

COPY

1 Reuben Yeroushalmi (SBN 193981)  
2 Daniel D. Cho (SBN 105409)  
3 Ben Yeroushalmi (SBN 232540)  
4 **YEROUSHALMI & ASSOCIATES**  
5 9100 Wilshire Boulevard, Suite 240W  
6 Beverly Hills, California 90212  
7 Telephone: 310.623.1926  
8 Facsimile: 310.623.1930

6 Attorneys for Plaintiffs,  
7 Consumer Advocacy Group, Inc.

**REC'D**  
JUN 10 2014  
**FILING WINDOW**

**ORIGINAL FILED**  
JUL 30 2014  
LOS ANGELES  
SUPERIOR COURT

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **LOS ANGELES – CENTRAL DISTRICT**

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

13 Plaintiff,

14 v.

15 CEQUENT CONSUMER PRODUCTS,  
16 INC., a Delaware Corporation; CEQUENT  
17 PERFORMANCE PRODUCTS, INC., a  
18 Delaware Corporation; TRIMAS  
19 COMPANY, LLC., a Delaware Limited  
20 Liability Corporation; TRIMAS  
21 CORPORATION, a Delaware Corporation;  
22 BIG LOTS STORES, INC., an Ohio  
23 Corporation; and DOES 1-20;

24 Defendants.

CASE NO. BC498207

**CONSENT JUDGMENT [PROPOSED]**

Health & Safety Code § 25249.5 *et seq.*

Judge: Hon. Mark Mooney  
Dept: 68  
Complaint Filed: December 28, 2012

23 **1. INTRODUCTION**

24 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer  
25 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the interest of the  
26 public, and defendant, Cequent Consumer Products, Inc. (hereinafter referred to as “Cequent” or  
27 Defendant), with each referred to as a “Party” and collectively referred to as “Parties.”

1  
2           **1.2 Defendants and Products**

3           1.2.1 Defendant employs ten or more persons, is a person in the course of doing  
4 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
5 Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”), and causes to be manufactured,  
6 distributed, or sells Ratchet Tie Downs, including but not limited to “Titan, 10’Ratchet Tie Down,  
7 For Loads up To: 600 Lbs, Break Strength: 1800lb, #94257.”

8           **1.3 Chemical Of Concern**

9           1.3.1 Diethyl hexyl phthalate (“DEHP”) and Di-butyl phthalate (“DBP”) are  
10 chemicals known to the State of California to cause cancer and/or birth defects or other  
11 reproductive harm.

12           **1.4 Notices of Violation.**

13           1.4.1 On or about July 25, 2011, CAG served Cequent Consumer Products, Inc.  
14 and various public enforcement agencies with a document entitled “60-Day Notice of Violation”  
15 (the “July 25, 2011 Notice”) that provided the recipients with notice of alleged violations of Health  
16 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP in  
17 Ratchet Tie Downs, including but not limited to “Titan, 10’Ratchet Tie Down, For Loads up To:  
18 600 Lbs, Break Strength: 1800lb, #94257.” No public enforcer has commenced or diligently  
19 prosecuted the allegations set forth in the July 25, 2011 Notice.

20           1.4.2 On or about November 30, 2012, CAG served Cequent Consumer Products,  
21 Inc. and various public enforcement agencies with a document entitled “60-Day Notice of  
22 Violation” (the “November 30, 2012 Notice”) that provided the recipients with notice of alleged  
23 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
24 exposures to DEHP in Ratchet Tie Downs, including but not limited to “Standard Duty 14’ Ratchet  
25 Tie Downs #3341500, Cequent Consumer Products, Inc., SKU#4289911611”. No public enforcer  
26 has commenced or diligently prosecuted the allegations set forth in the November 30, 2012 Notice.  
27

1           1.4.3 On or about December 11, 2012, CAG served Cequent Consumer Products,  
2 Inc. and various public enforcement agencies with a document entitled “60-Day Notice of  
3 Violation” (the “December 17, 2012 Notice”) that provided the recipients with notice of alleged  
4 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
5 exposures to DEHP and DBP in Ratchet Tie Downs, including but not limited to “Highland ® 4  
6 Pack 12’ Ratchet Tie Downs, “Heavy Duty for loads up to: 1100 LB”, 11604, UPC  
7 #042899116042” and “Highland ® 2 Pack 6’ Ratchet Tie Downs, “Standard Duty for loads up to:  
8 600 LB”, 11521, 755-2104, UPC #042899615217” No public enforcer has commenced or  
9 diligently prosecuted the allegations set forth in the December 11, 2012 Notice.

10           1.4.4 On or about December 11, 2012, CAG served Cequent Consumer Products,  
11 Inc. and various public enforcement agencies with a document entitled “60-Day Notice of  
12 Violation” (the “December 11, 2012 Notice”) that provided the recipients with notice of alleged  
13 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
14 exposures to DEHP and DBP in Ratchet Tie Downs, including but not limited to “Highland ® 2  
15 Pack 6’ Ratchet Tie Downs, “Titan”, “Standard Duty for loads up to: 600 LB”, 11572, 755-2612,  
16 UPC #042899115724.” No public enforcer has commenced or diligently prosecuted the  
17 allegations set forth in the December 11, 2012 Notice.

18           **1.5 Complaint.**

19           On December 28, 2012, CAG filed a Complaint for civil penalties and injunctive relief  
20 (“Complaint”) in Los Angeles Superior Court, Case No. BC498207. The Complaint alleges,  
21 among other things, that Defendant violated Proposition 65 by failing to give clear and reasonable  
22 warnings of exposure to DEHP from the Covered Products.

23           **1.6 Consent to Jurisdiction**

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

5 **1.7 No Admission**

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

22  
23 **2. DEFINITIONS**

24 2.1 “Covered Products” means Ratchet Tie Downs, including but not limited to “Titan,  
25 10’ Ratchet Tie Down, For Loads up To: 600 Lbs, Break Strength: 1800lb, #94257”, “Standard  
26 Duty 14’ Ratchet Tie Downs #3341500, Cequent Consumer Products, Inc., SKU#4289911611”,  
27 “Highland ® 4 Pack 12’ Ratchet Tie Downs, “Heavy Duty for loads up to: 1100 LB”, 11604, UPC

1 #042899116042” and “Highland ® 2 Pack 6’ Ratchet Tie Downs, “Standard Duty for loads up to:  
2 600 LB”, 11521, 755-2104, UPC #042899615217”, and “Highland ® 2 Pack 6’ Ratchet Tie  
3 Downs, “Titan”, “Standard Duty for loads up to: 600 LB”, 11572, 755-2612, UPC  
4 #042899115724”. “Covered Products” are limited to the products sold only by Cequent.

5 2.2 “Effective Date” means the date that this Consent Judgment is entered by the Court.

6 2.5 “Notices” means the July 25, 2011, November 30, 2012, and December 11, 2012

7 Notices.

8 **3. INJUNCTIVE RELIEF / CLEAR AND REASONABLE WARNINGS.**

9 3.1 As of the Effective Date, Defendant will not manufacture, distribute, or sell the  
10 Covered Products in California unless the Covered Products have been affixed with Proposition  
11 65 compliant warnings.

12 **4. SETTLEMENT PAYMENT**

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

16 4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling sixteen  
17 thousand dollars (\$16,000) as penalties pursuant to Health & Safety Code § 25249.12:

18 (a) Defendant will issue a check made payable to the State of California’s  
19 Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of twelve  
20 thousand dollars (\$12,000) representing 75% of the total penalty and Defendant will issue a check  
21 to “Consumer Advocacy Group, Inc.” in the amount of four thousand dollars (\$4,000) representing  
22 25% of the total penalty; and  
23

24 (b) Separate 1099s shall be issued for each of the above payments:  
25 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-  
26 0284486) in the amount of \$12,000. Defendant will also issue a 1099 to CAG c/o Yeroushalmi &  
27 Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

1                   4.1.2 **Payment In Lieu of Civil Penalties:** Defendant shall pay nine thousand  
2 dollars (\$9,000) in lieu of civil penalties to “Consumer Advocacy Group, Inc.” CAG will use this  
3 payment for investigation of the public’s exposure to Proposition 65 listed chemicals through  
4 various means, including laboratory fees for testing for Proposition 65 listed chemicals,  
5 administrative costs and fees related to such activities, expert fees for evaluating exposures through  
6 various mediums, including but not limited to consumer product, occupational, and environmental  
7 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained experts  
8 who assist with the extensive scientific analysis necessary for those files in litigation, as well as  
9 administrative costs and fees related to such activities in order to reduce the public’s exposure to  
10 Proposition 65 listed chemicals by notifying those persons and/or entities believed to be  
11 responsible for such exposures and attempting to persuade those persons and/or entities to  
12 reformulate their products or the source of exposure to completely eliminate or lower the level of  
13 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the instant  
14 Action. Further, should the court require it, CAG will submit under seal, an accounting of these  
15 funds as described above as to how the funds were used. The check shall be made payable to  
16 “Consumer Advocacy Group, Inc.” and delivered to Reuben Yeroushalmi, Yeroushalmi &  
17 Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

18                   4.1.3 **Reimbursement of Attorneys Fees and Costs:** Defendant shall pay fifty  
19 thousand dollars (\$50,000) to “Yeroushalmi & Associates” as reimbursement for reasonable  
20 investigation fees and costs, attorneys’ fees, and any other costs incurred as a result of  
21 investigating, bringing this matter to Defendant’s attention, litigating, and negotiating a settlement  
22 in the public interest. The check shall be made payable to “Yeroushalmi & Associates” and  
23 delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite  
24 240W, Beverly Hills, California 90212.

25                   4.2     All payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &  
26 Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.  
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1 any violation of Proposition 65 or any other statutory or common law regarding the failure to warn  
2 about exposure to DEHP or DBP from the Covered Products by virtue of the provisions of section  
3 1542 of the California Civil Code, which provides as follows:

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

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

22 **6. ENFORCEMENT OF JUDGMENT**

23           6.1     The terms of this Consent Judgment shall be enforced exclusively by the Parties  
24 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
25 California, Los Angeles County, giving the notice required by law, enforce the terms and  
26 conditions contained herein. A Party may enforce any of the terms and conditions of this Consent  
27 Judgment only after that Party first provides 90 days notice to the Party allegedly failing to comply

1 with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure  
2 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 the terms of this Consent Judgment, CAG shall provide a Notice of Violation  
5 ("NOV") to Defendant. The NOV shall include for each of the Covered Products: the date(s) the  
6 alleged violation(s) was observed and the location at which the Covered Products were offered for  
7 sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Products,  
8 including an identification of the component(s) of the Covered Products that were tested.

9               **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the  
10 alleged violation if, within 60 days of receiving such NOV, Defendant serves a Notice of  
11 Election ("NOE") that meets one of the following conditions:

12                   (a) The Covered Products were shipped by Defendant for sale in  
13 California before the Effective Date, or

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

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

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

2 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
3 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
4 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

5 7.2 If this Consent Judgment is not approved in its entirety by the Court, (a) this  
6 Consent Judgment and any and all prior agreements between the parties merged herein shall  
7 terminate and become null and void, and the actions shall revert to the status that existed prior to  
8 the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
9 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
10 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
11 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to  
12 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

13 **8. MODIFICATION OF JUDGMENT**

14 8.1 This Consent Judgment may be modified only upon written agreement of the  
15 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
16 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

17 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
18 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

19 **9. RETENTION OF JURISDICTION**

20 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms  
21 of this Consent Judgment.

22 **10. DUTIES LIMITED TO CALIFORNIA**

23 10.1 This Consent Judgment shall have no effect on Covered Products sold by Defendant  
24 outside the State of California.  
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1 **11. SERVICE ON THE ATTORNEY GENERAL**

2 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
3 California Attorney General so that the Attorney General may review this Consent Judgment prior  
4 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney  
5 General has received the aforementioned copy of this Consent Judgment, and in the absence of  
6 any written objection by the Attorney General to the terms of this Consent Judgment, the parties  
7 may then submit it to the Court for approval.

8 **12. ATTORNEY FEES**

9 12.1 Except as specifically provided in Section 4.1.3, each Party shall bear its own costs  
10 and attorneys' fees in connection with this action.

11 **13. ENTIRE AGREEMENT**

12 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
13 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,  
14 negotiations, commitments and understandings related hereto. No representations, oral or  
15 otherwise, express or implied, other than those contained herein have been made by any party  
16 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
17 to exist or to bind any of the Parties.

18 **14. GOVERNING LAW**

19 14.1 The validity, construction and performance of this Consent Judgment shall be  
20 governed by the laws of the State of California, without reference to any conflicts of law provisions  
21 of California law.

22 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of  
23 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
24 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
25 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
26 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant  
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1 subject to this Consent Judgment may provide written notice to CAG of any asserted change in the  
2 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and  
3 to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall  
4 be interpreted to relieve a Defendant from any obligation to comply with any pertinent state or  
5 federal law or regulation.

6 14.3 The Parties, including their counsel, have participated in the preparation of this  
7 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
8 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
9 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
10 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
11 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
12 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
13 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
14 this regard, the Parties hereby waive California Civil Code § 1654.

15 **15. EXECUTION AND COUNTERPARTS**

16 15.1 This Consent Judgment may be executed in counterparts and by means of facsimile  
17 or portable document format (pdf), which taken together shall be deemed to constitute one  
18 document and have the same force and effect as original signatures.

19 **16. NOTICES**

20 16.1 Any notices under this Consent Judgment shall be by personal delivery of First  
21 Class Mail.

22 If to CAG:

23 Reuben Yeroushalmi  
24 9100 Wilshire Boulevard, Suite 240W  
25 Beverly Hills, CA 90212  
26 (310) 623-1926

27 If to Cequent Consumer Products, Inc.:

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John Aleva, President, or  
Current President/CEO  
Cequent Consumer Products, Inc  
29000 Aurora Road # 2  
Solon, OH 44139-7202

With a copy to:

Elizabeth V. McNulty

Archer Norris PLC  
4695 MacArthur Court, Suite 350  
Newport Beach, Ca. 92660

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: 5-28, 2014

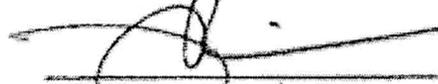


Name: Michel Sassoon

Title: Executive Director  
CONSUMER ADVOCACY GROUP,  
INC.

AGREED TO:

Date: MAY 27, 2014



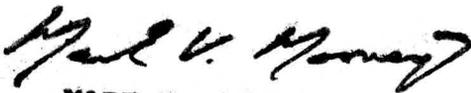
Name: Josh Sherbin

Title: VP + Secretary  
CEQUENT CONSUMER PRODUCTS,  
INC.

1 IT IS SO ORDERED.

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Date: JUL 30 2014

  
MARK V. MOONEY  
JUDGE OF THE SUPERIOR COURT