

FILED
Superior Court of California
County of Los Angeles

NOV 25 2015

Sherri B. Carter, Executive Officer/Clerk
By Michael Rivera Deputy
Michael Rivera

1 Reuben Yeroushalmi (SBN 193981)
2 Ben Yeroushalmi (SBN 232540)
3 Peter T. Sato (SBN 238486)
4 **YEROUSHALMI & YEROUSHALMI**
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.

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

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

15 Plaintiff,

16 v.

17 NOVELTY, INC., an Indiana Corporation;
18 AMERICA'S SUPPLIERS, INC., dba
19 DollarDays International, LLC, a Delaware
20 Corporation; DOLLARDAYS
21 INTERNATIONAL, INC., a Delaware
22 Corporation; DOLLARDAYS
23 INTERNATIONAL, LLC, a Delaware
24 Corporation; ROCK BOTTOM DEALS, an
25 Illinois Corporation; and DOES 1-20;

26 Defendants.

CASE NO. BC475762

CONSENT JUDGMENT [PROPOSED]

Dept: 37

Judge: Hon. Marc Marmaro

FAC filed: October 29, 2013

27 **1. INTRODUCTION**

28 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and
defendants Novelty, Inc., and defendants America's Suppliers, Inc. dba DollarDays International,

ORIGINAL

1 LLC, DollarDays International, Inc., and DollarDays International, LLC (hereinafter,
2 collectively, "Defendants"), with each a Party and collectively referred to as "Parties." By
3 stipulation of the Parties, the Court will retain jurisdiction to enforce the settlement under Code
4 of Civil Procedure § 664.6.

5 1.2 Defendants employ ten or more persons, are persons in the course of doing
6 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
7 California Health & Safety Code § 25249.5, *et seq.* ("Proposition 65"), and imported, distributed,
8 and/or sold "CHILDREN'S HATS WITH LENTICULAR CHARACTER PATCH", including
9 one or more of the following: 1) "Monsters v. Aliens™" Children's Cap (Yellow and Blue with
10 Orange and Yellow Insectosaurus Character) (Bar Code #9408026120) "Disney/Pixar®
11 Lenticular Hat with Wall-e patch, bar code: "7 94080 24270 1", light blue colored hat with
12 darker blue colored bill.", 2) Disney/Pixar© Lenticular Hat with Wall-e character patch, barcode:
13 "7 94080 24270 1", light blue colored hat with darker blue colored bill, 3) Disney/Pixar©
14 Lenticular Hat with Eve character patch, barcode: "7 94080 24270 1", purple and pink colored
15 hat, 4) Disney/Pixar© Lenticular Hat with M-O character patch, barcode: "7 94080 24270 1",
16 beige colored hat, 5) Disney/Pixar© Lenticular Hat with M-O character patch, barcode: "7 94080
17 24270 1", black colored hat with red colored bill." (hereinafter "Covered Products").

18 **1.3 Notice of Violation.**

19 1.3.1 On or about February 23, 2011, CAG served one or more Defendants, and
20 various public enforcement agencies with a document entitled "60-Day Notice of Intent to Sue"
21 (the "February 23, 2011 Notice") that provided the recipients with notice of alleged violations of
22 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
23 Diethyl Hexyl Phthalate contained in "Monsters vs. Aliens™" Children's Cap (Yellow and Blue
24 with Orange and Yellow Insectosaurus Character) (Bar Code # 9408026120).

25 1.3.2 On or about April 17, 2013, CAG served one or more Defendants, and
26 various public enforcement agencies with a document entitled "60-Day Notice of Intent to Sue"
27 (the "April 17, 2013 Notice") that provided the recipients with notice of alleged violations of
28

1 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
2 Diethyl Hexyl Phthalate contained in Children's Hats with Lenticular Character Patch

3 1.3.3 No public enforcer has commenced or diligently prosecuted the
4 allegations set forth in the February 23, 2011 and April 17, 2013 Notices.

5 **1.4 Complaint.**

6 On December 22, 2011, CAG filed a Complaint for Penalty, Injunction, and Restitution
7 ("Complaint") in Los Angeles Superior Court, Case No. BC475762. On October 29, 2013, CAG
8 filed a First Amended Complaint. The Complaint alleges, among other things, that Defendants
9 violated Proposition 65 by failing to give clear and reasonable warnings of exposure to DEHP
10 from the Covered Products.

11 **1.5 Consent to Jurisdiction**

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

19 **1.6 No Admission**

20 This Consent Judgment resolves claims that are denied and disputed. The parties enter
21 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
22 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
23 constitute an admission with respect to any material allegation of the Complaint, each and every
24 allegation of which Defendants deny, nor may this Consent Judgment or compliance with it be
25 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
26 Defendants.
27
28

1 **2. DEFINITIONS**

2 2.1 "Covered Products" means Children's Hats with Lenticular Character Patch
3 containing DEHP imported, distributed, or sold by Defendants.

4 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
5 Court.

6 2.3 "DEHP" means Diethyl Hexyl Phthalate.

7 2.5 "Notices" means the February 23, 2011 and April 17, 2013 Notices.

8 **3. INJUNCTIVE RELIEF/REFORMULATION**

9 3.1 Defendants have ceased sale of the Covered Products in California. In the future,
10 if Defendants decide to order the Covered Products those Covered Products sold or offered for
11 sale in California shall be formulated to contain less than 0.1% DEHP (1,000 parts per million)
12 by weight.

13 **4. SETTLEMENT PAYMENT**

14 4.1 **Payment and Due Date:** Within ten (10) days of the approval of the Consent
15 Judgment, Defendants shall pay a total of thirty-three thousand dollars (\$33,000) in full and
16 complete settlement of all monetary claims by CAG related to the Notices. Defendants shall pay
17 the sum of thirty-three thousand dollars (\$33,000), as follows:

18 4.2 **Reimbursement of Attorneys' Fees and Costs:** Defendants shall pay \$31,000.00
19 to "Yeroushalmi & Yeroushalmi" as reimbursement for the investigation fees and costs, testing
20 costs, expert fees, attorney fees, and other litigation costs and expenses for all work performed
21 through the approval of this Consent Judgment.

22 4.3 **Civil Penalties.** Defendants shall issue two separate checks for a total amount of
23 (\$1,000) as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable
24 to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the
25 amount of \$750.00, representing 75% of the total penalty; and (b) one check to Consumer
26 Advocacy Group, Inc. in the amount of \$250.00, representing 25% of the total penalty. Two
27 separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA,
28

1 P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$750.00. The
2 second 1099 shall be issued in the amount of \$250.00 to CAG and delivered to: Yeroushalmi &
3 Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Payment
4 of civil penalties by Defendants does not constitute an admission with respect to any material
5 allegation of the Complaint, each and every allegation of which Defendants deny, nor may
6 payment of civil penalties be used as evidence of any wrongdoing, misconduct, culpability or
7 liability on the part of Defendants.

8 **4.4 Payment In Lieu of Civil Penalties:** Defendants shall pay \$1,000.00 in lieu of
9 civil penalties to "Consumer Advocacy Group, Inc." CAG will use this payment for
10 investigation of the public's exposure to Proposition 65 listed chemicals through various means,
11 laboratory fees for testing for Proposition 65 listed chemicals, expert fees for evaluating
12 exposures through various mediums, including but not limited to consumer product,
13 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
14 hiring consulting and retained experts who assist with the extensive scientific analysis necessary
15 for those files in litigation, in order to reduce the public's exposure to Proposition 65 listed
16 chemicals by notifying those persons and/or entities believed to be responsible for such
17 exposures and attempting to persuade those persons and/or entities to reformulate their products
18 or the source of exposure to completely eliminate or lower the level of Proposition 65 listed
19 chemicals, thereby addressing the same public harm as allegedly in the instant Action. Further,
20 should the court require it, CAG will submit under seal, an accounting of these funds as
21 described above as to how the funds were used. The check shall be made payable to "Consumer
22 Advocacy Group, Inc."
23

24
25 **4.5** All Payments referenced in paragraphs 4.2, 4.3, and 4.4, shall be delivered to:
26 Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly
27 Hills, CA 90212, within 10 days after the Consent Judgment is signed.
28

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

2 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
3 behalf of itself and in the public interest, and Defendants and their officers, directors, insurers,
4 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
5 companies, and their successors and assigns ("Defendant Releasees"), or any other person in the
6 course of doing business, and the successors and assigns of any of them, who may use, maintain,
7 distribute or sell Covered Products ("Downstream Defendant Releasees"), for all claims for
8 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from
9 Covered Products as set forth in the Notices. Defendants' and Defendant Releasees' compliance
10 with this Consent Judgment shall constitute compliance with Proposition 65 with respect to
11 exposure to DEHP from Covered Products.

12 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
13 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
14 indirectly, any form of legal action and releases all claims, including, without limitation, all
15 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
16 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
17 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
18 fixed or contingent (collectively "Claims"), against Defendants, Defendant Releasees, and
19 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
20 statutory or common law regarding the failure to warn about exposure to DEHP from any and all
21 Covered Products, including but not limited to the Covered Products, imported, distributed, or
22 sold by Defendants and Defendant Releasees. In furtherance of the foregoing, as to alleged
23 exposures to DEHP from Covered Products, CAG hereby waives any and all rights and benefits
24 which it now has, or in the future may have, conferred upon it with respect to the Claims arising
25 from any violation of Proposition 65 or any other statutory or common law regarding the failure
26 to warn about exposure to DEHP from Covered Products by virtue of the provisions of section
27 1542 of the California Civil Code, which provides as follows:
28

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

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

18
19 **6. ENFORCEMENT OF JUDGMENT**

20 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
21 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
22 California, City and County of Los Angeles, giving the notice required by law, enforce the terms
23 and conditions contained herein. A Party may enforce any of the terms and conditions of this
24 Consent Judgment only after that Party first provides 30 days' notice to the Party allegedly
25 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
26 such Party's failure to comply in an open and good faith manner.

27 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
28 proceeding to enforce Section 3 of this Consent Judgment, CAG shall provide a Notice of

1 Violation ("NOV") to Defendants. The NOV shall include for each Covered Products: the
2 date(s) the alleged violation(s) was observed and the location at which the Covered Products was
3 offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
4 Covered Products.

5 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
6 alleged violation if, within 30 days of receiving such NOV, Defendants serves a Notice of
7 Election ("NOE") that meets one of the following conditions:

8 (a) The Covered Product was shipped by Defendants for sale in
9 California before the Effective Date, or

10 (b) Since receiving the NOV Defendants have taken corrective action
11 by either (i) requesting that its customers in California remove the Covered Product
12 identified in the NOV from sale in California and destroy or return the Covered Product
13 to Defendants, or (ii) providing a clear and reasonable warning for the Covered Product
14 identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

15 **6.2.2 Contested NOV.** Defendants may serve an NOE informing CAG of its
16 election to contest the NOV within 30 days of receiving the NOV.

17 (a) In its election, Defendants may request that the same sample(s) of
18 Covered Product(s) tested by CAG be subject to confirmatory testing at an EPA-
19 accredited laboratory.

20 (b) If the confirmatory testing establishes that the Covered Product
21 does not contain DEHP in excess of the level allowed in Section 3.1 CAG shall take no
22 further action regarding the alleged violation. If the testing does not establish compliance
23 with Section 3.1, Defendants may withdraw its NOE to contest the violation and may
24 serve a new NOE pursuant to Section 6.2.1.

25 (c) If Defendants do not withdraw an NOE to contest the NOV, the
26 Parties shall meet and confer for a period of no less than 30 days before CAG may seek
27 an order enforcing the terms of this Consent Judgment.
28

1 6.3. In any proceeding brought by either Party to enforce this Consent Judgment,
2 the prevailing party shall be entitled to recover its attorney's fees and costs.

3 **7. ENTRY OF CONSENT JUDGMENT**

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

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

15 **8. MODIFICATION OF JUDGMENT**

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

19 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
20 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

21 **9. RETENTION OF JURISDICTION**

22 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
23 terms of this Consent Judgment.

24 **10. DUTIES LIMITED TO CALIFORNIA**

25 This Consent Judgment shall have no effect on Covered Products sold outside the State of
26 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
4 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the
5 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
6 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
7 the parties may then submit it to the Court for approval.

8 **12. ATTORNEY FEES**

9 12.1 Except as specifically provided in Section 4.2, each Party shall bear its own costs
10 and attorney fees in connection with this action.

11 **13. GOVERNING LAW**

12 13.1 The validity, construction and performance of this Consent Judgment shall be
13 governed by the laws of the State of California, without reference to any conflicts of law
14 provisions of California law.

15 13.2 The Parties, including their counsel, have participated in the preparation of this
16 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
17 Consent Judgment was subject to revision and modification by the Parties and has been accepted
18 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
19 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
20 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
21 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
22 resolved against the drafting Party should not be employed in the interpretation of this Consent
23 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

24 **14. EXECUTION AND COUNTERPARTS**

25 14.1 This Consent Judgment may be executed in counterparts and by means of
26 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
27 one document.
28

1 **15. NOTICES**

2 15.1 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
11 If to Novelty, Inc.(aka "Novelty, Inc."):

12 Todd Green, President, or
13 Current President/CEO
14 Novelty, Inc.
15 351 W. Muskegon Drive
16 Greenfield, IN 46140

17
18 With a copy to:

19 Donald Weissman, Esq.
20 WEISSMAN LAW FIRM
21 5567 Reseda Blvd, Suite 118
22 Tarzana, CA 91356
23 Facsimile: (818) 705-2634

24
25 If to America's Suppliers, Inc.,
26 DollarDays International, Inc., or
27 DollarDays International, LLC (aka "Dollardays"):

28 Marc J. Joseph, CEO
Or Current President/CEO
DollarDays International, Inc.
7575 E Redfield Rd, Ste 201
Scottsdale, AZ 85260

With a copy to:

Michael P. Cutler
POLSINELLI LLP

2049 Century Park East, Suite 2900
Los Angeles, California 90067
Facsimile: (310) 556- 1802

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:

AGREED TO:

Date: October 1, 2015

Date: _____, 2015

By: Michael Marcus
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: Patricia Dwyer, CFO
Defendant, NOVELTY, INC.

AGREED TO:

Date: _____, 2015

By: _____
Defendants, AMERICA'S SUPPLIERS, INC.,
DOLLARDAYS INTERNATIONAL, INC.,
DOLLARDAYS INTERNATIONAL, LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

2049 Century Park East, Suite 2900
Los Angeles, California 90067
Facsimile: (310) 556- 1802

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:

AGREED TO:

Date: _____, 2015

Date: _____, 2015

By: _____

By: *John J. Drayton, CFO*
Defendant, NOVELTY, INC.

Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

AGREED TO:

Date: _____, 2015

By: *J.C.R. CFO*

Defendants, AMERICA'S SUPPLIERS, INC.,
DOLLARDAYS INTERNATIONAL, INC.,
DOLLARDAYS INTERNATIONAL, LLC

IT IS SO ORDERED.

Date: 11-25-15

Marc Marmaro

JUDGE OF THE SUPERIOR COURT

MARC MARMARO