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OF ORIGINAL FILED
Los Angeles Superior Court

SEP 15 2009

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Consumer Advocacy Group, Inc.

John A. Clarke, Executive Officer/Clerk

8 Bruce H. Jackson, Esq. (SBN 98118)
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9 Two Embarcadero Center
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10 San Francisco, CA 94111
11 Telephone No. (415) 576-3000
12 Facsimile No. (415) 576-3099

13 Attorney for Defendant
Prestolite Wire LLC.

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES-CENTRAL DISTRICT

18 CONSUMER ADVOCACY GROUP, INC., a
non-profit corporation,

) Case No. BC403276

19
20 Plaintiff,

) *bm*

21 v.

) ~~[PROPOSED] STIPULATED~~
) **STIPULATED CONSENT JUDGMENT**

22
23 PRESTOLITE WIRE, LLC, a Delaware limited
liability company, and DOES 1 TO 50,

) Health & Safety Code §25249.5 *et seq.*

24
25 Defendants.

) Action filed: 12/5/08

26 **1. INTRODUCTION**

27 1.1 On December 5, 2009, plaintiff the Consumer Advocacy Group, Inc.

28

1 (“CAG”), a non-profit corporation, filed a complaint in the Los Angeles Superior Court,
2 entitled *Consumer Advocacy Group v. Prestolite Wire, LLC.*, Case No. BC403276 (the
3 “Action”), for civil penalties and injunctive relief pursuant to the provisions of California
4 Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”). CAG’s Complaint named
5 Prestolite Wire, LLC (“Prestolite”) and unnamed “Does” as defendants.

6 1.2 Prestolite is a corporation that employs 10 or more persons. Prestolite
7 sells or has sold to California consumers, or has otherwise made available for distribution in
8 the State of California, Lead containing Product including but not limited to **PRO-Connect**
9 **OE Battery Cable** (“Product”). The Product contains Lead, a chemical known to the State of
10 California to cause Cancer and birth defects or other reproductive harm.

11 1.3 On or about August 11, 2008, CAG served Prestolite and the
12 appropriate public enforcement agencies with notice claiming that Prestolite was in violation
13 of Proposition 65 in regard to the Product. CAG’s notice and the Complaint in this Action
14 allege that Prestolite exposes people who handle the Product to Lead, without first providing
15 clear and reasonable warnings, in violation of California Health & Safety Code § 25249.6.

16 1.4 Prestolite denies the material allegations of the notices and the
17 Complaint, and denies liability for the cause of action alleged in the Complaint and in
18 connection with the Action.

19 1.5 For purposes of this Stipulated Stipulated Consent Judgment only, the
20 parties stipulate that this Court has jurisdiction over the allegations of violations contained in
21 CAG’s Complaint and personal jurisdiction over Prestolite as to the acts alleged in CAG’s
22 Complaint, that venue is proper in the County of Los Angeles, and that this Court has
23 jurisdiction to enter this Stipulated Stipulated Consent Judgment as a full and final resolution
24 of all claims which were or could have been raised in the Complaint based on the facts alleged
25 therein.

26 1.6 The parties enter into this Stipulated Stipulated Consent Judgment
27 pursuant to a settlement of certain disputed claims as alleged in the Complaint for the purpose
28 of avoiding prolonged and costly litigation, including without limitation the expenditure of

1 significant funds by Prestolite for scientific analysis and related proceedings before the
2 OEHHA and/or the Courts related to Product, and similar expenditures by CAG to oppose
3 such analysis and proceedings.

4 1.7 Nothing in this Stipulated Consent Judgment shall be construed as an
5 admission by the Parties of any fact, conclusion of law, issue of law or violation of law,
6 including without limitation, any admission concerning any violation of Proposition 65 or any
7 other statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
8 “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health
9 and Safety Code section 25249.6. Nothing in this Stipulated Consent Judgment, nor
10 compliance with its terms, shall constitute or be construed as an admission by the Parties of
11 any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or
12 liability by Prestolite, its officers, directors, employees, or parent, subsidiary or affiliated
13 corporations, or be offered or admitted as evidence in any administrative or judicial
14 proceeding or litigation in any court, agency, or forum.

15 1.8 Nothing in this Stipulated Consent Judgment shall prejudice, waive or
16 impair any right, remedy, argument, or defense the Parties may have in any other or future
17 legal proceeding.

18 1.9 This Stipulated Consent Judgment is the product of negotiation and
19 compromise and is accepted by the Parties, for purposes of settling, compromising and
20 resolving issues disputed in this action, including future compliance by Prestolite with Section
21 2 of this Stipulated Consent Judgment, and shall not be used for any other purpose, or in any
22 other matter.

23 **2. COMPLIANCE – STOP SALES IN CALIFORNIA AND WARNING**

24 2.1 Upon the execution of this Stipulated Stipulated Consent Judgment and
25 its approval by the Attorney General’s Office and the Court, as provided hereinbelow,
26 Prestolite will provide Proposition 65 complaint warnings on all containers of the Product
27 sold or distributed in California indicating that the Product contains Lead, a chemical
28 designated by the State to Cause Cancer, Reproductive Toxicity and Developmental. Within

1 Sixty (60) days of approval of this settlement by the Court (the “Compliance Date”),
2 Prestolite shall not engage in any California sale of the Product without providing the
3 following or something substantially similar to the following warning language:

4 **WARNING: This product contains a chemical known to the State of**
5 **California to cause cancer, and defects or other reproductive harm.**

6 **3. SETTLEMENT PAYMENT**

7 3.1 Within ten (10) days of entry of this Stipulated Consent Judgment by
8 the Court, Prestolite shall pay fifty-five thousand dollars (\$55,000) to “Consumer Advocacy
9 Group, Inc.” in care of the offices of Yeroushalmi & Associates. The payment shall be
10 apportioned as follows:

11 3.1.1 Monetary Payment in Lieu of Penalty: Eight Thousand Five
12 Hundred (\$8,500.00) shall be paid to CAG in lieu of any penalty pursuant to
13 California Health and Safety Code § 25249.7(b). CAG shall use such funds to
14 continue its work protecting people from exposures to toxic chemicals,
including those listed under Proposition 65; protecting the environment;
improving human health; and supporting environmentally sound practices.

15 3.1.2 Attorneys’ Fees and Costs: Forty-Six Thousand Five Hundred
16 dollars (\$46,500.00) of such payment shall be used to reimburse CAG and its
17 attorneys for reasonable investigation fees and costs, attorneys’ fees, and any
18 other costs incurred as a result of investigating, bringing this matter to
Prestolite’s attention, litigating, and negotiating a settlement in the public
interest.

19 **4. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

20 4.1 This written Stipulated Consent Judgment may only be modified by
21 written agreement of CAG and Prestolite upon stipulation and Order of the Court, or after
22 noticed motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or
23 upon motion of CAG or Prestolite as provided by law and upon entry of a modified Stipulated
24 Consent Judgment by the Court.

25 **5. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT**

26 5.1 Either party may, by motion or application for an order to show cause
27 before the Superior Court of the County of San Francisco, consistent with the terms and
28 conditions set forth in paragraphs 9.1 and 9.2 of this Stipulated Consent Judgment, enforce the

1 terms and conditions contained in this Stipulated Consent Judgment. The prevailing party
2 shall be entitled to its reasonable attorneys' fees and costs associated with such motion or
3 application.

4
5 **6. APPLICATION OF STIPULATED CONSENT JUDGMENT**

6 6.1 This Stipulated Consent Judgment shall apply to and be binding upon
7 the parties hereto, their divisions, subdivisions and subsidiaries, officers, directors,
8 employees, agents and their successors or assigns, and to the extent allowed by law, on the
9 general public.

10 **7. CLAIMS COVERED AND RELEASED**

11 7.1 CAG, on behalf of itself and in the public interest, hereby releases and
12 discharges Prestolite, its related affiliates, customers, retailers, distributors, predecessors,
13 successors and assigns, and all officers, directors, employees, and shareholders of them
14 (collectively, "Released Parties") from any and all claims asserted, or that could have been
15 asserted, in this litigation arising from the alleged failure to provide Proposition 65 warnings
16 regarding the exposure of individuals to listed chemicals in the Product. CAG, on behalf of
17 itself only, hereby releases and discharges the Released Parties from any and all known and
18 unknown past, present, and future rights, claims, causes of action, damages, suits, penalties,
19 liabilities, injunctive relief, declaratory relief, and attorney fees, costs, and expenses related to
20 or arising out of the facts and claims asserted, or that could have been asserted, under state or
21 federal law in this litigation arising from or related to Product or the facts alleged in Plaintiff's
22 Proposition 65 Notices or the Complaint, including without limitation any and all claims
23 concerning exposure of any person to Proposition 65-listed chemicals in the Product.
24 Compliance with the terms of this Stipulated Stipulated Consent Judgment shall constitute
25 compliance by the Released Parties with Proposition 65 with respect to exposures to Lead
26 containing Product manufactured and/or distributed by Prestolite. This release does not limit
27 or affect the obligations of any party created under this Stipulated Consent Judgment.

28 7.2 Unknown Claims. It is possible that other injuries, damages, liability, or

1 claims not now known to the Parties arising out of the facts alleged in the Complaint will
2 develop or be discovered, and this Stipulated Stipulated Consent Judgment is expressly intended
3 to cover and include all such injuries, damages, liability, and claims, including all rights of action
4 therefor. CAG has full knowledge of the contents of Section 1542 of the Civil Code. CAG, on
5 behalf of itself only, acknowledges that the claims released in section 7.1 above may include
6 unknown claims and waives Section 1542 as to any such unknown claims. Section 1542 reads as
7 follows:

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

13
14 CAG acknowledges and understands the significance and consequences of this specific
15 waiver of Civil Code Section 1542.

16 **8. SEVERABILITY**

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

20 **9. NOTICE AND CURE**

21 9.1 No action to enforce this Stipulated Consent Judgment may be
22 commenced, and no notice of violation related to Pro-Connect OE Battery Cable (the
23 “Product”) may be served or filed against Prestolite by CAG, unless the party seeking
24 enforcement or alleging violation notifies the other party of the specific acts alleged to breach
25 this Stipulated Consent Judgment at least 90 days before serving or filing any motion, action,
26 or Notice of Violation. Any notice to Prestolite must contain (a) the name of the product, (b)
27 specific dates when the product was sold in California without the warning specified in
28 Section 2, and (c) any evidence or other support for the allegations in the notice.

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

5 **10. GOVERNING LAW**

6 10.1 The terms of this Stipulated Consent Judgment shall be governed by
7 the laws of the State of California.

8 **11. PROVISION OF NOTICE**

9 11.1 All notices required pursuant to this Stipulated Consent Judgment and
10 correspondence shall be sent to the following:

11 For CAG:

12 Reuben Yeroushalmi
13 Yeroushalmi & Associates
14 3700 Wilshire Boulevard, Suite 480
15 Los Angeles, CA 90010
16 Facsimile No. (213) 382-3430

17 For The Prestolite:

18 Bruce Jackson, Esq.
19 BAKER & McKENZIE
20 Two Embarcadero Center
21 11th Floor
22 San Francisco, CA 94111
23 Facsimile No. (415) 576-3099

24 **12. COURT APPROVAL**

25 12.1 If this Stipulated Consent Judgment is not approved by the Court, it
26 shall be of no further force or effect.

27 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and
28 with Title 11 California Code of Regulations section 3003.

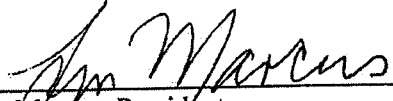
13. EXECUTION AND COUNTERPARTS

 13.1 The stipulations to this Stipulated Consent Judgment may be executed
in counterparts and by means of facsimile, which taken together shall be deemed to constitute
one document. A facsimile or pdf signatures shall be construed and valid as the original.

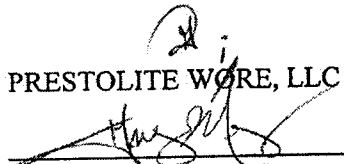
1 **14. AUTHORIZATION**

2 14.1 Each signer of this Stipulated Consent Judgment certifies that he or she
3 is fully authorized by the party he or she represents to stipulate to this Stipulated Consent
4 Judgment and to enter into and execute the Stipulated Consent Judgment on behalf of the
5 party represented and legally bind that party. The undersigned have read, understand and
6 agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as
7 explicitly provided herein, each party is to bear its own fees and costs.

8 CONSUMER ADVOCACY GROUP, INC.

9 
10 _____
11 Lyn Marcus, President

Dated: _____, 2009

12 
13 PRESTOLITE WORE, LLC
14 _____
15 GREA Mlenicz [Name]
16 President

Dated: 5/6/09, 2009

17 **ORDER AND JUDGMENT**

18
19 Based upon the stipulated Stipulated Consent Judgment between Consumer Advocacy Group,
20 Inc. and The Prestolite Chemical Product Company, the settlement is approved and judgment
21 is hereby entered according to the terms herein.

22
23 Dated: _____, 2009


24 _____
25 Judge, Superior Court of the State of California
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14. AUTHORIZATION

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

CONSUMER ADVOCACY GROUP, INC.



Lyn Marcus, President

Dated: 5/16/09, 2009

PRESTOLITE WORE, LLC


[Name]
President

Dated: _____, 2009

ORDER AND JUDGMENT

Based upon the stipulated Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and The Prestolite Chemical Product Company, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: 9-15, 2009



Soussan G. Bruquera
Judge, Superior Court of the State of California