

FILED

San Francisco County Superior Court

FEB 07 2013

CLERK OF THE COURT

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10 CONSUMER ADVOCACY GROUP, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

11 CONSUMER ADVOCACY GROUP.

12 Plaintiff,

13 v.

14 VOLTEC INDUSTRIES, LLC, TASCO
15 INTERNATIONAL, INC., and TASCO
16 INDUSTRIES, INC.

17 Defendants.

Case No. CGC-11-516771

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CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 et seq.

Dept.: 610

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, Tasco Industries, Inc. ("referred to as "Tasco") with each a Party to the action and collectively referred to as "Parties."

1.2 Tasco 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 manufacture, distribute, and sell Booster Cables ("Cables"). Lead is known to the State of California to cause cancer and/or birth defects or other reproductive harm.

1 1.3 **Notice of Violation.**

2 On June 15, 2011, CAG served Tasco, and various public enforcement agencies with a
3 document entitled "60-Day Notice of Violation" ("June 15, 2011 Notice") that provided the
4 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
5 individuals in California of exposures to lead contained in Booster Cables, 10-00217 sold by
6 Tasco. No public enforcer has commenced or diligently prosecuted the allegations set forth in the
7 June 15, 2011 Notice.

8 1.4 **Complaint.**

9 On December 20, 2011, CAG filed a Complaint for civil penalties and injunctive relief
10 ("Complaint") in San Francisco, Superior Court, Case No. CGC-11-516771, against Tasco and
11 other entities. The Complaint alleges, among other things, that Tasco violated Proposition 65 by
12 failing to give clear and reasonable warnings of exposure to lead from Booster Cables, 10-00217.

13 1.5 **Consent to Jurisdiction**

14 For purposes of this Consent Judgment, the Parties stipulate that this Court has
15 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
16 over Tasco as to the acts alleged in the Complaint, that venue is proper in the County of San
17 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
18 and resolution of the allegations contained in the Complaint and of all claims which were or could
19 have been raised by any person or entity based in whole or in part, directly or indirectly, on the
20 facts alleged therein or arising therefrom or related to.

21 1.6 **No Admission**

22 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
23 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
24 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
25 constitute an admission with respect to any material allegation of the Complaint, each and every
26 allegation of which Tasco denies, nor may this Consent Judgment or compliance with it be used
27 as evidence of any wrongdoing, misconduct, culpability or liability on the part of Tasco.

28

1 **2. DEFINITIONS**

2 2.1 "Accessible Component" means any component of a Covered Product that could
3 be touched by a person during reasonably foreseeable use.

4 2.2 "Covered Products" means Booster Cables, 10-00217.

5 2.3 "Effective Date" means the date that this Consent Judgment is entered by the
6 Court.

7 2.4 "Lead" means lead and lead compounds.

8 2.5 "Notice" means the June 15, 2011 Notice.

9 **3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE**
10 **WARNINGS.**

11 3.1 Tasco shall not sell the Covered Product in California unless it is reformulated to
12 contain less than 100 parts per million of lead.

13 **4. SETTLEMENT PAYMENT**

14 4.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from CAG,
15 whichever is later, Tasco shall pay a total of \$40,000 to CAG in full and complete settlement of
16 all monetary claims by CAG related to the Notice, as follows.

17 4.2 **Payment In Lieu of Civil Penalties:** Tasco shall pay \$2,000 in lieu of civil
18 penalties to "Consumer Advocacy Group, Inc." CAG will use the payment for such projects and
19 purposes related to environmental protection, worker health and safety, or reduction of human
20 exposure to hazardous substances (including administrative and litigation costs arising from such
21 projects), as CAG may choose.

22 4.3 **Reimbursement of Attorneys Fees and Costs:** Tasco shall pay \$36,000 to
23 "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs,
24 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
25 the approval of this Consent Judgment.

26 4.4 **Civil Penalty:** Defendant shall issue two separate checks for a total amount of two
27 thousand dollars (\$2,000) as penalties pursuant to Health & Safety Code § 25249.12: (a) one
28 check made payable to the State of California's Office of Environmental Health Hazard

1 Assessment (OEHHA) in the amount of \$1,500, representing 75% of the total penalty; and (b)
2 one check to Consumer Advocacy Group, Inc. in the amount of \$500, representing 25% of the
3 total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be
4 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
5 \$1500. The second 1099 shall be issued in the amount of \$500 to CAG and delivered to:
6 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
7 90212

8 4.5 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,
9 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

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

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

24 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
25 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
26 indirectly, any form of legal action and releases all claims, including, without limitation, all
27 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
28 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert

1 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
2 contingent (collectively "Claims"), against Tasco, Defendant Releasees, and Downstream
3 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
4 common law regarding the failure to warn about exposure to Lead in the Covered Product. In
5 furtherance of the foregoing, as to alleged exposures to Covered Product, CAG hereby waives
6 any and all rights and benefits which it now has, or in the future may have, conferred upon it with
7 respect to the Claims by virtue of the provisions of section 1542 of the California Civil Code,
8 which provides as follows:

9
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,
MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

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

23 6. ENFORCEMENT OF JUDGMENT

24 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
25 hereto. Subject to Section 6.2, the parties may, by noticed motion or order to show cause before
26 the Superior Court of California, San Francisco County, giving the notice required by law,
27 enforce the terms and conditions contained herein. A Party may enforce any of the terms and
28 conditions of this Consent Judgment only after that Party first provides 30 days notice to the Party

1 allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts
2 to resolve such Party's failure to comply in an open and good faith manner.

3 **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
4 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
5 Violation ("NOV") to Tasco. The NOV shall include for each Covered Product: the date(s) the
6 alleged violation(s) was observed and the location at which the Covered Product was offered for
7 sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Product,
8 including an identification of the component(s) of the Covered Product that were tested.

9 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
10 alleged violation if, within 30 days of receiving such NOV, Tasco serves a Notice of
11 Election ("NOE") that meets one of the following conditions:

12 (a) The Covered Product was shipped by Tasco for sale in California
13 before the Effective Date, or

14 (b) Since receiving the NOV Tasco has taken corrective action by
15 either (i) requesting that its customers in California remove the Covered Product identified
16 in the NOV from sale in California and destroy or return the Covered Product to Tasco, or
17 (ii) providing a clear and reasonable warning for the Covered Product identified in the
18 NOV pursuant to 27 Cal. Code Regs. § 25603.

19 **6.2.2 Contested NOV.** Tasco may serve an NOE informing CAG of its election
20 to contest the NOV within 30 days of receiving the NOV.

21 (a) In its election, Tasco may request that the sample(s) Covered
22 Product tested by CAG be subject to confirmatory testing at an EPA-accredited
23 laboratory.

24 (b) If the confirmatory testing establishes that the Covered Product
25 does not contain lead in excess of the level allowed in Section 3.1 CAG shall take no
26 further action regarding the alleged violation. If the testing does not establish compliance
27 with Section 3.1, Tasco may withdraw its NOE to contest the violation and may serve a
28 new NOE pursuant to Section 6.2.1.

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

4 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
5 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
6 violation of Proposition 65 or this Consent Judgment.

7 **7. ENTRY OF CONSENT JUDGMENT**

8 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
9 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
10 Tasco waive their respective rights to a hearing or trial on the allegations of the Complaint.

11 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
12 and any and all prior agreements between the parties merged herein shall terminate and become
13 null and void, and the actions shall revert to the status that existed prior to the execution date of
14 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
15 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
16 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
17 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
18 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

19 **8. MODIFICATION OF JUDGMENT**

20 8.1 This Consent Judgment may be modified only upon written agreement of the
21 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
22 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

23 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
24 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

25 **9. RETENTION OF JURISDICTION**

26 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
27 terms of this Consent Judgment.
28

1 **10. DUTIES LIMITED TO CALIFORNIA**

2 10.1 This Consent Judgment shall have no effect on Covered Products sold by Tasco
3 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 Tasco Industries, Inc.:

18 Tasco Industries, Inc.
19 13885 Ramona Ave.
20 Chino, CA 91710

21 With a copy to:

22 Robert Uriarte, Esq.
23 Uriarte & Wood
24 1175 E. Garvey Street, Suite 210
Covina, CA 91724

25 **17. AUTHORITY TO STIPULATE**

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

1 AGREED TO:

2 Date: January 10, 2013

3 Michael Marcus

4 Name: Michael Marcus

5 Title: Director
6 CONSUMER ADVOCACY GROUP,
7 INC.

AGREED TO:

Date: January 9th, 2013

Thomas Heller

Name: THOMAS Heller

Title: CEO
TASCO INDUSTRIES, INC.

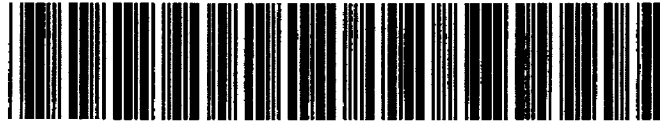
8
9 IT IS SO ORDERED.

10 Date: February 7, 2013

Marla J. Miller

JUDGE OF THE SUPERIOR COURT

MARLA J. MILLER



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
Document Scanning Lead Sheet**

Feb-07-2013 4:40 pm

Case Number: CGC-11-516771

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TEXT JUDGMENT

CONSUMER ADVOCACY GROUP, INC. VS. VOLTEC INDUSTRIES, LLC, A
CALIFORNIA CORPORATION

001C03937585

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