



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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TEXT JUDGMENT

CONSUMER ADVOCACY GROUP, INC., IN THE PUBLIC VS. VALLEY INDUSTRIES CORP

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21 A.J. Wholesale Distributors, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

22 CONSUMER ADVOCACY GROUP, INC.,
23 Plaintiff,

v.

24 VALLEY INDUSTRIES CORP, A.J.
25 WHOLESALE DISTRIBUTORS, INC. AND
26 DOES 1-50.

27 Defendant.

) Case No. CGC-08-479129

) (JCR)

) ~~PROPOSED~~ CONSENT JUDGMENT

) Health & Safety Code §25249.5 et seq.

) Hearing Date:

) Time : 9:30 A.M.

) Dept. : 302 301

PAUL H. ALVARADO

) Judge: Hon. Peter Busch

COPY

1 **1. INTRODUCTION**

2 1.1 On August 26, 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. Valley Industries Corp., et al* (the "Action"), for civil
5 penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code
6 §25249.5 *et seq.* ("Proposition 65"). CAG's Complaint named A.J. Wholesale Distributor,
7 Inc. ("A.J. WHOLESale") and unnamed "Does" as defendants. On March 11, 2009, A.J.
8 Wholesale Distributors filed its appearance in the Action. .

9 1.2 A.J. Wholesale Distributor, Inc. ("A.J. WHOLESale") is a
10 corporation that employs 10 or more persons. A.J. WHOLESale sells or has sold to
11 California consumers, or has otherwise made available for sale and distribution in the State of
12 California lead-containing products such as (i) "PIT BULL" brand 10pcx105gm Battery
13 Terminal (12/C) Item No. CHITAM10; (ii) "PIT BULL" brand 5Pcs Soldering Gun (Item
14 No.: CHIG001302 (collectively referred to as the "Products"). The plaintiff alleges, and A.J.
15 WHOLESale denies, that the sale of the sale and distribution of lead-containing products
16 exposed consumers to a listed Proposition 65 chemical without adequate warning, in violation
17 of Health & Safety Code § 25249.6. The parties agree to this consent judgment to avoid
18 costly and time-consuming litigation. This consent judgment requires A.J. WHOLESale to
19 provide warning labels to all known lead containing products old or distributed by A.J.
20 WHOLESale, and which intends to sell or distribute in California, indicating that the
21 product contains lead. .

22 1.3 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 A.J. WHOLESale, as to the acts alleged in CAG's Complaint,
25 that venue is proper in the County of San Francisco, and that this Court has jurisdiction to
26 enter this Consent Judgment as a full and final resolution of all claims which were or could
27 have been raised in the Complaint based on the facts alleged therein.

28 1.4 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 1.5 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 1.6 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 or future legal
9 proceeding.

10 1.7 This Consent Judgment is the product of negotiation and compromise
11 and is accepted by the Parties, for purposes of settling, compromising and resolving issues
12 disputed in this action, including future compliance by A.J. WHOLESALewith Section 2 of
13 this Consent Judgment and shall not be used for any other purpose, or in any other matter.

14 **2. COMPLIANCE – WARNING**

15 2.1 A.J. WHOLESAL agrees, promises, and represents that upon CAG’S
16 execution of this Settlement Agreement, it will prepare and attach Proposition 65 warning
17 labels to all known lead containing products sold or distributed by A.J. WHOLESAL, and
18 which it intends to sell or distribute in California, indicating that the product contains lead.
19 The warning label shall read as follows:

20 **WARNING:** *This product contains lead, a chemical known to the State of*
21 *California to cause cancer, and birth defects or other*
22 *reproductive harm.*

23 Compliance with this Paragraph 2.1 is compliance with the Safe Drinking
24 Water and Toxics Enforcement Act of 1986, Health and Safety Code §§ 25249.5 *et seq.*
25 (Proposition 65).

26 **3. SETTLEMENT PAYMENT**

27 3.1 Within ten days from the date of the approval of this Consent
28 Judgment, A.J. WHOLESAL shall pay total of fifty thousand dollars

1 (\$50,000.00) to CAG at the offices of Yeroushalmi & Associates to reimburse
2 CAG and its attorneys for their reasonable investigation fees and costs,
3 attorneys' fees, and any other costs incurred as a result of investigating,
4 bringing this matter to A.J. WHOLESale's attention, litigating and
5 negotiating a settlement in the public interest. Payment shall be to
6 "Yeroushalmi & Associates."

7 **4. MODIFICATION OF CONSENT JUDGMENT**

8 4.1 This written Consent Judgment may be modified by written agreement
9 of CAG and A.J. WHOLESale upon stipulation and order of the Court, or after noticed
10 motion, and upon entry of a consent judgment by the Court thereon, or upon motion of CAG
11 or A.J. WHOLESale as provided by law and upon entry of a modified consent judgment by
12 the Court.

13 **5. ENFORCEMENT OF CONSENT JUDGMENT**

14 5.1 Either party may, by motion or application for an order to show cause
15 before the Superior Court of the County of Alameda, consistent with the terms and conditions
16 set forth in paragraphs 9.1 and 9.2 of this Consent Judgment, enforce the terms and conditions
17 contained in this Consent Judgment. The prevailing party shall be entitled to its reasonable
18 attorneys' fees and costs associated with such motion or application.

19 **6. APPLICATION OF CONSENT JUDGMENT**

20 6.1 This Consent Judgment shall apply to and be binding upon the parties,
21 their divisions, subdivisions, parents, affiliates, and subsidiaries, and the successors or assigns
22 of any of them.

23 **7. CLAIMS COVERED AND RELEASED**

24 7.1 This Consent Judgment is a full, final and binding resolution of any
25 violation of Proposition 65 that could have been asserted in the Complaint. A.J.
26 WHOLESale, its related affiliates, its customers and their respective customers,
27 predecessors, successors, and assigns and all shareholders, officers, directors, and employees
28 of any of the released entities (collectively, "Released Parties") from all known and unknown

1 rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief,
2 declaratory relief, and attorney fees, costs, and expenses related to or arising out of the facts
3 and claims that were or could have been alleged based on any Released Party's 's failure to
4 warn about exposure to listed chemicals contained in the Products prior to the date of entry of
5 this judgment. Compliance with the terms of this Consent Judgment shall constitute
6 compliance with Proposition 65 with respect to exposures to lead by any Released Party with
7 respect to Products sold by or purchased from A.J. WHOLESale. This release does not
8 limit or affect the 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-containing Products may be served or filed against any
16 Released Party by CAG, unless the party seeking enforcement or alleging violation notifies
17 the other party of the specific acts alleged to breach this Consent Judgment at least 90 days
18 before serving or filing any motion, action, or Notice of Violation. Any notice to a Released
19 Party must contain (a) the name of the product, (b) specific dates when the product was sold
20 in California in violation of this Consent Judgment, and (c) any evidence or other support for
21 the allegations in the notice.

22 9.2 Within 30 days of receiving the notice described in Section 9.1, A.J.
23 WHOLESale shall either (1) cure the violation or (2) refute the information provided under
24 Section 9.1. Should the parties be unable to resolve the dispute, either party may seek relief
25 under Section 5.

26 **10. GOVERNING LAW**

27 10.1 The terms of this Consent Judgment shall be governed by the laws of
28 the State of California.

1 **11. PROVISION OF NOTICE**

2 11.1 All notices required pursuant to this Consent Judgment and
3 correspondence shall be sent to the following:

4 For CAG:

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

9 For A.J. Wholesale Distributors, Inc.:

10 Jason R. Chermela, Esq.
11 LEWIS, BRISBOIS, BISGAARD & SMITH
12 221 N. Figueroa Street
13 Suite 1200
14 Los Angeles, CA 90012

15 **13. COURT APPROVAL**

16 13.1 If this Consent Judgment is not approved by the Court, it shall be of no
17 further force or effect.

18 13.2 CAG shall comply with Health and Safety Code section 25249.7(f) and
19 with Title 11 California Code of Regulations section 3003.

20 **14. EXECUTION AND COUNTERPARTS**

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

24 **15. AUTHORIZATION**

25 15.1 Each signer of this Consent Judgment certifies that he or she is fully
26 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter
27 into and execute the Consent Judgment on behalf of the party represented and legally bind
28 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 shall bear its own
fees and costs.

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CONSUMER ADVOCACY GROUP, INC.

Lyn Marcus
Lyn Marcus
President

Dated: _____, 2009

A.J. WHOLESALE DISTRIBUTORS, INC.

[Signature]
[Signature] (Name)
[Signature] (Title)

Dated: Aug 17, 2009.

ORDER AND JUDGMENT

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

Dated: Jan 4, 2009

Paul H. Alvarado
Judge, Superior Court of the State of California

PAUL H. ALVARADO