

1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
3 YEROUSHALMI & ASSOCIATES
9100 Wilshire Blvd., Suite 610E
4 Beverly Hills, CA 90212
5 Telephone: 310-623-1926
Facsimile: 310-623-1930

6
7 Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

10
11 CONSUMER ADVOCACY GROUP, INC., in
12 the interest of the Public,
13
14 Plaintiff,
15
16 v.
17 P&G-Clairol, Inc., a Delaware corporation;
and Does 1-50,
18
19 Defendants.

CASE NO. BC461764

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

Health & Safety Code § 25249.5 *et seq.*

Dept.: 62
Judge: Hon. Michael L. Stern

Trial: April 23, 2012
Complaint: May 17, 2011

20
21 **1. INTRODUCTION**

22
23 1.1 On May 17, 2011, Plaintiff Consumer Advocacy Group, Inc. (“CAG”) filed a
24 complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v. P&G-*
25 *Clairol, Inc.*, Case No. BC461764 (the “Action”), for civil penalties and injunctive relief pursuant
26 to the provisions of California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) against
27 P&G-Clairol, Inc. (“P&G-Clairol”). CAG and P&G-Clairol are collectively referred to hereinafter
28 as “Parties.”

1 1.2 P&G-Clairol is a corporation that employs 10 or more persons. P&G-Clairol
2 allegedly has made available for distribution and sale in the State of California the following
3 product: **Clairol® Perfect 10 “nice’n easy” ® Permanent Hair Color** (including but not limited
4 to color “Light Ash Brown”) (“Covered Product”). The Covered Product allegedly contains
5 Diaminotoluene (mixed), a chemical known to the State of California to cause cancer.
6 (Diaminotoluene (mixed) is hereinafter referred to as “Noticed Chemical.”)

7 1.3 On or about November 30, 2010, CAG sent a Proposition 65 Notice of Intent to
8 Sue for violations of California Health & Safety Code § 25249.6 *et seq.* related to the Covered
9 Product (“Notice”). CAG’s Notice and the Complaint in this Action allege that P&G-Clairol
10 exposed people who handle the Covered Product to Diaminotoluene (mixed), without first
11 providing clear and reasonable warnings, in violation of California Health & Safety Code §
12 25249.6 *et seq.*

13 1.4 P&G-Clairol denies the material allegations of the Notice and the Complaint, and
14 denies liability for the cause of action alleged in the Complaint and in connection with the Action.

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

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

24 1.7 Nothing in this Consent Judgment shall be construed as an admission by the Parties
25 of any fact, conclusion of law, issue of law or violation of law, including without limitation, any
26 admission concerning any violation of Proposition 65 or any other statutory, regulatory, common
27 law, or equitable doctrine, or the meaning of the terms “knowingly and intentionally expose” or
28

1 "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in
2 this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
3 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of
4 fault, wrongdoing, or liability by P&G-Clairol, its officers, directors, employees, or parent,
5 subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or
6 judicial proceeding or litigation in any court, agency, or forum.

7 1.8 Nothing in this Consent Judgment shall prejudice, waive or impair any right,
8 remedy, argument, or defense the Parties may have in any other or future legal proceeding, except
9 as expressly provided in this Consent Judgment.

10 1.9 This Consent Judgment is the product of negotiations and compromise and is
11 accepted by the Parties, for purposes of settling, compromising, and resolving issues disputed in
12 this action, including future compliance by P&G-Clairol with Section 2 of this Consent Judgment,
13 and shall not be used for any other purpose, or in any other matter.

14 1.10 The Effective Date of this Consent Judgment is the date on which it is approved
15 and entered by the Court.

16 **2. COMPLIANCE – INJUNCTIVE RELIEF**

17 2.1 P&G-Clairol agrees, promises, and represents that within thirty (30) days of the
18 Effective Date it shall not engage in any California sale of any Covered Product containing
19 Diaminotoluene (mixed) without providing the following warning language:

20 **WARNING:** This product contains a chemical known to the State of California to cause
21 cancer.

22 This warning shall: (a) be displayed on the product's packaging, shelving, or display; (b)
23 be set out in a text box on a separate line or in a separate paragraph; and (c) be displayed with such
24 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
25 read and understood by an ordinary individual.

26 **3. SETTLEMENT PAYMENT**

27 3.1 Within ten (10) days of receipt of Notice of Entry of this Consent Judgment, P&G-
28

1 Clairol shall pay a total of eighty-five thousand dollars (\$85,000.00) by separate checks
2 apportioned as follows:

3 3.1.1 Monetary Payment in Lieu of Civil Penalty: Ten thousand dollars (\$
4 10,000.00) shall be paid to CAG in lieu of any civil penalty pursuant to California Health
5 and Safety Code § 25249.7(b). CAG will use the payment for such projects and purposes
6 related to environmental protection, worker health and safety, or reduction of human
7 exposure to hazardous substances (including administrative and product testing costs
8 arising from such projects), as CAG may choose. The check shall be made payable to
9 Consumer Advocacy Group, Inc. and delivered to Reuben Yeroushalmi, Yeroushalmi &
10 Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. A
11 separate Form 1099 shall be issued by P&G-Clairol to CAG for this amount.

12 3.1.2 Attorneys' Fees and Costs: Seventy thousand dollars (\$70,000.00) of such
13 payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable
14 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
15 investigating, bringing this matter to P&G-Clairol's attention, litigating, and negotiating a
16 settlement in the public interest. The check shall be made payable to Yeroushalmi &
17 Associates and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100
18 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. A separate Form 1099
19 shall be issued to Yeroushalmi & Associates for this amount.

20 3.1.3 Civil Penalty: P&G-Clairol shall issue two separate checks for a total
21 amount of five thousand dollars (\$5,000.00) as penalties pursuant to Health & Safety Code
22 § 25249.12: (a) one check made payable to the State of California's Office of
23 Environmental Health Hazard Assessment (OEHHA) in the amount of \$3,750.00,
24 representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group,
25 Inc. in the amount of \$1,250.00, representing 25% of the total penalty. Two separate
26 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA,
27 P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$3,750.00.
28

1 The second 1099 shall be issued in the amount of \$1,250.00 to CAG and delivered to:
2 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills,
3 California 90212.

4 **4. MODIFICATION OF CONSENT JUDGMENT**

5 4.1 This written Consent Judgment may only be modified by written agreement of
6 CAG and P&G-Clairol upon stipulation and Order of the Court, or after noticed motion, and upon
7 entry of a Consent Judgment by the Court thereon, or upon motion of CAG or P&G-Clairol as
8 provided by law and upon entry of a modified Consent Judgment by the Court.

9 **5. ENFORCEMENT OF CONSENT JUDGMENT**

10 5.1 Either party may, by motion or application for an order to show cause before the
11 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in
12 paragraphs 9.1 and 9.2 of this Consent Judgment, enforce the terms and conditions contained in
13 this Consent Judgment. The prevailing party shall be entitled to its reasonable attorneys' fees and
14 costs associated with such motion or application.

15 **6. APPLICATION OF CONSENT JUDGMENT**

16 6.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their
17 parent companies, affiliates and each of their divisions, subdivisions and subsidiaries, officers,
18 directors, employees, agents and their successors or assigns, and to the extent allowed by law, on
19 the general public.

20 **7. CLAIMS COVERED AND RELEASED**

21 7.1 CAG acting on its own behalf and in the public interest releases P&G-Clairol, its
22 parent and each of its related subsidiaries, affiliates, predecessors, successors and assigns, and all
23 of its officers, directors, employees, and shareholders, and all persons and entities who are
24 downstream in the stream of commerce from P&G-Clairol who sell or distribute the Covered
25 Product (and only as to the Covered Product distributed or sold by P&G-Clairol) (collectively,
26 "Released Parties"), from all claims for violations of Proposition 65 up through the Effective Date
27 based on exposure to the Noticed Chemical from the Covered Product as set forth in the Notice.
28

1 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
2 with respect to exposures to the Noticed Chemical from the Covered Product as set forth in the
3 Notice.

4 7.2 CAG, on behalf of itself only, hereby releases and discharges the Released Parties
5 from any and all known and unknown past, present, and future rights, claims, causes of action,
6 damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs,
7 and expenses related to or arising out of the facts and claims asserted, or that could have been
8 asserted, under state or federal law or the facts alleged in CAG's Proposition 65 Notice or the
9 Complaint relating to any and all claims concerning exposure of any person to the Noticed
10 Chemical in the Covered Product (and only as to the Covered Product distributed or sold by P&G-
11 Clairol). Compliance with the terms of this Consent Judgment constitutes compliance with
12 Proposition 65 with respect to exposures to the Noticed Chemical from the Covered Product as set
13 forth in the Notice. This release does not limit or affect the obligations of any party created under
14 this Consent Judgment.

15 7.3 Unknown Claims. It is possible that other injuries, damages, liability, or claims not
16 now known to the Parties arising out of the facts alleged in the Complaint and relating to the
17 exposure of individuals to the Noticed Chemical in the Covered Product will develop or be
18 discovered, and this Consent Judgment is expressly intended to cover and include all such injuries,
19 damages, liability, and claims, including all rights of action therefor. CAG has full knowledge of
20 the contents of Section 1542 of the Civil Code. CAG, on behalf of itself only, acknowledges that
21 the claims released in Section 7 above may include unknown claims and waives Section 1542 as
22 to any such unknown claims. Section 1542 reads as follows:

23 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
24 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
25 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
26 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
27 **OR HER SETTLEMENT WITH THE DEBTOR"**
28

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

3 **8. SEVERABILITY**

4 8.1 In the event that any of the provisions of this Consent Judgment are held by a court
5 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

6 **9. NOTICE AND CURE**

7 9.1 No action to enforce this Consent Judgment may be commenced, and no notice of
8 violation related to the Covered Product may be served or filed against P&G-Clairol by CAG,
9 unless the party seeking enforcement or alleging violation notifies the other party of the specific
10 acts alleged to breach this Consent Judgment at least 90 days before serving or filing any motion,
11 action, or Notice of Violation. Any notice to P&G-Clairol must contain (a) the name of the
12 product, (b) specific dates when the product was sold in California, (c) the store or other place at
13 which the product was available for sale to consumers, and (d) any other evidence or other support
14 for the allegations in the notice.

15 9.2 Within 30 days of receiving the notice described in Section 9.1, P&G-Clairol shall
16 either (1) withdraw the product, or (2) refute the information provided under Section 9.1. Should
17 the Parties be unable to resolve the dispute, either party may seek relief under Section 5.

18 **10. GOVERNING LAW**

19 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
20 California.

21 **11. PROVISION OF NOTICE**

22 11.1 All notices required pursuant to this Consent Judgment and correspondence shall be
23 sent to the following:

24 For Consumer Advocacy Group, Inc.

For P&G-Clairol, Inc.

25 Reuben Yeroushalmi
26 YEROUSHALMI & ASSOCIATES
27 9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212
28 T: 310-623-1926

Carolyn Collins, Esq.
NIXON PEABODY LLP
One Embarcadero Center, 18th Floor
San Francisco, CA 94111-3600
T: (415) 984-5069

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F: 310-623-1930

F: (415) 984-8300

12. COURT APPROVAL

12.1 If this 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 COUNTERPARTS


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

14. AUTHORIZATION

14.1 Each signer of this 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 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.

Dated: 3-13-12


CONSUMER ADVOCACY GROUP, INC.



Name and Title: MICHEL SASSOON - EXECUTIVE DIRECTOR

Dated: March 12, '12

P&G-LAIROL, INC.



Walter Geiger

Name and Title: VP/GM, NA HAIR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER AND JUDGMENT

Based upon the Consent Judgment between Consumer Advocacy Group, Inc. and P&G-Clairol, Inc., the Consent Judgment is approved and judgment is hereby entered according to the terms herein.

Dated: _____

Judge, Superior Court of the State of California