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

**ORIGINAL FILED**  
JUN 09 2011  
LOS ANGELES  
SUPERIOR COURT

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 ESI Cases & Accessories, Inc. a New York  
15 Corporation; and DOES 1-20;

16 Defendants.

CASE NO. BC447840

~~PROPOSED~~ STIPULATED CONSENT  
JUDGMENT AND ~~PROPOSED~~ ORDER

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: October 20, 2010

TRIAL DATE: None set

17  
18 **1. INTRODUCTION**

19 1.1 On October 20, 2010, Plaintiff, the Consumer Advocacy Group, Inc. (“CAG”),  
20 filed a complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v.*  
21 *ESI Cases & Accessories, Inc.*, Case No. BC447840 (the “Action), for civil penalties and  
22 injunctive relief pursuant to the provisions of California Health & Safety Code § 25249.5, *et seq.*  
23 (“Proposition 65”). ESI Cases & Accessories, Inc. shall be referred to hereinafter as “ESI” or  
24 “Defendant,” CAG and Defendant collectively to be referred to hereinafter as “Parties.”

25 1.2 Defendant is a corporation that employs 10 or more persons. Defendant allegedly  
26 has made available for distribution in the State of California an allegedly lead-containing product,  
27 Wireless Gear model CC4500 Rapid Car Charger (the “Product”). The Product allegedly contains  
28

1 Lead, a chemical known to the State of California to cause cancer and birth defects or other  
2 reproductive harm.

3 1.3 On or about June 11, 2010, CAG served Defendant and the appropriate public  
4 enforcement agencies with notice claiming that Defendant was in violation of Proposition 65 in  
5 regard to the Product. CAG's notice and the Complaint in this Action allege that Defendant  
6 exposed people who handle the Product to Lead, without first providing clear and reasonable  
7 warnings, in violation of California Health & Safety Code § 25249.6.

8 1.4 Defendant denies the material allegations of the notices and the Complaint, and  
9 denies liability for the cause of action alleged in the Complaint and in connection with the Action.

10 1.5 For purposes of this Stipulated Consent Judgment only, the Parties stipulate that  
11 this Court has jurisdiction over the allegations of violations contained in CAG's Complaint and  
12 personal jurisdiction over Defendant as to the acts alleged in CAG's Complaint, that venue is  
13 proper in the County of Los Angeles, and that this Court has jurisdiction to enter this Stipulated  
14 Consent Judgment as a full and final resolution of all claims which were or could have been raised  
15 in the Complaint based on the facts alleged therein.

16 1.6 The parties enter into this Stipulated Consent Judgment pursuant to a settlement of  
17 certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and  
18 costly litigation, including without limitation the expenditure of significant funds by Defendant for  
19 scientific analysis and related proceedings before the Office of Environmental Hazard Assessment  
20 and/or the Courts related to the Product, and similar expenditures by CAG to oppose such analysis  
21 and proceedings.

22 1.7 Nothing in this Stipulated Consent Judgment shall be construed as an admission by  
23 the Parties of any fact, conclusion of law, issue of law or violation of law, including without  
24 limitation, any admission concerning any violation of Proposition 65 or any other statutory,  
25 regulatory, common law, or equitable doctrine, or the meaning of the terms "knowingly and  
26 intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section  
27 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with its terms, shall  
28 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of

1 law, or violation of law, or of fault, wrongdoing, or liability by Defendant, its officers, directors,  
2 employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in  
3 any administrative or judicial proceeding or litigation in any court, agency, or forum.

4 1.8 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any  
5 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,  
6 except as expressly provided in this Stipulated Consent Judgment.

7 1.9 This Stipulated Consent Judgment is the product of negotiation and compromise  
8 and is accepted by the Parties, for purposes of settling, compromising, and resolving issues  
9 disputed in this action, including future compliance by Defendant with Section 2 of this Stipulated  
10 Consent Judgment, and shall not be used for any other purpose, or in any other matter.

## 11 2. COMPLIANCE – REFORMULATION

12 2.1 By January 1, 2012, Defendant agrees to reformulate the Product to a point where  
13 the Product contains no Lead.

## 14 3. SETTLEMENT PAYMENT

15 3.1 Within ten (10) days of entry of this Stipulated Consent Judgment by the  
16 Court, Defendants shall pay a total of forty-five thousand dollars (\$45,000) to Consumer  
17 Advocacy Group, Inc. and Yeroushalmi & Associates. The payment shall be made by separate  
18 checks apportioned as follows:

19 3.1.1 Monetary Payment in Lieu of Civil Penalty: Two thousand five hundred  
20 dollars (\$2,500) shall be paid to CAG in lieu of any civil penalty pursuant to California  
21 Health and Safety Code § 25249.7(b). CAG shall use such funds to continue its work  
22 protecting people from exposures to toxic chemicals, including those listed under  
23 Proposition 65; protecting the environment; improving human health; and supporting  
24 environmentally sound practices.

25 3.1.2 Attorneys' Fees and Costs: Forty-two thousand five hundred dollars  
26 (\$42,500) of such payment shall be paid to Yeroushalmi & Associates, as CAG's  
27 attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs  
28

1 incurred as a result of investigating, bringing this matter to Defendant's attention,  
2 litigating, and negotiating a settlement in the public interest.

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

4 4.1 This written Stipulated Consent Judgment may only be modified by written  
5 agreement of CAG and Defendant upon stipulation and Order of the Court, or after noticed  
6 motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion of  
7 CAG or Defendant as provided by law and upon entry of a modified Stipulated Consent Judgment  
8 by the Court.

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

10 5.1 Either party may, by motion or application for an order to show cause before the  
11 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in  
12 paragraphs 9.1 and 9.2 of this Stipulated Consent Judgment, enforce the terms and conditions  
13 contained in this Stipulated Consent Judgment. The prevailing party shall be entitled to its  
14 reasonable attorneys' fees and costs associated with such motion or application.

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

16 6.1 This Stipulated Consent Judgment shall apply to and be binding upon the  
17 Parties hereto, their divisions, subdivisions and subsidiaries, officers, directors, employees, agents  
18 and their successors or assigns, and to the extent allowed by law, on the general public.

19 **7. CLAIMS COVERED AND RELEASED**

20 7.1 CAG, on behalf of itself and in the public interest, hereby releases and discharges  
21 Defendant, its related subsidiaries, affiliates, predecessors, successors and assigns, and all officers,  
22 directors, employees, and shareholders of it (collectively, "Released Parties") from any and all  
23 claims asserted, or that could have been asserted, in this litigation arising from the alleged failure  
24 to provide Proposition 65 warnings for the Product regarding the exposure of individuals to Lead  
25 in the Product. CAG, on behalf of itself only, hereby releases and discharges the Released Parties  
26 from any and all known and unknown past, present, and future rights, claims, causes of action,  
27 damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs,  
28 and expenses related to or arising out of the facts and claims asserted, or that could have been

1 asserted, under state or federal law in this litigation arising from or related to the Product or the  
2 facts alleged in Plaintiff's Proposition 65 Notice or the Complaint, including without limitation  
3 any and all claims concerning exposure of any person to Lead in the Product. Compliance with the  
4 terms of this Stipulated Consent Judgment shall constitute compliance by the Released Parties  
5 with Proposition 65 with respect to exposures to Lead contained in the Product. This release does  
6 not limit or affect the obligations of any party created under this Stipulated Consent Judgment.

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

15           **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
16           **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
17           **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"**

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

20           **8.       SEVERABILITY**

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

24           **9.       NOTICE AND CURE**

25           9.1    No action to enforce this Stipulated Consent Judgment may be commenced, and no  
26 notice of violation related to the Product may be served or filed against Defendant by CAG, unless  
27 the party seeking enforcement or alleging violation notifies the other party of the specific acts  
28 alleged to breach this Stipulated Consent Judgment at least 90 days before serving or filing any

1 motion, action, or Notice of Violation. Any notice to Defendant must contain (a) the name of the  
2 product, (b) specific dates when the product was sold in California without the warning specified  
3 in Section 2, (c) the store or other place at which the product was available for sale to consumers,  
4 and (d) any other evidence or other support for the allegations in the notice.

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

9 **10. GOVERNING LAW**

10 10.1 The terms of this Stipulated Consent Judgment shall be governed by the laws of the  
11 State of California.

12 **11. PROVISION OF NOTICE**

13 11.1 All notices required pursuant to this Stipulated Consent Judgment and  
14 correspondence shall be sent to the following:

15 For CAG:

16 Reuben Yeroushalmi  
17 YEROUSHALMI & ASSOCIATES  
18 9100 Wilshire Boulevard, Suite 610E  
19 Beverly Hills, CA 90212  
T: 310-623-1926  
F: 310-623-1930

For ESI Cases & Accessories, Inc.:

Jeffrey S. Dweck, P.C.  
The Law Firm Of Jeffrey S. Dweck, P.C.  
100 West 33rd Street - Suite 1017  
New York, New York 10001  
T: 212-502-6150  
F: 212-502-2010

20 **12. COURT APPROVAL**

21 12.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be of no  
22 further force or effect.

23 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title  
24 11 California Code of Regulations section 3003.

25 **13. EXECUTION AND COUNTER PARTS**

26 13.1 This Stipulated Consent Judgment may be executed in counterparts and by means  
27 of facsimile, which taken together shall be deemed to constitute one document. Facsimile or pdf  
28 signatures shall be construed as valid as the original.



