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Superior Court of California
County of Los Angeles

AUG 22 2012

7 Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

John A. Clarke, Executive Officer/Clerk
By E.T. Espinoza, Deputy

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

11 CONSUMER ADVOCACY GROUP, INC., in
12 the interest of the Public,

CASE NO. BC449318

13 Plaintiff,

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

14
15 v.

Health & Safety Code § 25249.5 *et seq.*

16 WATCH CLUB, INC., TECTRON
17 INTERNATIONAL, and DOES 1-50,

Dept.: 37
Judge: Hon. Joanne O'Donnell

18 Defendants.

Trial: February 8, 2012
Complaint: November 12, 2010

19
20
21 **1. INTRODUCTION**

22
23 1.1 On November 12, 2010, Plaintiff Consumer Advocacy Group, Inc. (“CAG”) filed a
24 complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v. Watch*
25 *Club, Inc., et al*, Case No. BC449318 (the “Action”), for civil penalties and injunctive relief
26 pursuant to the provisions of California Health & Safety Code § 25249.5, *et seq.* (“Proposition
27 65”) against Watch Club, Inc. (“Watch Club”), and other entities. Defendant Tectron International
28 is a fictitious business name of Watch Club and is not a separate entity. CAG and Watch Club are

COPY

1 collectively referred to hereinafter as "Parties."

2 1.2 Watch Club is a corporation that employs 10 or more persons. Watch Club
3 allegedly has made available for distribution in the State of California the following product:
4 Simi® Heavy Duty Flashlight with Rubber Grip and Carrying Strap Super Bright (Item # FL5)
5 ("Covered Product"). The Covered Product allegedly contains Lead, a chemical known to the
6 State of California to cause cancer and birth defects or other reproductive harm. (Lead is
7 hereinafter referred to as "Noticed Chemical.")

8 1.3 On or about December 23, 2009, CAG sent a Proposition 65 Notice of Intent to Sue
9 for violations of California Health & Safety Code § 25249.6 *et seq.* related to the Covered Product
10 ("Notice"). CAG's Notice and the Complaint in this Action allege that Watch Club exposed
11 people who handle the Covered Product to Lead, without first providing clear and reasonable
12 warnings, in violation of California Health & Safety Code § 25249.6 *et seq.*

13 1.4 Watch Club denies the material allegations of the Notice and the Complaint, and
14 denies liability for the cause of action alleged in the Complaint and in connection with the Action.

15 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over the allegations of violations contained in CAG's Complaint and personal
17 jurisdiction over Watch Club as to the acts alleged in CAG's Complaint, that venue is proper in the
18 County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a
19 full and final resolution of all claims which were or could have been raised in the Complaint based
20 on the facts alleged therein.

21 1.6 The parties enter into this Consent Judgment pursuant to a settlement of certain
22 disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and costly
23 litigation.

24 1.7 Nothing in this Consent Judgment shall be construed as an admission by the Parties
25 of any fact, conclusion of law, issue of law or violation of law, including without limitation, any
26 admission concerning any violation of Proposition 65 or any other statutory, regulatory, common
27 law, or equitable doctrine, or the meaning of the terms "knowingly and intentionally expose" or
28 "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in

1 this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
2 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of
3 fault, wrongdoing, or liability by Watch Club, its officers, directors, employees, or parent,
4 subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or
5 judicial proceeding or litigation in any court, agency, or forum.

6 1.8 Nothing in this Consent Judgment shall prejudice, waive or impair any right,
7 remedy, argument, or defense the Parties may have in any other or future legal proceeding, except
8 as expressly provided in this Consent Judgment.

9 1.9 This Consent Judgment is the product of negotiations and compromise and is
10 accepted by the Parties, for purposes of settling, compromising, and resolving issues disputed in
11 this action, including future compliance by Watch Club with Section 2 of this Consent Judgment,
12 and shall not be used for any other purpose, or in any other matter.

13 1.10 The Effective Date of this Consent Judgment is the date on which it is approved
14 and entered by the Court.

15 **2. COMPLIANCE – INJUNCTIVE RELIEF**

16 2.1 Within thirty (30) days of approval of this Consent Judgment by the Court, Watch
17 Club agrees, promises, and represents that it will cease all California distribution and/or sales of
18 the Covered Product unless the Covered Product is reformulated to a point where the level of Lead
19 in the Covered Product does not exceed 100 parts per million, as randomly tested by a United
20 States EPA-approved lab.

21 **3. SETTLEMENT PAYMENT**

22 3.1 Within five (5) days of approval of this Consent Judgment by the Court, Watch
23 Club shall pay a total of fifty-five thousand dollars (\$55,000.00) by separate checks apportioned as
24 follows:

25 3.1.1 Monetary Payment in Lieu of Civil Penalty: Five hundred dollars (\$500) shall
26 be paid to CAG in lieu of any civil penalty pursuant to California Health and Safety Code §
27 25249.7(b). CAG will use the payment for such projects and purposes related to environmental
28 protection, worker health and safety, or reduction of human exposure to hazardous substances

1 (including administrative and product testing costs arising from such projects), as CAG may
2 choose. The check shall be made payable to Consumer Advocacy Group, Inc. and delivered to
3 Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E,
4 Beverly Hills, California 90212. A separate Form 1099 shall be issued by Watch Club to
5 CAG for this amount.

6 3.1.2 Attorneys' Fees and Costs: Fifty-Four thousand dollars (\$54,000) of such
7 payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable
8 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
9 investigating, bringing this matter to Watch Club's attention, litigating, and negotiating a
10 settlement in the public interest. The check shall be made payable to Yeroushalmi &
11 Associates and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100
12 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. A separate Form 1099
13 shall be issued to Yeroushalmi & Associates for this amount.

14 3.1.3 Civil Penalty: Watch Club shall issue two separate checks for a total
15 amount of five hundred dollars (\$500) as penalties pursuant to Health & Safety Code §
16 25249.12: (a) one check made payable to the State of California's Office of Environmental
17 Health Hazard Assessment (OEHHA) in the amount of \$375, representing 75% of the total
18 penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$125,
19 representing 25% of the total penalty. Two separate 1099s shall be issued for the above
20 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA
21 95184 (EIN: 68-0284486) in the amount of \$375. The second 1099 shall be issued in the
22 amount of \$125 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire
23 Boulevard, Suite 610E, Beverly Hills, California 90212.

24 4. MODIFICATION OF CONSENT JUDGMENT

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

1 **5. ENFORCEMENT OF CONSENT JUDGMENT**

2 5.1 Either party may, by motion or application for an order to show cause before the
3 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in
4 paragraphs 9.1 and 9.2 of this Consent Judgment, enforce the terms and conditions contained in
5 this Consent Judgment. The prevailing party shall be entitled to its reasonable attorneys' fees and
6 costs associated with such motion or application.

7 **6. APPLICATION OF CONSENT JUDGMENT**

8 6.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their
9 parent companies, affiliates and each of their divisions, subdivisions and subsidiaries, officers,
10 directors, employees, agents and their successors or assigns, and to the extent allowed by law, on
11 the general public.

12 **7. CLAIMS COVERED AND RELEASED**

13 7.1 CAG acting on its own behalf and in the public interest releases Watch Club, and
14 each of its related subsidiaries, affiliates, predecessors, successors and assigns, and all of its
15 officers, directors, employees, and shareholders, and all persons and entities who are downstream
16 in the stream of commerce from Watch Club who sell or distribute the Covered Product (and only
17 as to the Covered Product distributed or sold by Watch Club) (collectively, "Released Parties"),
18 from all claims for violations of Proposition 65 up through the Effective Date based on exposure
19 to the Noticed Chemical from the Covered Product as set forth in the Notice. Compliance with the
20 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
21 exposures to the Noticed Chemical from the Covered Product as set forth in the Notice.

22 7.2 CAG, on behalf of itself only, hereby releases and discharges the Released Parties
23 from any and all known and unknown past, present, and future rights, claims, causes of action,
24 damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs,
25 and expenses related to or arising out of the facts and claims asserted, or that could have been
26 asserted, under state or federal law or the facts alleged in CAG's Proposition 65 Notice or the
27 Complaint relating to any and all claims concerning exposure of any person to the Noticed
28 Chemical in the Covered Product (and only as to the Covered Product distributed or sold by

1 Watch Club). Compliance with the terms of this Consent Judgment constitutes compliance with
2 Proposition 65 with respect to exposures to the Noticed Chemical from the Covered Product as set
3 forth in the Notice. This release does not limit or affect the obligations of any party created under
4 this Consent Judgment.

5 7.3 Unknown Claims. It is possible that other injuries, damages, liability, or claims not
6 now known to the Parties arising out of the facts alleged in the Complaint and relating to the
7 exposure of individuals to the Noticed Chemical in the Covered Product will develop or be
8 discovered, and this Consent Judgment is expressly intended to cover and include all such injuries,
9 damages, liability, and claims, including all rights of action therefor. CAG has full knowledge of
10 the contents of Section 1542 of the Civil Code. CAG, on behalf of itself only, acknowledges that
11 the claims released in Section 7 above may include unknown claims and waives Section 1542 as
12 to any such unknown claims. Section 1542 reads as follows:

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

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

19 **8. SEVERABILITY**

20 8.1 In the event that any of the provisions of this Consent Judgment are held by a court
21 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

22 **9. NOTICE AND CURE**

23 9.1 No action to enforce this Consent Judgment may be commenced, and no notice of
24 violation related to the Covered Product may be served or filed against Watch Club by CAG,
25 unless the party seeking enforcement or alleging violation notifies the other party of the specific
26 acts alleged to breach this Consent Judgment at least 90 days before serving or filing any motion,
27 action, or Notice of Violation. Any notice to Watch Club must contain (a) the name of the product,
28 (b) specific dates when the product was sold in California, (c) the store or other place at which the

1 product was available for sale to consumers, and (d) any other evidence or other support for the
2 allegations in the notice.

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

6 **10. GOVERNING LAW**

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

9 **11. PROVISION OF NOTICE**

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

12 For Consumer Advocacy Group, Inc.

For Watch Club, Inc.

13 Reuben Yeroushalmi
14 YEROUSHALMI & ASSOCIATES
15 9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212
16 T: 310-623-1926
17 F: 310-623-1930

Leon Small
LAW OFFICES OF LEON SMALL, PC
16530 Ventura Blvd., Suite 306
Encino, CA 67580
T: 818-906-2555
F: 818-907-8471

18 **12. COURT APPROVAL**

19 12.1 If this Consent Judgment is not approved by the Court, it shall be of no further
20 force or effect.

21 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title
22 11 California Code of Regulations section 3003.

23 **13. EXECUTION AND COUNTERPARTS**

24 13.1 This Consent Judgment may be executed in counterparts and by facsimile or
25 electronic transmission, which taken together shall be deemed to constitute one document.
26 Facsimile or pdf signatures shall be construed as valid as the original.

27 **14. AUTHORIZATION**

28 14.1 Each signer of this Consent Judgment certifies that he or she is fully authorized by

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

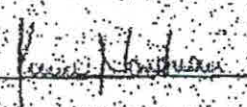
6
7 Dated: _____

CONSUMER ADVOCACY GROUP, INC.

8
9
10 Name and Title: _____

11
12 Dated: Jan. 27, 2012

WATCH CLUB, INC.

13
14
15 
16 Name and Title: KUMAR DANDEKAR
17 PRESIDENT

18
19 **ORDER AND JUDGMENT**

20 Based upon the Consent Judgment between Consumer Advocacy Group, Inc. and Watch Club,
21 Inc., the Consent Judgment is approved and judgment is hereby entered according to the terms
22 herein.

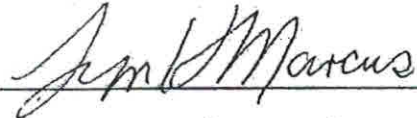
23
24 Dated: _____

25
26
27 _____
28 Judge, Superior Court of the State of California

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

6 Dated: 2/3/12

CONSUMER ADVOCACY GROUP, INC.

8 
9 _____

10 Name and Title: Lyn H. Marcus, Pres.

11
12 Dated: _____

WATCH CLUB, INC.

15 _____
16
17 Name and Title: _____

18
19 **ORDER AND JUDGMENT**

20 Based upon the Consent Judgment between Consumer Advocacy Group, Inc. and Watch Club,
21 Inc., the Consent Judgment is approved and judgment is hereby entered according to the terms
22 herein.

23
24 Dated: AUG 22 2012

25
26 Joanne O'Donnell
27 Judge, Superior Court of the State of California
28