

FILED

San Francisco County Superior Court

DEC 08 2015

CLERK OF THE COURT

BY:  Deputy Clerk

1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 **YEROUSHALMI & YEROUSHALMI**
5 9100 Wilshire Blvd., Suite 240W
6 Beverly Hills, CA 90212
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9 Attorneys for Plaintiff,
10 Consumer Advocacy Group, Inc.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**

13 CONSUMER ADVOCACY GROUP, INC., in
14 the public interest,

15 Plaintiff,

16 v.

17 NAYLON PRODUCTS AND
18 TRANSPORTATION, INC., a California
19 Corporation, LARSEN SUPPLY CO., a
20 California Corporation, and DO IT BEST
21 CORP., an Indiana Corporation, and DOES 1-
22 20;

23 Defendants.

CASE NO. CGC-12-519146

CONSENT JUDGMENT [PROPOSED]

Dept: 610
Judge: Cynthia M. Lee

Dept: 302
Law & Motion Judge: **HAROLD KAHN**
~~Ernest H. Goldsmith~~

Complaint filed: March 14, 2012

BY FAX

24 **1. INTRODUCTION**

25 1.1 This Consent Judgment is entered into by and between plaintiff CONSUMER
26 ADVOCACY GROUP, INC. (referred to as "CAG") acting on behalf of itself and in the interest
27 of the public and defendant LARSEN SUPPLY CO. (referred to as "LARSEN"), with each a
28 Party and collectively referred to as "Parties."

1.2 CAG is a California corporation that serves as a private enforcer of Proposition

1 65, as described in Proposition 65 and the regulations of the Attorney General of California at 11
2 Cal. Code Regs. § 3000 *et seq.*

3 1.3 Larsen employs ten or more persons, is a person in the course of doing business
4 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
5 & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”), and manufactures, distributes, and sells
6 Pipe Hooks.

7 **1.3. Notice of Violation.**

8 1.3.1 On or about August 1, 2011, CAG served Larsen and various public
9 enforcement agencies with a document entitled “60-Day Notice of Violation” (the
10 “Notice”) that provided the recipients with notice of alleged violations of Health &
11 Safety Code § 25249.6 for failing to warn individuals in California of exposures to di(2-
12 ethylhexyl)phthalate (DEHP) contained in Pipe Hooks.

13 1.3.2 No public enforcer has commenced or diligently prosecuted the
14 allegations set forth in the Notice.

15 **1.4. Complaint.**

16 On March 14, 2012, CAG filed a Complaint for civil penalties and injunctive relief
17 (“Complaint”) in San Francisco Superior Court, Case No. CGC-12-519146. The Complaint
18 alleges, among other things, that Larsen violated Proposition 65 by failing to give clear and
19 reasonable warnings of exposure to DEHP from Pipe Hooks.

20 **1.5 Consent to Jurisdiction**

21 For purposes of this Consent Judgment, the parties stipulate that this Court has
22 jurisdiction over the allegations of violations contained in the Complaint and personal
23 jurisdiction over Larsen as to the acts alleged in the Complaint, that venue is proper in the City
24 and County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment
25 as a full settlement and resolution of the allegations contained in the Complaint and of all claims
26 which were or could have been raised by any person or entity based in whole or in part, directly
27 or indirectly, on the facts alleged therein or arising therefrom or related to.
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1 **1.6 No Admission**

2 This Consent Judgment resolves claims that are denied and disputed. The parties enter
3 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
4 the 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 Larsen and the Defendant Releasees and Downstream Defendant Releasees
7 deny, nor may this Consent Judgment or compliance with it be used as evidence of any
8 wrongdoing, misconduct, culpability or liability on the part of Larsen. After the Effective Date,
9 all remaining Defendants will be dismissed without prejudice.

10 **2. DEFINITIONS**

11 2.1 “Covered Products” means Pipe Hooks sold only by Larsen.

12 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
13 Court.

14 **3. INJUNCTIVE RELIEF/REFORMULATION**

15 3.1 As of the Effective Date, Larsen shall not sell or offer for sale in California the
16 Covered Products unless the Covered Products have been reformulated to contain less than 0.1%
17 DEHP by weight.

18 3.2 For any Covered Products still existing in Larsen’s inventory as of the Effective
19 Date, Larsen shall place a Proposition 65 compliant warning. Any warning provided pursuant to
20 this section shall be affixed to the packaging of, or directly on, the Covered Products, and be
21 prominently placed with such conspicuousness as compared with other words, statements,
22 designs, or devices as to render it likely to be read and understood by an ordinary individual
23 under customary conditions before purchase or use. The warning shall state:

24 **WARNING:** This product contains a chemical known to the State of California
25 to cause cancer and birth defects or other reproductive harm.
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1 **4. SETTLEMENT PAYMENT**

2 4.1 Larsen shall pay a total of \$65,000 as complete settlement of all monetary claims
3 by CAG related to the Notice, as follows:

4 4.2 **Reimbursement of Attorneys' Fees and Costs:** Larsen shall pay fifty-two
5 thousand dollars (\$52,000.00) payable to "Yeroushalmi & Yeroushalmi" as reimbursement for
6 the investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs
7 and expenses for all work performed through the approval of this Consent Judgment.

8 4.3 **Civil Penalties.** Larsen shall issue two separate checks for a total amount of eight
9 thousand dollars (\$8,000.00) as civil penalties pursuant to Health & Safety Code § 25249.12: (a)
10 one check made payable to the State of California's Office of Environmental Health Hazard
11 Assessment (OEHHA) in the amount of \$6,000.00, representing 75% of the total penalty; and (b)
12 one check to Consumer Advocacy Group, Inc. in the amount of \$2,000.00, representing 25% of
13 the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099
14 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the
15 amount of \$6,000.00 The second 1099 shall be issued in the amount of \$2,000.00 to CAG and
16 delivered to: Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly
17 Hills, California 90212.

18 4.4 **Payment In Lieu of Civil Penalties:** Larsen shall pay five thousand dollars
19 (\$5,000.00) in lieu of civil penalties payable to "Consumer Advocacy Group, Inc." CAG will
20 use this payment for investigation of the public's exposure to Proposition 65 listed chemicals
21 through various means, laboratory fees for testing for Proposition 65 listed chemicals, expert fees
22 for evaluating exposures through various mediums, including but not limited to consumer
23 product, occupational, and environmental exposures to Proposition 65 listed chemicals, and the
24 cost of hiring consulting and retained experts who assist with the extensive scientific analysis
25 necessary for those files in litigation, as well as administrative costs incurred during the
26 litigation, in order to reduce the public's exposure to Proposition 65 listed chemicals by notifying
27 those persons and/or entities believed to be responsible for such exposures and attempting to
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1 persuade those persons and/or entities to reformulate their products or the source of exposure to
2 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing
3 the same public harm as allegedly in the instant Action. Further, should the court require it,
4 CAG will submit under seal, an accounting of these funds as described above as to how the funds
5 were used.

6 4.5 Payments pursuant to 4.2, 4.3 and 4.4 shall be delivered to: Reuben Yeroushalmi,
7 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

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

9 5.1 This Consent Judgment is a full, final, and binding resolution between CAG (on
10 behalf of itself and in the public interest) and Larsen and its officers, directors, insurers, employees,
11 parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies
12 and their successors and assigns ("Defendant Releasees"), including but not limited to each of its
13 suppliers, customers, distributors, wholesalers, retailers, cooperatives, cooperative members and
14 members shareholders of any national stocking purchasing cooperative, or any other person in the
15 course of doing business, and the successors and assigns of any of them, who may use, maintain,
16 distribute or sell Covered Products, or who directly or indirectly provide, distribute, drop-ship,
17 billthrough, bill or sell Covered Products including, but not limited to, Do It Best Corp., an Indiana
18 corporation and its affiliates, subsidiaries, and cooperative members ("Downstream Defendant
19 Releasees"), for all claims for violations of Proposition 65 up through the Effective Date based on
20 exposure to DEHP from Covered Products. Larsen and Defendant Releasees' compliance with
21 this Consent Judgment shall constitute compliance with Proposition 65 with respect to DEHP from
22 Covered Products. Nothing in this Section affects CAG's right to commence or prosecute an action
23 under Proposition 65 against any person other than Defendant Releasees or Downstream
24 Defendant Releasees.

25 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
26 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
27 indirectly, any form of legal action and releases all claims, including, without limitation, all
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1 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
2 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
3 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
4 fixed or contingent (collectively "Claims"), against Larsen, Defendant Releasees, and
5 Downstream Defendant Releasees including, but not limited to, Do It Best, an Indiana
6 Corporation arising from any violation of Proposition 65 or any other statutory or common law
7 regarding the failure to warn about exposure to DEHP from Covered Products manufactured,
8 distributed, or sold by Larsen and Defendant Releasees and Downstream Defendant Releasees.
9 In furtherance of the foregoing, as to alleged exposures to DEHP from Covered Products, CAG
10 hereby waives any and all rights and benefits which it now has, or in the future may have,
11 conferred upon it with respect to the Claims arising from any violation of Proposition 65 or any
12 other statutory or common law regarding the failure to warn about exposure to DEHP from
13 Covered Products by virtue of the provisions of section 1542 of the California Civil Code, which
14 provides as follows:

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16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
17 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
18 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
19 KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS
20 OR HER SETTLEMENT WITH THE DEBTOR.

21 CAG understands and acknowledges that the significance and consequence of this waiver of
22 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
23 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from
24 any violation of Proposition 65 or any other statutory or common law regarding the failure to
25 warn about exposure to DEHP from Covered Products, including but not limited to any exposure
26 to, or failure to warn with respect to exposure to DEHP from the Covered Products, CAG will
27 not be able to make any claim for those damages against Larsen or the Defendant Releasees or
28 Downstream Defendant Releasees. Furthermore, CAG acknowledges that it intends these
consequences for any such Claims arising from any violation of Proposition 65 or any other

1 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
2 Products as may exist as of the date of this release but which CAG does not know exist, and
3 which, if known, would materially affect their decision to enter into this Consent Judgment,
4 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
5 negligence, or any other cause.

6 **6. ENFORCEMENT OF JUDGMENT**

7 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
8 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
9 California, City and County of San Francisco, giving the notice required by law, enforce the
10 terms and conditions contained herein. A Party may enforce any of the terms and conditions of
11 this Consent Judgment only after that Party first provides 30 days notice to the Party allegedly
12 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
13 such Party's failure to comply in an open and good faith manner.

14 6.2 Prior to bringing any motion, order to show cause, or other proceeding to enforce
15 Section 3 of this Consent Judgment, CAG shall provide a Notice of Violation ("NOV") to
16 Larsen. The NOV shall include for each of the Covered Products: the date(s) the alleged
17 violation(s) was observed and the location at which the Covered Products were offered for sale,
18 and shall be accompanied by all test data obtained by CAG regarding the Covered Products,
19 including an identification of the component(s) of the Covered Products that were tested.

20 6.2.1 Non-Contested NOV. CAG shall take no further action regarding the alleged
21 violation if, within 30 days of receiving such NOV, Larsen serves a Notice of Election ("NOE")
22 that meets one of the following conditions:

23 (a) The Covered Products were shipped by Larsen for sale in California before the
24 Effective Date, or

25 (b) Since receiving the NOV Larsen has taken corrective action by either (i)
26 requesting that its customers in California remove the Covered Products identified in the NOV
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1 from sale in California and destroy or return the Covered Products to Larsen, or (ii) providing a
2 clear and reasonable warning for the Covered Products identified in the NOV pursuant to 27 Cal.
3 Code Regs. § 25603.

4 6.2.2 Contested NOV. Larsen may serve an NOE informing CAG of its election to
5 contest the NOV within 30 days of receiving the NOV.

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

8 (b) If the confirmatory testing establishes that the Covered Products do not contain
9 DEHP in excess of the level allowed in Section 3.1 CAG shall take no further action regarding
10 the alleged violation. If the testing does not establish compliance with Section 3.1, Larsen may
11 withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 6.2.1.

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

15 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
16 prevailing party shall be entitled to recover its attorney's fees and costs.

17 7. ENTRY OF CONSENT JUDGMENT

18 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
19 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
20 Larsen waive their respective rights to a hearing or trial on the allegations of the Complaint.
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22 7.2 If this Consent Judgment is not approved in its entirety by the Court, (a) this
23 Consent Judgment and any and all prior agreements between the parties merged herein shall
24 terminate and become null and void, and the actions shall revert to the status that existed prior to
25 the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
26 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
27 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
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1 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
2 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

3 **8. MODIFICATION OF JUDGMENT**

4 8.1 This Consent Judgment may be modified only upon written agreement of the
5 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
6 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

7 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
8 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

9 **9. RETENTION OF JURISDICTION**

10 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
11 terms of this Consent Judgment.

12 **10. DUTIES LIMITED TO CALIFORNIA**

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

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

16 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
17 California Attorney General so that the Attorney General may review this Consent Judgment
18 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
19 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
20 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
21 the parties may then submit it to the Court for approval.

22 **12. ATTORNEY FEES**

23 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
24 and attorney fees in connection with this action.
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1 **13. ENTIRE AGREEMENT**

2 13.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
4 negotiations, commitments and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the parties.

8 **14. GOVERNING LAW**

9 14.1 The validity, construction and performance of this Consent Judgment shall be
10 governed by the laws of the State of California, without reference to any conflicts of law
11 provisions of California law.

12 14.2 The Parties, including their counsel, have participated in the preparation of this
13 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
14 Consent Judgment was subject to revision and modification by the Parties and has been accepted
15 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
16 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
17 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
18 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
19 resolved against the drafting Party should not be employed in the interpretation of this Consent
20 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

21 **15. EXECUTION AND COUNTERPARTS**

22 15.1 This Consent Judgment may be executed in counterparts and by means of
23 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
24 one document.
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1 16. NOTICES

2 16.1 Any notices under this Consent Judgment shall be by personal delivery or First
3 Class Mail.

4 If to CAG:

5 Reuben Yeroushalmi
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, CA 90212
8 (310) 623-1926

9 If to Larsen Supply Co.

10 Ric Larsen, President
11 Larsen Supply Co.
12 12055 E. Slauson Avenue
13 Santa Fe Springs, CA 90670

14 With a copy to:

15 Albert Israel
16 111 West Ocean Boulevard, Suite 1940
17 Long Beach, CA 90802

18 17. AUTHORITY TO STIPULATE

19 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
20 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
21 of the party represented and legally to bind that party.

22 AGREED TO:

AGREED TO:

23 Date: _____, 2014

Date: 9-24-14, 2014

24
25 By: _____
26 Plaintiff, CONSUMER ADVOCACY
27 GROUP, INC.

By: Alan Holderness, Controller
Defendant, LARSEN SUPPLY CO.

1 **16. NOTICES**

2 16.1 Any notices under this Consent Judgment shall be by personal delivery or First
3 Class Mail.

4 If to CAG:

5 Reuben Yeroushalmi
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, CA 90212
8 (310) 623-1926

9 If to Larsen Supply Co.

10 Ric Larsen, President
11 Larsen Supply Co.
12 12055 E. Slauson Avenue
13 Santa Fe Springs, CA 90670

14 With a copy to:

15 Albert Israel
16 111 West Ocean Boulevard, Suite 1940
17 Long Beach, CA 90802

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19 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
20 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
21 of the party represented and legally to bind that party.

22 AGREED TO:

23 Date: 11-3-, 2014

22 AGREED TO:

23 Date: _____, 2014

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25 By: 
26 Plaintiff, CONSUMER ADVOCACY
27 GROUP, INC.

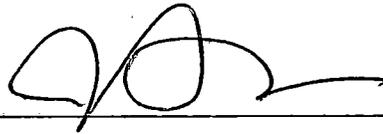
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25 By: _____
26 Defendant, LARSEN SUPPLY CO.

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IT IS SO ORDERED.

Date: _____

12/8/15



JUDGE OF THE SUPERIOR COURT

HAROLD KAHN