

ORIGINAL

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LOS ANGELES SUPERIOR COURT
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

11
12 CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

13
14 Plaintiff,

15 v.

16 OATEY CO., an Ohio Corporation and
DOES 1-20;

17
18 Defendants.

CASE NO. BC480121

~~PROPOSED~~ STIPULATED CONSENT
JUDGMENT AND ~~PROPOSED~~
ORDER

Health & Safety Code § 25249.5 et seq.

Dept.:
Judge: Honorable

Complaint Filed: March 2, 2012
Trial: None set

19
20 **1. INTRODUCTION**

21 1.1 On March 2, 2012, Plaintiff, Consumer Advocacy Group, Inc. (“CAG”), filed a
22 complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v. Oatey*
23 *Co.*, Case No. BC480121 (the “Action”), for civil penalties and injunctive relief pursuant to the
24 provisions of California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) against
25 Oatey Co. (“Defendant”). CAG and Defendant are collectively referred to hereinafter as
26 “Parties.”

27 1.2 Defendant is a corporation that employs 10 or more persons. In the Action, CAG
28 alleges that Defendant made available for sale and distribution in the State of California the

1 following products: Tube Nailers, an exemplar of which includes but is not limited to Vinyl
2 Coated Tube Nailers (Product No. 33967) ("Covered Product" or "Covered Products"). The
3 Covered Product allegedly contains Diethyl Hexyl Phthalate ("DEHP"), a chemical known to the
4 State of California to cause cancer and birth defects or other reproductive harm. (DEHP is
5 hereinafter referred to as the "Noticed Chemical.")

6 1.3 On or about July 6, 2011, CAG served Defendant and the appropriate public
7 enforcement agencies with a notice claiming that Defendant was in violation of Proposition 65 in
8 regard to the Covered Product. CAG's notice and the Complaint in this Action allege that
9 Defendant exposed people who handle the Covered Product to the Noticed Chemical, without
10 first providing clear and reasonable warnings, in violation of California Health & Safety Code §
11 25249.6.

12 1.4 Defendant denies all of CAG's the material allegations, including allegations
13 averred in the notices and the Complaint, and denies liability for the cause of action alleged in
14 the Complaint and in connection with the Action. By executing this Stipulated Consent
15 Judgment and agreeing to provide the relief and remedies specified herein, Defendant does not
16 admit that it has committed any violations of Proposition 65, or any other law or legal duty and
17 specifically denies that it has committed any such violations and no such admission shall be
18 deemed to have occurred as a result of Defendant's agreement to settle and compromise the
19 Action. Defendant maintains that all Covered Products distributed, marketed and/or sold by
20 Defendant in California have at all times been in compliance with Proposition 65.

21 1.5 For purposes of this Stipulated Consent Judgment only, the Parties stipulate that
22 this Court has jurisdiction over the allegations of violations contained in CAG's Complaint and
23 personal jurisdiction over Defendant with respect to the matters set forth in the Stipulated
24 Consent judgment, that venue is proper in the County of Los Angeles, and that this Court has
25 jurisdiction to enter this Stipulated Consent Judgment as a full and final resolution of all claims
26 which were or could have been raised in the Complaint based on the facts alleged therein.

1 1.6 The parties enter into this Stipulated Consent Judgment pursuant to a settlement
2 of certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and
3 costly litigation.

4 1.7 Neither this Stipulated Consent Judgment nor any of its provisions shall be
5 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation
6 of law, including without limitation, any admission concerning any violation of Proposition 65 or
7 any other statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
8 "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and
9 Safety Code section 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with
10 its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion
11 of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Defendant, its
12 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or
13 admitted as evidence in any administrative or judicial proceeding or litigation in any court,
14 agency, or forum.

15 1.8 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any
16 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
17 except as expressly provided in this Stipulated Consent Judgment. By executing this Consent
18 Judgment and agreeing to provide the relief and remedies specified herein, Defendant does not
19 admit that this Action or any other action that may be filed against it in the future under
20 Proposition 65 or any other cause of action is not preempted by Federal law. Defendant reserves
21 all of their rights and defenses with regard to any claim by any person under Proposition 65 or
22 otherwise, including the defense of federal preemption.

23 1.9 This Stipulated Consent Judgment is the product of negotiations during the
24 litigation and is accepted by the Parties, for purposes of settling, compromising, and resolving
25 issues disputed in this action, including future compliance by Defendant with Section 2 of this
26 Stipulated Consent Judgment, and shall not be used for any other purpose, or in any other matter.

27 **2. COMPLIANCE – INJUNCTIVE RELIEF**

1 2.1 Within 30 days of approval of this Consent Judgment by the Court, Defendant
2 shall cease sale and distribution of the Covered Product in California, unless the Covered
3 Product is reformulated to a point where there is no DEHP in the Covered Product, or if there is
4 any DEHP in the product, the level of DEHP would be below 0.1%.

5 **3. SETTLEMENT PAYMENT**

6 3.1 Within ten (10) days of approval of this Consent Judgment by the Court,
7 Defendant shall pay a total of fifty-two thousand dollars (\$52,000.00) by separate checks
8 apportioned as follows:

9 3.1.1 Monetary Payment in Lieu of Civil Penalty: Five thousand dollars
10 (\$5,000) shall be paid to CAG in lieu of any civil penalty pursuant to California Health and
11 Safety Code § 25249.7(b). CAG will use the payment for such projects and purposes related to
12 environmental protection, worker health and safety, or reduction of human exposure to
13 hazardous substances (including administrative and product testing costs arising from such
14 projects), as CAG may choose. The check shall be made payable to Consumer Advocacy Group,
15 Inc. and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire
16 Boulevard, Suite 610E, Beverly Hills, California 90212.

17 3.1.2 Attorneys' Fees and Costs: Forty-two thousand dollars (\$42,000) of such
18 payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable
19 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
20 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a
21 settlement in the public interest. The check shall be made payable to Yeroushalmi & Associates
22 and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard,
23 Suite 610E, Beverly Hills, California 90212.

24 3.1.3 Civil Penalty: Defendant shall issue two separate checks for a total
25 amount of five thousand dollars (\$5,000) as penalties pursuant to Health & Safety Code § 25192:
26 (a) one check made payable to the State of California's Office of Environmental Health Hazard
27 Assessment (OEHHA) in the amount of \$3,750, representing 75% of the total penalty; and (b)
28 one check to Consumer Advocacy Group, Inc. in the amount of \$1250, representing 25% of the

1 total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be
2 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
3 \$3,750. The second 1099 shall be issued in the amount of \$1,250 to CAG and delivered to:
4 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
5 90212.

6 **4. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

7 4.1 This written Stipulated Consent Judgment may only be modified by written
8 agreement of CAG and Defendant upon stipulation and Order of the Court, or after noticed
9 motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion
10 of CAG or Defendant as provided by law and upon entry of a modified Stipulated Consent
11 Judgment by the Court.

12 4.2 The Attorney General shall be served with notice of any proposed modification to
13 this Consent Judgment at least 15 days in advance of its consideration by the Court.

14 **5. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT**

15 5.1 Either party may, by motion or application for an order to show cause before the
16 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth
17 in paragraphs 8.1 and 8.2 of this Stipulated Consent Judgment, enforce the terms and conditions
18 contained in this Stipulated Consent Judgment. The prevailing party shall be entitled to its
19 reasonable attorneys' fees and costs associated with such motion or application.

20 5.2 The Parties may enforce the terms and conditions of this Consent Judgment
21 pursuant to paragraph 5.1 only after the party seeking to enforce the Stipulated Consent
22 Judgment has first given 30 days notice to the Party allegedly failing to comply with the terms
23 and conditions of the Stipulated Consent Judgment (the Notice of Non-Compliance) and has
24 attempted, in an open and good faith manner, to resolve such Party's alleged failure to comply.
25 The Notice of Non-Compliance shall identify the specific provision that the party seeking
26 enforcement alleges was violated as well as sufficient information to put the party accused of the
27 violation on notice of the scope, nature, timing and substance of the alleged violation.

28 **6. APPLICATION OF STIPULATED CONSENT JUDGMENT**

1 6.1 This Stipulated Consent Judgment shall apply to and be binding upon the
2 Parties hereto, their divisions, subdivisions and subsidiaries, officers, directors, employees,
3 agents and their successors or assigns, and to the extent allowed by law, on the general public.

4 **7. CLAIMS COVERED AND RELEASED**

5 7.1 CAG, on behalf of itself and in the public interest, hereby releases and discharges
6 Defendant, its related subsidiaries, affiliates, predecessors, successors, assigns, distributors,
7 vendors, and manufacturers, and all officers, directors, employees, and shareholders of them
8 (collectively, "Released Parties") from any and all claims asserted, or that could have been
9 asserted, in this litigation arising from the alleged failure to provide Proposition 65 warnings
10 only for the Covered Product regarding the exposure of individuals to the Noticed Chemical in
11 the Covered Product. CAG, on behalf of itself only, hereby releases and discharges the Released
12 Parties from any and all known and unknown past, present, and future rights, claims, causes of
13 action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees,
14 costs, and expenses only related to or arising out of the facts and claims asserted, or that could
15 have been asserted, under state or federal law or the facts alleged in Plaintiff's Proposition 65
16 Notices or the Complaint relating only to any and all claims concerning exposure of any person
17 to the Noticed Chemical in the Covered Product. Compliance with the terms of this Stipulated
18 Consent Judgment shall constitute compliance by the Released Parties with Proposition 65 with
19 respect to exposures to the Noticed Chemical contained in the Covered Product. This release
20 does not limit or affect the obligations of any party created under this Stipulated Consent
21 Judgment.

22 7.2 Unknown Claims. It is possible that other injuries, damages, liability, or claims
23 not now known to the Parties arising out of the facts alleged in the Complaint and relating to the
24 exposure of individuals to the Noticed Chemical in the Covered Product will develop or be
25 discovered, and this Stipulated Consent Judgment is expressly intended to cover and include all
26 such injuries, damages, liability, and claims, including all rights of action therefor. CAG has full
27 knowledge of the contents of Section 1542 of the Civil Code. CAG, on behalf of itself only,
28

1 acknowledges that the claims released in paragraph 7.1 above may include unknown claims and
2 waives Section 1542 as to any such unknown claims. Section 1542 reads as follows:

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

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

10 **8. NOTICE AND CURE**

11 8.1 No action to enforce this Stipulated Consent Judgment may be commenced, and
12 no notice of violation related to the Covered Product may be served or filed against Defendant by
13 CAG, unless the party seeking enforcement or alleging violation notifies the other party of the
14 specific acts alleged to breach this Stipulated Consent Judgment at least 90 days before serving
15 or filing any motion, action, or Notice of Violation. Any notice to Defendant must contain (a) the
16 name of the product, (b) specific dates when the product was sold in California, (c) the store or
17 other place at which the product was available for sale to consumers, and (d) any other evidence
18 or other support for the allegations in the notice.

19 8.2 Within 30 days of receiving the notice described in paragraph 8.1, Defendant shall
20 either (1) take all steps necessary to bring the sale of the product into compliance under the terms
21 of this Stipulate Consent Judgment, (2) withdraw the product, or (3) refute the information
22 provided under paragraph 8.1. Should the parties be unable to resolve the dispute, either party
23 may seek relief under Section 5.

24 **9. GOVERNING LAW**

25 9.1 The terms of this Stipulated Consent Judgment shall be governed by the laws of
26 the State of California.

27 **10. PROVISION OF NOTICE**

28 10.1 All notices required pursuant to this Stipulated Consent Judgment and
correspondence shall be sent to the following:

1 For Consumer Advocacy Group, Inc.

For Oatey Co.

2
3 Reuben Yeroushalmi
4 YEROUSHALMI & ASSOCIATES
5 9100 Wilshire Boulevard, Suite 610E
6 Beverly Hills, CA 90212
7 T: 310-623-1926
8 F: 310-623-1930

John F. Cermak, Jr.
Baker & Hostetler LLP
12100 Wilshire Blvd
15th Floor
Los Angeles, California 90025
T 310.442.8885
F 310.820.8859

9 The contacts and/or addresses above may be amended by giving notice to all Parties to this
10 Consent Judgment.

11 **11. ENTIRE AGREEMENT**

12 11.1 This Stipulated Consent Judgment constitutes the sole and entire agreement and
13 understanding between the Parties with respect to the subject matter hereof, and any prior
14 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
15 merged herein and therein. There are no warranties, representations or other agreements
16 between the Parties, except as expressly set forth herein. No representations, oral or otherwise,
17 express or implied, other than those specifically referred to herein, shall be deemed to exist or
18 bind any of the Parties hereto. No supplementation, modification, waiver, or termination of this
19 Stipulated Consent Judgment shall be binding unless executed in writing by the Party to be
20 bound thereby.

21 **12. ATTORNEY GENERAL REVIEW AND COURT APPROVAL**

22 12.1 The Court shall either approve or disapprove of this Stipulated Consent Judgment
23 in its entirety, without alteration, deletion or amendment, unless otherwise so stipulated by the
24 Parties and their counsel. If this Stipulated Consent Judgment is not approved by the Court, it
25 shall be of no further force or effect.

26 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title
27 11 California Code of Regulations section 3003.

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1 **13. EXECUTION AND COUNTERPARTS**


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

5 **14. AUTHORIZATION**

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

12
13
14 Dated: 4-25-12

CONSUMER ADVOCACY GROUP, INC.

15
16 
17 Printed Name: MICHEL SASSOON
18 Title: EXECUTIVE DIRECTOR

19
20
21 Dated: _____

OATEY CO.

22
23
24
25 Printed Name: _____
26 Title: _____
27
28

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11 Except as explicitly provided herein, each party is to bear its own fees and costs.

12
13
14 Dated: _____

CONSUMER ADVOCACY GROUP, INC.

15
16
17 Printed Name: _____

18 Title: _____

19
20
21 Dated: 4/25/12

OATEY CO.




23
24 Printed Name: Neal R. Restro

25
26 Title: Vice President of CFO

ORDER AND JUDGMENT

Based upon the Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and Oatey Co., the Consent Judgment is approved and judgment is hereby entered according to the terms herein.

Dated: 4/2/13



Judge, Superior Court of the State of California

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