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Consumer Advocacy Group, Inc.
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ORIGINAL FILED

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**LOS ANGELES
SUPERIOR COURT**

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10

11 CONSUMER ADVOCACY GROUP, INC.,)
in the public interest,)

12 Plaintiff,)

13 vs.)

14)
15 NAVAJO MANUFACTURING COMPANY,)
INC., a Colorado corporation; and DOES 1)
16 through 20, inclusive;)

17 Defendants.)
18)
19)

Case No. BC425418

Assigned For All Purposes To
The Honorable Mark Mooney

~~[PROPOSED]~~ CONSENT JUDGMENT

Complaint filed: November 5, 2009

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1 **1. INTRODUCTION**

2 **1.1 Consumer Advocacy Group, Inc. and Navajo Manufacturing Company**

3 This Consent Judgment is entered into by and between Consumer Advocacy Group, Inc.
4 (hereinafter "CAG" or "plaintiff") and Navajo Manufacturing Company (hereinafter "Navajo"),
5 with CAG and Navajo collectively referred to as the "Parties."

6 **1.2 Plaintiff**

7 CAG is a registered corporation based in California who seeks to promote awareness of
8 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

11 Navajo employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code §25249.5, *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 CAG alleges that Navajo has manufactured, distributed and/or sold in the State of
16 California automotive battery post terminal products containing lead. Lead is listed pursuant to
17 the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
18 §§25249.5, *et seq.* ("Proposition 65"), as a chemical known to the State of California to cause
19 birth defects and other reproductive harm. Lead is referred to herein as a "Listed Chemical."

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: (1) top
22 post battery terminal product (Product No. 14827) containing lead; and (2) side post battery
23 terminal product (Product No. 14823) containing lead. All such items shall be referred to herein
24 as the "Products."

25 **1.6 Notices of Violation**

26 On or about December 7, 2008, CAG served Navajo and various public enforcement
27 agencies with documents entitled "60-Day Notice of Violation" (the "Notice") that provided
28 Navajo and such public enforcers with notice which alleged that Navajo was in violation of

1 California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the
2 Products exposed users in California to the Listed Chemical. No public enforcer has diligently
3 prosecuted the allegations set forth in the Notices.

4 **1.7 Complaints**

5 On November 5, 2009, CAG, who was and is acting in the interest of the general public in
6 California, in the Superior Court in and for the County of Los Angeles, filed a complaint against
7 Navajo as a defendant and alleging violations of Health & Safety Code § 25249.6 by Navajo based
8 on the alleged exposures to the Listed Chemical in the Products manufactured, distributed and/or
9 offered for sale in California by Navajo.

10 **1.8 No Admission**

11 Navajo denies the material factual and legal allegations contained in CAG's Notice and
12 Complaint, and maintains that all Products that it has sold and distributed in California have been
13 and are in compliance with all laws. More particularly, Navajo contends that since approximately
14 February of 2007, Navajo's products have borne a warning label compliant with the requirement of
15 Health & Safety Code § 25249.6. Nothing in this Consent Judgment shall be construed as an
16 admission by Navajo of any fact, finding, issue of law, or violation of law; nor shall compliance
17 with this Consent Judgment constitute or be construed as an admission by Navajo of any fact,
18 finding, conclusion, issue of law or violation of law, such being specifically denied by Navajo.
19 However, this section shall not diminish or otherwise affect the obligations, responsibilities and
20 duties of Navajo under this Consent Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the parties stipulate that this Court has
23 jurisdiction over Navajo as to the allegations contained in the Complaint, that venue is proper in
24 the County of Los Angeles, and that this Court has jurisdiction to enter and enforce the provisions
25 of this Consent Judgment.

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
3 which is 10 calendar days after the approval of this consent Judgment by the Court.

4 **2. INJUNCTIVE RELIEF: WARNINGS**

5 **2.1 Product Warnings**

6 After the Effective Date, Navajo shall not knowingly sell, ship, or offer to be shipped for
7 sale in California, Products containing the Listed Chemical unless such Products are shipped with
8 clear and reasonable warnings including the following, or substantially similar, language:

9
10 **WARNING:** This product contains lead, a chemical known
11 to the State of California to cause cancer,
 birth defects and other reproductive harm.

12 Any warning issued for the Products shall be prominently placed with such
13 conspicuousness as compared with other words, statements, designs or devices as to render it
14 likely to be read and understood by an ordinary individual under customary conditions before
15 purchase or, for Products shipped directly to an individual in California, before use. Navajo may
16 perform its warning obligation by affixing a warning to the packaging of, labeling to, or, if no
17 label exists, directly on, each Product sold in retail outlets in California by Navajo or its retail
18 customers. At its option, Navajo may discontinue sales of the Products in California instead.

19 **2.2 Exceptions To Warning Requirements**

20 The warning requirements set forth in Section 2.1, above, shall not apply to any Products
21 manufactured before the Effective Date.

22 **3. REIMBURSEMENT OF FEES AND COSTS**

23 **3.1 Attorneys' Fees and Costs**

24 The parties reached an accord on the compensation due to CAG and its counsel under the
25 private attorney general doctrine and principles of contract law. Under these legal principles,
26 Navajo shall reimburse CAG's counsel for fees and costs incurred as a result of investigating,
27 bringing this matter to Navajo's attention, and negotiating a settlement in the public interest.
28 Navajo shall pay CAG and its counsel \$10,000.00 for all attorneys' fees, expert and investigation

1 fees, and related costs. A total payment of \$10,000.00 shall be made payable to "Yeroushalmi &
2 Associates," and shall be delivered on the Effective Date, at the following address:

3 Reuben Yeroushalmi, Esq.
4 Yeroushalmi & Associates
5 9100 Wilshire Boulevard, Suite 610 E.
6 Beverly Hills, California 90212

7 Navajo shall issue a 1099 for fees and cost paid in the amount of \$10,000.00 to
8 "Yeroushalmi & Associates," at Yeroushalmi & Associates at 9100 Wilshire Boulevard,
9 Suite 610 E., Beverly Hills, California 90212.

10 **4. RELEASE OF ALL CLAIMS**

11 **4.1 Release of Navajo and Downstream Customers**

12 In further consideration of the promises and agreements herein contained, and for the
13 payments to be made pursuant to Section 3 above, CAG, on behalf of itself, its past and current
14 agents, representatives, attorneys, successors and/or assignees, and in the interest of the general
15 public and on behalf of the public interest, hereby waives all rights to institute or participate in,
16 directly or indirectly, any form of legal action and releases all claims, liabilities, obligations,
17 losses, costs, expenses, fines and damages, including, without limitation, all actions, and causes of
18 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
19 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys'
20 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
21 "Claims"), against Navajo and its past, present and future directors, officers, employees, attorneys,
22 representatives, shareholders, agents, parents, subsidiaries, divisions, affiliates, successors,
23 predecessors, and assigns and each of its downstream distributors, wholesalers, licensors,
24 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent
25 companies, affiliated entities, partners, subsidiaries, successors, and assigns, and each of their
26 respective officers, directors, attorneys, representatives, shareholders, agents, and employees,
27 affiliates, subsidiaries, and sister and parent entities (collectively "Releasees"). This release is
28 limited to those claims which arise under Proposition 65 relating to Navajo's alleged failure to

1 warn about exposures to or identification of the Listed Chemical contained in the Products.

2 The Parties further understand and agree that this release shall not extend upstream to any
3 entities that manufactured the Products or any component parts thereof, or to any distributors or
4 suppliers who sold the Products or any component parts thereof to Navajo.

5 **4.2 Navajo's Release of CAG**

6 Navajo waives any and all claims against CAG, its attorneys and other representatives, for
7 any and all actions taken or statements made (or those that could have been taken or made) by
8 CAG and its attorneys and other representatives, whether in the course of investigating claims or
9 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to
10 the Products.

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and
13 shall be null and void if, for any reason, it is not approved and entered by the Court within one
14 year after it has been fully executed by all parties, in which event any monies that have been
15 provided to CAG, or its counsel pursuant to Section 3 above, shall be refunded within fifteen (15)
16 days after receiving written notice from Navajo that the one year period has expired.

17 **6. SEVERABILITY**

18 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
19 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
20 provisions remaining shall not be adversely affected.

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California. In the event that Proposition 65 is repealed,
24 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
25 then Navajo shall have no further obligations pursuant to this Consent Judgment with respect to,
26 and to the extent that, the Products are so affected.

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1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
4 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
5 other party at the following addresses:

6	To Navajo:	To CAG:
7		
8	Thomas H. Cadden, Esq.	Reuben Yeroushalmi, Esq.
9	Cadden & Fuller LLP	Yeroushalmi & Associates
10	114 Pacifica, Suite 450	9100 Wilshire Boulevard, Suite 610 E.
	Irvine, CA 92618	Beverly Hills, California 90212

11 Any party, from time to time, may specify in writing to the other party a change of address
12 to which all notices and other communications shall be sent.

13 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile, each of which
15 shall be deemed an original, and all of which, when taken together, shall constitute one and the
16 same document.

17 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

18 CAG agrees to comply with the reporting form requirements referenced in California
19 Health & Safety Code § 25249.7(f).

20 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

21 The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
22 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
23 obtaining such approval, CAG and Navajo agree to mutually employ their best efforts to support
24 the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment
25 by the Court in a timely manner.

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12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court.

13. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions hereof.

AGREED TO:

AGREED TO:

Date: 8/20/10

Date: _____

By: [Signature] Consumer Advocacy Group, Inc.

By: _____ Navajo Manufacturing Company

Its: President

Its: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 8/20/10

Date: _____

YEROUSHALMI & ASSOCIATES

CADDEN & FULLER LLP

By: [Signature] Reuben Yeroushalmi Daniel D. Cho Attorneys for Plaintiff, Consumer Advocacy Group, Inc.

By: Thomas H. Cadden Ignacio J. Lazo Michael P. Campbell Attorneys for Defendant, Navajo Manufacturing Company

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

NAV01-

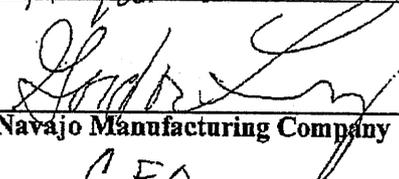
1 12. MODIFICATION

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3 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
4 of any party and entry of a modified consent judgment by the Court.

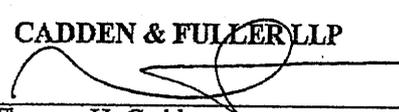
5 13. AUTHORIZATION

6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective parties and have read, understood, and agree to all of the terms and conditions hereof.

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9
10 **AGREED TO:**
11 **Date:** _____
12
13 **By:** _____
14 **Consumer Advocacy Group, Inc.**
15 **Its:** _____

AGREED TO:
11 **Date:** August 17, 2010
12
13 **By:** 
14 **Navajo Manufacturing Company**
15 **Its:** CEO

16 **APPROVED AS TO FORM:**
17 **Date:** _____
18
19 **YEROUSHALMI & ASSOCIATES**
20 **By:** _____
21 **Reuben Yeroushalmi**
22 **Daniel D. Cho**
23 **Attorneys for Plaintiff,**
24 **Consumer Advocacy Group, Inc.**

APPROVED AS TO FORM:
17 **Date:** 08 / 17 / 2010
18
19 **CADDEN & FULLER LLP**
20 **By:** 
21 **Thomas H. Cadden**
22 **Ignacio J. Lazo**
23 **Michael P. Campbell**
24 **Attorneys for Defendant,**
25 **Navajo Manufacturing Company**

25 **IT IS SO ORDERED.**

26 **Date:** NOV 03 2010

MARK V. MOONEY

JUDGE OF THE SUPERIOR COURT