1.5    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           1.6    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           1.7    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 Colomer U.S.A. with Section 2 of this  
11 Consent Judgment and shall not be used for any other purpose, or in any other matter.

12           **2.    COMPLIANCE - REFORMULATION**

13           2.1    Within 180 days of entry of this Consent Judgment by the Court (the  
14 "Compliance Date"), Colomer U.S.A. shall reformulate the Products so that they do not  
15 contain o-phenylphenol. Beginning 180 days after entry of this Consent Judgment, Colomer  
16 U.S.A. shall not manufacture, import to the United States for sale in California, or cause to be  
17 manufactured or imported to the United States for sale in California, any Product containing  
18 o-phenylphenol. Compliance with this Paragraph 2.1 is compliance with the Safe Drinking  
19 Water and Toxics Enforcement Act of 1986, Health and Safety Code §§ 25249.5 *et seq.*  
20 (Proposition 65).

21           **3.    SETTLEMENT PAYMENT**

22           3.1    Within 30 days of entry of this Consent Judgment by the Court,  
23 Colomer U.S.A. shall pay total of forty-nine thousand dollars to CAG at the offices of  
24 Yeroushalmi & Associates. The payment shall be apportioned as follows:

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

1 protecting the environment; improving human health; and supporting  
2 environmentally sound practices. Payment shall be to "Consumer Advocacy  
3 Group, Inc."

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

10 **4. MODIFICATION OF CONSENT JUDGMENT**

11 4.1 This written Consent Judgment may be modified by written agreement  
12 of CAG and Colomer U.S.A. upon stipulation and order of the Court, or after noticed motion,  
13 and upon entry of a consent judgment by the Court thereon, or upon motion of CAG or  
14 Colomer U.S.A. as provided by law and upon entry of a modified consent judgment by the  
15 Court.

16 **5. ENFORCEMENT OF CONSENT JUDGMENT**

17 5.1 Either party may, by motion or application for an order to show cause  
18 before the Superior Court of the County of Alameda, consistent with the terms and conditions  
19 set forth in paragraphs 9.1 and 9.2 of this Consent Judgment, enforce the terms and conditions  
20 contained in this Consent Judgment. The prevailing party shall be entitled to its reasonable  
21 attorneys' fees and costs associated with such motion or application.

22 **6. APPLICATION OF CONSENT JUDGMENT**

23 6.1 This Consent Judgment shall apply to and be binding upon the parties,  
24 their divisions, subdivisions, parents, affiliates, and subsidiaries, and the successors or assigns  
25 of any of them.

26 **7. CLAIMS COVERED AND RELEASED**

27 7.1 This Consent Judgment is a full, final and binding resolution of any  
28 violation of Proposition 65 that could have been asserted in the Complaint. Colomer U.S.A.,

1 its related affiliates, its customers and their respective customers, predecessors, successors,  
2 and assigns and all shareholders, officers, directors, and employees of any of the released  
3 entities (collectively, "Released Parties") from all known and unknown rights, claims, causes  
4 of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and  
5 attorney fees, costs, and expenses related to or arising out of the facts and claims that were or  
6 could have been alleged based on any Released Party's 's failure to warn about exposure to  
7 listed chemicals contained in , Roux® 'Tween Time® Instant Haircolor Touch-Up Stick,  
8 Fanci-Full®, or any other substantially similar formulation of the product identified in the 60-  
9 day notices of violation served by CAG in initiating the Action prior to the date of entry of  
10 this judgment. Compliance with the terms of this Consent Judgment shall constitute  
11 compliance with Proposition 65 with respect to exposures to o-phenylphenol by any Released  
12 Party with respect to the Product sold by or purchased from Colomer U.S.A.. This release  
13 does not limit or affect the obligations of any party created under this Consent Judgment.

#### 14 8. SEVERABILITY

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

#### 18 9. NOTICE AND CURE

19 9.1 No action to enforce this Consent Judgment may be commenced, and  
20 no notice of violation related to o-phenylphenol may be served or filed against any Released  
21 Party by CAG, unless the party seeking enforcement or alleging violation notifies the other  
22 party of the specific acts alleged to breach this Consent Judgment at least 90 days before  
23 serving or filing any motion, action, or Notice of Violation. Any notice to a Released Party  
24 must contain (a) the name of the product, (b) specific dates when the product was sold in  
25 California in violation of this Consent Judgment, and (c) any evidence or other support for the  
26 allegations in the notice.

27 9.2 Within 30 days of receiving the notice described in Section 9.1,  
28 Colomer U.S.A. shall either (1) cure the violation or (2) refute the information provided under

1 Section 9.1. Should the parties be unable to resolve the dispute, either party may seek relief  
2 under Section 5.

3 **10. GOVERNING LAW**

4 10.1 The terms of this Consent Judgment shall be governed by the laws of  
5 the State of California.

6 **11. PROVISION OF NOTICE**

7 11.1 All notices required pursuant to this Consent Judgment and  
8 correspondence shall be sent to the following:

9 For CAG:

10 Reuben Yeroushalmi  
11 Yeroushalmi & Associates  
12 3700 Wilshire Boulevard, Suite 480  
Los Angeles, CA 90010

13 For Colomer U.S.A.:

14 Lisa L. Halko  
15 Greenberg Traurig LLP  
1201 K Street, Suite 1100  
16 Sacramento, CA 95814

17 **13. COURT APPROVAL**

18 13.1 If this Consent Judgment is not approved by the Court, it shall be of no  
19 further force or effect.

20 13.2 CAG shall comply with Health and Safety Code section 25249.7(f) and  
21 with Title 11 California Code of Regulations section 3003.

22 **14. EXECUTION AND COUNTERPARTS**

23 14.1 The stipulations to this Consent Judgment may be executed in  
24 counterparts and by means of facsimile, which taken together shall be deemed to constitute  
25 one document. A facsimile or pdf signature shall be as valid as the original.

26 **15. AUTHORIZATION**

27 15.1 Each signer of this Consent Judgment certifies that he or she is fully  
28 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter

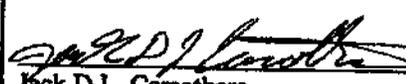
1 into and execute the Consent Judgment on behalf of the party represented and legally bind  
2 that party. The undersigned have read, understand and agree to all of the terms and conditions  
3 of this Consent Judgment. Except as explicitly provided herein, each party shall bear its own  
4 fees and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

5  
6 CONSUMER ADVOCACY GROUP, INC.

7   
8 \_\_\_\_\_  
9 Lynn Marcus  
10 President

Dated: 12/15, 2009

11 COLOMER U.S.A., INC.

12  
13   
14 \_\_\_\_\_  
15 Jack D.L. Carrothers  
16 Corporate Counsel & Secretary

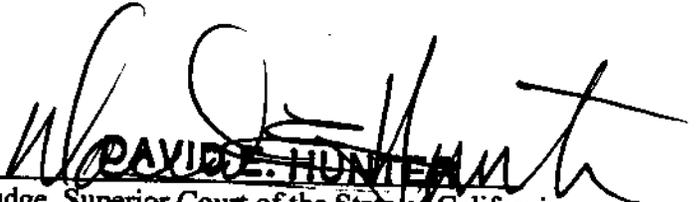
Dated: 12/15, 2009

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Consumer Advocacy Group, Inc. and Colomer U.S.A., Inc., the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: 1-8 2010, ~~2008~~

  
DAVID E. HUNTER  
Judge, Superior Court of the State of California

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