

ORIGINAL FILED

NOV 29 2011

LOS ANGELES
SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CONSUMER ADVOCACY GROUP, INC.,

Plaintiff,

v.

PLASTICOLOR MOLDED PRODUCTS,
INC.,

Defendant.

CASE NO.

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

COPY

1. INTRODUCTION

This Settlement Agreement ("Agreement") is made and entered into, by and between Consumer Advocacy Group, Inc. ("CAG") on the one hand, and Plasticolor Molded Products, Inc. ("Plasticolor") on the other hand as to CAG's claims that sale of Plasticolor's steering wheel covers, violated Proposition 65 by allegedly exposing California consumers to lead, without sufficient warning that the products contained a chemical known to the State of California to cause cancer and reproductive toxicity. CAG filed its Complaint on 9/27, 2011. CAG and Plasticolor are referred to herein collectively as the "Parties."

1 **1.1** The Parties enter into this Settlement Agreement to resolve all claims related
2 to the Notice of Violation filed by CAG on or about July 23, 2010 (“Notice”).

3 **1.2** The Notice alleges violations of the Safe Drinking Water and Toxic
4 Enforcement Act of 1986, California Health and Safety Code sections 25249.5-25249.13
5 (“Proposition 65”). The Notice alleges that Plasticolor has sold in the State of California a
6 Harley-Davidson Classic Steering Wheel Cover that contains lead. Lead is listed pursuant to
7 Proposition 65, as a chemical known to the State of California to cause cancer, birth defects and
8 other reproductive harm. Lead is referred to herein as the “Listed Chemical.” Plasticolor
9 denies the material allegations of the Notice, denies liability for any claim that was or could
10 have been raised in the Notice, and denies that the Covered Products require a Proposition 65
11 warning or otherwise cause harm to any person. The scope of this Consent Judgment covers all
12 steering wheel covers manufactured or sold by Plasticolor, regardless of the design or licensed
13 image they bear, expressly including the Harley-Davidson Classic Steering Wheel Cover (the
14 “Covered Products”).

15 **1.3** For the purposes of this Consent Judgment only, the Parties stipulate that this
16 Court has jurisdiction over the allegations contained in the Complaint and personal jurisdiction
17 over Plasticolor as to the act alleged in the Complaint, that venue is proper in the County of Los
18 Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
19 resolution of all claims which were or could have been asserted in this action based on the facts
20 alleged in the Notice of Intent to Sue or the Complaint.

21 **1.4** The Parties have entered into this Consent Judgment to settle, compromise
22 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
23 Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by
24 any of their respective officers, directors, shareholders, employees, agents, affiliates, licensees,
25 licensors, customers, distributors, or retailers of any fact, conclusion of law, issue of law,
26 violation of law, fault, wrongdoing or liability, including any admissions concerning any
27 alleged violation of Proposition 65, nor shall this Consent Judgment be offered or admitted as
28

1 The check shall be to "Yeroushalmi & Associates." CAG represents and warrants that CAG has
2 authorized the payment of attorney fees and costs. Yeroushalmi & Associates shall provide its
3 address and federal tax identification number to Plasticolor prior to such payment.

4 **4. MODIFICATION OF CONSENT JUDGMENT**

5 Any modifications to this Agreement shall be in writing by the Parties.

6 **5. RELEASE OF ALL CLAIMS**

7 **5.1 CAG Release of Plasticolor, its Licensors and Downstream Customers**

8 In consideration of the promises and agreements herein contained, CAG on behalf of
9 itself, its past and current agents, representatives, attorneys, successors, and/or assignees, and
10 "in the public interest" as that phrase is understood pursuant to Health and Safety Code section
11 25249.7, subd. (d), hereby waives all rights to institute or participate in, directly or indirectly,
12 any form of legal action and releases all claims including, without limitation, all actions, and
13 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,
14 fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
15 fees, and attorneys' fees) (collectively "Claims"), only as relating to the Covered Products, that
16 were brought or could have been brought by Plaintiff, for and on its own behalf and "in the
17 public interest," in the Complaint against Plasticolor, Harley-Davidson Motor Company Group,
18 LLC ("Harley-Davidson") or any of their parents, subsidiaries or affiliates, customers,
19 downstream distributors, wholesalers, retailers, licensors, licensees, officers, directors,
20 managers, employees, members, shareholders, agents, insurers and representatives, and the
21 successors and assigns of any of them, who may use, maintain, manufacture, distribute,
22 advertise, market or sell the Covered Products (collectively "Releasees").

23 This release is limited to, but is intended to be a full, final, and binding resolution of,
24 those Claims that arise under Proposition 65, as against Plasticolor, Harley-Davidson and the
25 other Releasees, as such Claims relate to the allegation that the Covered Products contain the
26 Listed Chemical and/or the Releasees' alleged failure to warn about exposures to the Listed
27 Chemical purportedly contained in the Covered Products.

28 Plasticolor's compliance with this Settlement Agreement shall constitute compliance

1 with Proposition 65 for Plasticolor, Harley-Davidson and the Releasees with respect to the
2 Covered Products.

3 **5.2 Unknown Claims**

4 In addition to the above, CAG, on behalf of itself and its agents, attorneys,
5 representatives, successors and assigns, in its individual capacity only and not in its
6 representative capacity, provides a general release herein which shall be effective as a full and
7 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
8 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of CAG of any
9 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
10 subject matter of this dispute. CAG has full knowledge of the contents of the California Civil
11 Code section 1542 ("Section 1542"). CAG acknowledges that the claims released in this
12 Agreement include unknown claims and waives Section 1542 as to any such unknown claims.
13 Section 1542 reads as follows:

14 **A general release does not extend to claims which the creditor does not**
15 **know or suspect to exist in his or her favor at the time of executing the**
16 **release, which if known by him or her must have materially affected his or**
17 **her settlement with the debtor.**

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

20 **6. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and
22 shall be null and void if for any reason it is not approved and entered by the Court within one
23 year after it has been fully executed by all parties, in which event any monies that have been
24 provided to CAG, or his counsel pursuant to this Agreement, shall be refunded within fifteen
25 (15) days after receiving written notice from Plasticolor that the one-year period has expired.

26 **7. SEVERABILITY**

27 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
28 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
provisions remaining shall not be adversely affected.

1 8. GOVERNING LAW

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed,
4 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
5 Products specifically, then Plasticolor shall provide written notice to CAG of any asserted
6 change in the law, and shall have no further obligations pursuant to this Consent Judgment with
7 respect to, and to the extent that, the Products are so affected. Nothing in this Consent
8 Judgment shall be interpreted to relieve Plasticolor from any obligation to comply with any
9 pertinent state or federal toxics control laws.

10 9. NOTICES

11 Unless specified herein, any notice required or permitted hereunder shall be effective
12 only if in writing and delivered in person or sent by telecopy, certified or registered mail return
13 receipt requested, or traceable overnight delivery service, to the following designees:

14 For Plasticolor:

15
16 Matt Bagne
17 President
18 Plasticolor, Inc.
19 801 S. Acacia Ave
20 Fullerton, CA 92831
21 Fax: 714.526-8137

22 With a copy to:

23
24 Melissa Jones
25 Greenberg Traurig LLP
26 1201 K Street, Suite 1100
27 Sacramento, CA 95814

28 For CAG:

Reuben Yeroushalmi
Yeroushalmi & Associates
3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010
Fax: 213.382.3430

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one
4 and the same document.

5 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 CAG agrees to comply with the reporting form requirements referenced in California
7 Health & Safety Code § 25249.7(f).

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

9 The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
10 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
11 obtaining such approval, the Parties and their respective counsel agree to mutually employ their
12 best efforts to support the entry of this agreement as a Consent Judgment and obtain approval
13 of the Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best
14 efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in
15 support of the requisite motion for judicial approval.

16 **13. AUTHORIZATION**

17 The undersigned are authorized to execute this Consent Judgment on behalf of their
18 respective parties and have read, understood, and agree to all of the terms and conditions
19 hereof.

20

21 Dated: 8/19/11

CONSUMER ADVOCACY GROUP, INC

22

23

24

By: Lyn H Marcus

25

Name: Lyn H Marcus

26

Title: President

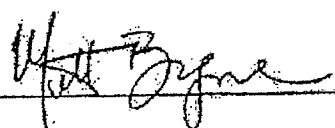
27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

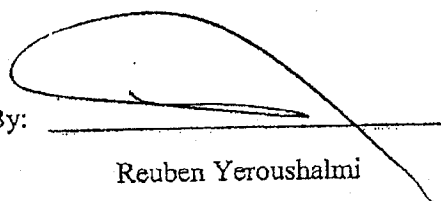
Dated: 7/5/11

PLASTICOLOR MOLDED PRODUCTS, INC

By: 
Matt Bagnie
President

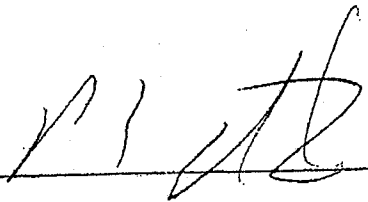
YEROUSHALMI & ASSOCIATES

Dated: 8/19/11

By: 
Reuben Yeroushalmi

GREENBERG TRAURIG LLP

Dated: 7/5/11

By: 
~~Melissa Jones~~
Robert Adel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REVIEWED AND APPROVED AS A JUDGMENT OF THE SUPERIOR COURT. IT IS SO ORDERED.

Dated: Nov. 29, 2011

Richard R. Funi
JUDGE OF THE SUPERIOR COURT

