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10 Consumer Advocacy Group, Inc.

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

OCT 28 2013

Sherri R. Carter, Executive Officer/Clerk
By Rosemarie D. Aquino, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13 CONSUMER ADVOCACY GROUP, INC.,
14 in the public interest,

15 Plaintiff,

16 v.

17 SHOE CITY, INC., a California Corporation,
18 SHOE CITY G.P., INC., a California
19 Corporation, SHOE CITY - 1997, INC., a
20 California Corporation, SHOE CITY #6,
21 INCORPORATED, a California Corporation,
22 SHOE CITY #8, a California Corporation,
23 SHOE CITY - 2000, INC., a California
24 Corporation, SHOE CITY - WHITTIER,
25 INC., and DOES 1-20;

26 Defendants.

CASE NO. BC480513

CONSENT JUDGMENT [~~PROPOSED~~]

Dept: 51

Judge: Abraham Khan

Complaint filed: March 9, 2012

27 1. INTRODUCTION

28 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and
defendants Shoe City, Inc., Shoe City G.P., Inc., Shoe City - 1997, Inc., Shoe City #6,

CONSENT JUDGMENT [~~PROPOSED~~]

COPY

1 Incorporated, Shoe City #8, Shoe City – 2000, Inc. and Shoe City – Whittier, Inc. (“hereinafter
2 Defendant”), with each a Party and collectively referred to as “Parties.”

3 1.2 Defendants have more than 10 employees and are persons in the course of doing
4 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
5 California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”), and manufacture,
6 distribute, and sell Children’s Boots, Sandals and other footwear.

7 **1.3 Notices of Violation.**

8 1.3.1 On or about May 26, 2011, CAG served Defendants and various public
9 enforcement agencies with a document entitled “60-Day Notice of Violation” (the “May
10 26, 2011 Notice”) that provided the recipients with notice of alleged violations of Health
11 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
12 di(2-ethylhexyl)phthalate (DEHP) contained in Children’s Boots, Sandals and other
13 footwear.

14 1.3.2 On or about October 19, 2012, CAG served Defendants and various public
15 enforcement agencies with a document entitled “60-Day Notice of Violation” (the
16 “October 19, 2012 Notice”) that provided the recipients with notice of alleged violations
17 of Health & Safety Code § 25249.6 for failing to warn individuals in California of
18 exposures to di(2-ethylhexyl)phthalate (DEHP) contained in Children’s Boots, Sandals
19 and other footwear.

20 1.3.3 No public enforcer has commenced or diligently prosecuted the
21 allegations set forth in the May 26, 2011 and October 19, 2012 Notices.

22 **1.4 Complaint.**

23 On March 9, 2012, CAG filed a Complaint for civil penalties and injunctive relief
24 (“Complaint”) in Los Angeles Superior Court, Case No. BC480513. The Complaint alleges,
25 among other things, that Defendant violated Proposition 65 by failing to give clear and
26 reasonable warnings of exposure to DEHP from the Covered Products.

27 **1.5 Consent to Jurisdiction**

1 For purposes of this Consent Judgment, the parties stipulate that this Court has
2 jurisdiction over the allegations of violations contained in the Complaint and personal
3 jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the
4 City and County of Los Angeles and that this Court has jurisdiction to enter this Consent
5 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of
6 all claims which were or could have been raised by any person or entity based in whole or in
7 part, directly or indirectly, on the facts alleged therein or arising therefrom or related to.

8 **1.6 No Admission**

9 This Consent Judgment resolves claims that are denied and disputed. The parties enter
10 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
11 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
12 constitute an admission with respect to any material allegation of the Complaint, each and every
13 allegation of which Defendants denies, nor may this Consent Judgment or compliance with it be
14 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
15 Defendants.

16 **2. DEFINITIONS**

17 2.1 "Covered Products" means Children's Boots, Sandals and other footwear
18 containing DEHP sold by Defendants.

19 2.2 "Effective Date" means the date that this Consent Judgment is entered by the
20 Court.

21 **3. INJUNCTIVE RELIEF/REFORMULATION**

22 3.1 Within 30 days of the Effective Date Defendants shall not sell or offer for sale in
23 California Covered Products unless they are reformulated to contain no more than 0.1% DEHP
24 by weight.
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1 **4. SETTLEMENT PAYMENT**

2 Within fourteen (14) days of the Effective Date, or receipt of W-9 forms from CAG,
3 whichever is later, defendant shall pay a total of \$90,000 in full and complete settlement of all
4 monetary claims by CAG related to the notice, as follows.

5 **4.1 Reimbursement of Attorneys' Fees and Costs:** Within ten business days of the
6 Effective Date, Defendants shall pay \$78,000 to "Yeroushalmi & Associates" as reimbursement
7 for the investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation
8 costs and expenses for all work performed through the approval of this Consent Judgment.

9 **4.2 Civil Penalties.** Defendants shall issue two separate checks for a total amount of
10 \$8,000 as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to
11 the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the
12 amount of \$6,000, representing 75% of the total penalty; and (b) one check to Consumer
13 Advocacy Group, Inc. in the amount of \$2,000, representing 25% of the total penalty. Two
14 separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA,
15 P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$6,000. The
16 second 1099 shall be issued in the amount of \$2,000 to CAG and delivered to: Yeroushalmi &
17 Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

18 **4.3 Payment In Lieu of Civil Penalties:** Defendants shall pay \$4,000 in lieu of civil
19 penalties to "Consumer Advocacy Group, Inc." CAG will use this payment for investigation of
20 the public's exposure to Proposition 65 listed chemicals through various means, laboratory fees
21 for testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through
22 various mediums, including but not limited to consumer product, occupational, and
23 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting
24 and retained experts who assist with the extensive scientific analysis necessary for those files in
25 litigation, in order to reduce the public's exposure to Proposition 65 listed chemicals by notifying
26 those persons and/or entities believed to be responsible for such exposures and attempting to
27 persuade those persons and/or entities to reformulate their products or the source of exposure to
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1 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing
2 the same public harm as allegedly in the instant Action. Further, should the court require it,
3 CAG will submit under seal, an accounting of these funds as described above as to how the funds
4 were used. The check shall be made payable to "Consumer Advocacy Group, Inc." and delivered
5 to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E,
6 Beverly Hills, California 90212.

7 4.4 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,
8 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

9 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

10 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
11 behalf of itself and in the public interest and Defendants and its officers, directors, insurers,
12 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
13 companies and their successors and assigns ("Defendant Releasees"), including but not limited to
14 each of its suppliers, customers, distributors, wholesalers, retailers, or any other person in the
15 course of doing business, and the successors and assigns of any of them, who may use, maintain,
16 distribute or sell Covered Products ("Downstream Defendant Releasees"), for all claims for
17 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from
18 Covered Products as set forth in the Notice. Defendants and Defendant Releasees' compliance
19 with this Consent Judgment shall constitute compliance with Proposition 65 with respect to
20 DEHP from Covered Products as set forth in the Notice.

21 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
22 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
23 indirectly, any form of legal action and releases all claims, including, without limitation, all
24 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
25 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
26 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
27 fixed or contingent (collectively "Claims"), against Defendants, Defendant Releasees, and
28

1 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
2 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
3 Products manufactured, distributed, or sold by Defendants and Defendant Releasees. In
4 furtherance of the foregoing, as to alleged exposures to DEHP from Covered Products, CAG
5 hereby waives any and all rights and benefits which it now has, or in the future may have,
6 conferred upon it with respect to the Claims arising from any violation of Proposition 65 or any
7 other statutory or common law regarding the failure to warn about exposure to DEHP from
8 Covered Products by virtue of the provisions of section 1542 of the California Civil Code, which
9 provides as follows:

10 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
11 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT**
12 **THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,**
13 **MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE**
14 **DEBTOR.**

15 CAG understands and acknowledges that the significance and consequence of this waiver of
16 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
17 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from
18 any violation of Proposition 65 or any other statutory or common law regarding the failure to
19 warn about exposure to DEHP from Covered Products, including but not limited to any exposure
20 to, or failure to warn with respect to exposure to DEHP from the Covered Products, CAG will
21 not be able to make any claim for those damages against Defendants or the Defendant Releasees
22 or Downstream Defendant Releasees. Furthermore, CAG acknowledges that it intends these
23 consequences for any such Claims arising from any violation of Proposition 65 or any other
24 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
25 Products as may exist as of the date of this release but which CAG does not know exist, and
26 which, if known, would materially affect their decision to enter into this Consent Judgment,
27 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
28 negligence, or any other cause.

1 **6. ENFORCEMENT OF JUDGMENT**

2 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
3 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
4 California, City and County of Los Angeles, giving the notice required by law, enforce the terms
5 and conditions contained herein. A Party may enforce any of the terms and conditions of this
6 Consent Judgment only after that Party first provides 30 days' notice to the Party allegedly
7 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
8 such Party's failure to comply in an open and good faith manner.

9 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
10 proceeding to enforce Section 0 of this Consent Judgment, CAG shall provide a Notice of
11 Violation ("NOV") to Defendants. The NOV shall include for each of the Covered Products: the
12 date(s) the alleged violation(s) was observed and the location at which the Covered Products
13 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
14 Covered Products, including an identification of the component(s) of the Covered Products that
15 were tested.

16 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
17 alleged violation if, within 30 days of receiving such NOV, Defendants serves a Notice of
18 Election ("NOE") that meets one of the following conditions:

19 (a) The Covered Products were shipped by Defendants for sale in
20 California before the Effective Date, or

21 (b) Since receiving the NOV Defendants has taken corrective action
22 by either (i) requesting that its customers in California remove the Covered Products
23 identified in the NOV from sale in California and destroy or return the Covered Products
24 to Defendants, or (ii) providing a clear and reasonable warning for the Covered Products
25 identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

26 6.2.2 **Contested NOV.** Defendants may serve an NOE informing CAG of its
27 election to contest the NOV within 30 days of receiving the NOV.
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1 (a) In its election, Defendants may request that the sample(s) Covered
2 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
3 laboratory.

4 (b) If the confirmatory testing establishes that the Covered Products do
5 not contain DEHP in excess of the level allowed in Section 0 CAG shall take no further
6 action regarding the alleged violation. If the testing does not establish compliance with
7 Section 0, Defendants may withdraw its NOE to contest the violation and may serve a
8 new NOE pursuant to Section 0.

9 (c) If Defendants does not withdraw an NOE to contest the NOV, the
10 Parties shall meet and confer for a period of no less than 30 days before CAG may seek
11 an order enforcing the terms of this Consent Judgment.

12 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
13 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
14 violation of Proposition 65 or this Consent Judgment, including attorney fees.

15 7. ENTRY OF CONSENT JUDGMENT

16 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
17 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
18 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint.

19 7.2 If this Consent Judgment is not approved by the Court in its entirety, (a) this
20 Consent Judgment and any and all prior agreements between the parties merged herein shall
21 terminate and become null and void, and the actions shall revert to the status that existed prior to
22 the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
23 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
24 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
25 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
26 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.
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1 **8. MODIFICATION OF JUDGMENT**

2 8.1 This Consent Judgment may be modified only upon written agreement of the
3 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
4 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

5 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
6 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

7 **9. RETENTION OF JURISDICTION**

8 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
9 terms of this Consent Judgment.

10 **10. DUTIES LIMITED TO CALIFORNIA**

11 This Consent Judgment shall have no effect on Covered Products sold outside the State of
12 California.

13 **11. SERVICE ON THE ATTORNEY GENERAL**

14 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
15 California Attorney General so that the Attorney General may review this Consent Judgment
16 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
17 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
18 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
19 the parties may then submit it to the Court for approval.

20 **12. ATTORNEY FEES**

21 12.1 Except as specifically provided in Section 0, each Party shall bear its own costs
22 and attorney fees in connection with this action.

23 **13. ENTIRE AGREEMENT**

24 13.1 This Consent Judgment contains the sole and entire agreement and understanding
25 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
26 negotiations, commitments and understandings related hereto. No representations, oral or
27 otherwise, express or implied, other than those contained herein have been made by any party
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1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
2 deemed to exist or to bind any of the parties.

3 **14. GOVERNING LAW**

4 14.1 The validity, construction and performance of this Consent Judgment shall be
5 governed by the laws of the State of California, without reference to any conflicts of law
6 provisions of California law.

7 14.2 The Parties, including their counsel, have participated in the preparation of this
8 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
9 Consent Judgment was subject to revision and modification by the Parties and has been accepted
10 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
11 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
12 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
13 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
14 resolved against the drafting Party should not be employed in the interpretation of this Consent
15 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

16 **15. EXECUTION AND COUNTERPARTS**

17 15.1 This Consent Judgment may be executed in counterparts and by means of
18 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
19 one document.

20 **16. NOTICES**

21 16.1 Any notices under this Consent Judgment shall be by personal delivery or First
22 Class Mail.

23 If to CAG:

24
25 Reuben Yeroushalmi, Esq.
26 9100 Wilshire Boulevard, Suite 610E
27 Beverly Hills, CA 90212
(310) 623-1926

28 If to Shoe City, Inc.:

1 Shoe City, Inc.
2 12548 Washington Blvd., Ste. 100
3 Whittier, CA 90602
4
5
6

7 With a copy to:

8 Stephen Thomas
9 Tim Lin
10 Thomas Business Law Group, P.C.
11 17800 Castleton Street, Suite 657
12 City of Industry, CA 91748

13 **17. AUTHORITY TO STIPULATE**

14 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
15 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
16 of the party represented and legally to bind that party.

17
18 **AGREED TO:**

19 Date: 10-1-13, 2013

AGREED TO:

Date: _____, 2013

20
21
22 By: 
23 **PLAINTIFF, CONSUMER ADVOCACY
24 GROUP, INC.**

By: _____
25 **Defendant, SHOE CITY, INC.**

26 **IT IS SO ORDERED.**
27
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Shoe City, Inc.
12548 Washington Blvd., Ste. 100
Whittier, CA 90602

sl

With a copy to:

Stephen Thomas
Tim Lin
Thomas Business Law Group, P.C.
17800 Castleton Street, Suite 657
City of Industry, CA 91748

17. AUTHORITY TO STIPULATE

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

AGREED TO:

Date: _____, 2013

AGREED TO:

Date: SEP 30, 2013

By: _____
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: [Signature]
Defendant, SHOE CITY, INC.

IT IS SO ORDERED.

1 Date:

10/28/13

ABRAHAM KIAN

JUDGE OF THE SUPERIOR COURT

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CONSENT JUDGMENT [PROPOSED]

Case No. # BC 480513