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3 SUPERIOR COURT OF THE STATE OF CALIFORNIA

4 COUNTY OF LOS ANGELES

5
6 CONSUMER ADVOCACY GROUP, INC.,
7 in the interest of the Public,

8 Plaintiff,

9 v.

10 NORTHEASTERN PLASTICS, INC., a
11 Texas Corporation, AMERICAN
12 INTERNATIONAL INDUSTRIES, INC.,
and DOES 1-50,

13 Defendants.
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15

CASE NO. BC 449019

**[PROPOSED] CONSENT JUDGMENT
AND [PROPOSED] ORDER**

*Cal. Health & Safety Code, § 25249.5, et
seq.*

Dept.: 47
Judge: Debre K. Weintraub

Complaint filed: Nov. 9, 2010
Trial: July 24, 2012

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

16 **1. INTRODUCTION**

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18 1.1 On November 12, 2010, Plaintiff Consumer Advocacy Group, Inc. ("CAG"), on
19 behalf of itself and in the public interest, filed a complaint in the Los Angeles Superior Court,
20 entitled *Consumer Advocacy Group, Inc. v. Northeastern Plastics, Inc., et al*, Case No.
21 BC449019 (the "Action), for civil penalties and injunctive relief pursuant to the provisions of
22 California Health & Safety Code § 25249.5, *et seq.* ("Proposition 65") against
23 NORTHEASTERN PLASTICS, INC. ("NORTHEASTERN"), AMERICAN
24 INTERNATIONAL INDUSTRIES, INC. ("AMERICAN") and other entities. CAG,
25 NORTHEASTERN, and AMERICAN are collectively referred to hereinafter as "Parties."

26 1.2 NORTHEASTERN and AMERICAN are corporations alleged to employ 10 or
27 more persons. NORTHEASTERN and AMERICAN allegedly have made available for
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1 distribution in the State of California the following product: "Bitty Booster Cable™ 10 Gauge
2 10 ft. Catalog No. MT 10 ("Covered Product"). The Covered Product allegedly contains Lead, a
3 chemical known to the State of California to cause cancer and birth defects or other reproductive
4 harm. (Lead is hereinafter referred to as "Noticed Chemical.")

5 1.3 On or about July 23, 2010, CAG sent a Proposition 65 Notice of Intent to Sue for
6 alleged violations of California Health & Safety Code § 25249.6 *et seq.* related to the Covered
7 Product ("Notice"). CAG's Notice and the Complaint in this Action allege that
8 NORTHEASTERN and AMERICAN exposed people who handle the Covered Product to Lead,
9 without first providing clear and reasonable warnings, in violation of California Health & Safety
10 Code § 25249.6 *et seq.*

11 1.4 NORTHEASTERN and AMERICAN deny the material allegations of the Notice
12 and the Complaint, and deny liability for the cause of action alleged in the Complaint and in
13 connection with the Action.

14 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
15 has jurisdiction over the allegations of violations contained in CAG's Complaint and personal
16 jurisdiction over NORTHEASTERN and AMERICAN as to the acts alleged in CAG's
17 Complaint, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction
18 to enter this Consent Judgment as a full and final resolution of all claims which were or could
19 have been raised in the Complaint based on the facts alleged therein or in the Notice with respect
20 to the Covered Product.

21 1.6 The parties enter into this Consent Judgment pursuant to a settlement of certain
22 disputed claims as alleged in the Complaint and in the Notice for the purpose of avoiding
23 prolonged and costly litigation.

24 1.7 Nothing in this Consent Judgment shall be construed as an admission by the
25 Parties of any fact, conclusion of law, issue of law or violation of law, including without
26 limitation, any admission concerning any violation of Proposition 65 or any other statutory,
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1 regulatory, common law, or equitable doctrine, or the meaning of the terms "knowingly and
2 intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code
3 section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall
4 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of
5 law, or violation of law, or of fault, wrongdoing, or liability by NORTHEASTERN or
6 AMERICAN, its officers, directors, employees, or parent, subsidiary or affiliated corporations,
7 nor shall anything in this Consent Judgment or compliance with its terms be offered or admitted
8 as evidence in any administrative or judicial proceeding or litigation in any court, agency, or
9 forum.

10 1.8 Nothing in this Consent Judgment shall prejudice, waive or impair any right,
11 remedy, argument, or defense the Parties may have in any other or future legal proceeding,
12 except as expressly provided in this Consent Judgment.

13 1.9 This Consent Judgment is the product of negotiations and compromise and is
14 accepted by the Parties, for purposes of settling, compromising, and resolving issues disputed in
15 this action, including future compliance by NORTHEASTERN and AMERICAN with Section 2
16 of this Consent Judgment, and shall not be used for any other purpose, or in any other matter.

17 1.10 The Effective Date of this Consent Judgment is the date on which it is approved
18 and entered by the Court.

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20 **2. COMPLIANCE – INJUNCTIVE RELIEF**

21 2.1 NORTHEASTERN and AMERICAN each has indicated that it does not intend to
22 sell or distribute the Covered Product in California at any time in the future. Notwithstanding
23 the foregoing, NORTHEASTERN and AMERICAN each agrees, promises, and represents that it
24 will not distribute or sell the Covered Product in California at any time after March 15, 2012,
25 unless the Covered Product is formulated or reformulated to a point where the level of Lead in
26 the Covered Product does not exceed 0.01 percent Lead by weight (100 parts per million), as
27 randomly tested by a United States EPA-approved lab.

1 **3. SETTLEMENT PAYMENT**

2 3.1 Within ten (10) days of granting the Motion for Judicial Approval of this Consent
3 Judgment by the Court, NORTHEASTERN and/or AMERICAN, jointly and severally, shall pay
4 a total of fifty-five thousand dollars (\$55,000.00) by separate checks apportioned as follows:

5 3.1.1 Monetary Payment in Lieu of Civil Penalty: Five hundred dollars (\$500)
6 shall be paid to CAG in lieu of any civil penalty pursuant to California Health and Safety
7 Code § 25249.7(b). CAG shall use the payment for such projects and purposes related to
8 environmental protection, worker health and safety, or reduction of human exposure to
9 hazardous substances (including administrative and product testing costs arising from
10 such projects), as CAG may choose. The check shall be made payable to Consumer
11 Advocacy Group, Inc. and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates,
12 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. A separate Form
13 1099 shall be issued to CAG for this amount.

14 3.1.2 Attorneys' Fees and Costs: Fifty-Four thousand dollars (\$54,000) of such
15 payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable
16 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
17 investigating, bringing this matter to NORTHEASTERN'S and AMERICAN'S attention,
18 litigating, and negotiating a settlement in the public interest. The check shall be made
19 payable to Yeroushalmi & Associates and delivered to Reuben Yeroushalmi,
20 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills,
21 California 90212. A separate Form 1099 shall be issued to Yeroushalmi & Associates
22 for this amount.

23 3.1.3 Civil Penalty: NORTHEASTERN and/or AMERICAN shall issue two
24 separate checks for a total amount of five hundred dollars (\$500) as civil penalties
25 pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of
26 California's Office of Environmental Health Hazard Assessment (OEHHA) in the
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1 amount of \$375, representing 75% of the total penalty; and (b) one check to Consumer
2 Advocacy Group, Inc. in the amount of \$125, representing 25% of the total penalty. Two
3 separate 1099s shall be issued for the above payments: The first 1099 shall be issued to
4 OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
5 \$375. The second 1099 shall be issued in the amount of \$125 to CAG and delivered to:
6 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills,
7 California 90212.

8 **4. MODIFICATION OF CONSENT JUDGMENT**

9 4.1 This written Consent Judgment may only be modified by written agreement of
10 CAG, NORTHEASTERN, and AMERICAN upon stipulation and Order of the Court, or after
11 noticed motion, and upon entry of a Consent Judgment by the Court thereon, or upon motion of
12 CAG or NORTHEASTERN or AMERICAN as provided by law and upon entry of a modified
13 Consent Judgment by the Court.

14 **5. ENFORCEMENT OF CONSENT JUDGMENT**

15 5.1 Any of the Parties may, by motion or application for an order to show cause
16 before the Superior Court of the County of Los Angeles, consistent with the terms and conditions
17 set forth in paragraphs 9.1 and 9.2 of this Consent Judgment, enforce the terms and conditions
18 contained in this Consent Judgment. The prevailing party shall be entitled to its reasonable
19 attorneys' fees and costs associated with such motion or application.

20 **6. APPLICATION OF CONSENT JUDGMENT**

21 6.1 This Consent Judgment shall apply to and be binding upon the Parties hereto,
22 their parent companies, affiliates and each of their divisions, subdivisions and subsidiaries,
23 officers, directors, employees, agents and their successors or assigns, and to the extent allowed
24 by law, on the general public.

25 **7. CLAIMS COVERED AND RELEASED**

1 7.1 CAG acting on its own behalf and in the public interest releases
2 NORTHEASTERN, AMERICAN, and each of their respective subsidiaries, affiliates,
3 predecessors, successors and assigns, and all of their respective officers, directors, employees,
4 shareholders, partners, agents and all persons and entities who are downstream in the stream of
5 commerce from NORTHEASTERN and AMERICAN who sell or distribute the Covered
6 Product (and only as to the Covered Product distributed or sold by NORTHEASTERN and/or
7 AMERICAN) (collectively, "Released Parties"), from all claims for violations of Proposition 65
8 relating to any and all Covered Products sold or distributed prior to the Effective Date based on
9 alleged exposures to the Noticed Chemical from the Covered Product, as well as any alleged
10 failure to provide Proposition 65 warnings for the Covered Product regarding the Noticed
11 Chemical, as set forth in the Notice. Compliance with the terms of this Consent Judgment shall
12 constitute compliance with Proposition 65 with respect to alleged exposures to the Noticed
13 Chemical from the Covered Product as set forth in the Notice.

14 7.2 CAG, on behalf of itself only, hereby releases and discharges the Released Parties
15 from any and all known and unknown past, present, and future rights, claims, causes of action,
16 damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees, costs,
17 and expenses related to or arising out of the facts and claims asserted, or that could have been
18 asserted, under state or federal law or the facts alleged in CAG's Proposition 65 Notice or the
19 Complaint relating to any and all claims concerning, relating to or arising from alleged exposure
20 of any person to the Noticed Chemical in the Covered Product (and only as to the Covered
21 Product distributed or sold by NORTHEASTERN and/or AMERICAN), as well as any alleged
22 failure to provide Proposition 65 warnings for the Covered Product regarding the Noticed
23 Chemical. Compliance with the terms of this Consent Judgment shall constitute compliance with
24 Proposition 65 with respect to alleged exposures to the Noticed Chemical from the Covered
25 Product as set forth in the Notice. This release does not limit or affect the obligations of any
26 party created under this Consent Judgment.

27 7.3 Unknown Claims. It is possible that other injuries, damages, liability, or claims
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1 not now known to the Parties arising out of the facts alleged in the Complaint and relating to the
2 exposure of individuals to the Noticed Chemical in the Covered Product will develop or be
3 discovered, and this Consent Judgment is expressly intended to cover and include all such
4 injuries, damages, liability, and claims, including all rights of action thereof. CAG has full
5 knowledge of the contents of Section 1542 of the Civil Code. CAG, on behalf of itself and in the
6 interest of the public, acknowledges that the claims released in Section 7 above may include
7 unknown claims and waives Section 1542 as to any such unknown claims. Section 1542 reads as
8 follows:

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

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

17 **8. SEVERABILITY**

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

21 **9. NOTICE AND CURE**

22 9.1 No action to enforce this Consent Judgment may be commenced, and no notice of
23 violation related to the Covered Product may be served or filed against NORTHEASTERN or
24 AMERICAN by CAG, unless the party seeking enforcement or alleging violation notifies the
25 other party of the specific acts alleged to breach this Consent Judgment at least 90 days before
26 serving or filing any motion, action, or Notice of Violation. Any notice to NORTHEASTERN or
27 AMERICAN must contain (a) the name of the product, (b) specific dates when the product was
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1 sold in California, (c) the store or other place at which the product was available for sale to
2 consumers, and (d) any other evidence or other support for the allegations in the notice.

3 9.2 Within 30 days of receiving the notice described in Section 9.1,
4 NORTHEASTERN or AMERICAN shall either (1) withdraw the product, or (2) refute the
5 information provided under Section 9.1. Should the parties be unable to resolve the dispute,
6 either party may seek relief under Section 5.

7 **10. GOVERNING LAW**

8 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
9 California.

10 **11. PROVISION OF NOTICE**

11 11.1 All notices required pursuant to this Consent Judgment and correspondence shall
12 be sent to the following:

14 For CAG:	For NORTHEASTERN and AMERICAN:
15 Reuben Yeroushalmi	David J. DiMeglio
16 YEROUSHALMI & ASSOCIATES	JONES DAY
17 9100 Wilshire Boulevard, Suite 610E	555 South Flower Street
Beverly Hills, CA 90212	Fiftieth Floor
18 T: 310-623-1926	Los Angeles, CA 90071
19 F: 310-623-1930	T: 213.489.3939
	F: 213.243.2539

20 **12. COURT APPROVAL**

21 12.1 If this Consent Judgment is not approved by the Court, it shall be void and of no
22 further force or effect.

23 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title
24 11 California Code of Regulations section 3003.

25 **13. EXECUTION AND COUNTERPARTS**

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1 13.1 This Consent Judgment may be executed in counterparts and by facsimile or
2 electronic transmission, which taken together shall be deemed to constitute one document.
3 Facsimile or pdf signatures shall be construed as valid as the original.

4 **14. ENTIRE AGREEMENT, AUTHORIZATION**

5 14.1 This Consent Judgment contains the sole and entire agreement and understanding
6 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
7 negotiations, commitments and understandings related hereto. No representations, oral or
8 otherwise, express or implied, other than those contained herein, have been made by any Party.
9 No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to
10 exist or to bind any of the Parties.

11 14.2 Each signer of this Consent Judgment certifies that he or she is fully authorized by
12 the party he or she represents to stipulate to the terms and conditions of this Consent Judgment
13 and to enter into and execute the Consent Judgment on behalf of the party represented and
14 legally bind that party. The undersigned have read, understand and agree to all of the terms and
15 conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear
16 its own fees and costs.
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19 Dated: May 17, 2012

CONSUMER ADVOCACY GROUP, INC.

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22 Printed Name: Michael Marcus
23 Title: Director
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1 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein, have been made by any Party.
4 No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to
5 exist or to bind any of the Parties.

6 14.2 Each signer of this Consent Judgment certifies that he or she is fully authorized by
7 the party he or she represents to stipulate to the terms and conditions of this Consent Judgment
8 and to enter into and execute the Consent Judgment on behalf of the party represented and
9 legally bind that party. The undersigned have read, understand and agree to all of the terms and
10 conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear
11 its own fees and costs.

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14 Dated: _____

CONSUMER ADVOCACY GROUP, INC.

15
16 _____
17 Printed Name: _____

18 Title: _____
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20
21 Dated: 5/17/2012

NORTHEASTERN PLASTICS, INC.

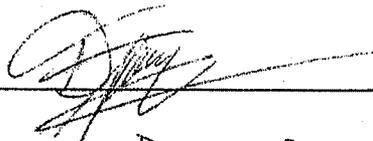
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23 _____
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25 Printed Name: MARC H. FIELDS

26 Title: President / CEO
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1 Dated: MAY 17, 2012

AMERICAN INTERNATIONAL INDUSTRIES,
INC.

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6 Printed Name: DANIEL DROR
Title: CHAIRMAN + CEO

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14 **ORDER AND JUDGMENT**

15 Based upon the Consent Judgment between CONSUMER ADVOCACY GROUP, INC.,
16 NORTHEASTERN PLASTICS, INC., and AMERICAN INTERNATIONAL INDUSTRIES,
17 INC. the Consent Judgment is approved and judgment is hereby entered according to the terms
18 herein.

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20 Dated: _____

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22 _____
23 Judge, Superior Court of the State of California