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5

6 Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
10

11 CONSUMER ADVOCACY GROUP,
12 Plaintiff,

13 v.

14 SANYO NORTH AMERICA
CORPORATION, SANYO ELECTRONIC
15 DEVICE (USA) CORP., and SANYO
ENERGY (USA) CORP.
16 Defendants.

Case No. BC475262

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Dept.: 54

Judge: Hon. Ernest M. Hiroshige

18 **1. INTRODUCTION**

19 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
20 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the interest of the
21 public and defendant, Sanyo North America Corporation, Sanyo Electronic Device (USA) Corp.,
22 and Sanyo Energy (USA) Corp. (referred to collectively as “Sanyo”) with each a Party to the
23 action and collectively referred to as “Parties.”

24 1.2 Sanyo employs ten or more persons, is a person in the course of doing business for
25 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
26 Safety Code §§ 25249.6 *et seq.* (“Proposition 65”), and manufacture, distribute, and sell Hands
27 Free Headsets.
28

1 Angeles and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
2 and resolution of the allegations contained in the Complaint and of all claims which were or could
3 have been raised by any person or entity based in whole or in part, directly or indirectly, on the
4 facts alleged therein or arising therefrom or related to.

5 1.7 **No Admission**

6 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
7 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
8 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
9 constitute an admission with respect to any material allegation of the Complaint, each and every
10 allegation of which Sanyo denies, nor may this Consent Judgment or compliance with it be used
11 as evidence of any wrongdoing, misconduct, culpability or liability on the part of Sanyo.

12 **2. DEFINITIONS**

13 2.1 “Accessible Component” means any component of a Covered Product that could
14 be touched by a person during reasonably foreseeable use.

15 2.2 “Covered Products” means the GE Sanyo Cellular Hands Free Kit as well as other
16 hands free kits manufactured, sold or distributed by Sanyo, labeled as “GE Sanyo” containing the
17 same and/or identical components intended for use with cellular phones.

18 2.3 “Effective Date” means the date that this Consent Judgment is approved by the
19 Court.

20 2.4 “Lead” means lead and lead compounds.

21 2.5 “Notice” means the December 27, 2010 Notice.

22 **3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE**
23 **WARNINGS.**

24 3.1 As of the Effective Date, Defendant shall only order, cause to be ordered,
25 manufacture or cause to be manufactured Products for distribution or sale in California that
26 contain less than 100 parts per million of lead.

1 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or
2 lead compounds from Covered Product, CAG will not be able to make any claim for those
3 damages against Sanyo the Defendant Releasees, or Downstream Defendant Releasees.
4 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may
5 exist as of the date of this release but which CAG does not know exist, and which, if known,
6 would materially affect their decision to enter into this Consent Judgment, regardless of whether
7 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

8 **6. ENFORCEMENT OF JUDGMENT**

9 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
10 hereto. Subject to Section 6.2, the parties may, by noticed motion or order to show cause before
11 the Superior Court of California, Los Angeles County, giving the notice required by law, enforce
12 the terms and conditions contained herein. A Party may enforce any of the terms and conditions
13 of this Consent Judgment only after that Party first provides 30 days notice to the Party allegedly
14 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
15 such Party's failure to comply in an open and good faith manner.

16 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
17 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
18 Violation ("NOV") to Sanyo. The NOV shall include for each Covered Product: the date(s) the
19 alleged violation(s) was observed and the location at which the Covered Product was offered for
20 sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Product,
21 including an identification of the component(s) of the Covered Product that were tested.

22 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
23 alleged violation if, within 30 days of receiving such NOV, Sanyo serves a Notice of
24 Election ("NOE") that meets one of the following conditions:

25 (a) The Covered Product was shipped by Sanyo for sale in California
26 before the Effective Date, or

27 (b) Since receiving the NOV Sanyo has taken corrective action by
28 either (i) requesting that its Downstream Defendant Releasees in California remove the

1 Covered Product identified in the NOV from sale in California and destroy or return the
2 Covered Product to Sanyo, or (ii) providing a clear and reasonable warning for the
3 Covered Product identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

4 6.2.2 **Contested NOV.** Sanyo may serve an NOE informing CAG of its election
5 to contest the NOV within 30 days of receiving the NOV.

6 (a) In its election, Sanyo may request that the sample(s) Covered
7 Product tested by CAG be subject to confirmatory testing at an EPA-accredited
8 laboratory.

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

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

17 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
18 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
19 violation of Proposition 65 or this Consent Judgment.

20 **7. ENTRY OF CONSENT JUDGMENT**

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

24 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
25 and any and all prior agreements between the parties merged herein shall terminate and become
26 null and void, and the actions shall revert to the status that existed prior to the execution date of
27 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
28 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall

1 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
2 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
3 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

4 **8. MODIFICATION OF JUDGMENT**

5 8.1 This Consent Judgment may be modified only upon written agreement of the
6 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
7 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

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.

13 **10. DUTIES LIMITED TO CALIFORNIA**

14 10.1 This Consent Judgment shall have no effect on Covered Products sold by Sanyo
15 outside the State of 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, each Party shall bear its own costs
25 and attorney fees in connection with this action.

26 **13. ENTIRE AGREEMENT**

27 13.1 This Consent Judgment contains the sole and entire agreement and understanding
28 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,

1 negotiations, commitments and understandings related hereto. No representations, oral or
2 otherwise, express or implied, other than those contained herein have been made by any party
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
4 deemed to exist or to bind any of the Parties.

5 **14. GOVERNING LAW**

6 14.1 The validity, construction and performance of this Consent Judgment shall be
7 governed by the laws of the State of California, without reference to any conflicts of law
8 provisions of California law.

9 14.2 The Parties, including their counsel, have participated in the preparation of this
10 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
11 Consent Judgment was subject to revision and modification by the Parties and has been accepted
12 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
13 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
14 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
15 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
16 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
17 this regard, the Parties hereby waive California Civil Code § 1654.

18 **15. EXECUTION AND COUNTERPARTS**

19 15.1 This Consent Judgment may be executed in counterparts and by means of
20 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
21 one document.

22 **16. NOTICES**

23 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
24 Class Mail.

25 If to CAG:

26 Reuben Yeroushalmi
27 9100 Wilshire Boulevard, Suite 610E
28 Beverly Hills, CA 90212
(310) 623-1926

1 If to Sanyo:

2 Sanyo Electronic Device USA Corp.
3 2055 Sanyo Ave
4 San Diego, CA 92154

5 Sanyo North America Corp.
6 2055 Sanyo Ave.
7 San Diego, CA 92154

8 Sanyo Energy (USA) Corp.
9 2055 Sanyo Ave.
10 San Diego, CA 92154

11 With a copy to:

12 Corrie Plant, Esq.
13 Pillsbury Winthrop Shaw Pittman, LLP
14 725 South Figueroa Street, Suite 2800
15 Los Angeles, CA 90017

16 **17. AUTHORITY TO STIPULATE**

17 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
18 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
19 the party represented and legally to bind that party.

20 **AGREED TO:**

21 Date: May __, 2012

22 

23 Name: Michel Sassoon

24 Title: Executive Director
25 CONSUMER ADVOCACY GROUP,
26 INC.

27 **AGREED TO:**

28 Date: May __, 2012



Name: _____
Title: _____
SANYO ELECTRONIC DEVICE USA CORP.

1 If to Sanyo:

2 Sanyo Electronic Device USA Corp.
3 2055 Sanyo Ave
4 San Diego, CA 92154

5 Sanyo North America Corp.
6 2055 Sanyo Ave.
7 San Diego, CA 92154

8 Sanyo Energy (USA) Corp.
9 2055 Sanyo Ave.
10 San Diego, CA 92154

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18 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
19 the party represented and legally to bind that party.

20 AGREED TO:

21 Date: May __, 2012

22 Name: _____

23 Title: _____

24 CONSUMER ADVOCACY GROUP,
25 INC.

26 AGREED TO:

27 Date: May 22, 2012

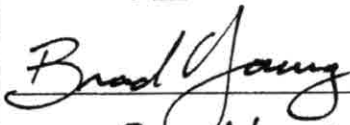
28 Name: _____

Title: _____

HIROTO OISHI
Division President
SANYO ELECTRONIC DEVICE USA CORP.

1 AGREED TO:

2 Date: May 22, 2012

3 

4 Name: BRAD YOUNG

5 Title: ASST. SECRETARY

6 SANYO NORTH AMERICA CORP.

7

8

9 **IT IS SO ORDERED.**

10 Date: _____

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AGREED TO:

Date: May 30, 2012



Name: Yoshinobu Nakatani

Title: President

SANYO ENERGY (USA) CORP., a division of
Sanyo North America Corporation

JUDGE OF THE SUPERIOR COURT