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LOS ANGELES
SUPERIOR COURT

1 REUBEN YEROUSHALMI (State Bar No. 193981)
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4 Suite No. 480
5 Los Angeles, California 90010
6 Telephone No. (213) 382-3183
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8 Attorneys for Plaintiff
9 CONSUMER ADVOCACY GROUP, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 CONSUMER ADVOCACY GROUP, INC.,)
13 in the public interest,)
14 Plaintiff,)
15 vs.)
16 CTT TOOLS, INC., and DOES 1-100;)
17 Defendants.)

CASE NO. BC399270
[Hon. David L. Minning]

~~[PROPOSED]~~ CONSENT JUDGMENT

Discovery Cut-off: None
Motion Cut-off: None
Trial: None

18 Plaintiff Consumer Advocacy Group, Inc., on behalf of itself and suing in the public
19 interest pursuant to Health and Safety Code § 25249.7(d) ("CAG"), and Defendant CTT Tools,
20 Inc. ("CTT") (CAG and CTT are sometimes collectively referred to below as the "Parties") enter
21 into this Consent Judgment as follows:

22 **1.0 Introduction**

23 1.1 CAG is an entity based in Los Angeles, California that seeks to promote
24 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
25 hazardous substances contained in consumer and industrial products.

26 1.2 CAG alleges that CTT is a California corporation that employs ten or more
27 persons, or has employed ten or more persons during the relevant limitations period, and acts as
28 an importer and distributor of tools and other products.

1.3 The product at issue in this action is 10 piece battery terminal sold by CTT that

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1 was known as the "Cal-Hawk 10 piece battery terminal, Set # CZBT10P" (referred to below as
2 the "Covered Product.")

3 1.4 CAG alleges that the Covered Product contains lead. On February 27, 1987, the
4 Governor of California added lead to the list of chemicals known to the State under the
5 California Safe Drinking Water and Toxic Enforcement Act (Health & Safety Code §§ 25249.5
6 et seq.) ("Proposition 65") to cause reproductive toxicity in reproductive females and males.
7 Twenty months after its inclusion in the list, lead became subject fully to the discharge
8 prohibitions and warning requirements of Proposition 65.

9 1.5 On October 2, 2007 and June 9, 2008, CAG served public enforcement agencies
10 and CTT with certain documents entitled "Sixty-Day Notice Of Intent To Sue For Violations Of
11 The Safe Drinking Water And Toxic Enforcement Act of 1986" ("Notices"). The Notices alleged
12 that CTT violated Proposition 65 by failing to warn consumers in California that use of the
13 Covered Product exposes persons to lead.

14 1.6 On October 2, 2008, CAG filed this action in the Superior Court of the State of
15 California, County of Los Angeles, Case No. BC399270 ("the Action") against CTT alleging that
16 CTT violated Proposition 65 by exposing persons in California to the lead found in the Covered
17 Product without providing "clear and reasonable" warnings. CAG further alleges that the alleged
18 exposures constitute "consumer product" exposures.

19 1.7 Thereafter, CTT filed an Answer denying the material allegations of CAG's
20 Complaint in the Action and asserting various affirmative defenses, including, but not limited, to
21 CTT having sold the Covered Product in California with compliant warnings under Proposition
22 65 during all or a portion of the period at issue.

23 1.8 For purposes of this Consent Judgment only, the Parties stipulate that: (a) the
24 Court has jurisdiction over the allegations of Proposition 65 violations contained in CAG's
25 Complaint and personal jurisdiction over CTT as to the acts alleged in CAG's Complaint in this
26 Action; (b) venue is proper in the County of Los Angeles; and (c) this Court has jurisdiction to
27 enter this Consent Judgment as a full and final settlement and resolution of all allegations
28 contained in CAG's Complaint in the Action and Notices, and of all claims which were or could

1 have been raised by any person or entity based in whole or in part, directly or indirectly, on the
2 facts alleged in the Notices, in CAG's Complaint in this Action or arising or related thereto.

3 1.9 The Parties enter into this Consent Judgment pursuant to a settlement of certain
4 disputed claims between the Parties alleged in CAG's Complaint in this Action and the Notices
5 for the purpose of avoiding prolonged and costly litigation between the Parties hereto. By
6 execution of this Consent Judgment, the Parties do not admit any facts or conclusions of law,
7 including, but not limited to, any facts or conclusions of law regarding any violation of
8 Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in
9 this Consent Judgment, including CTT's execution of this Consent Judgment and agreement to
10 provide relief and remedies herein, shall be construed as an admission by each of the Parties of
11 any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment,
12 nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted
13 as evidence of an admission or evidence of fault, wrongdoing, or liability by CTT, its officers,
14 directors, employees, representatives or parent, subsidiary or affiliated corporations, in any
15 administrative or judicial proceeding or litigation or arbitration or other proceeding in any court,
16 agency, or forum. This Consent Judgment shall not be admissible in any action or proceeding
17 except for proceedings to enforce or modify this Consent Judgment as set forth below.
18 Nevertheless, CTT's obligations, responsibilities and duties shall remain as set forth in this
19 Consent Judgment unless a modification has been entered by the Court as set forth below.

20 **2.0 CAG's Release Of CTT**

21 2.1 Except as set forth in this Consent Judgment, upon the Court's approval of this
22 Consent Judgment and completion of CTT's obligations set forth below, CAG on behalf of itself
23 and its agents, representatives, attorneys, predecessors, successors and assigns fully releases and
24 forever discharges CTT and its related entities, affiliates, predecessors, successors, and assigns
25 and all officers, directors, representatives, insurers, and employees of any of the released entities
26 (collectively, "Released Parties") from all known and unknown rights, claims, causes of action,
27 damages, suits, fines, losses, obligations, penalties, liabilities, injunctive relief, declaratory relief,
28 attorneys' fees, costs, and expenses related to or arising out of the facts and claims that were or

1 could have been alleged in this Action and relating to sale, distribution, marketing and use of the
2 Covered Product. Without limiting the foregoing, the Parties intend the scope of this release to
3 cover all Claims Covered (as defined in Section 3 below) as to the Released Parties put in
4 controversy by this Action.

5 2.2 CAG acknowledges and represents that it has full knowledge of the contents of
6 Section 1542 of the Civil Code. CAG further acknowledges that the claims released in section
7 2.1 above include unknown claims and waives Section 1542 as to any such unknown claims.
8 Section 1542 reads as follows:

9 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
11 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
12 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
13 OR HER SETTLEMENT WITH THE DEBTOR.”

14 CAG acknowledges and understands the significance and consequences of this specific waiver of
15 Civil Code Section 1542. Being aware of this statute, the CAG hereby expressly waives and
16 relinquishes all rights and benefits which it may have thereunder as well as under any other
17 statute or common law principles of similar effect relating to the claims that were raised or could
18 have been raised in this Action or related to CTT's sale, distribution, marketing and use of the
19 Covered Product.

20 CAG further understands that the facts in respect of which the Release made in this
21 Consent Judgment are given may hereafter turn out to be other than or different from the facts
22 now believed by it to be true; and CAG hereto accepts and assumes the risk of the facts turning
23 out to be different and agrees that this Release shall remain in all respects effective and not
24 subject to termination or rescission by virtue of any such different facts.

25 **3.0 Claims Covered**

26 3.1 This Consent Judgment is a final and binding resolution between CAG and the
27 Released Parties of the following claims and cause of action:

28 All Proposition 65 claims and any and all other claims that were or could have been

1 asserted in the Action arising from or related to allegations that the Released Parties exposed,
2 knowingly and intentionally, users of the Covered Product and others in proximity to such use to
3 lead, a chemical designated by the State of California to cause cancer, without first giving clear
4 and reasonable warning of such to persons exposed up to the effective date of this Consent
5 Judgment.

6 **4.0 CTT's Duties**

7 4.1 CTT represents, warrants and promises that it has discontinued selling or
8 distributing the Covered Product and that it has no current intention to ever sell or distribute the
9 Covered Product in the future. CTT further represents, warrants and promises that it will not sell
10 or distribute the Covered Product in California in the future unless it provides warnings that
11 comply with Proposition 65 in such a conspicuously and prominent manner in order to assure
12 that the warning message is made available to and likely to be read, seen or heard by the
13 consumer prior to or at the time of the sale of purchase. The purpose of this section is to have
14 each consumer to whom the product or portion thereof is sold to receive said warning.

15 **5.0 Monetary Relief**

16 5.1 Payment in Lieu of Civil Penalties. Within ten days of this Court's approval of
17 this Consent Judgment in the Action, CTT shall pay the sum of \$3,500 to CAG for the purpose
18 of furthering environmental causes. Payment shall be made to "Consumer Advocacy Group, Inc."
19 CAG represents and warrants that it will use the payment for such projects and purposes related
20 to environmental protection, worker health and safety, or reduction of human exposure to
21 hazardous substances (including administrative and litigation costs arising from such projects), as
22 CAG may choose. CAG shall provide its address and federal tax identification number to CTT
23 prior to such payment. CAG further agrees to release and hold harmless CTT and the Released
24 Parties with regard to the allocation or distribution of the amount paid under this section.

25 5.2 Payment to Yeroushalmi & Associates. Within ten days of this Court's approval
26 of this Consent Judgment in the Action, CTT shall pay the sum of \$34,000 to CAG for its
27 attorney fees and costs incurred in this Action. The check shall be made to "Yeroushalmi &
28 Associates." CAG represents and warrants that it has authorized the payment of attorneys' fees

1 and costs to Yeroushalmi & Associates, and that the payment, allocation and distribution of this
2 payment will not violate any agreement between CAG and its attorneys with any other person or
3 entity, including, but not limited to the State of California. CAG further releases and agrees to
4 hold harmless CTT and the Released Parties with regard to any issue concerning the allocation
5 and distribution of the amount paid under this section. Yeroushalmi & Associates shall provide
6 its address and federal tax identification number to CTT prior to such payment.

7 5.3 The payments that CTT makes pursuant to this section above shall be in
8 consideration for the full, final and complete satisfaction of any and all claims for civil penalties,
9 restitution and attorneys' fees or other relief for the alleged violations regarding the Covered
10 Product, up to and including the date of entry of this Consent Judgment. Making this payment
11 shall not be construed as an admission by CTT of any fact, conclusion of law, issue of law, or
12 violation of law. Nor shall compliance with this Consent Judgment constitute or be construed as
13 an admission by CTT of any fact, conclusion of law, issue of fact, law or violation of law.

14 **6.0 Authority To Enter Into Consent Judgment**

15 6.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
16 by the Party he or she represents to enter into and execute this Consent Judgment on behalf of the
17 Party represented and legally to bind that Party.

18 **7.0 Attorney General Review**

19 7.1 Consistent with section 3003, subdivision (a) of Title 11 of the California Code of
20 Regulations, CAG shall submit this Consent Judgment to the Attorney General's Office for
21 review within five days of the Parties' execution of this Consent Judgment.

22 7.2 Following submittal to the Attorney General, the Parties shall proceed as set forth
23 in this Consent Judgment.

24 **8.0 Execution In Counterparts And Facsimile**

25 8.1 This Consent Judgment may be executed in counterparts, which taken together
26 shall be deemed to constitute the same document. A facsimile or pdf electronically transmitted
27 signature shall be deemed as valid as an original.

28 **9.0 Court Approval**

1 9.1 CAG shall submit this Consent Judgment to the Court for consideration and
2 judicial approval as required by Health and Safety Code section 25249.7, subdivision (f)(4).
3 CAG shall file a motion for approval of the settlement within a reasonable period of time after
4 the date this Consent Judgment is signed by all of the Parties. CAG also agrees to serve a copy of
5 the noticed motion to approve and enter the Consent Judgment on the California Attorney
6 General's office as soon as practicable and, depending on the Court's calendar and setting for a
7 hearing if possible, at least forty-five (45) days prior to the date set for hearing of the motion in
8 this Court. CAG will provide the Court with the necessary information to allow the Court to
9 make the findings required by Health and Safety Code section 25249.7, subdivision(f)(4)(A)-(C).

10 9.2 If this Consent Judgment is not approved by the Court, it shall be of no force and
11 effect and cannot be used in any action or proceeding for any purpose.

12 **10.0 Entire Agreement**

13 10.1 This Consent Judgment contain the sole and entire agreement and understanding
14 of the Parties with respect to the entire subject matter hereof, and all related prior discussions,
15 negotiations, commitments, and understandings. No representations, oral or otherwise, express
16 or implied, other than those specifically referred herein has been made by any party hereto. No
17 other agreements, oral or otherwise, exist to bind any of the Parties.

18 10.2 This Consent Judgment is the result of mutual drafting and no ambiguity found
19 herein shall be construed in favor of or against any Party.

20 **11.0 Modification Of Consent Judgment**

21 11.1 Any modification to this Consent Judgment shall be in writing signed by the
22 Parties.

23 **12.0 Application Of Consent Judgment**

24 12.1 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of
25 CAG, CTT and the Released Parties identified in Section 2.1 above.

26 **13.0 Notification Requirements**

27 13.1 Any notice required or permitted hereunder shall be effective only if in writing
28 and delivered in person or sent by telecopy, certified or registered mail return receipt requested,

1 or traceable overnight delivery service, to the following designees:

2 For CAG:

3 Reuben Yeroushalmi, Esq.

4 Yeroushalmi & Associates

5 3700 Wilshire Blvd., Suite 480

6 Los Angeles, CA 90010

7 Facsimile Number: (213) 382-3430

8 For CTT:

9 Eliot L. Teitelbaum, Esq.

10 Kooreny & Teitelbaum, LLP

11 11911 San Vicente Boulevard, Suite No. 265

12 Los Angeles, CA 90049

13 Facsimile Number: (310) 440-5277

14 Any Party may change its designee(s) for purposes of notification by providing notice of such
15 change pursuant to this section.

16 **14 Retention Of Jurisdiction**

17 14.1 This Court shall retain jurisdiction of this matter to implement the Consent
18 Judgment.

19 **15 Severability**

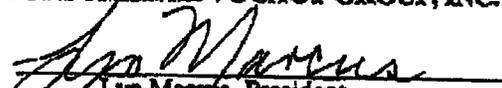
20 15.1 In the event that any of the provisions of this Consent Judgment are held by a
21 court of competent jurisdiction to be unenforceable, the validity of the enforceable provisions
22 shall not be adversely affected.

23 **16 Governing Law**

24 16.1 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California.

26 Dated: November 7, 2009

CONSUMER ADVOCACY GROUP, INC.

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28 Lyn Marcis, President

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Dated: November 4, 2009

CTT TOOLS, INC.

John Tsai
John Tsai, General Manager

As to form and content:

Dated: November 4, 2009

YERUSHALMI & ASSOCIATES

Reuben Yerushalmi
Attorneys for Plaintiff
Consumer Advocacy Group, inc.

Dated: November 6, 2009

KOORENNY & TETTELBAUM, LLP
Elliott L. Tettelbaum
Attorneys for Defendant
CTT Tools, Inc.

ORDER AND JUDGMENT

Good cause appearing based upon the above-Consent Judgment,
IT IS SO ORDERED, ADJUDGED AND DECREED.

FEB 09 2010

DAVID L. MINNING

Judge Of The Superior Court

~~(Proposed) Consent Judgment~~