

ORIGINAL

1
2 Reuben Yeroushalmi (SBN 193981)
3 Daniel D. Cho (SBN 105409)
4 Ben Yeroushalmi (SBN 232540)
5 **YEROUSHALMI & YEROUSHALMI**
6 AN ASSOCIATION OF INDEPENDENT LAW CORPORATIONS
7 9100 Wilshire Blvd., Suite 240W
8 Beverly Hills, CA 90212
9 Telephone: 310-623-1926
10 Facsimile: 310-623-1930

11 Attorneys for Plaintiff,
12 Consumer Advocacy Group, Inc.

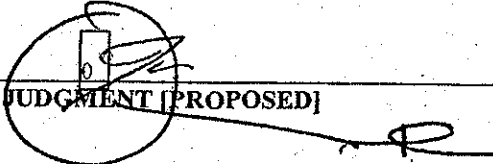
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES

| | |
|---|---|
| <p>15 CONSUMER ADVOCACY GROUP, INC., in 16 the interest of the Public, 17 Plaintiff, 18 v. 19 FINE DISCOUNT NO. 1, INC., a California 20 corporation; GENERAL DISCOUNT 21 STORES, a business entity unknown; 22 UNICORP, INC. dba UNINEX INTERNATIONAL, a California Corporation, UNINEX WIRE AND CABLE, INC., a California Corporation, and DOES 1-50; 23 Defendants.</p> | <p>24 CASE NO. BC465246 25 CONSENT JUDGMENT [PROPOSED] 26 Health & Safety Code § 25249.5 <i>et seq.</i> 27 Dept.: 45 28 Judge: Hon. Mel Recana Complaint filed: July 13, 2011 Trial Date: August 11, 2014</p> |
|---|---|

29 INTRODUCTION

30 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
31 Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself and in the interest of the
32 public and defendants, Unicorp, Inc. dba Uninex International and Uninex Wire and Cable, Inc.
(referred to as "Defendants") with each a Party to the action and collectively referred to as

33 CONSENT JUDGMENT [PROPOSED]



REC'D
SEP 04 2014
FILING WINDOW

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

OCT 20 2014

Sherri R. Carter, Executive Officer/Clerk
By Daniel Haro, Deputy

1
2
3 "Parties."

4 **1.2 Defendants and Products**

5 1.2.1 Defendants are California corporations which each together employ ten or
6 more persons. Defendants sell Headsets No. TA634 and Indoor/Outdoor Floodlight Holder Kit
7 No. EC1806FL (hereinafter "Subject Products"). For purposes of this Consent Judgment,
8 Defendants are deemed a person in the course of doing business in California and is subject to
9 the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
10 & Safety Code §§ 25249.6 et seq. ("Proposition 65").

11 **1.3 Chemicals Of Concern**

12 1.3.1 Lead and Lead Compounds are known to the State of California to cause
13 cancer and/or birth defects or other reproductive harm.

14 1.3.2 Di(2-ethylhexyl)phthalate ("DEHP") is known to the State of California to
15 cause cancer and/or birth defects or other reproductive harm.

16 **1.4 Notices of Violation.**

17 1.4.1 On July 22, 2011 and June 1, 2012, CAG served Defendants, and various
18 public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notices")
19 that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6
20 for failing to warn individuals in California of exposures DEHP and Lead (Pb) respectively
21 contained in Subject Products sold by Defendants. No public enforcer has commenced or
22 diligently prosecuted the allegations set forth in the Notices.

23 **1.5 Complaint.**

24 On July 13, 2011, CAG filed a Complaint for civil penalties and injunctive relief
25 ("Complaint") in Los Angeles Superior Court, Case No. BC465246, against Defendants. CAG
26 filed a Second Amended Complaint ("SAC") against Defendants on or about September 6, 2012.
27 The Complaint and SAC allege, among other things, that Defendants violated Proposition 65 by
28 failing to give clear and reasonable warnings of exposure to lead and DEHP from the Subject
Products.

1
2
3
4 **1.6 Consent to Jurisdiction**

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

13 **1.7 No Admission**

14 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
15 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
16 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
17 shall be construed as an admission by the Parties of any material allegation of the Complaint
18 (each and every allegation of which Defendants deny), any fact, conclusion of law, issue of law
19 or violation of law, including without limitation, any admission concerning any violation of
20 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or the
21 meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as
22 used in Health and Safety Code section 25249.6, et seq. Nothing in this Consent Judgment, nor
23 compliance with its terms, shall constitute or be construed as an admission by the Parties of any
24 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
25 any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations,
26 or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in
27 any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice,
28 waive or impair any right, remedy, argument, or defense the Parties may have in any other or
future legal proceeding, except as expressly provided in this Consent Judgment.

9
MM

9 NM
No. TA634

9
MM

1
2
3 **2. DEFINITIONS**

4 2.1 "Covered Products" sold by Defendants means Headsets and Indoor/Outdoor
5 Floodlight Holder Kit EC1806FL sold only by Defendants, Uninex Wire and Cable, Inc. and
6 Unicorp, Inc. dba Uninex International.

7 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
8 Court.

9 2.3 "Lead" means lead and lead compounds.

10 2.4 "DEHP" means Di(2-ethylhexyl)phthalate.

11 2.4 "Notices" means the July 22, 2011 and June 1, 2012 60 Day Notices of Violation
12 sent by CAG to Defendants.

13 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
14 **WARNINGS.**

15 3.1 Defendants shall not sell the Covered Products in California unless they are
16 reformulated as follows:

17 (a) Indoor/Outdoor Floodlight Holder Kit No. EC1806FL to contain less than
18 100 parts per million of lead; and

19 (b) Headsets No. TA634 to contain less than 0.1% DEHP.

20 3.2 Reformulation is required for all Covered Products manufactured by, delivered to,
21 or received by Defendants for sale in California after the Effective Date. For all Covered
22 Products to be sold or distributed in California and existing in Defendants inventory as of the
23 Effective Date, Defendants will provide Proposition 65 compliant warnings on said products.
24 Defendants shall not engage in any California sale of the Covered Products without providing the
25 following or something substantially similar to the following warning language, printed
26 conspicuously on the labels of the Covered Products:

27 (a) For Indoor/Outdoor Floodlight Holder Kit No. EC1806FL -

28 **WARNING: This product contains lead, a chemical known to the
State of California to cause cancer and birth defects or other
reproductive harm. Wash hands after handling.**

1
2 (b) For Headsets No. TA634 -

3
4 **WARNING: This product contains Di(2-ethylhexyl)phthalate**
5 **("DEHP"), a chemical known to the State of California to cause**
6 **cancer and birth defects or other reproductive harm. Wash hands**
7 **after handling.**

MM

8
9
10 **4. SETTLEMENT PAYMENT**

11 4.1 **Payment and Due Date:** Within ten (10) days of the approval of the Consent
12 Judgment, Defendants shall pay a total of seventy-five thousand dollars and zero cents (\$75,000)
13 in full and complete settlement of all monetary claims by CAG related to the Notices.
14 Defendants shall pay the sum of seventy-five thousand dollars (\$75,000), as follows:

15 4.1.1 **Civil Penalty:** Defendants shall issue two separate checks totaling one
16 thousand dollars (\$1,000) as penalties pursuant to Health & Safety Code § 25249.12 divided as
17 follows:

18 (a) Defendants will issue a check made payable to the State of California's Office
19 of Environmental Health Hazard Assessment (OEHHA) in the amount of seven hundred and
20 fifty dollars (\$750) representing 75% of the total penalty and Defendants will issue a check to
21 CAG in the amount of two hundred and fifty dollars (\$250) representing 25% of the total
22 penalty; and

23 (c) Separate 1099s shall be issued for each of the above payments: Defendants
24 will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the
25 amount of \$750. Defendants will also issue a 1099 to CAG c/o Yeroushalmi & Associates, 9100
26 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212 in the amount of \$250.

27 4.1.2 **Payment In Lieu of Civil Penalties:** Defendants shall pay \$1,000 in lieu
28 of civil penalties to "Consumer Advocacy Group, Inc." as follows: Defendants will issue a
check to CAG in the amount of one thousand dollars (\$1,000). CAG will use this payment for
investigation of the public's exposure to Proposition 65 listed chemicals through various means,
laboratory fees for testing for Proposition 65 listed chemicals, expert fees for evaluating
exposures through various mediums, including but not limited to consumer product,

1
2
3 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
4 hiring consulting and retained experts who assist with the extensive scientific analysis necessary
5 for those files in litigation, in order to reduce the public's exposure to Proposition 65 listed
6 chemicals by notifying those persons and/or entities believed to be responsible for such
7 exposures and attempting to persuade those persons and/or entities to reformulate their products
8 or the source of exposure to completely eliminate or lower the level of Proposition 65 listed
9 chemicals, thereby addressing the same public harm as allegedly in the instant Action. Further,
10 should the court require it, CAG will submit under seal, an accounting of these funds as
11 described above as to how the funds were used. The check shall be made payable to "Consumer
12 Advocacy Group, Inc." and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100
13 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

14 4.1.3 **Reimbursement of Attorneys Fees and Costs:** Defendant shall pay
15 seventy-three thousand dollars (\$73,000) to "Yeroushalmi & Associates," due on before
16 November 4, 2014, as reimbursement for reasonable investigation fees and costs, attorneys' fees,
17 and any other costs incurred as a result of investigating, bringing this matter to Defendants'
18 attention, litigating, and negotiating a settlement in the public interest. The check shall be made
19 payable to "Yeroushalmi & Associates" and delivered to Reuben Yeroushalmi, Yeroushalmi &
20 Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

21 4.2 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
22 Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

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

24 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
25 behalf of itself and in the public interest and Defendants, and their officers, directors, insurers,
26 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
27 companies and their successors and assigns ("Defendant Releasees"), including but not limited to
28 each of its suppliers, customers, distributors, wholesalers, retailers, including Fine Discount
No.1, Inc. or any other person in the course of doing business, and the successors and assigns of

7
MM

9
MM

1
2 any of them, who may use, maintain, distribute or sell Covered Products ("Downstream
3 Defendant Releasees"), for all claims for violations of Proposition 65 up through the Effective
4 Date based on exposure to Lead and DEHP from the Covered Products as set forth in the
5 Notices. Defendants, Defendant Releasees' and Downstream Defendant Releasees compliance
6 with this Consent Judgment shall constitute compliance with Proposition 65 with respect to Lead
7 and DEHP from the Covered Products as set forth in the Notices.
8

9 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
10 successors, and/or assignees, and in the public interest, hereby waives all rights to institute or
11 participate in, directly or indirectly, any form of legal action and releases all claims, including,
12 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
13 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
14 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
15 known or unknown, fixed or contingent (collectively "Claims"), against Defendants, Defendant
16 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 or
17 any other statutory or common law regarding the failure to warn about exposure to Lead and
18 DEHP in the Covered Products. In furtherance of the foregoing, as to alleged exposures to
19 Covered Products, CAG, on behalf of itself only, hereby waives any and all rights and benefits
20 which it now has, or in the future may have, conferred upon it with respect to the Claims by
21 virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:
22

23 **A general release does not extend to claims which the creditor does**
24 **not know or suspect to exist in his or her favor at the time of**
25 **executing the release, which if known by him or her, must have**
26 **materially affected his or her settlement with the debtor.**

27 CAG understands and acknowledges that the significance and consequence of this waiver
28 of California Civil Code section 1542 is that even if CAG suffers future damages arising out of
or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
including but not limited to any exposure to, or failure to warn with respect to exposure to, lead
or lead compounds and DEHP from Covered Products, CAG will not be able to make any claim

1
2
3 for those damages against Defendants, Defendant Releasees, or Downstream Defendant
4 Releasees. Furthermore, CAG acknowledges that it intends these consequences for any such
5 Claims as may exist as of the date of this release but which CAG does not know exist, and
6 which, if known, would materially affect their decision to enter into this Consent Judgment,
7 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
8 negligence, or any other cause.

9 **6. ENFORCEMENT OF JUDGMENT**

10 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
11 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
12 California, Los Angeles County, giving the notice required by law, enforce the terms and
13 conditions contained herein. A Party may enforce any of the terms and conditions of this
14 Consent Judgment only after that Party first provides 90 days notice to the Party allegedly failing
15 to comply with the terms and conditions of this Consent Judgment and attempts to resolve such
16 Party's failure to comply in an open and good faith manner.

17 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
18 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of
19 Violation ("NOV") to Defendants. The NOV shall include for each of the Covered Products: the
20 date(s) the alleged violation(s) was observed and the location at which the Covered Products
21 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
22 Covered Products, including an identification of the component(s) of the Covered Products that
23 were tested.

24 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
25 alleged violation if, within 60 days of receiving such NOV, Defendants serves a Notice of
26 Election ("NOE") that meets one of the following conditions:

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

(b) Since receiving the NOV Defendants have taken corrective action

1
2
3 by either (i) requesting that its customers or stores in California, as applicable, remove
4 the Covered Products identified in the NOV from sale in California and destroy or return
5 the Covered Products to Defendants or vendor, as applicable, or (ii) providing a clear and
6 reasonable warning for the Covered Products identified in the NOV pursuant to 27 Cal.
7 Code Regs. § 25603.

8 6.2.2 **Contested NOV.** Defendants may serve an NOE informing CAG of its
9 election to contest the NOV within 30 days of receiving the NOV.

10 (a) In its election, Defendants may request that the sample(s) Covered
11 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
12 laboratory.

13 (b) If the confirmatory testing establishes that the Covered Products do
14 not contain lead or DEHP in excess of the levels allowed in Section 3.1, above, CAG
15 shall take no further action regarding the alleged violation. If the testing does not
16 establish compliance with Section 3.1, above, Defendants may withdraw its NOE to
17 contest the violation and may serve a new NOE pursuant to Section 6.2.1.

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

21 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
22 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
23 violation of Proposition 65 or this Consent Judgment.

24 **7. ENTRY OF CONSENT JUDGMENT**

25 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
26 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG,
27 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint
28 and SAC.

7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment

9
MM

1
2
3 and any and all prior agreements between the parties merged herein shall terminate and become
4 null and void, and the actions shall revert to the status that existed prior to the execution date of
5 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
6 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
7 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
8 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
9 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

10 **8. MODIFICATION OF JUDGMENT**

11 8.1 This Consent Judgment may be modified only upon written agreement of the
12 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
13 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

14 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
15 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

16 **9. RETENTION OF JURISDICTION**

17 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
18 terms of this Consent Judgment, pursuant to CCP Section 664.6 et seq.

19 **10. DUTIES LIMITED TO CALIFORNIA**

20 10.1 This Consent Judgment shall have no effect on Covered Products sold by
21 Defendants outside the State of California.

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

23 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
24 California Attorney General so that the Attorney General may review this Consent Judgment
25 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
26 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
27 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
28 the parties may then submit it to the Court for approval.

12. ATTORNEY FEES

1
2 12.1 Except as specifically provided in Section 4.1.3, each Party shall bear its own
3 costs and attorney fees in connection with this action.

4
5 **13. ENTIRE AGREEMENT**

6 13.1 This Consent Judgment contains the sole and entire agreement and understanding
7 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
8 negotiations, commitments and understandings related hereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any party
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
11 deemed to exist or to bind any of the Parties.

12 **14. GOVERNING LAW**

13 14.1 The validity, construction and performance of this Consent Judgment shall be
14 governed by the laws of the State of California, without reference to any conflicts of law
15 provisions of California law.

16 14.2 The Parties, including their counsel, have participated in the preparation of this
17 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
18 Consent Judgment was subject to revision and modification by the Parties and has been accepted
19 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
20 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
21 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
22 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
23 resolved against the drafting Party should not be employed in the interpretation of this Consent
24 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

25 **15. EXECUTION AND COUNTERPARTS**

26 15.1 This Consent Judgment may be executed in counterparts and by means of
27 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
28 one document and have the same force and effect as original signatures.

1
2
3 **16. NOTICES**

4 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
5 Class Mail.

6 If to CAG: Reuben Yeroushalmi
7 9100 Wilshire Boulevard, Suite 240W
8 Beverly Hills, CA 90212
9 (310) 623-1926

10 If to Uninex Wire and Cable, Inc. and Unicorp, Inc. dba Uninex International:

11 Daniel Tai, President
12 Unicorp, Inc. dba Uninex International
13 5780 Smithway Street
14 Commerce, California 90040

15 Daniel Tai, President
16 Uninex Wire and Cable, Inc.
17 5780 Smithway Street
18 Commerce, California 90040

19 With a copy to:

20 Lisa Salisbury
21 Salisbury Law Group
22 3720 South Susan Street, Suite 110
23 Santa Ana, CA 92704

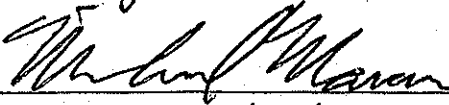
24 **17. AUTHORITY TO STIPULATE**

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
27 of the party represented and legally to bind that party.
28

9
MM

1
2 AGREED TO:

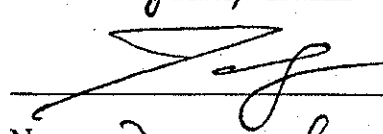
3 Date: August 4, 2014

4 

5
6 Name: Michael Marcus
7 Title: Director
8 CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

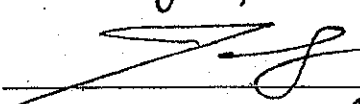
Date: Aug 4, 2014



Name: Daniel Tai
Title: President
UNINEX WIRE AND CABLE, INC., a California Corporation

9 AGREED TO:

10 Date: Aug 4, 2014

11 

12 Name: Daniel Tai
13 Title: President
14 UNICORP, INC. DBA UNINEX
15 INTERNATIONAL, a California Corporation

16
17 IT IS SO ORDERED.

18 Date: OCT 20 2014


Mel Rod Recana

JUDGE OF THE SUPERIOR COURT