

JAN 24 2014

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By Denise Gonzalez, Deputy

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6 Attorneys for Plaintiffs,
Consumer Advocacy Group, Inc.
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
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12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,

14 Plaintiff,

15 v.

16 NATIONAL AUTOMOTIVE PARTS
17 ASSOCIATION, a Michigan Corporation,
18 PENNZOIL-QUAKER STATE COMPANY,
a Delaware Corporation dba SOPUS
19 PRODUCTS, BIG LOTS STORES, INC., an
20 Ohio Corporation, BIG LOTS, INC., an Ohio
Corporation, and DOES 1-20;

21 Defendants.
22

CASE NO. BC486158

CONSENT JUDGMENT ~~CONFIDENTIAL~~

Dept: 47

Judge: Debre K. Weintraub

Complaint filed: June 7, 2012

23 1. INTRODUCTION

24 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
25 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and
26 defendant National Automotive Parts Association ("NAPA"), with each a Party and collectively
27 referred to as "Parties."
28

1 1.2 NAPA employs ten or more persons, is a person in the course of doing business for
2 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
3 Safety Code §§ 25249.6 et seq. ("Proposition 65"), and manufactures, distributes, and sells Auto
4 Expressions™ "Ultimate Grip" Steering Wheel Cover UPC# 019912503028 ("Steering Wheel
5 Covers").

6 **1.3 Notice of Violation.**

7 1.3.1 On or about August 17, 2011, CAG served NAPA and various public
8 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "August
9 17, 2011 Notice") that provided the recipients with notice of alleged violations of Health &
10 Safety Code § 25249.6 for failing to warn individuals in California of exposures to
11 di(2-ethylhexyl)phthalate (DEHP) contained in Steering Wheel Covers.

12 1.3.2 No public enforcer has commenced or diligently prosecuted the allegations
13 set forth in the August 17, 2011 Notice.

14 **1.4 Complaint.**

15 On June 7, 2012, CAG filed a Complaint for civil penalties and injunctive relief
16 ("Complaint") in Los Angeles Superior Court, Case No. BC486158. The Complaint alleges,
17 among other things, that NAPA violated Proposition 65 by failing to give clear and reasonable
18 warnings of exposure to DEHP from Steering Wheel Covers.

19 **1.5 Consent to Jurisdiction**

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

1 **1.6 No Admission**

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

8 **2. DEFINITIONS**

9 2.1 "Covered Products" means Steering Wheel Covers sold by NAPA.

10 2.2 "Effective Date" means the date that this Consent Judgment is entered by the Court.

11 **3. INJUNCTIVE RELIEF/REFORMULATION**

12 3.1 Within 30 days of the Effective Date NAPA shall not sell or offer for sale in
13 California Covered Products that contain DEHP with more than 0.1% DEHP by weight.

14 **4. SETTLEMENT PAYMENT**

15 4.1 **Reimbursement of Attorneys' Fees and Costs:** Within fourteen (14) business
16 days of the Effective Date, NAPA shall pay \$52,000 to "Yeroushalmi & Associates" as
17 reimbursement for the investigation fees and costs, testing costs, expert fees, attorney fees, and
18 other litigation costs and expenses for all work performed through the approval of this Consent
19 Judgment.

20 4.2 **Civil Penalties.** NAPA shall issue two separate checks for a total amount of three
21 thousand dollars (\$3,000) as penalties pursuant to Health & Safety Code § 25249.12: (a) one check
22 made payable to the State of California's Office of Environmental Health Hazard Assessment
23 (OEHHA) in the amount of \$2,250.00, representing 75% of the total penalty; and (b) one check to
24 Consumer Advocacy Group, Inc. in the amount of \$750.00, representing 25% of the total penalty.
25 Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to
26 OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$2,250.00.
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1 The second 1099 shall be issued in the amount of \$750.00 to CAG and delivered to: Yeroushalmi
2 & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

3 **4.3 Payment In Lieu of Civil Penalties:** NAPA shall pay \$1,000.00 in lieu of civil
4 penalties to "Consumer Advocacy Group, Inc." CAG will use this payment for investigation of the
5 public's exposure to Proposition 65 listed chemicals through various means, laboratory fees for
6 testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through various
7 mediums, including but not limited to consumer product, occupational, and environmental
8 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained
9 experts who assist with the extensive scientific analysis necessary for those files in litigation, as
10 well as administrative costs incurred during the litigation, in order to reduce the public's exposure
11 to Proposition 65 listed chemicals by notifying those persons and/or entities believed to be
12 responsible for such exposures and attempting to persuade those persons and/or entities to
13 reformulate their products or the source of exposure to completely eliminate or lower the level of
14 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the
15 instant Action. Further, should the court require it, CAG will submit under seal, an accounting of
16 these funds as described above as to how the funds were used. The check shall be made payable to
17 "Consumer Advocacy Group, Inc." and delivered to Reuben Yeroushalmi, Yeroushalmi &
18 Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

19 **4.4** Payments pursuant to 4.1, 4.2 and 4.3 shall be delivered to: Reuben Yeroushalmi,
20 Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212 within
21 fourteen (14) business days of the Effective Date.
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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 NAPA and its officers, directors, insurers, employees,
26 parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies
27 and their successors and assigns ("Defendant Releasees"); including but not limited to each of its
28 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of doing

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

7 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
8 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
9 indirectly, any form of legal action and releases all claims, including, without limitation, all
10 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
11 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
12 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
13 contingent (collectively "Claims"), against NAPA, Defendant Releasees, and Downstream
14 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
15 common law regarding the failure to warn about exposure to DEHP from Covered Products
16 manufactured, distributed, or sold by NAPA and Defendant Releasees. In furtherance of the
17 foregoing, as to alleged exposures to DEHP from Covered Products, CAG hereby waives any and
18 all rights and benefits which it now has, or in the future may have, conferred upon it with respect to
19 the Claims arising from any violation of Proposition 65 or any other statutory or common law
20 regarding the failure to warn about exposure to DEHP from Covered Products by virtue of the
21 provisions of section 1542 of the California Civil Code, which provides as follows:
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23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
25 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

26 CAG understands and acknowledges that the significance and consequence of this waiver of
27 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
28 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from any

1 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
2 about exposure to DEHP from Covered Products, including but not limited to any exposure to, or
3 failure to warn with respect to exposure to DEHP from the Covered Products, CAG will not be
4 able to make any claim for those damages against NAPA or the Defendant Releasees or
5 Downstream Defendant Releasees. Furthermore, CAG acknowledges that it intends these
6 consequences for any such Claims arising from any violation of Proposition 65 or any other
7 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
8 Products as may exist as of the date of this release but which CAG does not know exist, and which,
9 if known, would materially affect their decision to enter into this Consent Judgment, regardless of
10 whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any
11 other cause.

12 6. ENFORCEMENT OF JUDGMENT

13 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
14 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
15 California, City and County of Los Angeles, giving the notice required by law, enforce the terms
16 and conditions contained herein. A Party may enforce any of the terms and conditions of this
17 Consent Judgment only after that Party first provides 30 days' notice to the Party allegedly failing
18 to comply with the terms and conditions of this Consent Judgment and attempts to resolve such
19 Party's failure to comply in an open and good faith manner.

20 6.2 Notice of Violation. Prior to bringing any motion, order to show cause, or other
21 proceeding to enforce Section 0 of this Consent Judgment, CAG shall provide a Notice of
22 Violation ("NOV") to NAPA. The NOV shall include for each of the Covered Products: the
23 date(s) the alleged violation(s) was observed and the location at which the Covered Products were
24 offered for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered
25 Products, including an identification of the component(s) of the Covered Products that were tested.
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1 6.2.1 Non-Contested NOV. CAG shall take no further action regarding the
2 alleged violation if, within 30 days of receiving such NOV, NAPA serves a Notice of
3 Election ("NOE") that meets one of the following conditions:

4 (a) The Covered Products were shipped by NAPA for sale in California
5 before the Effective Date, or

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

11 6.2.2 Contested NOV: NAPA may serve an NOE informing CAG of its election
12 to contest the NOV within 30 days of receiving the NOV.

13 (a) In its election, NAPA may request that the sample(s) Covered
14 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
15 laboratory.

16 (b) If the confirmatory testing establishes that the Covered Products do
17 not contain DEHP in excess of the level allowed in Section 0 CAG shall take no further
18 action regarding the alleged violation. If the testing does not establish compliance with
19 Section 0, NAPA may withdraw its NOE to contest the violation and may serve a new
20 NOE pursuant to Section 0.

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

24 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
25 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
26 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 NAPA 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 by the Court, (a) this Consent Judgment
6 and any and all prior agreements between the parties merged herein shall terminate and become
7 null and void, and the actions shall revert to the status that existed prior to the execution date of this
8 Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation,
9 documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect,
10 nor shall any such matter be admissible in evidence for any purpose in this Action, or in any other
11 proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms
12 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
21 terms of this Consent Judgment.

22 **10. DUTIES LIMITED TO CALIFORNIA**

23 This Consent Judgment shall have no effect on Covered Products sold outside the State of
24 California.

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

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

5 **12. ATTORNEY FEES**

6 12.1 Except as specifically provided in Section 0, each Party shall bear its own costs and
7 attorney fees in connection with this action.

8 **13. ENTIRE AGREEMENT**

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

15 **14. GOVERNING LAW**

16 14.1 The validity, construction and performance of this Consent Judgment shall be
17 governed by the laws of the State of California, without reference to any conflicts of law
18 provisions of California law.

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

2 15.1 This Consent Judgment may be executed in-counterparts and by means of facsimile
3 or portable document format (pdf), which taken together shall be deemed to constitute one
4 document.

5 16. NOTICES

6 16.1 Any notices under this Consent Judgment shall be by personal delivery or First
7 Class Mail.

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9 If to CAG:

10 Reuben Yeroushalmi, Esq.
11 9100 Wilshire Boulevard, Suite 610E
12 Beverly Hills, CA 90212
13 (310) 623-1926

14 If to National Automotive Parts Association:

15 National Automotive Parts Association
16 2999 Circle 75 Parkway
17 Atlanta, GA 30339

18 With a copy to:

19 Tina Mangarpan
20 Ford, Walker, Haggerty & Behar, LLP
21 One World Trade Center, 27th Floor
22 Long Beach, CA 90831

23 17. AUTHORITY TO STIPULATE

24 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
26 the party represented and legally to bind that party.
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1 AGREED TO:
2 Date: 8-16, 2013

AGREED TO:
Date: 8/14, 2013

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4
5 By: [Signature]
6 Plaintiff, CONSUMER ADVOCACY
7 GROUP, INC.

By: [Signature]
Defendant, NATIONAL AUTOMOTIVE
PARTS ASSOCIATION

8 IT IS SO ORDERED.

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10 Date: 1-22-14

DEBRE KATZ WEINTRAUB
JUDGE OF THE SUPERIOR COURT

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