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5 Attorneys for Plaintiff,
6 Consumer Advocacy Group, Inc.

ORIGINAL FILED
Superior Court of California
County of Los Angeles

DEC 23 2011

John A. Clarke, Executive Officer/Clerk
S. T. Black, Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

12 Plaintiff,

13 v.

14 CONCORD BUYING GROUP, INC., a
15 New Hampshire Corporation; A.J.
16 WRIGHT, a New Hampshire
17 Corporation; THE TJX COMPANIES,
18 INC., a Delaware Corporation; POWER
DEVICES LLC, a Ohio Limited Liability
Company; and DOES 1-50;

19 Defendants.

CASE NO. BC 442078

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

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: July 22, 2010

TRIAL DATE: None set

20
21 **1. INTRODUCTION**

22 1.1 On July 22, 2010, Plaintiff, the Consumer Advocacy Group, Inc. (“CAG”), filed a
23 complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v. Concord*
24 *Buying Group, Inc., A.J. Wright, The TJX Companies, Inc., Power Devices, LLC*, Case No. BC
25 442078 (the “Action”), for civil penalties and injunctive relief pursuant to the provisions of
26 California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”). Power Devices, LLC
27 shall be referred to hereinafter as “Power Devices” or “Defendant.” CAG and Defendant
28 collectively to be referred to hereinafter as “Parties.”

1 1.2 Defendant is a limited liability company. Defendant allegedly has made available
2 for distribution in the State of California an allegedly lead-containing product, handheld
3 flashlights (the "Product"). The Product allegedly contains Lead, a chemical known to the State of
4 California to cause cancer and birth defects or other reproductive harm.

5 1.3 On or about December 18, 2009, CAG served Defendant and the appropriate public
6 enforcement agencies with notice claiming that Defendant was in violation of Proposition 65 in
7 regard to the Product. CAG's notice and the Complaint in this Action allege that Defendant
8 exposed people who handle the Product to Lead, without first providing clear and reasonable
9 warnings, in violation of California Health & Safety Code § 25249.6. Also, on or about January
10 12, 2011, CAG served a "Sixty-Day Notice of Intent to Sue for Violation of the Safe Drinking
11 Water and Toxic Enforcement Act of 1986" ("Sixty-Day Notice") on Aurora Wholesalers, LLC
12 dba The Mazel Company, MZ Wholesale Acquisition, LLC, The Powerhouse Group, MZ
13 Targetco, LLC (collectively referred to for brevity as the "Mazel Entities") claiming that the
14 Mazel Entities also were in violation of Proposition 65 in regard to the Product. The contentions
15 in CAG's Sixty-Day Notice to the Mazel Entities are identical to the contentions in the notice to
16 Defendant: namely, that the Mazel Entities exposed people who handle the Product to Lead,
17 without first providing clear and reasonable warnings, in violation of California Health & Safety
18 Code § 25249.6. The Sixty-Day Notice was served on the Mazel Entities by CAG, with the intent
19 by CAG of adding the Mazel Entities as additional defendants to the Action although they have
20 not yet been added as defendants.

21 1.4 Defendant denies the material allegations of the notices and the Complaint, and
22 denies liability for the cause of action alleged in the Complaint and in connection with the Action.
23 The Mazel Entities deny the material allegations of the Sixty-Day Notice. Defendant and the
24 Mazel Entities maintain that the Product manufactured, distributed, and sold by them in California
25 has at all times been in compliance with all applicable laws. Defendant and the Mazel Entities
26 reserve all of their rights and defenses with regard to any claim by any person under Proposition
27 65 or otherwise.

28 1.5 Defendant has previously filed a Motion to Quash Plaintiff's Complaint for Lack of

1 Personal Jurisdiction. The Motion to Quash has not yet been ruled on by the Court, and the Court
2 has ordered supplemental briefing. However, in order to informally resolve this issue and to avoid
3 incurring further legal expenses, for purposes of this Stipulated Consent Judgment only, the
4 Parties stipulate that this Court has jurisdiction over the allegations of violations contained in
5 CAG's Complaint and personal jurisdiction over Defendant as to the acts alleged in CAG's
6 Complaint, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction
7 to enter this Stipulated Consent Judgment as a full and final resolution of all claims which were or
8 could have been raised in the Complaint based on the facts alleged therein.

9 1.6 The Parties enter into this Stipulated Consent Judgment pursuant to a settlement of
10 certain disputed claims as alleged in the Complaint and the Sixty-Day Notice for the purpose of
11 avoiding prolonged and costly litigation, including without limitation the expenditure of
12 significant funds by Defendant or the Mazel Entities for scientific analysis and related proceedings
13 before the Office of Environmental Hazard Assessment and/or the Courts related to the Product,
14 and similar expenditures by CAG to oppose such analysis and proceedings.

15 1.7 Nothing in this Stipulated Consent Judgment shall be construed as an admission by
16 the Parties of any fact, conclusion of law, issue of law or violation of law, including without
17 limitation, any admission concerning any violation of Proposition 65 or any other statutory,
18 regulatory, common law, or equitable doctrine, or the meaning of the terms "knowingly and
19 intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section
20 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with its terms, shall
21 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of
22 law, or violation of law, or of fault, wrongdoing, or liability by Defendant or the Mazel Entities, or
23 their respective officers, directors, employees, or parent, subsidiary or affiliated corporations, or
24 be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any
25 court, agency, or forum.

26 1.8 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any
27 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
28 except as expressly provided in this Stipulated Consent Judgment.

1 1.9 This Stipulated Consent Judgment is the product of negotiation and compromise
2 and is accepted by the Parties, for purposes of settling, compromising, and resolving issues
3 disputed in this action, including future compliance by Defendant with Section 2 of this Stipulated
4 Consent Judgment, and shall not be used for any other purpose, or in any other matter.

5 2. **COMPLIANCE – REFORMULATION OR WARNING**

6 2.1 As defined above, the Product covered by this Stipulation is all handheld
7 flashlights. For purposes of this Stipulation and the Judgment to be entered hereon, "Lead Free"
8 Product shall mean a Product which materials contain less than 40 parts per million ("ppm") lead.

9 2.2 As of the Effective Date of this Stipulated Consent Judgment, Defendant agrees it will
10 not ship or sell the Product to a third party for retail sale in California unless either:

11 2.2.1 The Product has been reformulated to a point where the Product is Lead Free,

12 or

13 2.2.2 Defendant provides a clear and conspicuous warning directly on the Product or
14 on the Product's packaging in the form below to its customers in California:

15 "WARNING: This product and packaging contain chemicals known
16 to the State of California to cause cancer and/or birth defects or
17 other reproductive harm."

18 As of the Effective Date, for any existing Product that is not yet reformulated and that is
19 shipped or sold to a third party for retail sale in California, Defendant shall include the warning
20 directly on the Product or on the Product's packaging.

21 3. **SETTLEMENT PAYMENT**

22 3.1 Within ten business (10) days of entry of this Stipulated Consent Judgment by the
23 Court, Defendant shall pay a total of thirty-five thousand dollars (\$35,000) to Consumer Advocacy
24 Group, Inc. and Yeroushalmi & Associates. The payment shall be made by separate checks
25 apportioned as follows:

26 3.1.1 Monetary Payment in Lieu of Civil Penalty: Five thousand dollars (\$5,000)
27 shall be paid to Consumer Advocacy Group, Inc. as in lieu of any civil penalty pursuant to
28 California Health and Safety Code § 25249.7(b). CAG will use the payment for such projects and

1 purposes related to environmental protection, worker health and safety, or reduction of human
2 exposure to hazardous substances (including administrative and litigation costs arising from such
3 projects), as CAG may choose. The check shall be delivered to: Reuben Yeroushalmi,
4 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
5 90212. CAG shall provide its address and federal tax identification number to Defendant prior to
6 such payment.

7 3.1.2 Attorneys' Fees and Costs: Thirty thousand dollars (\$30,000) of such
8 payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable
9 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
10 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a settlement
11 in the public interest. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
12 Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. Yeroushalmi
13 & Associates shall provide its address and federal tax identification number to Defendant prior to
14 such payment.

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

16 4.1 This written Stipulated Consent Judgment may only be modified by written
17 agreement of CAG and Defendant upon stipulation and Order of the Court, or after noticed
18 motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion of
19 CAG or Defendant as provided by law and upon entry of a modified Stipulated Consent Judgment
20 by the Court.

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

22 5.1 Any of the Parties may, by motion or application for an order to show cause before
23 the Superior Court of the County of Los Angeles, consistent with the terms and conditions set
24 forth in paragraphs 9.1 and 9.2 of this Stipulated Consent Judgment, enforce the terms and
25 conditions contained in this Stipulated Consent Judgment. The prevailing party shall be entitled to
26 its reasonable attorneys' fees and costs associated with such motion or application.

27 **6. APPLICATION OF STIPULATED CONSENT JUDGMENT**

28 6.1 This Stipulated Consent Judgment shall apply to and be binding upon the

1 Parties hereto, their divisions, subdivisions and subsidiaries, officers, directors, employees, agents
2 and their successors or assigns, and to the extent allowed by law, on the general public.

3 7. **CLAIMS COVERED AND RELEASED**

4 7.1 Waiver and Release of Claim Against Defendant: CAG, on behalf of itself and in
5 the public interest, hereby releases and discharges Defendant and the Mazel Entities, including
6 their subsidiaries, affiliates and related companies, predecessors, successors and assigns, and all
7 officers, directors, employees, agents, representatives, attorneys, licensors, members, managers,
8 suppliers, authorized dealers, and shareholders of them, (collectively, "Released Parties") from
9 any and all claims asserted, or that could have been asserted, in this or other litigation arising from
10 the alleged failure of any of the Released Parties to provide Proposition 65 warnings for the
11 Product regarding the exposure of individuals to Lead in the Product. CAG, on behalf of itself
12 only, hereby releases and discharges the Released Parties from any and all known and unknown
13 past, present, and future rights, claims, causes of action, damages, suits, penalties, liabilities,
14 injunctive relief, declaratory relief, and attorney fees, costs, and expenses related to or arising out
15 of the facts and claims asserted, or that could have been asserted, under state or federal law in this
16 or other litigation arising from or related to the Product or the facts alleged in Plaintiff's
17 Proposition 65 Notice or the Complaint, including without limitation any and all claims
18 concerning exposure of any person to Lead in the Product. Compliance with the terms of this
19 Stipulated Consent Judgment shall constitute compliance by the Released Parties with Proposition
20 65 with respect to exposures to Lead contained in the Product. This release does not limit or affect
21 the obligations of any party that are created under this Stipulated Consent Judgment.

22 7.2 Waiver and Release of Claims Against Downstream Persons.

23 CAG, on behalf of itself and in the public interest, hereby releases and discharges each
24 distributor, wholesaler, retailer, customer, purchaser, seller, dealer, owner, operator, lessor, lessee,
25 licensee, or user of the Product manufactured, distributed, and/or sold by the Released Parties, and
26 all their subsidiaries, affiliates and related companies, and the officers, directors, employees,
27 agents, representatives, attorneys, licensors, members, managers, suppliers, authorized dealers,
28 and shareholders of them (collectively, "Downstream Persons"), from any and all claims asserted.

1 or that could have been asserted, in this litigation arising from the alleged failure of any of the
2 Released Parties or the Downstream Persons to provide Proposition 65 warnings for the Product
3 regarding the exposure of individuals to Lead in the Product. "Downstream Persons" is
4 specifically defined herein to include defendants Concord Buying Group, Inc., A.J. Wright, and
5 The TJX Companies, Inc. CAG, on behalf of itself only, hereby releases and discharges the
6 Downstream Persons from any and all known and unknown past, present, and future rights,
7 claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief,
8 and attorney fees, costs, and expenses related to or arising out of the facts and claims asserted, or
9 that could have been asserted, under state or federal law in this litigation arising from or related to
10 the Product or the facts alleged in Plaintiff's Proposition 65 Notice or the Complaint, including
11 without limitation any and all claims concerning exposure of any person to Lead in the Product.
12 This release does not limit or affect the obligations of any party that are created under this
13 Stipulated Consent Judgment.

14 7.3 Matters Covered By This Consent Judgment/Release of Future Claims.

15 As to the Product, this Consent Judgment is a full, final, and binding resolution between
16 CAG, acting on behalf of itself and, as to those matters raised in CAG's Notice, the public interest
17 pursuant to Health and Safety Code Section 25249.7(d), on the one hand, and the Released Parties
18 and Downstream Persons on the other hand, for the alleged failure to provide clear, reasonable,
19 and lawful warnings of exposure to lead used or contained in the Product. As to the Product,
20 compliance with the terms of this Consent Judgment resolves any issue, now and in the future,
21 concerning compliance by the Released Parties and Downstream Persons with existing
22 requirements of Proposition 65 to provide clear and reasonable warning about exposure to lead in
23 the Product.

24 7.4 Unknown Claims. It is possible that other injuries, damages, liability, or claims not
25 now known to the Parties arising out of the facts alleged in the Complaint and relating to the
26 Product will develop or be discovered, and this Stipulated Consent Judgment is expressly intended
27 to cover and include all such injuries, damages, liability, and claims, including all rights of action
28 therefor. CAG has full knowledge of the contents of Section 1542 of the Civil Code. CAG, on

1 behalf of itself only, acknowledges that the claims released in section 7.1 and 7.2 above may
2 include unknown claims and waives Section 1542 as to any such unknown claims. Section 1542
3 reads as follows:

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

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

11 **8. SEVERABILITY**

12 8.1 In the event that any of the provisions of this Stipulated Consent Judgment are held
13 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
14 affected.

15 **9. NOTICE AND CURE**

16 9.1 No action to enforce this Stipulated Consent Judgment may be commenced, and no
17 notice of violation related to the Product may be served or filed against Defendant or the Mazel
18 Entities by CAG, unless the party seeking enforcement or alleging violation notifies the other
19 party of the specific acts alleged to breach this Stipulated Consent Judgment at least 90 days
20 before serving or filing any motion, action, or Notice of Violation. Any such notice must contain
21 (a) the name of the product, (b) specific dates when the product was sold in California without the
22 warning specified in Section 2, (c) the store or other place at which the product was available for
23 sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

24 9.2 Within 30 days of receiving the notice described in Section 9.1, Defendant or the
25 Mazel Entities shall either (1) withdraw the product, or (2) refute the information provided under
26 Section 9.1. Should the parties be unable to resolve the dispute, either party may seek relief under
27 Section 5.

28 **10. GOVERNING LAW**

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

1 **11. PROVISION OF NOTICE**

2 11.1 All notices required pursuant to this Stipulated Consent Judgment and
3 correspondence shall be sent to the following:

4 For CAG:	For Power Devices, LLC or the Mazel Entities:
5 Reuben Yeroushalmi	Stacie D. Yee
6 YEROUSHALMI & ASSOCIATES	SQUIRE, SANDERS & DEMPSEY (US) LLP
7 9100 Wilshire Boulevard, Suite 610E	555 S. Flower Street, Suite 3100
8 Beverly Hills, CA 90212	Los Angeles, CA 90071
T: 310-623-1926	T: 213-624-2500
F: 310-623-1930	F: 213-623-4581

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10 **12. COURT APPROVAL**

11 12.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be of no
12 further force or effect.

13 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title
14 11 California Code of Regulations section 3003. Within a reasonable time of receiving all
15 necessary signatures to this Consent Judgment, and consistent with Health & Safety Code
16 §25249.7(f), Plaintiff shall notice a Motion to Approve Settlement and for Entry of Consent
17 Judgment (“Motion”) in the Los Angeles Superior Court for a hearing scheduled not earlier than
18 forty-five (45) days later. Plaintiff shall serve this Consent Judgment and the noticed Motion on
19 the California Attorney General’s office within a reasonable time of receiving all necessary
20 signatures.

21 12.3 It is expressly understood and agreed by the Parties hereto that the rights and
22 obligations contained in this Consent Judgment are expressly conditioned on the non-opposition
23 by the California Attorney General’s Office to this Consent Judgment. Should the Attorney
24 General object to the Consent Judgment, the Parties shall negotiate in good faith to modify the
25 Consent Judgment in a manner that resolves the objection of the Attorney General. If the Parties
26 cannot agree on appropriate modifications within thirty (30) days of receiving the Attorney
27 General’s objections, this Consent Judgment shall, at any Party’s option, be deemed null and void

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1 as to that Party, shall not bind that Party, and shall not be construed as an admission or waiver of
2 any claim or defense and cannot be used for any purpose.

3 12.4 If the Court enters this Consent Judgment, Plaintiff shall, within ten (10) working
4 days after entry, electronically provide or otherwise serve a copy of it and the report required
5 pursuant to 11 Cal. Code Regs. § 3004 to/on the California Attorney General's Office, and shall
6 dismiss the complaint as against defendants Concord Buying Group, Inc., A.J. Wright, and The
7 TJX Companies, Inc.

8 12.5 The Effective Date of this Consent Judgment shall be the later of either the date this
9 Consent Judgment is entered by the Court or October 1, 2011.

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11 **13. EXECUTION AND COUNTER PARTS**

12 13.1 This Stipulated Consent Judgment may be executed in counterparts and by means
13 of facsimile, which taken together shall be deemed to constitute one document. Facsimile or pdf
14 signatures shall be construed as valid as the original.

15 **14. AUTHORIZATION**

16 14.1 Each signer of this Stipulated Consent Judgment certifies that he or she is fully
17 authorized by the party he or she represents to stipulate to the terms and conditions of this
18 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on
19 behalf of the party represented and legally bind that party. The undersigned have read, understand
20 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as
21 explicitly provided herein, each party is to bear its own fees and costs.

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23 Dated: _____

CONSUMER ADVOCACY GROUP, INC.

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Name and Title: _____

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1 as to that Party, shall not bind that Party, and shall not be construed as an admission or waiver of
2 any claim or defense and cannot be used for any purpose.

3 12.4 If the Court enters this Consent Judgment, Plaintiff shall, within ten (10) working
4 days after entry, electronically provide or otherwise serve a copy of it and the report required
5 pursuant to 11 Cal. Code Regs. § 3004 to/on the California Attorney General's Office, and shall
6 dismiss the complaint as against defendants Concord Buying Group, Inc., A.J. Wright, and The
7 UXX Companies, Inc.

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9 Consent Judgment is entered by the Court or October 1, 2011.

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18 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on
19 behalf of the party represented and legally bind that party. The undersigned have read, understand
20 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as
21 explicitly provided herein, each party is to bear its own fees and costs.

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Dated: 7/13/11

CONSUMER ADVOCACY GROUP, INC.

Lyn H Marcus, Pres

Name and Title: Lyn H Marcus, Pres.

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Dated: 6/20/11

POWER DEVICES, LLC



Name and Title: REUVEN DESSLER
OWNER

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ORDER AND JUDGMENT

Based upon the Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and Power Devices, LLC, the Consent Judgment is approved and judgment is hereby entered according to the terms herein.

Dated: Dec. 23, 2011

Soussan G. Bruguera

Judge, Superior Court of the State of California

LOSANGELES/326933.1

