

1 Reuben Yeroushalmi (SBN 193981)  
2 Daniel D. Cho (SBN 105409)  
3 Ben Yeroushalmi (SBN 232540)  
4 **YEROUSHALMI & ASSOCIATES**  
5 9100 Wilshire Boulevard, Suite 610E  
6 Beverly Hills, California 90212  
7 Telephone: 310.623.1926  
8 Facsimile: 310.623.1930

9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc.

**FILED**  
LOS ANGELES SUPERIOR COURT

SEP 23 2013

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK  
BY *Elmer Sabalboro*  
ELMER SABALBORO, DEPUTY

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

RECEIVED  
SEP 11 2013  
Dept. 308

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

15 Plaintiff,

16 v.

17 COST PLUS, INC., a California corporation,  
18 COST PLUS WORLD MARKET, INC., a  
19 Texas corporation, and DOES 1-20

20 Defendants.

CASE NO. BC488266

CONSENT JUDGMENT [~~PROPOSED~~]

Dept: ~~308~~ 308

Judge: ~~Hon. Ralph Dau~~ Hon Jane L. Johnson

Complaint filed: July 13, 2012

21 1. INTRODUCTION

22 1.1 This Consent Judgment is entered into by and between plaintiff Consumer  
23 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and  
24 defendant Cost Plus, Inc. ("Cost Plus"), with each a Party and collectively referred to as  
25 "Parties."

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

ORIGINAL

1           **1.3 Notices of Violation.**

2           1.3.1 On or about November 3, 2011, CAG served Cost Plus and various public  
3 enforcement agencies with a document entitled "60-Day Notice of Violation" (the  
4 "November 3, 2011 Notice") that provided the recipients with notice of alleged violations  
5 of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
6 exposures to di(2-ethylhexyl)phthalate (DEHP) contained in Chrome Bottle Stoppers  
7 with O-Rings.

8           1.3.2 No public enforcer has commenced or diligently prosecuted the  
9 allegations set forth in the November 3, 2011 Notice.

10           **1.4 Complaint.**

11           On July 13, 2012, CAG filed a Complaint for civil penalties and injunctive relief  
12 ("Complaint") in Los Angeles Superior Court, Case No. BC488266. The Complaint alleges,  
13 among other things, that Cost Plus violated Proposition 65 by failing to give clear and reasonable  
14 warnings of exposure to DEHP from Chrome Bottle Stoppers with O-Rings.

15           **1.5 Consent to Jurisdiction**

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

23           **1.6 No Admission**

24           This Consent Judgment resolves claims that are denied and disputed. The parties enter  
25 into this Consent Judgment pursuant to a full and final settlement of any and all claims between  
26 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not  
27 constitute an admission with respect to any material allegation of the Complaint, each and every  
28

1 allegation of which Cost Plus denies, nor may this Consent Judgment or compliance with it be  
2 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Cost Plus.

3 **2. DEFINITIONS**

4 2.1 "Covered Products" means Bottle Stoppers sold by Cost Plus.

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

7 **3. INJUNCTIVE RELIEF/REFORMULATION**

8 3.1 Within 30 days of the Effective Date Cost Plus shall not sell or offer for sale in  
9 California Covered Products that contain DEHP with more than 0.1% DEHP by weight.

10 **4. SETTLEMENT PAYMENT**

11 Within fifteen (15) days of service of the notice of approval of this Consent Judgment by  
12 the Court, Defendant shall pay a total of fifty thousand dollars (\$50,000.00) (herein "Settlement  
13 Payment") by separate checks apportioned as follows:

14 4.1 **Civil Penalties.** Cost Plus shall issue two separate checks for a total amount of  
15 four thousand dollars (\$4,000.00.) as penalties pursuant to Health & Safety Code § 25249.12: (a)  
16 one check made payable to the State of California's Office of Environmental Health Hazard  
17 Assessment (OEHHA) in the amount of three thousand dollars (\$3,000.00), representing 75% of  
18 the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of one  
19 thousand dollars (\$1,000.00), representing 25% of the total penalty. Two separate 1099s shall be  
20 issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010,  
21 Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,000.00. The second 1099 shall  
22 be issued in the amount of \$1,000.00 to CAG and delivered to: Yeroushalmi & Associates, 9100  
23 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

24 4.2 **Payment In Lieu of Civil Penalties:** Cost Plus shall pay one thousand dollars  
25 (\$1,000.00) in lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG will use this  
26 payment for investigation of the public's exposure to Proposition 65 listed chemicals through  
27 various means, laboratory fees for testing for Proposition 65 listed chemicals, expert fees for  
28

1 evaluating exposures through various mediums, including but not limited to consumer product,  
2 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of  
3 hiring consulting and retained experts who assist with the extensive scientific analysis necessary  
4 for those files in litigation, in order to reduce the public's exposure to Proposition 65 listed  
5 chemicals by notifying those persons and/or entities believed to be responsible for such  
6 exposures and attempting to persuade those persons and/or entities to reformulate their products  
7 or the source of exposure to completely eliminate or lower the level of Proposition 65 listed  
8 chemicals, thereby addressing the same public harm as allegedly in the instant Action. Further,  
9 should the court require it, CAG will submit under seal, an accounting of these funds as  
10 described above as to how the funds were used.

11           **4.3 Reimbursement of Attorneys' Fees and Costs:** Within fifteen business days of  
12 service of the notice of entry of this Consent Judgment by the Court, Cost Plus shall pay forty-  
13 five thousand dollars (\$45,000.00) to "Yeroushalmi & Associates" as reimbursement for the  
14 investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs and  
15 expenses for all work performed through the approval of this Consent Judgment.  
16

17  
18           **4.4** All payments above shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &  
19 Associates, 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.  
20

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 Cost Plus 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,  
28 distribute or sell Covered Products ("Downstream Defendant Releasees"), for all claims for

1 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from  
2 Covered Products as set forth in the Notice. Cost Plus and Defendant Releasees' compliance  
3 with this Consent Judgment shall constitute compliance with Proposition 65 with respect to  
4 DEHP from Covered Products as set forth in the Notice.

5       5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
6 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
7 indirectly, any form of legal action and releases all claims, including, without limitation, all  
8 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
9 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
10 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,  
11 fixed or contingent (collectively "Claims"), against Cost Plus, Defendant Releasees, and  
12 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other  
13 statutory or common law regarding the failure to warn about exposure to DEHP from Covered  
14 Products manufactured, distributed, or sold by Cost Plus and Defendant Releasees. In  
15 furtherance of the foregoing, as to alleged exposures to DEHP from Covered Products, CAG  
16 hereby waives any and all rights and benefits which it now has, or in the future may have,  
17 conferred upon it with respect to the Claims arising from any violation of Proposition 65 or any  
18 other statutory or common law regarding the failure to warn about exposure to DEHP from  
19 Covered Products by virtue of the provisions of section 1542 of the California Civil Code, which  
20 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

1 warn about exposure to DEHP from Covered Products, including but not limited to any exposure  
2 to, or failure to warn with respect to exposure to DEHP from the Covered Products, CAG will  
3 not be able to make any claim for those damages against Cost Plus 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  
8 which, if known, would materially affect their decision to enter into this Consent Judgment,  
9 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,  
10 negligence, or any 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 Los Angeles, 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  
17 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve  
18 such 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 0 of this Consent Judgment, CAG shall provide a Notice of  
21 Violation ("NOV") to Cost Plus. The NOV shall include for each of the Covered Products: the  
22 date(s) the alleged violation(s) was observed and the location at which the Covered Products  
23 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the  
24 Covered Products, including an identification of the component(s) of the Covered Products that  
25 were tested.  
26  
27  
28

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, Cost Plus serves a Notice of  
3 Election ("NOE") that meets one of the following conditions:

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

6           (b) Since receiving the NOV Cost Plus has taken corrective action by  
7 either (i) removing the Covered Products identified in the NOV from sale in California  
8 and destroying or returning the Covered Products to the vendor, or (ii) providing a clear  
9 and reasonable warning for the Covered Products identified in the NOV pursuant to 27  
10 Cal. Code Regs. § 25603.

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

13           (a) In its election, Cost Plus 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, Cost Plus may withdraw its NOE to contest the violation and may serve a new  
20 NOE pursuant to Section 0.

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

24           6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the  
25 prevailing party in said proceeding shall be entitled to recover its reasonable attorneys' fees and  
26 costs. Further, such party may seek whatever fines, costs, penalties or remedies as may be  
27 provided by law for any violation of Proposition 65 or this Consent Judgment.  
28

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 Cost Plus 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  
8 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the  
9 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall  
10 have any effect, nor shall any such matter be admissible in evidence for any purpose in this  
11 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine  
12 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  
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  
28

1 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the  
2 Attorney General has received the aforementioned copy of this Consent Judgment, and in the  
3 absence of any written objection by the Attorney General to the terms of this Consent Judgment,  
4 the parties may 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  
7 and 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  
14 deemed 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  
23 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a  
24 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent  
25 Judgment agrees that any statute or rule of construction providing that ambiguities are to be  
26 resolved against the drafting Party should not be employed in the interpretation of this Consent  
27 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.  
28

1 **15. EXECUTION AND COUNTERPARTS**

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

5 **16. NOTICES**

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

8  
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 Cost Plus:

15 President  
16 Cost Plus, Inc.  
17 200 Fourth Street  
18 Oakland, CA 94607

19 With a copy to:

20 Merrit M. Jones  
21 Bryan Cave LLP  
22 560 Mission Street, 25<sup>th</sup> Floor  
23 San Francisco, CA 94105

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

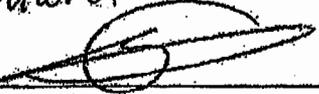
AGREED TO:

AGREED TO:

Date: 6-10-, 2013

Date: \_\_\_\_\_, 2013

*Michel Sassoon - executive director*

By:   
Plaintiff, CONSUMER ADVOCACY GROUP, INC.

By: \_\_\_\_\_  
Defendant, COST PLUS, INC.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AGREED TO:

Date: \_\_\_\_\_, 2013

AGREED TO:

Date: June 13<sup>th</sup>, 2013

By: \_\_\_\_\_  
Plaintiff, CONSUMER ADVOCACY  
GROUP, INC.

By: *[Signature]*  
Defendant, COST PLUS, INC.

**IT IS SO ORDERED.**

Date: 9/23/2013

*[Signature]*  
JUDGE OF THE SUPERIOR COURT