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Superior Court of California  
County of Los Angeles

NOV 20 2012

John A. Clarke, Executive Officer/Clerk

By R. Castle Deputy  
R. Castle

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

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

Plaintiff,

v.

NORTHEASTERN PLASTICS, INC., a  
Texas Corporation, AMERICAN  
INTERNATIONAL INDUSTRIES, INC.,  
and DOES 1-50,

Defendants.

CASE NO. BC 449019

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

*Cal. Health & Safety Code, § 25249.5, et  
seq.*

Dept.: 47  
Judge: Debre K. Weintraub

Complaint filed: Nov. 9, 2010  
Trial: July 24, 2012

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

1. INTRODUCTION

1.1 On November 12, 2010, Plaintiff Consumer Advocacy Group, Inc. ("CAG"), on behalf of itself and in the public interest, filed a complaint in the Los Angeles Superior Court, entitled *Consumer Advocacy Group, Inc. v. Northeastern Plastics, Inc., et al*, Case No. BC449019 (the "Action"), for civil penalties and injunctive relief pursuant to the provisions of California Health & Safety Code § 25249.5, *et seq.* ("Proposition 65") against

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1 NORTHEASTERN PLASTICS, INC. ("NORTHEASTERN"), AMERICAN  
2 INTERNATIONAL INDUSTRIES, INC. ("AMERICAN") and other entities. CAG,  
3 NORTHEASTERN, and AMERICAN are collectively referred to hereinafter as "Parties."

4 1.2 NORTHEASTERN and AMERICAN are corporations alleged to employ 10 or  
5 more persons. NORTHEASTERN and AMERICAN allegedly have made available for  
6 distribution in the State of California the following product: "Bitty Booster Cable™ 10 Gauge  
7 10 ft. Catalog No. MT 10 ("Covered Product"). The Covered Product allegedly contains Lead, a  
8 chemical known to the State of California to cause cancer and birth defects or other reproductive  
9 harm. (Lead is hereinafter referred to as "Noticed Chemical.")

10 1.3 On or about July 23, 2010, CAG sent a Proposition 65 Notice of Intent to Sue for  
11 alleged violations of California Health & Safety Code § 25249.6 *et seq.* related to the Covered  
12 Product ("Notice"). CAG's Notice and the Complaint in this Action allege that  
13 NORTHEASTERN and AMERICAN exposed people who handle the Covered Product to Lead,  
14 without first providing clear and reasonable warnings, in violation of California Health & Safety  
15 Code § 25249.6 *et seq.*

16 1.4 NORTHEASTERN and AMERICAN deny the material allegations of the Notice  
17 and the Complaint, and deny liability for the cause of action alleged in the Complaint and in  
18 connection with the Action.

19 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
20 has jurisdiction over the allegations of violations contained in CAG's Complaint and personal  
21 jurisdiction over NORTHEASTERN and AMERICAN 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 jurisdiction  
23 to enter this Consent Judgment as a full and final resolution of all claims which were or could  
24 have been raised in the Complaint based on the facts alleged therein or in the Notice with respect  
25 to the Covered Product.  
26

27 1.6 The parties enter into this Consent Judgment pursuant to a settlement of certain  
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1 disputed claims as alleged in the Complaint and in the Notice for the purpose of avoiding  
2 prolonged and costly litigation.

3 1.7 Nothing in this Consent Judgment shall be construed as an admission by the  
4 Parties of any fact, conclusion of law, issue of law or violation of law, including without  
5 limitation, any admission concerning any violation of Proposition 65 or any other statutory,  
6 regulatory, common law, or equitable doctrine, or the meaning of the terms "knowingly and  
7 intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code  
8 section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall  
9 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of  
10 law, or violation of law, or of fault, wrongdoing, or liability by NORTHEASTERN or  
11 AMERICAN, its officers, directors, employees, or parent, subsidiary or affiliated corporations,  
12 nor shall anything in this Consent Judgment or compliance with its terms be offered or admitted  
13 as evidence in any administrative or judicial proceeding or litigation in any court, agency, or  
14 forum.

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

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

22 1.10 The Effective Date of this Consent Judgment is the date on which it is approved  
23 and entered by the Court.

24  
25 **2. COMPLIANCE – INJUNCTIVE RELIEF**

26 2.1 NORTHEASTERN and AMERICAN each has indicated that it does not intend to  
27 sell or distribute the Covered Product in California at any time in the future. Notwithstanding  
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1 the foregoing, NORTHEASTERN and AMERICAN each agrees, promises, and represents that it  
2 will not distribute or sell the Covered Product in California at any time after March 15, 2012,  
3 unless the Covered Product is formulated or reformulated to a point where the level of Lead in  
4 the Covered Product does not exceed 0.01 percent Lead by weight (100 parts per million), as  
5 randomly tested by a United States EPA-approved lab.

6 **3. SETTLEMENT PAYMENT**

7 3.1 Within ten (10) days of granting the Motion for Judicial Approval of this Consent  
8 Judgment by the Court, NORTHEASTERN and/or AMERICAN, jointly and severally, shall pay  
9 a total of fifty-five thousand dollars (\$55,000.00) by separate checks apportioned as follows:

10 3.1.1 Monetary Payment in Lieu of Civil Penalty: Five hundred dollars (\$500)  
11 shall be paid to CAG in lieu of any civil penalty pursuant to California Health and Safety  
12 Code § 25249.7(b). CAG will use this payment for investigation of the public's exposure  
13 to Proposition 65 listed chemicals through various means, laboratory fees for testing for  
14 Proposition 65 listed chemicals, expert fees for evaluating exposures through various  
15 mediums, including but not limited to consumer product, occupational, and  
16 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring  
17 consulting and retained experts who assist with the extensive scientific analysis necessary  
18 for those files in litigation, in order to reduce the public's exposure to Proposition 65  
19 listed chemicals by notifying those persons and/or entities believed to be responsible for  
20 such exposures and attempting to persuade those persons and/or entities to reformulate  
21 their products or the source of exposure to completely eliminate or lower the level of  
22 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in  
23 the instant Action. Further, should the court require it, CAG will submit under seal, an  
24 accounting of these funds as described above as to how the funds were used.  
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26 The check shall be made payable to Consumer Advocacy Group, Inc. and delivered to  
27 Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E,  
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Beverly Hills, California 90212. A separate Form 1099 shall be issued to CAG for this amount.

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

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

**4. MODIFICATION OF CONSENT JUDGMENT**

4.1 This written Consent Judgment may only be modified by written agreement of CAG, NORTHEASTERN, and AMERICAN upon stipulation and Order of the Court, or after noticed motion, and upon entry of a Consent Judgment by the Court thereon, or upon motion of

1 CAG or NORTHEASTERN or AMERICAN as provided by law and upon entry of a modified  
2 Consent Judgment by the Court.

3 **5. ENFORCEMENT OF CONSENT JUDGMENT**

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

9 **6. APPLICATION OF CONSENT JUDGMENT**

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

14 **7. CLAIMS COVERED AND RELEASED**

15 7.1 CAG acting on its own behalf and in the public interest releases  
16 NORTHEASTERN, AMERICAN, and each of their respective subsidiaries, affiliates,  
17 predecessors, successors and assigns, and all of their respective officers, directors, employees,  
18 shareholders, partners, agents and all persons and entities who are downstream in the stream of  
19 commerce from NORTHEASTERN and AMERICAN who sell or distribute the Covered  
20 Product (and only as to the Covered Product distributed or sold by NORTHEASTERN and/or  
21 AMERICAN) (collectively, "Released Parties"), from all claims for violations of Proposition 65  
22 relating to any and all Covered Products sold or distributed prior to the Effective Date based on  
23 alleged exposures to the Noticed Chemical from the Covered Product, as well as any alleged  
24 failure to provide Proposition 65 warnings for the Covered Product regarding the Noticed  
25 Chemical, as set forth in the Notice. Compliance with the terms of this Consent Judgment shall  
26

1 constitute compliance with Proposition 65 with respect to alleged exposures to the Noticed  
2 Chemical from the Covered Product as set forth in the Notice.

3       7.2 CAG, on behalf of itself only, hereby releases and discharges the Released Parties  
4 from any and all known and unknown past, present, and future rights, claims, causes of action,  
5 damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees, costs,  
6 and expenses related to or arising out of the facts and claims asserted, or that could have been  
7 asserted, under state or federal law or the facts alleged in CAG's Proposition 65 Notice or the  
8 Complaint relating to any and all claims concerning, relating to or arising from alleged exposure  
9 of any person to the Noticed Chemical in the Covered Product (and only as to the Covered  
10 Product distributed or sold by NORTHEASTERN and/or AMERICAN), as well as any alleged  
11 failure to provide Proposition 65 warnings for the Covered Product regarding the Noticed  
12 Chemical. Compliance with the terms of this Consent Judgment shall constitute compliance with  
13 Proposition 65 with respect to alleged exposures to the Noticed Chemical from the Covered  
14 Product as set forth in the Notice. This release does not limit or affect the obligations of any  
15 party created under this Consent Judgment.

16       7.3 Unknown Claims. It is possible that other injuries, damages, liability, or claims  
17 not now known to the Parties arising out of the facts alleged in the Complaint and relating to the  
18 exposure of individuals to the Noticed Chemical in the Covered Product will develop or be  
19 discovered. CAG has full knowledge of the contents of Section 1542 of the Civil Code. CAG, on  
20 behalf of itself only, acknowledges that the claims released in Section 7 above by CAG, on  
21 behalf of itself only, may include unknown claims and waives Section 1542 as to any such  
22 unknown claims. Section 1542 reads as follows:

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

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

3 **8. SEVERABILITY**

4 8.1 In the event that any of the provisions of this Consent Judgment are held by a  
5 court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
6 affected.

7 **9. NOTICE AND CURE**

8 9.1 No action to enforce this Consent Judgment may be commenced, and no notice of  
9 violation related to the Covered Product may be served or filed against NORTHEASTERN or  
10 AMERICAN by CAG, unless the party seeking enforcement or alleging violation notifies the  
11 other party of the specific acts alleged to breach this Consent Judgment at least 90 days before  
12 serving or filing any motion, action, or Notice of Violation. Any notice to NORTHEASTERN or  
13 AMERICAN must contain (a) the name of the product, (b) specific dates when the product was  
14 sold in California, (c) the store or other place at which the product was available for sale to  
15 consumers, and (d) any other evidence or other support for the allegations in the notice.

16 9.2 Within 30 days of receiving the notice described in Section 9.1,  
17 NORTHEASTERN or AMERICAN shall either (1) withdraw the product, or (2) refute the  
18 information provided under Section 9.1. Should the parties be unable to resolve the dispute,  
19 either party may seek relief under Section 5.

20 **10. GOVERNING LAW**

21 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
22 California.

23 **11. PROVISION OF NOTICE**

24 11.1 All notices required pursuant to this Consent Judgment and correspondence shall  
25 be sent to the following:

26 For CAG:

For NORTHEASTERN and AMERICAN:

1 Reuben Yeroushalmi  
2 YEROUSHALMI & ASSOCIATES  
3 9100 Wilshire Boulevard, Suite 610E  
4 Beverly Hills, CA 90212  
5 T: 310-623-1926  
6 F: 310-623-1930

David J. DiMeglio  
JONES DAY  
555 South Flower Street  
Fiftieth Floor  
Los Angeles, CA 90071  
T: 213.489.3939  
F: 213.243.2539

6 **12. COURT APPROVAL**

7 12.1 If this Consent Judgment is not approved by the Court, it shall be void and of no  
8 further force or effect.

9 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title  
10 11 California Code of Regulations section 3003.

11 **13. EXECUTION AND COUNTERPARTS**

12 13.1 This Consent Judgment may be executed in counterparts and by facsimile or  
13 electronic transmission, which taken together shall be deemed to constitute one document.

14 Facsimile or pdf signatures shall be construed as valid as the original.

15 **14. ENTIRE AGREEMENT, AUTHORIZATION**

16 14.1 This Consent Judgment contains the sole and entire agreement and understanding  
17 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
18 negotiations, commitments and understandings related hereto. No representations, oral or  
19 otherwise, express or implied, other than those contained herein, have been made by any Party.  
20 No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to  
21 exist or to bind any of the Parties.

22 14.2 Each signer of this Consent Judgment certifies that he or she is fully authorized by  
23 the party he or she represents to stipulate to the terms and conditions of this Consent Judgment  
24 and to enter into and execute the Consent Judgment on behalf of the party represented and  
25 legally bind that party. The undersigned have read, understand and agree to all of the terms and  
26 conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear  
27

1 its own fees and costs.

2  
3 Dated: 10/17/2012

CONSUMER ADVOCACY GROUP, INC.

Michael Marcus

Printed Name: Michael Marcus  
Title: Officer

12 Dated: 10/4/2012

NORTHEASTERN PLASTICS, INC.

Mark H. Fields

Printed Name: MARK FIELDS  
Title: President & COO

19 Dated: 10/04/2012

AMERICAN INTERNATIONAL INDUSTRIES, INC.

Daniel Dror

Printed Name: DANIEL DROR  
Title: CHAIRMAN + CEO

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**ORDER AND JUDGMENT**

Based upon the Consent Judgment between CONSUMER ADVOCACY GROUP, INC.,  
NORTHEASTERN PLASTICS, INC., and AMERICAN INTERNATIONAL INDUSTRIES,  
INC. the Consent Judgment is approved and judgment is hereby entered according to the terms  
herein.

Dated: NOV 20 2012

DEBRE KATZ WEINTRAUB

Judge, Superior Court of the State of California