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Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.

**CONFORMED COPY**  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

AUG 06 2012

John A. Clarke, Executive Officer/Clerk  
By J. Barkley Deputy  
TRACY BARKLEY

**RECEIVED**

JUL 26 2012

**ROOM 102**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

CONSUMER ADVOCACY GROUP, INC., in  
the interest of the Public,  
  
Plaintiff,  
  
v.  
  
P&G-Clairol, Inc., a Delaware corporation;  
and Does 1-50,  
  
Defendants.

CASE NO. BC461764

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

Health & Safety Code § 25249.5 et seq.

Dept.: 62  
Judge: Hon. Michael L. Stern

Trial: April 23, 2012  
Complaint: May 17, 2011

ORIGINAL

**1. INTRODUCTION**

1.1 On May 17, 2011, Plaintiff Consumer Advocacy Group, Inc. ("CAG") filed a complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v. P&G-Clairol, Inc.*, Case No. BC461764 (the "Action"), for civil penalties and injunctive relief pursuant to the provisions of California Health & Safety Code § 25249.5, et seq. ("Proposition 65") against P&G-Clairol, Inc. ("P&G-Clairol"). CAG and P&G-Clairol are collectively referred to hereinafter as "Parties."

1           1.2     P&G-Clairol is a corporation that employs 10 or more persons. P&G-Clairol  
2 allegedly has made available for distribution and sale in the State of California the following  
3 product: **Clairol® Perfect 10 "nice'n easy" ® Permanent Hair Color** (including but not limited  
4 to color "Light Ash Brown") ("Covered Product"). The Covered Product allegedly contains  
5 Diaminotoluene (mixed), a chemical known to the State of California to cause cancer.  
6 (Diaminotoluene (mixed) is hereinafter referred to as "Noticed Chemical.")

7           1.3     On or about November 30, 2010, CAG sent a Proposition 65 Notice of Intent to  
8 Sue for violations of California Health & Safety Code § 25249.6 *et seq.* related to the Covered  
9 Product ("Notice"). CAG's Notice and the Complaint in this Action allege that P&G-Clairol  
10 exposed people who handle the Covered Product to Diaminotoluene (mixed), without first  
11 providing clear and reasonable warnings, in violation of California Health & Safety Code §  
12 25249.6 *et seq.*

13           1.4     P&G-Clairol 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 P&G-Clairol as to the acts alleged in CAG's Complaint, that venue is proper in  
18 the 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

1 "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in  
2 this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an  
3 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of  
4 fault, wrongdoing, or liability by P&G-Clairol, its officers, directors, employees, or parent,  
5 subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative  
6 judicial proceeding or litigation in any court, agency, or forum.

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

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

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

16 **2. COMPLIANCE – INJUNCTIVE RELIEF**

17 2.1 P&G-Clairol agrees, promises, and represents that within thirty (30) days of the  
18 Effective Date it shall not engage in any California sale of any Covered Product containing  
19 Diaminotoluene (mixed) without providing the following warning language:

20  
21 "WARNING: This product contains a chemical known to the State of California to cause  
22 cancer."

23 This warning shall: (a) be displayed on the product's packaging, shelving, or display; (b)  
24 be set out in a text box on a separate line or in a separate paragraph; and (c) be displayed with such  
25 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
26 read and understood by an ordinary individual.

27 **3. SETTLEMENT PAYMENT**

28

1           3.1     Within ten (10) days of receipt of Notice of Entry of this Consent Judgment, P&G  
2     Clairol shall pay a total of ninety thousand dollars (\$90,000.00) by separate checks apportioned  
3     follows:

4           3.1.1   Attorneys' Fees and Costs: Seventy thousand dollars (\$70,000.00) of such  
5     payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable  
6     investigation fees and costs, attorneys' fees, and any other costs incurred as a result of  
7     investigating, bringing this matter to P&G-Clairol's attention, litigating, and negotiating  
8     settlement in the public interest. The check shall be made payable to Yeroushalmi &  
9     Associates and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100  
10    Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. A separate Form 1099  
11    shall be issued to Yeroushalmi & Associates for this amount.

12           3.1.2   Civil Penalty: P&G-Clairol shall issue two separate checks for a total  
13    amount of twenty thousand dollars (\$20,000.00) as penalties pursuant to Health & Safety  
14    Code § 25249.12: (a) one check made payable to the State of California's Office of  
15    Environmental Health Hazard Assessment (OEHHA) in the amount of ~~\$15,000.00~~ <sup>20,000.00</sup> *RM*  
16    representing 75% of the total penalty; and (b) ~~one check to Consumer Advocacy Group,~~  
17    ~~Inc. in the amount of \$5,000, representing 25% of the total penalty.~~ Two separate 1099s  
18    shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O.  
19    Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of ~~\$15,000~~ <sup>20,000</sup>. The  
20    ~~second 1099 shall be issued in the amount of \$5,000.00 to CAG and delivered to:~~  
21    Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills,  
22    California 90212. *MA*

23           4.     **MODIFICATION OF CONSENT JUDGMENT**

24           4.1     This written Consent Judgment may only be modified by written agreement of  
25    CAG and P&G-Clairol upon stipulation and Order of the Court, or after noticed motion, and upon  
26    entry of a Consent Judgment by the Court thereon, or upon motion of CAG or P&G-Clairol as  
27    provided by law and upon entry of a modified Consent Judgment by the Court.

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**5. ENFORCEMENT OF CONSENT JUDGMENT**

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

**6. APPLICATION OF CONSENT JUDGMENT**

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

**7. CLAIMS COVERED AND RELEASED**

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

7.2 CAG, on behalf of itself only, hereby releases and discharges the Released Parties from any and all known and unknown past, present, and future rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs, and expenses related to or arising out of the facts and claims asserted, or that could have been asserted, under state or federal law or the facts alleged in CAG's Proposition 65 Notice or the

1 Complaint relating to any and all claims concerning exposure of any person to the Noticed  
2 Chemical in the Covered Product (and only as to the Covered Product distributed or sold by P&G-  
3 Clairol). Compliance with the terms of this Consent Judgment constitutes compliance with  
4 Proposition 65 with respect to exposures to the Noticed Chemical from the Covered Product as set  
5 forth in the Notice. This release does not limit or affect the obligations of any party created under  
6 this Consent Judgment.

7       7.3    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 exposure of individuals to the Noticed Chemical in the Covered Product will develop or be  
10 discovered, and this Consent Judgment is expressly intended to cover and include all such injuries,  
11 damages, liability, and claims, including all rights of action therefor. CAG has full knowledge of  
12 the contents of Section 1542 of the Civil Code. CAG, on behalf of itself only, acknowledges that  
13 the claims released in Section 7 above may include unknown claims and waives Section 1542 as  
14 to any such unknown claims. Section 1542 reads as 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**  
18           **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**  
19           **OR HER SETTLEMENT WITH THE DEBTOR"**

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

## 22       8.     **SEVERABILITY**

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

## 25       9.     **NOTICE AND CURE**

26       9.1    No action to enforce this Consent Judgment may be commenced, and no notice of  
27 violation related to the Covered Product may be served or filed against P&G-Clairol by CAG,  
28 unless the party seeking enforcement or alleging violation notifies the other party of the specific

1 acts alleged to breach this Consent Judgment at least 90 days before serving or filing any motion,  
2 action, or Notice of Violation. Any notice to P&G-Clairol must contain (a) the name of the  
3 product, (b) specific dates when the product was sold in California, (c) the store or other place at  
4 which the product was available for sale to consumers, and (d) any other evidence or other suppo  
5 for the allegations in the notice.

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

9 **10. GOVERNING LAW**

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

12 **11. PROVISION OF NOTICE**

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

15 For Consumer Advocacy Group, Inc.

For P&G-Clairol, Inc.

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

Carolyn Collins, Esq.  
NIXON PEABODY LLP  
One Embarcadero Center, 18th Floor  
San Francisco, CA 94111-3600  
T: (415) 984-5069  
F: (415) 984-8300

20  
21 **12. COURT APPROVAL**

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

24 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title  
25 11 California Code of Regulations section 3003.

26 **13. EXECUTION AND COUNTERPARTS**  
27  
28

1 13.1 This Consent Judgment may be executed in counterparts and by facsimile or  
2 electronic transmission, which taken together shall be deemed to constitute one document.  
3 Facsimile or pdf signatures shall be construed as valid as the original.

4 14. AUTHORIZATION

5 14.1 Each signer of this Consent Judgment certifies that he or she is fully authorized by  
6 the party he or she represents to stipulate to the terms and conditions of this Consent Judgment and  
7 to enter into and execute the Consent Judgment on behalf of the party represented and legally bind  
8 that party. The undersigned have read, understand and agree to all of the terms and conditions of  
9 this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and  
10 costs.

11 Dated: July 20, 2012

CONSUMER ADVOCACY GROUP, INC.

12  
13 *Lyn H. Marcus*

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

16  
17 Dated: July 29, 2012

P&G-CLAIROL, INC.

18  
19 *Joseph P. Geiger*

20 Name and Title: WALTER GEIGER  
21 VP NA HAIR CARE

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**ORDER AND JUDGMENT**

Based upon the Consent Judgment between Consumer Advocacy Group, Inc. and P&G-Clairo Inc., the Consent Judgment is approved and judgment is hereby entered according to the terms herein.

Dated: August 3, 2012

  
\_\_\_\_\_

Judge, Superior Court of the State of California