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

14 CONSUMER ADVOCACY GROUP, INC., a) Case No. CGC-08-476010
15 non-profit corporation,)
16)
Plaintiff,) **[PROPOSED] CONSENT JUDGMENT**
17)
18 v.) Health & Safety Code §25249.5 *et seq.*
19)
20 THE LAMOTTE CHEMICAL PRODUCTS)
COMPANY, and DOES 1-100)
21)
Defendants.)
22)

23 **1. INTRODUCTION**

24 1.1 On June 5, 2008, plaintiff the Consumer Advocacy Group, Inc.
25 (“CAG”), a non-profit corporation, filed a complaint in San Francisco County Superior Court,
26 entitled *Consumer Advocacy Group v. The LaMotte Chemical Products Company, et al.*,
27 Case No. CGC-08-47010 (the “Action”), for civil penalties and injunctive relief pursuant to
28 the provisions of California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”).
CAG’s Complaint named The LaMotte Chemical Products Company (“LaMotte”) and

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unnamed "Does" as defendants.

1.2 LaMotte is a corporation that employs 10 or more persons. LaMotte sells or has sold to California consumers, or has otherwise made available for distribution in the State of California, consumer water testing products including but not limited to a Lamotte Thorium Nitrate Solution ("Product #1") and Lamotte Phenolphthalein Indicator Solution ("Product #2") (collectively the "Products"). Product #1 contains Radionuclides, a chemical known to the State of California to cause Cancer. Product #2 contains Phenolphthalein, a chemical known to the State of California to cause Cancer.

1.3 On or about June 28, 2007, CAG served LaMotte and the appropriate public enforcement agencies with notice claiming that LaMotte was in violation of Proposition 65 in regard to Product #1. CAG's notice and the Complaint in this Action allege that LaMotte exposes people who handle Product#1 to Radionuclides, without first providing clear and reasonable warnings, in violation of California Health & Safety Code § 25249.6.

1.4 On or about February 7, 2008, CAG served LaMotte and the appropriate public enforcement agencies with notice claiming that LaMotte was in violation of Proposition 65 in regard to Product #2. CAG's notice and the Complaint in this Action allege that LaMotte exposes people who handle Product #2 to Phenolphthalein, without first providing clear and reasonable warnings, in violation of California Health & Safety Code § 25249.6.

1.5 LaMotte denies the material allegations of the notices and the Complaint, and denies liability for the cause of action alleged in the Complaint and in connection with the Action. LaMotte has provided a Proposition 65 warning on the label of its Phenolphthalein Indicator Solution since 1998, when warnings were first required under Proposition 65. LaMotte contends that the level of radionuclides in Product #1 is not unsafe and is too low to require a warning.

1.6 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over the allegations of violations contained in CAG's Complaint and personal jurisdiction over LaMotte as to the acts alleged in CAG's Complaint, that venue

1 is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
2 Consent Judgment as a full and final resolution of all claims which were or could have been
3 raised in the Complaint based on the facts alleged therein.

4 1.7 The parties enter into this Consent Judgment pursuant to a settlement of
5 certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and
6 costly litigation, including without limitation the expenditure of significant funds by LaMotte
7 for scientific analysis and related proceedings before the OEHHA and/or the Courts related to
8 Product #1, and similar expenditures by CAG to oppose such analysis and proceedings.

9 1.8 Nothing in this Consent Judgment shall be construed as an admission
10 by the Parties of any fact, conclusion of law, issue of law or violation of law, including
11 without limitation, any admission concerning any violation of Proposition 65 or any other
12 statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
13 “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health
14 and Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its
15 terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion
16 of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by LaMotte, its
17 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or
18 admitted as evidence in any administrative or judicial proceeding or litigation in any court,
19 agency, or forum.

20 1.9 Nothing in this Consent Judgment shall prejudice, waive or impair any
21 right, remedy, argument, or defense the Parties may have in any other or future legal
22 proceeding.

23 1.10 This Consent Judgment is the product of negotiation and compromise
24 and is accepted by the Parties, for purposes of settling, compromising and resolving issues
25 disputed in this action, including future compliance by LaMotte with Section 2 of this
26 Consent Judgment, and shall not be used for any other purpose, or in any other matter.

27 **2. COMPLIANCE – STOP SALES IN CALIFORNIA AND WARNING**

28 2.1 Effective as of the date of the entry of this Consent Judgment, LaMotte

1 (1) shall not directly sell its Thorium Nitrate Solution in California, and (2) shall provide the
2 following Proposition 65-compliant warning on the label of its Thorium Nitrate Solution that
3 it manufactures after the date of entry of this Consent Judgment (so that there is a warning on
4 any of LaMotte's Thorium Nitrate Solution bottles that may reach California through indirect
5 sales):

6 **WARNING: This product contains radionuclides, a chemical known to**
7 **the State of California to cause cancer.**

8 **3. SETTLEMENT PAYMENT**

9 3.1 Within fifteen days (15) days of entry of this Consent Judgment by the
10 Court, LaMotte shall pay twenty-five thousand dollars (\$25,000) to "Consumer Advocacy
11 Group, Inc." in care of the offices of Reuben Yeroushalmi. The payment shall be apportioned
12 as follows:

13 3.1.1 Monetary Payment in Lieu of Penalty: Five Hundred dollars
14 (\$500.00) shall be paid to CAG in lieu of any penalty pursuant to California
15 Health and Safety Code § 25249.7(b). CAG shall use such funds to continue
16 its work protecting people from exposures to toxic chemicals, including those
17 listed under Proposition 65; protecting the environment; improving human
18 health; and supporting environmentally sound practices.

19 3.1.2 Attorneys' Fees and Costs: Twenty Four Thousand Five
20 Hundred dollars (\$24,500.00) of such payment shall be used to reimburse CAG
21 and its attorneys for reasonable investigation fees and costs, attorneys' fees,
22 and any other costs incurred as a result of investigating, bringing this matter to
23 LaMotte's attention, litigating, and negotiating a settlement in the public
24 interest.

25 **4. MODIFICATION OF CONSENT JUDGMENT**

26 4.1 This written Consent Judgment may only be modified by written
27 agreement of CAG and LaMotte upon stipulation and Order of the Court, or after noticed
28 motion, and upon entry of a consent judgment by the Court thereon, or upon motion of CAG
or LaMotte as provided by law and upon entry of a modified consent judgment by the Court.

5. ENFORCEMENT OF CONSENT JUDGMENT

5.1 Either party may, by motion or application for an order to show cause
before the Superior Court of the County of San Francisco, consistent with the terms and

1 conditions set forth in paragraphs 9.1 and 9.2 of this Consent Judgment, enforce the terms and
2 conditions contained in this Consent Judgment. The prevailing party shall be entitled to its
3 reasonable attorneys' fees and costs associated with such motion or application.

4 **6. APPLICATION OF CONSENT JUDGMENT**

5 6.1 This Consent Judgment shall apply to and be binding upon the parties
6 hereto, their divisions, subdivisions and subsidiaries, officers, directors, employees, agents
7 and their successors or assigns, and to the extent allowed by law, on the general public.

8 **7. CLAIMS COVERED AND RELEASED**

9 7.1 CAG, on behalf of itself and in the public interest, hereby releases and
10 discharges LaMotte, its related affiliates, customers, retailers, distributors, predecessors,
11 successors and assigns, and all officers, directors, employees, and shareholders of them
12 (collectively, "Released Parties") from any and all claims asserted, or that could have been
13 asserted, in this litigation arising from the alleged failure to provide Proposition 65 warnings
14 regarding the exposure of individuals to listed chemicals in Product #1 or Product #2. CAG,
15 on behalf of itself only, hereby releases and discharges the Released Parties from any and all
16 known and unknown past, present, and future rights, claims, causes of action, damages, suits,
17 penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs, and expenses
18 related to or arising out of the facts and claims asserted, or that could have been asserted,
19 under state or federal law in this litigation arising from or related to Product #1 or Product #2
20 or the facts alleged in Plaintiff's Proposition 65 Notices or the Complaint, including without
21 limitation any and all claims concerning exposure of any person to Proposition 65-listed
22 chemicals in Product #1 or Product #2.. Compliance with the terms of this Consent Judgment
23 shall constitute compliance by the Released Parties with Proposition 65 with respect to
24 exposures to Phenolphthalein and Thorium Nitrate products manufactured and/or distributed
25 by LaMotte. This release does not limit or affect the obligations of any party created under
26 this Consent Judgment.

27 7.2 Unknown Claims. It is possible that other injuries, damages, liability, or
28 claims not now known to the Parties arising out of the facts alleged in the Complaint will develop

1 or be discovered, and this Consent Judgment is expressly intended to cover and include all such
2 injuries, damages, liability, and claims, including all rights of action therefor. CAG has full
3 knowledge of the contents of Section 1542 of the Civil Code. CAG, on behalf of itself only,
4 acknowledges that the claims released in section 7.1 above may include unknown claims and
5 waives Section 1542 as to any such unknown claims. Section 1542 reads as follows:

6 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
7 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
8 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
9 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
10 **OR HER SETTLEMENT WITH THE DEBTOR.”**

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12
13 CAG acknowledges and understands the significance and consequences of this specific
14 waiver of Civil Code Section 1542.

15 **8. SEVERABILITY**

16 8.1 In the event that any of the provisions of this Consent Judgment are
17 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
18 adversely affected.

19 **9. NOTICE AND CURE**

20 9.1 No action to enforce this Consent Judgment may be commenced, and
21 no notice of violation related to Phenolphthalein and Thorium may be served or filed against
22 LaMotte by CAG, unless the party seeking enforcement or alleging violation notifies the other
23 party of the specific acts alleged to breach this Consent Judgment at least 90 days before
24 serving or filing any motion, action, or Notice of Violation. Any notice to LaMotte must
25 contain (a) the name of the product, (b) specific dates when the product was sold in California
26 without the warning specified in Section 2, and (c) any evidence or other support for the
27 allegations in the notice.

28 9.2 Within 30 days of receiving the notice described in Section 9.1,
LaMotte shall either (1) withdraw the product or (2) provide for the product the warning

1 described in Section 2 or (3) refute the information provided under Section 9.1. Should the
2 parties be unable to resolve the dispute, either party may seek relief under Section 5.

3 **10. GOVERNING LAW**

4 10.1 The terms of this Consent Judgment shall be governed by the laws of
5 the State of California.

6 **11. PROVISION OF NOTICE**

7 11.1 All notices required pursuant to this Consent Judgment and
8 correspondence shall be sent to the following:

9 For CAG:

10 Reuben Yeroushalmi
11 Yeroushalmi & Associates
12 3700 Wilshire Boulevard, Suite 480
13 Los Angeles, CA 90010
14 Facsimile No. (213) 382-3430

15 For The LaMotte:

16 Jeffrey J. Parker, Esq.
17 Sheppard, Mullin Richter & Hampton LLP
18 333 South Hope Street
19 48th Floor
20 Los Angeles, CA 90071
21 Facsimile No. (213) 620-1398

22 **12. COURT APPROVAL**

23 12.1 If this Consent Judgment is not approved by the Court, it shall be of no
24 further force or effect.

25 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and
26 with Title 11 California Code of Regulations section 3003.

27 **13. EXECUTION AND COUNTERPARTS**

28 13.1 The stipulations to this Consent Judgment may be executed in
counterparts and by means of facsimile, which taken together shall be deemed to constitute
one document. A facsimile or pdf signatures shall be construed and valid as the original.

14. AUTHORIZATION

14.1 Each signer of this Consent Judgment certifies that he or she is fully

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authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

CONSUMER ADVOCACY GROUP, INC.

Lyn Marcus
Lyn Marcus, President

Dated: 4/13, 2009

THE LAMOTTE CHEMICAL PRODUCTS COMPANY

David LaMotte
David LaMotte
President

Dated: 3/16, 2009

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Consumer Advocacy Group, Inc. and The LaMotte Chemical Products Company, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: _____, 2009

Judge, Superior Court of the State of California