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Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
Ben Yeroushalmi (SBN 232540)
YEROUSHALMI & ASSOCIATES
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, California 90212
Telephone: (310) 623-1926
Facsimile: (310) 623-1930

Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.

**ENDORSED
FILED**
San Francisco County Superior Court

DEC 28 2012

CLERK OF THE COURT
By: ERICKA LARNAUTI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CONSUMER ADVOCACY GROUP,

Plaintiff,

v

BRADSHAW INTERNATIONAL, INC

Defendants

Case No. CGC-12-519961

CONSENT JUDGMENT [~~PROPOSED~~]

Health & Safety Code § 25249.5 *et seq.*

Dept.: 302

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between plaintiff, Consumer Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself and in the interest of the public and defendant Bradshaw International, Inc. (referred to as "Bradshaw") with each a Party to the action and collectively referred to as "Parties."

1.2 Bradshaw employs ten or more persons, is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* ("Proposition 65"), and manufactures, distributes, and sells Coffee Filter Separators, Corn Cutters and Strippers, and Tongs ("Products") The Products

1 allegedly contain lead and DEHP, chemicals known to the State of California to cause cancer
2 and/or birth defects or other reproductive harm

3 **1.3 Notices of Violation**

4 On June 7, 2011 CAG served Bradshaw, various retailers and various public enforcement
5 agencies with a document dated May 27, 2011 and entitled "60-Day Notice of Violation" ("June
6 7, 2011 Notice") that provided the recipients with notice of alleged violations of Health & Safety
7 Code § 25249.6 for failing to warn individuals in California of exposures to lead and lead
8 compounds contained in Coffee Filter Separators sold by Bradshaw and retailers. No public
9 enforcer has commenced or diligently prosecuted the allegations set forth in the service of this
10 Notice

11 On September 6, 2011, CAG served Bradshaw, various retailers and various public
12 enforcement agencies with a document dated August 30, 2011 and entitled "60-Day Notice of
13 Violation" ("September 6, 2011 Notice") that provided the recipients with notice of alleged
14 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
15 exposures to DEHP contained in Pro Freshionals® Corn Cutter #05826 sold by Bradshaw and
16 retailers. No public enforcer has commenced or diligently prosecuted the allegations set forth in
17 this Notice.

18 On November 9, 2011, CAG served Bradshaw various retailers and various public
19 enforcement agencies with a document entitled "60-Day Notice of Violation" ("November 9 2011
20 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code §
21 25249.6 for failing to warn individuals in California of exposures to DEHP contained in Good
22 Cook® Tongs #25871 sold by Bradshaw and retailers. No public enforcer has commenced or
23 diligently prosecuted the allegations set forth in this Notice.

24 On March 15, 2012, CAG served Bradshaw, various retailers and various public
25 enforcement agencies with a document entitled "60-Day Notice of Violation" ("March 15, 2012
26 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code §
27 25249.6 for failing to warn individuals in California of exposures to DEHP contained in Tongs
28

1 sold by Bradshaw and retailers. No public enforcer has commenced or diligently prosecuted the
2 allegations set forth in this Notice

3 On March 20, 2012, CAG served Bradshaw, various retailers and various public
4 enforcement agencies with a document entitled "60-Day Notice of Violation" ("March 20, 2012
5 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code §
6 25249.6 for failing to warn individuals in California of exposures to DEHP contained in Tongs
7 sold by Bradshaw and retailers. No public enforcer has commenced or diligently prosecuted the
8 allegations set forth in this Notice

9 On March 15, 2012, CAG served Bradshaw, various retailers and various public
10 enforcement agencies with a document entitled "60-Day Notice of Violation" ("March 15, 2012
11 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code §
12 25249.6 for failing to warn individuals in California of exposures to DEHP contained in Tongs
13 sold by Bradshaw and retailers. No public enforcer has commenced or diligently prosecuted the
14 allegations set forth in this Notice

15 On March 28, 2012, CAG served Bradshaw, various retailers and various public
16 enforcement agencies with a document entitled "60-Day Notice of Violation" ("March 28, 2012
17 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code §
18 25249.6 for failing to warn individuals in California of exposures to DEHP contained in Tongs
19 sold by Bradshaw and retailers. No public enforcer has commenced or diligently prosecuted the
20 allegations set forth in this Notice.

21 **1.4 Complaint.**

22 On April 12, 2012, CAG filed a Complaint for civil penalties and injunctive relief
23 ("Complaint") in San Francisco, Superior Court, Case No. CGC-12-519961, against Bradshaw
24 and other entities. The Complaint alleges, among other things, that Bradshaw violated
25 Proposition 65 by failing to give clear and reasonable warnings of exposure to lead and DEHP
26 from Coffee Filter Separators, Pro Freshionals® Corn Cutter #05826, and Good Cook® Tongs
27 #25871.

28 **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 jurisdiction
3 over Bradshaw as to the acts alleged in the Complaint, that venue is proper in the County of San
4 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
5 and resolution of the allegations contained in the Complaint and of all claims which were or could
6 have been raised by any person or entity based in whole or in part, directly or indirectly, on the
7 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 Bradshaw 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 Bradshaw.

15 **2. DEFINITIONS**

16 2.1 "Covered Products" means Coffee Filter Separators, Pro Freshionals® Corn
17 Cutter #05826, Corn Cutters, Good Cook® Tongs #25871, and Tongs sold by Bradshaw and the
18 re-sale of those products (that initially were sold by Bradshaw) by Downstream Defendant
19 Releasees. (Defined terms are defined in Section 5.1)

20 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
21 Court

22 2.3 "Lead" means lead and lead compounds. DEHP means Di (2-ethylhexyl)
23 Phthalate

24 2.4 "Notices" means the June 7, 2011, September 6, 2011, November 9, 2011, March
25 15, 2012, March 20, 2012, and March 28, 2012 Notices.

26 **3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE**
27 **WARNINGS.**

28 3.1 Bradshaw shall not sell the Covered Products in California unless it (they) is (are)

1 reformulated to contain less than 100 parts per million of lead or less than 0.01% DEHP

2 **4. SETTLEMENT PAYMENT**

3 4.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from CAG,
4 whichever is later, Bradshaw shall pay a total of \$65,000 in full and complete settlement of all
5 monetary claims by CAG related to the Notices, as follows

6 4.2 **Payment In Lieu of Civil Penalties:** Bradshaw shall pay \$1,000 in lieu of civil
7 penalties to "Consumer Advocacy Group, Inc." CAG will use the payment for such projects and
8 purposes related to environmental protection, worker health and safety, or reduction of human
9 exposure to hazardous substances (including administrative and litigation costs arising from such
10 projects), as CAG may choose.

11 4.3 **Reimbursement of Attorneys Fees and Costs:** Bradshaw shall pay \$62,000 to
12 "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs,
13 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
14 the approval of this Consent Judgment

15 4.4 **Civil Penalty:** Defendant shall issue two separate checks for a total amount of two
16 thousand dollars (\$2,000) as penalties pursuant to Health & Safety Code § 25249.12: (a) one
17 check made payable to the State of California's Office of Environmental Health Hazard
18 Assessment (OEHHA) in the amount of \$1,500, representing 75% of the total penalty; and (b)
19 one check to Consumer Advocacy Group, Inc. in the amount of \$500, representing 25% of the
20 total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be
21 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
22 \$1,500. The second 1099 shall be issued in the amount of \$500 to CAG and delivered to:
23 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
24 90212

25 4.5 All of the payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
26 Associates, 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212 Yeroushalmi &
27 Associates shall deliver the appropriate payments to: CAG, Yeroushalmi & Associates, and
28 OEHA after Court approval of this Consent Judgment.

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

2 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
3 behalf of itself and in the public interest and Bradshaw and its officers, directors, insurers,
4 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
5 companies and their successors and assigns ("Defendant Releasees") and each of their suppliers,
6 customers, distributors, wholesalers, retailers, including or any other person in the course of doing
7 business, and the successors and assigns of any of them who may use, maintain, distribute or sell
8 Covered Products, and all persons and entities who are downstream in the stream of commerce
9 from Bradshaw who sell or distribute the Covered Products, including but not limited to Ross
10 Stores, Inc., Ross Dress For Less, Inc., 99 Cents Only Stores, Sears Holding Corporation, Sears
11 Brand Management Corporation, Sears Brands, LLC, Kmart Corporation, The Kroger Co.,
12 Ralph's Grocery Company, Wise Buys Liquidators, Inc., Wal-Mart Stores, Inc. and all of their
13 affiliates and subsidiaries each of whom are third party beneficiaries of this Consent Judgment
14 ("Downstream Defendant Releasees"), for all claims for violations of Proposition 65 up through
15 the Effective Date based on exposure to Lead and DEHP from Covered Products, and as set forth
16 in the Notices. Bradshaw and Defendant Releasees' compliance with this Consent Judgment
17 shall constitute compliance with Proposition 65 with respect to Lead and DEHP from the Covered
18 Products as set forth in the Notices.

19 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
20 successors, and/or assignees, hereby waive all rights to institute or participate in, directly or
21 indirectly, any form of legal action and releases all claims, including, without limitation, all
22 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
23 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
24 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
25 contingent (collectively "Claims"), against Bradshaw, Defendant Releasees, and Downstream
26 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
27 common law regarding the failure to warn about exposure to Lead and DEHP in the Covered
28 Products. In furtherance of the foregoing, as to alleged exposures to Covered Products, CAG

1 hereby waives any and all rights and benefits which it now has, or in the future may have,
2 conferred upon it with respect to the Claims by virtue of the provisions of section 1542 of the
3 California Civil Code, which provides as follows:

4
5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
6 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
7 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
8 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
9 DEBTOR.

8 CAG understands and acknowledges that the significance and consequence of this waiver of
9 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
10 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
11 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or
12 lead compounds and DEHP from Covered Products, CAG will not be able to make any claim for
13 those damages against Bradshaw, the Defendant Releasees, or Downstream Defendant Releasees.
14 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may
15 exist as of the date of this release but which CAG does not know exist, and which, if known,
16 would materially affect their decision to enter into this Consent Judgment, regardless of whether
17 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

18 **6. ENFORCEMENT OF JUDGMENT**

19 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
20 hereto. Subject to Section 6.2, the parties may, by noticed motion or order to show cause before
21 the Superior Court of California, San Francisco County, giving the notice required by law,
22 enforce the terms and conditions contained herein. A Party may enforce any of the terms and
23 conditions of this Consent Judgment only after that Party first provides 30 days notice to the Party
24 allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts
25 to resolve such Party's failure to comply in an open and good faith manner.

26 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
27 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
28 Violation ("NOV") to Bradshaw. The NOV shall include for each of the Covered Products: the

1 date(s) the alleged violation(s) was observed and the location at which the Covered Products were
2 offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
3 Covered Products, including an identification of the component(s) of the Covered Products that
4 were tested.

5 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
6 alleged violation if, within 30 days of receiving such NOV, Bradshaw serves a Notice of
7 Election (“NOE”) that meets one of the following conditions:

8 (a) The Covered Products were shipped by Bradshaw for sale in
9 California before the Effective Date, or

10 (b) Since receiving the NOV Bradshaw has taken corrective action by
11 either (i) requesting that its customers in California remove the Covered Products
12 identified in the NOV from sale in California and destroy or return the Covered Products
13 to Bradshaw, or (ii) providing a clear and reasonable warning for the Covered Products
14 identified in the NOV pursuant to 27 Cal. Code Regs § 25603

15 **6.2.2 Contested NOV.** Bradshaw may serve an NOE informing CAG of its
16 election to contest the NOV within 30 days of receiving the NOV.

17 (a) In its election, Bradshaw may request that the sample(s) Covered
18 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
19 laboratory.

20 (b) If the confirmatory testing establishes that the Covered Products do
21 not contain lead in excess of the level allowed in Section 3.1, CAG shall take no further
22 action regarding the alleged violation. If the testing does not establish compliance with
23 Section 3.1, Bradshaw may withdraw its NOE to contest the violation and may serve a
24 new NOE pursuant to Section 6.2.1.

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

28

1 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
2 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
3 violation of Proposition 65 or this Consent Judgment

4 **7. ENTRY OF CONSENT JUDGMENT**

5 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
6 California Health & Safety Code § 25249 7(f). Upon entry of the Consent Judgment, CAG and
7 Bradshaw waive their respective rights to a hearing or trial on the allegations of the Complaint

8 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
9 and any and all prior agreements between the parties merged herein shall terminate and become
10 null and void, and the actions shall revert to the status that existed prior to the execution date of
11 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
12 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
13 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
14 Action, or in any other proceeding; (c) the Parties agree to meet and confer to determine whether
15 to modify the terms of the Consent Judgment and to resubmit it for approval, and (d) if within 45
16 days of any Court determination not to approve the Consent Judgment the Parties cannot
17 negotiate a mutually acceptable modification of the Consent Judgment and resubmit the same for
18 approval, Yeroushalmi & Associates and CAG shall return the \$65,000 in payments described
19 above in Section 4 to Bradshaw

20 **8. MODIFICATION OF JUDGMENT**

21 8.1 This Consent Judgment may be modified only upon written agreement of the
22 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
23 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

24 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
25 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment

26 **9. RETENTION OF JURISDICTION**

27 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
28 terms of this Consent Judgment

1 **10. DUTIES LIMITED TO CALIFORNIA**

2 10.1 This Consent Judgment shall have no effect on Covered Products sold by
3 Bradshaw outside the State of California.

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

5 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
6 California Attorney General so that the Attorney General may review this Consent Judgment
7 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
8 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
9 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
10 the parties may then submit it to the Court for approval.

11 **12. ATTORNEY FEES**

12 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
13 and attorney fees in connection with this action.

14 **13. ENTIRE AGREEMENT**

15 13.1 This Consent Judgment contains the sole and entire agreement and understanding
16 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
17 negotiations, commitments and understandings related hereto. No representations, oral or
18 otherwise, express or implied, other than those contained herein have been made by any party
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
20 deemed to exist or to bind any of the Parties.

21 **14. GOVERNING LAW**

22 14.1 The validity, construction and performance of this Consent Judgment shall be
23 governed by the laws of the State of California, without reference to any conflicts of law
24 provisions of California law.

25 14.2 The Parties, including their counsel, have participated in the preparation of this
26 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
27 Consent Judgment was subject to revision and modification by the Parties and has been accepted
28 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or

1 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
2 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
3 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
4 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
5 this regard, the Parties hereby waive California Civil Code § 1654.

6 **15. EXECUTION AND COUNTERPARTS**

7 15.1 This Consent Judgment may be executed in counterparts and by means of
8 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
9 one document.

10 **16. NOTICES**

11 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
12 Class Mail.

13 If to CAG:

14 Reuben Yeroushalmi
15 9100 Wilshire Boulevard, Suite 610E
16 Beverly Hills, CA 90212
(310) 623-1926

17 If to Bradshaw:

18 Bradshaw International, Inc
19 9409 Buffalo Avenue
20 Rancho Cucamonga, CA 91730

21 With a copy to:

22 Matthew Covington, Esq.
23 DLA Piper
555 Mission Street, Suite 2400
San Francisco, CA 94105

24 **17. AUTHORITY TO STIPULATE**

25 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
26 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
27 the party represented and legally to bind that party.
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AGREED TO:

Date: November __, 2012

CONSUMER ADVOCACY GROUP,
INC.

By _____

Name: _____

Title: _____

AGREED TO:

Date: November __, 2012

BRADSHAW INTERNATIONAL, INC.

By *Jerry Vigliotti*

Name: JERRY VIGLIOTTI

Title: CFO

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date: November __, 2012

CONSUMER ADVOCACY GROUP,
INC.

By 

Name: MICHEL SOSSOUN

Title: EXECUTIVE DIRECTOR

AGREED TO:

Date: November __, 2012

BRADSHAW INTERNATIONAL, INC.

By _____

Name: _____

Title: _____

IT IS SO ORDERED.

Date: DEC 28 2012

MARLA MILLER

JUDGE OF THE SUPERIOR COURT