

DEC 2 2014

F I L E D

Superior Court of California
County of San Francisco

JAN 27 2015

CLERK OF THE COURT

BY: *Alan Kony*
Deputy Clerk

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

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.,**
14 in the public interest,

15 Plaintiff,

16 v.

17 **JAY FRANCO & SONS, INC.,** a New York
18 Corporation, and **DOES 1-20;**

19 Defendants.

CASE NO. CGC-12-523742

~~CONSENT JUDGMENT [PROPOSED]~~

Filed: August 28, 2012

BY FAX

20 **1. INTRODUCTION**

21 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
22 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and
23 defendant JAY FRANCO & SONS, INC. ("Jay Franco"), with each a Party and collectively
24 referred to as "Parties."

25 1.2 Jay Franco employs ten or more persons, is a person in the course of doing business
26 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
27 Safety Code §§ 25249.6 et seq. ("Proposition 65"), and manufactures, distributes, and sells
28

1 Children's Vinyl Placemats, including but not limited to The Amazing Spider Man Placemat,
2 RN#18389 ("Placemats").

3 **1.3 Notice of Violation.**

4 1.3.1 On or about October 21, 2011, CAG served Jay Franco and various public
5 enforcement agencies with a document entitled "60-Day Notice of Violation" (the
6 "October 21, 2011 Notice") that provided the recipients with notice of alleged violations
7 of Health & Safety Code § 25249.6 for failing to warn individuals in California of
8 exposures to di(2-ethylhexyl)phthalate (DEHP) contained in the Placemats.

9 1.3.2 No public enforcer has commenced or diligently prosecuted the allegations
10 set forth in the October 21, 2011 Notice.

11 **1.4 Complaint.**

12 On August 27, 2012, CAG filed a Complaint for civil penalties and injunctive relief
13 ("Complaint") in San Francisco Superior Court, Case No. CGC-12-523742. The Complaint
14 alleges, among other things, that Jay Franco violated Proposition 65 by failing to give clear and
15 reasonable warnings of exposure to DEHP from Placemats.

16 **1.5 Consent to Jurisdiction**

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

24 **1.6 No Admission**

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

4 2. DEFINITIONS

5 2.1 "Covered Products" means Children's Vinyl Placemats, limited to those
6 manufactured, distributed, and/or sold by Jay Franco.

7 2.2 "Effective Date" means the date of the Court's approval of this Consent Judgment.

8 3. INJUNCTIVE RELIEF/CLEAR AND REASONABLE WARNINGS

9 3.1 As of the Effective Date, Jay Franco shall not sell or offer for sale in California
10 Covered Products unless they are reformulated to contain less than 0.1% DEHP by weight.

11 4. SETTLEMENT PAYMENT

12 4.1 Within ten (10) business days of the Effective Date, Jay Franco shall pay a total of
13 Sixty-Two Thousand Dollars (\$62,000.00) by separate checks apportioned as set forth below.

14 4.1.1 Civil Penalties. Jay Franco shall issue two separate checks for a total
15 amount of 10,000 thousand dollars (\$10,000.00) as penalties pursuant to Health & Safety Code §
16 25249.12: (a) one check made payable to the State of California's Office of Environmental Health
17 Hazard Assessment (OEHHA) in the amount of \$7,500.00, representing 75% of the total penalty;
18 and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$2,500.00, representing
19 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first
20 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in
21 the amount of \$7,500.00. The second 1099 shall be issued in the amount of \$2,500.00 to CAG
22 and delivered to: Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly
23 Hills, California 90212.

24 4.1.2 Payment In Lieu of Civil Penalties: Jay Franco shall pay \$4,000.00 in
25 lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG will use this payment for
26 investigation of the public's exposure to Proposition 65 listed chemicals through various means,
27 laboratory fees for testing for Proposition 65 listed chemicals, expert fees for evaluating exposures
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1 through various mediums, including but not limited to consumer product, occupational, and
2 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and
3 retained experts who assist with the extensive scientific analysis necessary for those files in
4 litigation, as well as administrative costs incurred during the litigation, in order to reduce the
5 public's exposure to Proposition 65 listed chemicals by notifying those persons and/or entities
6 believed to be responsible for such exposures and attempting to persuade those persons and/or
7 entities to reformulate their products or the source of exposure to completely eliminate or lower
8 the level of Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly
9 in the instant Action. Further, should the court require it, CAG will submit under seal, an
10 accounting of these funds as described above as to how the funds were used. The check shall be
11 made payable to "Consumer Advocacy Group, Inc." and delivered to Reuben Yeroushalmi,
12 Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California
13 90212.

14 4.1.3 Reimbursement of Attorneys' Fees and Costs: Jay Franco shall pay \$48,000.00
15 to "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs,
16 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
17 the approval of this Consent Judgment.

18 4.2 Payments pursuant to 4.1.1, 4.1.2 and 4.1.3 shall be delivered to: Reuben
19 Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA
20 90212.

21 5. MATTERS COVERED BY THIS CONSENT JUDGMENT

22 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
23 behalf of itself and in the public interest and Jay Franco and its officers, directors, insurers,
24 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
25 companies and their successors and assigns ("Defendant Releasees"), including but not limited to
26 each of its suppliers, customers, distributors, wholesalers, retailers, or any other person in the
27 course of doing business, and the successors and assigns of any of them, who may use, maintain,
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1 distribute or sell Covered Products ("Downstream Defendant Releasees"), for all claims for
2 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from
3 Covered Products as set forth in the Notice. Jay Franco and Defendant Releasees' compliance
4 with this Consent Judgment shall constitute compliance with Proposition 65 with respect to DEHP
5 exposures from Covered Products as set forth in the Notice.

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

21
22 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
23 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT**
24 **THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,**
25 **MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE**
26 **DEBTOR.**

27 CAG understands and acknowledges that the significance and consequence of this waiver of
28 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 Claims arising from any
violation of Proposition 65 or any other statutory or common law regarding the failure to warn

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

11 **6. ENFORCEMENT OF JUDGMENT**

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

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

25 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
26 alleged violation if, within 30 days of receiving such NOV, Jay Franco serves a Notice of
27 Election ("NOE") that meets one of the following conditions:
28

1 (a) The Covered Products were shipped by Jay Franco for sale in
2 California before the Effective Date, or

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

8 6.2.2 Contested NOV. Jay Franco 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, Jay Franco may request that the sample(s) Covered
11 Products tested by CAG be subject to confirmatory testing at an EPA-accredited laboratory.

12 (b) If the confirmatory testing establishes that the Covered Products do
13 not contain DEHP, CAG shall take no further action regarding the alleged violation. If the
14 testing does not establish compliance with Proposition 65, Jay Franco may withdraw its
15 NOE to contest the violation and may serve a new NOE pursuant to Section 6.2.2.

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

19 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
20 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
21 violation of Proposition 65 or this Consent Judgment.

22 7. ENTRY OF CONSENT JUDGMENT

23 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
24 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
25 Jay Franco waive their respective rights to a hearing or trial on the allegations of the Complaint.

26 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
27 and any and all prior agreements between the parties merged herein shall terminate and become
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1 null and void, and the actions shall revert to the status that existed prior to the execution date of
2 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
3 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
4 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,
5 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
6 modify the terms of the Consent Judgment and to resubmit it for approval.

7 **8. MODIFICATION OF JUDGMENT**

8 8.1 This Consent Judgment may be modified only upon written agreement of the parties
9 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party
10 as provided by law and upon entry of a modified Consent Judgment by the Court.

11 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
12 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

13 **9. RETENTION OF JURISDICTION**

14 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
15 of this Consent Judgment.

16 **10. DUTIES LIMITED TO CALIFORNIA**

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

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

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

26 **12. ATTORNEY FEES**

27 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs and
28

1 attorney fees in connection with this action.

2 **13. ENTIRE AGREEMENT**

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

9 **14. GOVERNING LAW**

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

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

22 **15. EXECUTION AND COUNTERPARTS**

23 15.1 This Consent Judgment may be executed in counterparts and by means of facsimile
24 or portable document format (pdf), which taken together shall be deemed to constitute one
25 document.
26
27
28

1 16. NOTICES

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

4
5 If to CAG:

6 Reuben Yeroushalmi, Esq.
7 9100 Wilshire Boulevard, Suite 240W
8 Beverly Hills, CA 90212
9 (310) 623-1926

10 If to JAY FRANCO & SONS, INC.:

11 Joseph Franco
12 JAY FRANCO AND SONS, INC.
13 295 5th Avenue # 312
14 New York, NY 10016-7106

15 With a copy to:

16 Robert Schuda
17 Rebecca Woodson
18 McKenna Long and Aldridge LLP
19 300 South Grand Ave, 14th Floor
20 Los Angeles, CA 90071

21 17. AUTHORITY TO STIPULATE

22 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
23 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
24 the party represented and legally to bind that party.

25 AGREED TO:

AGREED TO:

26 Date: _____, 2014

Date: _____, 2014

27 By: _____
28 For Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: _____
For Defendant, JAY FRANCO & SONS, INC.

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AGREED TO:

AGREED TO:

Date: 12-1, 2014

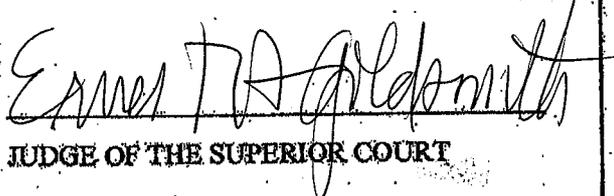
Date: _____, 2014

By: 
For Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: _____
For Defendant, JAY FRANCO & SONS, INC.

IT IS SO ORDERED.

Date: JAN 27 2015


JUDGE OF THE SUPERIOR COURT

ERNEST H. GOLDSMITH

295 5th Avenue # 312
New York, NY 10016-7106

With a copy to:

Robert Schuda
Rebecca Woodson
McKenna Long and Aldridge LLP
300 South Grand Ave. 14th Floor

AGREED TO:

Date: _____, 2014

AGREED TO:

Date: 14 November, 2014

By: _____

For Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: David B. McGowan

For Defendant, JAY FRANCO & SONS,
INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

Superior Court of California
County of San Francisco

CONSUMER ADVOCACY GROUP, INC.,
in the public interest

Plaintiff,

vs.

JAY FRANCO & SONS, INC., a New York
Corporation, and DOES 1-20;

Defendants.

Case Number: CGC-12-523742

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, Michael Yuen, Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On January 27, 2015, I served the attached CONSENT JUDGMENT by placing a copy thereof in a sealed envelope, addressed as follows:

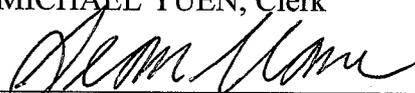
Reuben Yeroushalmi, Esq.
Peter Sato, Esq.
Yeroushalmi & Associates
9100 Wilshire Blvd, Suite 240W
Beverly Hills, CA 90212

Robert S. Schuda, Esq.
Rebecca L. Woodson, Esq.
McKenna Long & Aldridge, LLP
300 South Grand Ave, 14th Floor
Los Angeles, CA 90071

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: January 27, 2015

MICHAEL YUEN, Clerk

By: 

Sean Kane, Deputy Clerk