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15 LIL' DRUG STORE PRODUCTS, INC.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF LOS ANGELES

18 CONSUMER ADVOCACY GROUP, INC., in  
19 the public interest,

20 Plaintiff,

21 v.

22 LIL' DRUG STORE PRODUCTS, INC., an  
23 Iowa corporation, and DOES 1-20,

24 Defendants.

CASE NO. BC 425417

**[PROPOSED] STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: November 5, 2009  
TRIAL DATE: January 10, 2011  
TIME: 10:00 a.m.

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26 **1. INTRODUCTION**

27 1.1 On November 5, 2009, plaintiff, the Consumer Advocacy Group, Inc. ("CAG"), a  
28 non-profit corporation, filed a complaint in the Los Angeles Superior Court entitled *Consumer*

1 *Advocacy Group, Inc. v. Lil' Drug Store Products, Inc.*, Case No. BC 425417 (the "Action), for  
2 civil penalties and injunctive relief pursuant to the provisions of California Health & Safety Code  
3 § 25249.5, *et seq.* ("Proposition 65"). CAG's Complaint named Lil' Drug Store Products, Inc.,  
4 ("Lil' Drug Store") and unnamed "Does" as defendants.

5 1.2 Lil' Drug Store is a corporation that employs 10 or more persons. Lil' Drug Store  
6 has made available for distribution in the State of California two lead-containing products, Lil'  
7 Auto Store LA-031 Top Battery Terminal product, and Lil' Auto Store LA-032 Sidepost Battery  
8 Terminal product (the "Products"). The Products contain lead, a chemical known to the State of  
9 California to cause cancer and birth defects or other reproductive harm.

10 1.3 On or about February 25 and August 17, 2009, CAG served Lil' Drug Store and the  
11 appropriate public enforcement agencies with notice claiming that Lil' Drug Store was in violation  
12 of Proposition 65 in regard to the Products. CAG's notices and the Complaint in this Action allege  
13 that Lil' Drug Store exposes people who handle the Products to Lead, without first providing  
14 clear and reasonable warnings, in violation of California Health & Safety Code § 25249.6.

15 1.4 Lil' Drug Store denies the material allegations of the notices and the Complaint,  
16 and denies liability for the cause of action alleged in the Complaint and in connection with the  
17 Action.

18 1.5 For purposes of this Stipulated Stipulated Consent Judgment only, the parties  
19 stipulate that this Court has jurisdiction over the allegations of violations contained in CAG's  
20 Complaint and personal jurisdiction over Lil' Drug Store as to the acts alleged in CAG's  
21 Complaint, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction  
22 to enter this Stipulated Stipulated Consent Judgment as a full and final resolution of all claims  
23 which were or could have been raised in the Complaint based on the facts alleged therein.

24 1.6 The parties enter into this Stipulated Stipulated Consent Judgment pursuant to a  
25 settlement of certain disputed claims as alleged in the Complaint for the purpose of avoiding  
26 prolonged and costly litigation, including without limitation the expenditure of significant funds  
27 by Lil' Drug Store for scientific analysis and related proceedings before the Office of

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1 Environmental Hazard Assessment and/or the Courts related to the Products, and similar  
2 expenditures by CAG to oppose such analysis and proceedings.

3 1.7 Nothing in this Stipulated Consent Judgment shall be construed as an admission by  
4 the Parties of any fact, conclusion of law, issue of law or violation of law, including without  
5 limitation, any admission concerning any violation of Proposition 65 or any other statutory,  
6 regulatory, common law, or equitable doctrine, or the meaning of the terms "knowingly and  
7 intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section  
8 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with its terms, shall  
9 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of  
10 law, or violation of law, or of fault, wrongdoing, or liability by Lil' Drug Store, its officers,  
11 directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as  
12 evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum.

13 1.8 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any  
14 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,  
15 except as expressly provided in this Stipulated Consent Judgment.

16 1.9 This Stipulated Consent Judgment is the product of negotiation and compromise  
17 and is accepted by the Parties, for purposes of settling, compromising and resolving issues  
18 disputed in this action, including future compliance by Lil' Drug Store with Section 2 of this  
19 Stipulated Consent Judgment, and shall not be used for any other purpose, or in any other matter.

20 **2. COMPLIANCE – WARNING FOR SALES IN CALIFORNIA**

21 2.1 Upon the execution of this Stipulated Consent Judgment and its submission to the  
22 Attorney General's Office and approval by the Court, as provided hereinbelow, Lil' Drug Store  
23 will provide Proposition 65 compliant warnings on all containers of the Products sold or  
24 distributed in California indicating that the Products contain lead, a chemical designated by the  
25 State to Cause Cancer, Reproductive Toxicity and Developmental. Within Sixty (60) days of  
26 approval of this settlement by the Court (the "Compliance Date"), Lil' Drug Store shall not engage  
27 in any California sale of the Products without providing the following or something

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1 substantially similar to the following warning language, printed conspicuously on the labels of the  
2 Products:

3 **WARNING: This product contains lead, a chemical known to the State**  
4 **of California to cause cancer and birth defects or other reproductive**  
5 **harm. Wash hands after handling.**

6 **3. SETTLEMENT PAYMENT**

7 3.1 Within ten (10) days of entry of this Stipulated Consent Judgment by the  
8 Court, Lil' Drug Store Products, Inc. shall pay a total of forty-seven thousand five hundred dollars  
9 (\$47,500) to Consumer Advocacy Group, Inc. and Yeroushalmi & Associates. The payment shall  
10 be made by separate checks apportioned as follows:

11 3.1.1 Monetary Payment in Lieu of Penalty: Two thousand five hundred  
12 dollars (\$2,500) shall be paid to CAG in lieu of any penalty pursuant to California  
13 Health and Safety Code § 25249.7(b). CAG shall use such funds to continue its  
14 work protecting people from exposures to toxic chemicals, including those listed  
15 under Proposition 65; protecting the environment; improving human health; and  
16 supporting environmentally sound practices.

17 3.1.2 Attorneys' Fees and Costs: Forty five thousand dollars (\$45,000) of  
18 such payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for  
19 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred  
20 as a result of investigating, bringing this matter to Lil' Drug Store 's attention,  
21 litigating, and negotiating a settlement in the public interest.

22 **4. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

23 4.1 This written Stipulated Consent Judgment may only be modified by written  
24 agreement of CAG and Lil' Drug Store upon stipulation and Order of the Court, or after noticed  
25 motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion of  
26 CAG or Lil' Drug Store as provided by law and upon entry of a modified Stipulated Consent  
27 Judgment by the Court.

28 **5. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT**

5.1 Either party may, by motion or application for an order to show cause

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

5 **6. APPLICATION OF STIPULATED CONSENT JUDGMENT**

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

9 **7. CLAIMS COVERED AND RELEASED**

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

1 to the Products will develop or be discovered, and this Stipulated Stipulated Consent Judgment is  
2 expressly intended to cover and include all such injuries, damages, liability, and claims, including  
3 all rights of action therefor. CAG has full knowledge of the contents of Section 1542 of the Civil  
4 Code. CAG, on behalf of itself only, acknowledges that the claims released in section 7.1 above  
5 may include unknown claims and waives Section 1542 as to any such unknown claims. Section  
6 1542 reads as follows:

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

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

14 **8. SEVERABILITY**

15 8.1 In the event that any of the provisions of this Stipulated Consent Judgment  
16 are held by a court to be unenforceable, the validity of the enforceable provisions shall not be  
17 adversely affected.

18 **9. NOTICE AND CURE**

19 9.1 No action to enforce this Stipulated Consent Judgment may be commenced,  
20 and no notice of violation related to the Products may be served or filed against Lil' Drug Store by  
21 CAG, unless the party seeking enforcement or alleging violation notifies the other party of the  
22 specific acts alleged to breach this Stipulated Consent Judgment at least 90 days before serving or  
23 filing any motion, action, or Notice of Violation. Any notice to Lil' Drug Store must contain (a)  
24 the name of the product, (b) specific dates when the product was sold in California without the  
25 warning specified in Section 2, (c) the store or other place at which the product was available for  
26 sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

27 9.2 Within 30 days of receiving the notice described in Section 9.1, Lil' Drug  
28 Store shall either (1) withdraw the product, (2) provide for the product the warning described in  
Section 2, or (3) refute the information provided under Section 9.1. Should the parties be unable to  
resolve the dispute, either party may seek relief under Section 5.



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**10. GOVERNING LAW**

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

**11. PROVISION OF NOTICE**

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

For CAG:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
3700 Wilshire Boulevard, Suite 480  
Los Angeles, CA 90010  
Telephone No: (213) 382-3183  
Facsimile No: (213) 382-3430

For Lil' Drug Store:

Bradley G. Hart  
E-mail: bhart@bradleyriley.com  
Bradley & Riley, PC  
2007 First Avenue SE  
Cedar Rapids, IA 52406-2804  
Telephone No: (319) 363-0101  
Facsimile No: (319) 363-9824

**12. COURT APPROVAL**

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

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

**13. EXECUTION AND COUNTER PARTS**

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


**14. AUTHORIZATION**

14.1 Each signer of this Stipulated Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to the terms and conditions of this



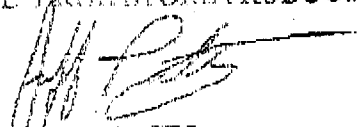
1 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on  
2 behalf of the party represented and legally bind that party. The undersigned have read, understand  
3 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as  
4 explicitly provided herein, each party is to bear its own fees and costs.

5  
6 CONSUMER ADVOCACY GROUP, INC.

7   
8 Lynn Marcus, President

Dated: 5/5/10

9  
10 LIL DRUG STORE PRODUCTS, INC.

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12  
13 Jeff Ditz, V.P. CFO

Dated: 4-22-10

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15  
16 ORDER AND JUDGMENT

17 Based upon the stipulated Stipulated Consent Judgment between Consumer Advocacy Group, Inc.  
18 and Lil Drug Store Products, Inc., the settlement is approved and judgment is hereby entered  
19 according to the terms herein.

20  
21 Dated: \_\_\_\_\_, 2010

22 \_\_\_\_\_  
23 Judge, Superior Court of the State of California

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