

**ENDORSED
FILED**
San Francisco County Superior Court

APR 22 2011

CLERK OF THE COURT
BY: ERICKA LARNAUTI
Deputy Clerk

1 Reuben Yeroushalmi (SBN 193981)
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11 Attorneys for Defendants
12 Barjan, LLC, TravelCenters of America, LLC, and
TA Operating LLC

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN FRANCISCO

16 CONSUMER ADVOCACY GROUP, INC.,
17 in the public interest,
18 Plaintiff,

19 v.

20 BARJAN PRODUCTS LLC, a Delaware
21 Limited Liability Company,
22 TRAVELCENTERS OF AMERICA, a
23 Delaware Corporation, TA OPERATING
CORPORATION, a Delaware Corporation,
24 and DOES 1-50;
25 Defendants.

CASE NO. CGC-10-499500

~~[PROPOSED]~~ STIPULATED CONSENT
JUDGMENT AND ~~[PROPOSED]~~ ORDER

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: May 5, 2010
TRIAL DATE: None set

26
27 1. INTRODUCTION

28 1.1 On May 5, 2010, Plaintiff, the Consumer Advocacy Group, Inc. ("CAG"), filed a

COPY

1 complaint in the San Francisco Superior Court entitled *Consumer Advocacy Group, Inc. v. Barjan*
2 *Products LLC, et al*, Case No. CGC10-499500 (the “Action), for civil penalties and injunctive
3 relief pursuant to the provisions of California Health & Safety Code § 25249.5, *et seq.*
4 (“Proposition 65”). CAG’s Complaint erroneously named Barjan Products LLC, (the true identity
5 of which is Barjan, LLC), TravelCenters of America (the true identity of which is TravelCenters
6 of America, LLC), and TA Operating, Corporation (the true identity of which is TA Operating
7 LLC), (“Defendants”) and unnamed “Does,” collectively to be referred to hereinafter as
8 “Defendants.” CAG and Defendants collectively to be referred to hereinafter as “Parties.”

9 1.2 Defendants are corporations that employ 10 or more persons. Defendants allegedly
10 have made available for distribution in the State of California an allegedly lead-containing
11 product, Barjan Products Battery Terminal Containing Lead (the “Product”). The Product
12 allegedly contains lead, a chemical known to the State of California to cause cancer and birth
13 defects or other reproductive harm.

14 1.3 On or about July 1, 2009, August 13, 2009, and October 22, 2009, CAG served
15 Defendants and the appropriate public enforcement agencies with notice claiming that Defendants
16 were in violation of Proposition 65 in regard to the Product. CAG's notices and the Complaint in
17 this Action allege that Defendants expose people who handle the Product to Lead, without first
18 providing clear and reasonable warnings, in violation of California Health & Safety Code §
19 25249.6.

20 1.4 Defendants deny the material allegations of the notices and the Complaint, and
21 deny liability for the cause of action alleged in the Complaint and in connection with the Action.

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

28 1.6 The parties enter into this Stipulated 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, including without limitation the expenditure of significant funds by Defendants
3 for scientific analysis and related proceedings before the Office of Environmental Hazard
4 Assessment and/or the Courts related to the Product, and similar expenditures by CAG to oppose
5 such analysis and proceedings.

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

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

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

23 2. COMPLIANCE – WARNING FOR SALES IN CALIFORNIA

24 2.1 Upon the execution of this Stipulated Consent Judgment and its submission to the
25 Attorney General's Office and approval by the Court, as provided herein below, Defendants will
26 provide Proposition 65-compliant warnings on all containers of the Product sold or distributed in
27 California indicating that the Product contains Lead, a chemical designated by the State to Cause
28 Cancer, Reproductive Toxicity, Developmental, Female, and Male. Within Sixty (60) days of

1 approval of this consent judgment by the Court (the "Compliance Date"), Defendants shall not
2 engage in any California sale of the Product without providing the following or something
3 substantially similar to the following warning language; printed conspicuously on the labels of the
4 Product:

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

7 **3. SETTLEMENT PAYMENT**

8 3.1 Within ten (10) days of entry of this Stipulated Consent Judgment by the
9 Court, Defendants shall pay a total of thirty thousand five hundred dollars (\$30,500) to Consumer
10 Advocacy Group, Inc. and Yeroushalmi & Associates. The payment shall be made by separate
11 checks apportioned as follows:

12 3.1.1 Monetary Payment in Lieu of Penalty: One thousand five hundred
13 dollars (\$1,500) shall be paid to CAG in lieu of any penalty pursuant to California
14 Health and Safety Code § 25249.7(b). CAG shall use such funds to continue its
15 work protecting people from exposures to toxic chemicals, including those listed
16 under Proposition 65; protecting the environment; improving human health; and
17 supporting environmentally sound practices.

18 3.1.2 Attorneys' Fees and Costs: Twenty nine thousand dollars (\$29,000)
19 of such payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys,
20 for reasonable investigation fees and costs, attorneys' fees, and any other costs
21 incurred as a result of investigating, bringing this matter to Defendants' attention,
22 litigating, and negotiating a settlement in the public interest.

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

24 4.1 This written Stipulated Consent Judgment may only be modified by written
25 agreement of CAG and Defendants upon stipulation and Order of the Court, or after noticed
26 motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion of
27 CAG or Defendants as provided by law and upon entry of a modified Stipulated Consent
28 Judgment by the Court.

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5. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT

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

6. APPLICATION OF STIPULATED CONSENT JUDGMENT

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

7. CLAIMS COVERED AND RELEASED

7.1 CAG, on behalf of itself and in the public interest, hereby releases and discharges Defendants, their related subsidiaries, affiliates, predecessors, successors and assigns, and all officers, directors, employees, and shareholders of them (collectively, "Released Parties") from any and all claims asserted, or that could have been asserted, in this litigation arising from the alleged failure to provide Proposition 65 warnings for the Product regarding the exposure of individuals to listed chemical in the Product. CAG, on behalf of itself only, hereby releases and discharges the Released Parties from any and all known and unknown past, present, and future rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs, and expenses related to or arising out of the facts and claims asserted, or that could have been asserted, under state or federal law in this litigation arising from or related to the Product or the facts alleged in Plaintiff's Proposition 65 Notices or the Complaint, including without limitation any and all claims concerning exposure of any person to Proposition 65-listed chemicals in the Product. Compliance with the terms of this Stipulated Consent Judgment shall constitute compliance by the Released Parties with Proposition 65 with respect to exposures to Lead contained in the Product. This release does not limit or affect the obligations of any party created under this Stipulated Consent Judgment.

1 7.2 Unknown Claims. It is possible that other injuries, damages, liability, or
2 claims not now known to the Parties arising out of the facts alleged in the Complaint and relating
3 to the Product will develop or be discovered, and this Stipulated Consent Judgment is expressly
4 intended to cover and include all such injuries, damages, liability, and claims, including all rights
5 of action therefor. CAG has full knowledge of the contents of Section 1542 of the Civil Code.
6 CAG, on behalf of itself only, acknowledges that the claims released in section 7.1 above may
7 include unknown claims and waives Section 1542 as to any such unknown claims. Section 1542
8 reads as follows:

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

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

14 **8. SEVERABILITY**

15 8.1 In the event that any of the provisions of this Stipulated Consent Judgment
16 are 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 Stipulated Consent Judgment may be commenced,
20 and no notice of violation related to the Product may be served or filed against Defendants by
21 CAG, unless the party seeking enforcement or alleging violation notifies the other party of the
22 specific acts alleged to breach this Stipulated Consent Judgment at least 90 days before serving or
23 filing any motion, action, or Notice of Violation. Any notice to Defendants must contain (a) the
24 name of the product, (b) specific dates when the product was sold in California without the
25 warning specified in Section 2, (c) the store or other place at which the product was available for
26 sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

27 9.2 Within 30 days of receiving the notice described in Section 9.1, Defendants
28 shall either (1) withdraw the product, (2) provide for the product the warning described in Section

1 2, or (3) refute the information provided under Section 9.1. Should the parties be unable to resolve
2 the dispute, either party may seek relief under Section 5.

3 **10. GOVERNING LAW**

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

6 **11. PROVISION OF NOTICE**

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

9 For CAG:

10 Reuben Yeroushalmi
11 YEROUSHALMI & ASSOCIATES
12 BEVERLY HILLS, CA 90212
13 Telephone: 310-623-1926
14 Facsimile: 310-623-1930

15 For Barjan, LLC, TravelCenters of America, LLC, and TA Operating LLC:

16 Joey P. Moore, Esq. (SBN 97368)
17 JOEY P. MOORE, A PROFESSIONAL CORPORATION
18 575 Anton Blvd., Suite 710
19 Costa Mesa, CA 92626
20 Telephone: 714.438.7210
21 Facsimile: 714.438.0160

22 **12. COURT APPROVAL**

23 12.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be
24 of no further force or effect.

25 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and
26 with Title 11 California Code of Regulations section 3003.

27 **13. EXECUTION AND COUNTER PARTS**

28 13.1 This Stipulated Consent Judgment may be executed in counterparts and by
means of facsimile, which taken together shall be deemed to constitute one document. Facsimile
or pdf signatures shall be construed as valid as the original.


14. AUTHORIZATION

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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 the terms and conditions of 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.

Dated: 10-18-10

CONSUMER ADVOCACY GROUP, INC.



Name and Title: MICHEL SASSOON
Executive director

Dated: _____

BARJAN, LLC

Name and Title: _____

Dated: _____

TRAVELCENTERS OF AMERICA, LLC

Name and Title: _____

Dated: _____

TA OPERATING LLC

Name and Title: _____

1 14.1 Each signer of this Stipulated Consent Judgment certifies that he or she is
2 fully authorized by the party he or she represents to stipulate to the terms and conditions of this
3 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on
4 behalf of the party represented and legally bind that party. The undersigned have read, understand
5 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as
6 explicitly provided herein, each party is to bear its own fees and costs.

7
8 Dated: _____ CONSUMER ADVOCACY GROUP, INC.
9
10 _____
11 Name and Title: _____

12
13 Dated: 10/18/10 _____ BARJAN, LLC
14
15 Stephen Trocke
16 STEPHEN J. TROCKE
17 Name and Title: VP + CFO

18 Dated: _____ TRAVELCENTERS OF AMERICA, LLC
19
20 _____
21 Name and Title: _____

22
23 Dated: _____ TA OPERATING LLC
24
25 _____
26 Name and Title: _____
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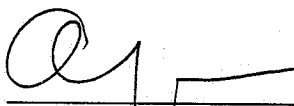
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2 fully authorized by the party he or she represents to stipulate to the terms and conditions of this
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4 behalf of the party represented and legally bind that party. The undersigned have read, understand
5 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as
6 explicitly provided herein, each party is to bear its own fees and costs.

7
8 Dated: _____ CONSUMER ADVOCACY GROUP, INC.
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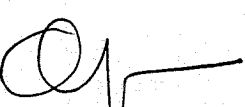
11 Name and Title: _____

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13 Dated: _____ BARJAN, LLC
14
15 _____

16 Name and Title: _____

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18 Dated: 10/19/10 TRAVELCENTERS OF AMERICA, LLC
19
20 

21 Name and Title: **Mark R. Young**
Executive Vice President
and General Counsel

22
23 Dated: 10/19/10 TA OPERATING LLC
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25 

26 Name and Title: **Mark R. Young**
Executive Vice President
and General Counsel

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~~ORDER AND~~ JUDGMENT

Based upon the Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and Barjan, LLC, TravelCenters of America, LLC and TA Operating LLC, the Consent Judgment is approved and judgment is hereby entered according to the terms herein.

Dated: 4-21-11

CHARLOTTE WALTER WOOLARD
Judge, Superior Court of the State of California