

FILED
ALAMEDA COUNTY
MAY 02 2016
CLERK OF THE SUPERIOR COURT
By Nancy A. Rose
NANCY ROSE, Deputy

1 Reuben Yeroushalmi (SBN 193981)
2 Ben Yeroushalmi (SBN 232540)
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10 Attorneys for Plaintiffs,
11 Consumer Advocacy Group, Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA

14 CONSUMER ADVOCACY GROUP, INC.,
15 in the interest of the Public,
16 Plaintiff,
17 v.
18 PLASTICOLOR MOLDED PRODUCTS,
19 INC., a California Corporation; and DOES 1-
20 20;
21 Defendants.

22 CASE NO. HG15760945
23 ASSIGNED FOR ALL PURPOSES TO
24 JUDGE Brenda Harbin-Forte
25 DEPARTMENT 516
26 **CONSENT JUDGMENT [PROPOSED]**

27 Complaint filed: March 5, 2015

28 **1. INTRODUCTION**

29 **1.1** This Consent Judgment is entered into by and between plaintiff Consumer
30 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public, and
31 defendant PLASTICOLOR MOLDED PRODUCTS, INC. ("PLASTICOLOR" or "Defendant")
32 with each a "Party" and collectively referred to as "Parties."

33 **1.2** It is alleged that Defendant named in the Complaint employs ten or more persons,
34 is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
35 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition
36 65"), and manufactured, distributed, and/or sold Seat Covers, which include but are not limited

1 to, "FORD Sideless Seat Cover with Head Rest, Black, item number 008601, Barcode:
2 081134186013" before the Effective Date of this Consent Judgment.

3 **1.3 Notice of Violation.**

4 1.3.1 On or about May 8, 2014 CAG served the Defendant named in the Complaint and
5 various public enforcement agencies with documents entitled "60-Day Notice of Violation" (the
6 "Notice") that provided the recipients with notice of alleged violations of Health & Safety Code
7 § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in the
8 Covered Products.

9 1.3.2 No public enforcer has commenced or diligently prosecuted the allegations
10 set forth in the Notices.

11 **1.4 Complaint.**

12 On March 5, 2015, CAG filed a Complaint for civil penalties and injunctive relief
13 ("Complaint") in Alameda Superior Court, Case No. HG15760945. The Complaint alleges,
14 among other things, that the named Defendant violated Proposition 65 by failing to give clear
15 and reasonable warnings of exposure to DEHP from the Covered Products.

16 **1.5 Consent to Jurisdiction**

17 While otherwise disputed, for purposes of this Consent Judgment, the parties consent that
18 this Court has jurisdiction over the allegations of violations contained in the Complaint and
19 personal jurisdiction over the named Defendant as to the acts alleged in the Complaint, that
20 venue is proper in the City and County of Alameda and that this Court has jurisdiction to enter
21 this Consent Judgment as a full settlement and resolution of the allegations contained in the
22 Complaint and of all claims which were or could have been raised by any person or entity based
23 in whole or in part, directly or indirectly, on the prior conduct of the parties or on the facts
24 alleged in the Complaint or arising therefrom or related to.

25 **1.6 No Admission**

26 1.6.1 This Consent Judgment resolves claims that are denied and disputed. The parties
27 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
28 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment

1 shall not constitute an admission with respect to any material allegation of the Complaint, each
2 and every allegation of which Defendant denies including jurisdiction, nor may this Consent
3 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability
4 or liability on the part of Defendant.

5 1.6.2 Nothing in this Consent Judgment shall prejudice, waive or impair any right,
6 remedy, argument, or defense the Parties may have in any other or future legal proceeding,
7 except as expressly provided in this Consent Judgment.

8 1.6.3 This Consent Judgment is the product of negotiation and compromise and is
9 accepted by the Parties, for purposes of settling, compromising, and resolving issues disputed in
10 this Action, including future compliance by Defendants with Section 2 of this Consent Judgment.

11 2. DEFINITIONS

12 2.1 "Covered Products" means all Seat Covers, which includes but is not limited to,
13 "FORD Sideless Seat Cover with Head Rest, Black, item number 008601, Barcode:
14 081134186013" sold, distributed, processed, packaged, produced, manufactured, and/or handled
15 by Defendant.

16 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
17 Court.

18 2.3 "DEHP" means Di (2-ethylhexyl) phthalate.

19 3. INJUNCTIVE RELIEF/REFORMULATION

20 3.1 After the Effective Date, Defendant shall not sell, offer for sale in California, or
21 ship for sale in California any Covered Products unless Defendant has either (1) reformulated the
22 Covered Products to the point where the level of DEHP does not exceed more than 0.1 % by
23 weight or 1,000 ppm (parts per million); or (2) provided a Proposition 65 compliant warning on
24 the Covered Products. Any warning provided pursuant to this section shall be affixed to the
25 packaging of, or directly on, the Covered Products, and be prominently placed with such
26 conspicuousness as compared with other words, statements, designs, or devices as to render it
27 likely to be read and understood by an ordinary individual under customary conditions before
28 purchase or use. The Parties agree that product labeling stating that:

1 **WARNING:** This product contains a chemical known to the State of California
2 to cause cancer or birth defects or other reproductive harm;

3 shall constitute compliance with Proposition 65 with respect to the DEHP in the
4 Covered Products distributed and/or sold by the Defendant after the Effective Date.

5 **4. SETTLEMENT PAYMENT**

6 **Total Payment:** Within 10 days after the Effective Date, Defendant shall pay a total of
7 ninety thousand dollars (\$90,000.00) as follows:

8 **4.1 Civil Penalties.** Defendant shall issue two separate checks for a total amount of
9 ten thousand dollars (\$10,000.00) as 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 \$7,500.00 representing 75% of the total penalty; and (b)
12 one check to Consumer Advocacy Group, Inc. in the amount of \$2,500.00 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 \$7,500.00. The second 1099 shall be issued in the amount of \$2,500.00 to CAG and
16 delivered to: Yeroushalmi & Yeroushlami, 9100 Wilshire Boulevard, Suite 240W, Beverly
17 Hills, California 90212.

18 **4.2 Payments in Lieu of Civil Penalties**

19 Defendant also shall separately pay five thousand dollars (\$5,000.00) to CAG as a
20 payment in lieu of civil penalty pursuant to Health & Safety Code §25249.7(b) and California
21 Code of Regulations, Title 11 § 3203(b). CAG will use this payment for investigation of the
22 public's exposure to Proposition 65 listed chemicals through various means, laboratory fees for
23 testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through various
24 mediums, including but not limited to consumer product, occupational, and environmental
25 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained
26 experts who assist with the extensive scientific analysis necessary for those files in litigation, as
27 well as administrative costs incurred during the litigation, in order to reduce the public's
28 exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to

1 be responsible for such exposures and attempting to persuade those persons and/or entities to
2 reformulate their products or the source of exposure to completely eliminate or lower the level of
3 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the
4 instant Action.

5 **4.3 Reimbursement of Attorneys' Fees and Costs:** Defendant shall pay seventy-
6 five thousand dollars (\$75,000.00) to "Yeroushalmi & Associates" as reimbursement for the
7 investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs and
8 expenses for all work performed through the approval of this Consent Judgment.

9 **4.4** Payments pursuant to 4.1, 4.2 and 4.3 shall be delivered to: Reuben Yeroushalmi,
10 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212 within
11 the time agreed upon by the Parties.

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

13 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on
14 behalf of itself and in the public interest and Defendant and its officers, directors, insurers,
15 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
16 companies, agents, contractors, vendors, licensors, including but limited to Ford Motor Company
17 and their successors and assigns ("Defendant Releasees"), and each of their suppliers, customers,
18 distributors, wholesalers, retailers, including but not limited to AutoZone, Inc., and the
19 successors and assigns of any of them who may use, maintain, distribute or sell Covered
20 Products ("Downstream Defendant Releasees"), for all conduct of the named Defendant prior to
21 the Effective Date based on alleged exposure to DEHP from Covered Products as set forth in the
22 Notice. Defendant and Defendant Releasees' compliance with this Consent Judgment shall
23 constitute compliance with Proposition 65 with respect to exposure to DEHP from Covered
24 Products.

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
28 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,

1 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
2 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
3 fixed or contingent (collectively "Claims"), against Defendant, Defendant Releasees, and
4 Downstream Defendant Releasees arising from any allegations of violation of Proposition 65 or
5 any other statutory or common law regarding the failure to warn about exposure to DEHP from
6 Covered Products manufactured, distributed, or sold by Defendant and Defendant Releasees. In
7 furtherance of the foregoing, as to alleged exposures to DEHP from Covered Products, CAG
8 hereby waives any and all rights and benefits which it now has, or in the future may have,
9 conferred upon it with respect to the Claims arising from any violation of Proposition 65 or any
10 other statutory or common law regarding the failure to warn about exposure to DEHP from
11 Covered Products by virtue of the provisions of section 1542 of the California Civil Code, which
12 provides as follows:

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

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

1 negligence, or any other cause.

2 **6. ENFORCEMENT OF JUDGMENT**

3 **6.1** For purposes of this Consent Judgment only, the Parties stipulate that this Court
4 has jurisdiction over Defendant as to the allegations contained in the Complaint, that venue of
5 the action in Alameda County is proper, and that this Court has jurisdiction to enter and enforce
6 the provisions of this Consent Judgment, pursuant to Code of Civil Procedure section 664.6, as a
7 full and binding resolution of all claims that were or could have been raised in the Complaint
8 against Defendant based on the facts alleged therein and in the Notices

9 **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
10 proceeding to enforce any alleged violation of Section 3.1 of this Consent Judgment, CAG shall
11 provide a Notice of Violation ("NOV") to Defendant. The NOV shall include for each of the
12 Newly Alleged Products ("Newly Alleged Products" means any Covered Product for which CAG
13 alleges a violation of the Consent Judgment after the Effective Date): the date(s) the alleged
14 violation(s) was observed and the location at which the Newly Alleged Products were offered for
15 sale, and shall be accompanied by all test data obtained by CAG regarding the Newly Alleged
16 Products, including an identification of the component(s) of the Newly Alleged Products that
17 were tested. Before any destructive testing of any Newly Alleged Products is conducted by or on
18 behalf of CAG, CAG shall give Defendant(s) an opportunity to inspect and verify at reasonable
19 times and places the authenticity of any Newly Alleged Product in violation of this Consent
20 Judgment.

21 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
22 alleged violation if, within 60 days of receiving such NOV, Defendant serves a Notice of
23 Election ("NOE") that meets one of the following conditions:

24 (a) The Newly Alleged Products were shipped by Defendant for sale
25 in California before the Effective Date, or

26 (b) Since receiving the NOV Defendant has taken corrective action by
27 either (i) requesting that its customers in California remove the Newly Alleged Products
28 identified in the NOV from sale in California and destroy or return the Newly Alleged

1 Products to Defendant, or (ii) providing a clear and reasonable warning for the Newly
2 Alleged Products identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

3 6.2.2 **Contested NOV.** Defendant may serve an NOE informing CAG of its
4 election to contest the NOV within 60 days of receiving the NOV.

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

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

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

16 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
17 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
18 violation of this Consent Judgment.

19 7. ENTRY OF CONSENT JUDGMENT

20 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
21 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
22 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

23 7.2 If this Consent Judgment is not approved in full by the Court, (a) this Consent
24 Judgment and any and all prior agreements between the parties merged herein shall terminate
25 and become null and void, and the actions shall revert to the status that existed prior to the
26 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
27 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
28 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any

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 AND RIGHTS THEREUNDER**

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. Any
7 Party may waive in writing any right it may have under this Consent Judgment.

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

10 **9. RETENTION OF JURISDICTION**

11 **9.1** This Court shall retain jurisdiction of this matter to implement and enforce the
12 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

13 **10. DUTIES LIMITED TO CALIFORNIA**

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

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

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

23 **12. ATTORNEY FEES**

24 **12.1** Except as specifically provided in Section 4.3 and 6.3, each Party shall bear its
25 own costs and attorney fees in connection with this action.

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1 **13. GOVERNING LAW**

2 13.1 The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.

5 13.2 The Parties, including their counsel, have participated in the preparation of this
6 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
7 Consent Judgment was subject to revision and modification by the Parties and has been accepted
8 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
9 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
10 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
11 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
12 resolved against the drafting Party should not be employed in the interpretation of this Consent
13 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

14 **14. EXECUTION AND COUNTERPARTS**

15 14.1 This Consent Judgment may be executed in counterparts and by means of
16 facsimile or portable document format (PDF), which taken together shall be deemed to constitute
17 one document.

18 **15. NOTICES**

19 15.1 Any notices under this Consent Judgment shall be by personal delivery or First
20 Class Mail.

21 If to CAG:

22 Reuben Yeroushalmi
23 9100 Wilshire Boulevard, Suite 240W
24 Beverly Hills, CA 90212
(310) 623-1926

25 If to Plasticolor Molded Products, Inc.

26 Gayle Deflin
27 LBMB, Inc.
28 801 South Acacia Avenue
Fullerton, CA 92831

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16. AUTHORITY TO STIPULATE

16.1 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:
Date: 11/24, 2015

AGREED TO:
Date: 11/23, 2015

By: *Michael Warner*
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: *Shayle Napp*
Defendant, PLASTICOLOR MOLDED
PRODUCTS, INC.

IT IS SO ORDERED.

Date: MAY 02 2016

Sandra K. Bean *NABR*

JUDGE OF THE SUPERIOR COURT
Sandra K. Bean