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7 Consumer Advocacy Group, Inc.

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

11 CONSUMER ADVOCACY GROUP, INC., in
12 the public interest,

13 Plaintiff,

14 v.

15 MARSHALLS OF MA, INC., a Massachusetts
16 Corporation; MARMAXX OPERATING
CORP., a Delaware Corporation; THE TJX
17 COMPANIES, INC., a Delaware Corporation;
DGL GROUP LTD., a New York Corporation,
18 NATIONAL STORES, INC.; a California
19 Corporation; and DOES 1-50;

20 Defendants.

CASE NO. BC480514

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

California Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 9, 2012

Trial Date: October 23, 2013

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22 **1. INTRODUCTION**

23 1.1 On March 9, 2012, Plaintiff, the Consumer Advocacy Group, Inc. (“CAG”), filed a
24 complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v.*
25 *Marshalls of MA, Inc., et al.*, Case No. BC480514 (the “Action”), for civil penalties and injunctive
26 relief pursuant to the provisions of California Health and Safety Code section 25249.5, *et seq.*
27 (“Proposition 65”) against Marshalls of MA, Inc., Marmaxx Operating Corp., the TJX Companies,
28 Inc., DGL Group Ltd. (“DGL”), and National Stores, Inc. On November 9, 2012, CAG filed the

1 operative Second Amended Complaint. This Consent Judgment is entered into between CAG and
2 DGL. CAG and DGL are collectively referred to hereinafter as the “Parties.”

3 1.2 DGL is a corporation that employs 10 or more persons. DGL has made available
4 for distribution in the State of California the following products: (1) in-ear headphones; (2) car
5 chargers; and (3) headphones (hereinafter collectively referred to as “Products”). “Products” are
6 limited to those sold by DGL. The Products allegedly contain lead, a chemical known to the State
7 of California to cause cancer and birth defects or other reproductive harm (“Noticed Chemical”).

8 1.3 On or about May 27, 2011, CAG served Marshalls of MA, Inc., Marmaxx
9 Operating Corp., the TJX Companies, Inc., DGL and the appropriate public enforcement agencies
10 with a notice of violation claiming that these defendants were in violation of Proposition 65. The
11 notice specifically identified the Hype Metal, In-Ear Headphones, HY-530-M-PNK. CAG’s May
12 27th notice and the Complaint in this Action allege that these defendants exposed California
13 consumers to the Noticed Chemical, without first providing clear and reasonable warnings, in
14 violation of California Health and Safety Code section 25249.6.

15 1.4 On or about February 26, 2012, CAG served DGL, National Stores, Inc. and the
16 appropriate public enforcement agencies with a notice of violation claiming that these defendants
17 were in violation of Proposition 65. The notice specifically identified the Vibe Essential Car
18 Charger, VE-760-UN6. CAG’s February 26th notice and the First Amended Complaint in this
19 Action allege that these defendants exposed California consumers to the Noticed Chemical,
20 without first providing clear and reasonable warnings, in violation of California Health and Safety
21 Code section 25249.6.

22 1.5 On or about May 8, 2012, CAG served DGL and the appropriate public
23 enforcement agencies with a notice of violation claiming that DGL was in violation of Proposition
24 65. The notice specifically identified the Vibe Sound Black Stereo Headphones, VS-770-BLK.
25 CAG’s May 8th notice and the Second Amended Complaint in this Action allege that DGL
26 exposed California consumers to the Noticed Chemical, without first providing clear and
27 reasonable warnings, in violation of California Health and Safety Code section 25249.6.

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1 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
2 jurisdiction over the allegations of violations contained in the three notices of violation and CAG's
3 Second Amended Complaint and personal jurisdiction over DGL as to the acts alleged in CAG's
4 Second Amended Complaint, that venue is proper in the County of Los Angeles, and that this
5 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims
6 which were or could have been raised in the Second Amended Complaint.

7 1.7 DGL denies the material allegations of the notices and the Complaint, the First
8 Amended Complaint, and the Second Amended Complaint. The Parties enter into this Consent
9 Judgment pursuant to a settlement of certain disputed claims as alleged in the Second Amended
10 Complaint for the purpose of avoiding prolonged and costly litigation. Nothing in this Consent
11 Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue of
12 law or violation of law, including without limitation, any admission concerning any violation of
13 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or the
14 meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as
15 used in California Health and Safety Code section 25249.6.

16 1.8 Nothing in this Consent Judgment shall prejudice, waive or impair any right,
17 remedy, argument, or defense the Parties may have in any other or future legal proceeding, except
18 as expressly provided in this Consent Judgment.

19 1.9 The "Effective Date" of this Consent Judgment shall be the date the court enters the
20 Consent Judgment.

21 **2. REFORMULATION**

22 2.1 Thirty (30) days after the Effective Date of this Consent Judgment, DGL shall not
23 sell or ship for sale in California any Products that contain more than 100 parts per million lead by
24 weight.

25 2.2 Any Products that have been manufactured, distributed, shipped or sold by DGL
26 prior to the 30th day after the Effective Date shall not be subject to the requirements of Paragraph
27 2.1.

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1 **3. SETTLEMENT PAYMENT**

2 3.1 Within ten (10) days of the Effective Date, DGL shall pay a total of seventy
3 thousand dollars (\$70,000.00) to CAG and Yeroushalmi & Associates as set forth below.

4 3.1.1 Civil Penalties: DGL shall issue two separate checks for a total amount of
5 four thousand dollars (\$4,000.00) as penalties pursuant to California Health and Safety Code
6 section 25249.12: (a) one check made payable to the State of California's Office of Environmental
7 Health Hazard Assessment ("OEHHA") in the amount of three thousand dollars (\$3,000),
8 representing 75% of the total civil penalty; and (b) one check to Consumer Advocacy Group, Inc.
9 in the amount of one thousand dollars (\$1,000), representing 25% of the total penalty.

10 3.1.2 Monetary Payment in Lieu of Civil Penalty: DGL shall pay one thousand
11 dollars (\$1,000.00) to CAG in lieu of any civil penalty pursuant to California Health and Safety
12 Code section 25249.7(b). CAG will use the payment for such projects and purposes related to
13 environmental protection, worker health and safety, or reduction of human exposure to hazardous
14 substances (including administrative and litigation costs arising from such projects), as CAG may
15 choose. The check shall be made payable to Consumer Advocacy Group, Inc. and delivered to
16 Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly
17 Hills, California 90212.

18 3.1.3 Attorneys' Fees and Costs: DGL shall pay sixty-five thousand dollars
19 (\$65,000) to Yeroushalmi & Associates, as CAG's attorneys, for reasonable investigation fees and
20 costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter
21 to DGL's attention, litigating, and negotiating a settlement in the public interest. The check shall
22 be made payable to Yeroushalmi & Associates and delivered to Reuben Yeroushalmi,
23 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
24 90212.

25 **4. MODIFICATION OF CONSENT JUDGMENT**

26 4.1 This Consent Judgment may be modified by written agreement of CAG and DGL
27 upon stipulation and order of the Court, or after noticed motion, and upon entry of a Consent
28 Judgment by the Court thereon, or upon motion of CAG or DGL as provided by law and upon

1 entry of a modified Consent Judgment by the Court.

2 **5. ENFORCEMENT OF CONSENT JUDGMENT**

3 5.1 Either party may, by motion or application for an order to show cause before the
4 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in
5 paragraphs 9.1 and 9.2 of this Consent Judgment, enforce the terms and conditions contained in
6 this Consent Judgment.

7 **6. APPLICATION OF CONSENT JUDGMENT**

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

11 **7. CLAIMS COVERED AND RELEASED**

12 7.1 CAG, on its own behalf and in the public interest, hereby releases and discharges
13 DGL, its subsidiaries, affiliates, predecessors, successors and assigns, vendors, suppliers,
14 distributors, retailers (including defendants Marshalls of MA, Inc., Marmaxx Operating Corp., the
15 TJX Companies, Inc., and National Stores, Inc.), and customers and all officers, directors,
16 employees, agents and shareholders of them (collectively "Released Parties") from any and all
17 claims for violations of Proposition 65 up through the Effective Date based on exposure to the
18 Noticed Chemical from the Products as set forth in the notices of violation and the Second
19 Amended Complaint.

20 7.2 Compliance with the terms of this Consent Judgment shall constitute compliance
21 by the Released Parties with Proposition 65 with respect to exposures to the Noticed Chemical
22 from the Products as set forth in the notices of violation and the Second Amended Complaint.

23 7.3 CAG, on behalf of itself only, hereby releases and discharges the Released Parties
24 from any and all known and unknown past, present, and future rights, claims, causes of action,
25 damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees, costs,
26 and expenses related to or arising out of the facts and claims asserted, or that could have been
27 asserted, under state or federal law or the facts alleged in notices of violation or the Second
28 Amended Complaint relating to any and all claims concerning exposure of any person to the

1 Noticed Chemical in the Products.

2 7.4 Unknown Claims. It is possible that other injuries, damages, liability, or claims not
3 now known to the Parties arising out of the facts alleged in the notices of violation and the Second
4 Amended Complaint and relating to the Products will develop or be discovered, and this Consent
5 Judgment is expressly intended to cover and include all such injuries, damages, liability, and
6 claims, including all rights of action therefor. CAG has full knowledge of the contents of
7 California Civil Code section 1542. CAG, on behalf of itself only, acknowledges that the claims
8 released in sections 7.1 through 7.3 above may include unknown claims and waives section 1542
9 as to any such unknown claims. Section 1542 reads as follows:

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

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

15 **8. SEVERABILITY**

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

18 **9. NOTICE AND CURE**

19 9.1 No action to enforce this Consent Judgment may be commenced, and no notice of
20 violation related to the Products may be served or filed against DGL by CAG, unless the party
21 seeking enforcement or alleging violation notifies the other party of the specific acts alleged to
22 breach this Consent Judgment at least ninety (90) days before serving or filing any motion, action,
23 or notice of violation. Any notice to DGL must contain (a) the name of the product, (b) specific
24 dates when the product was sold in California, (c) the store or other place at which the product was
25 available for sale to consumers, and (d) any other evidence or other support for the allegations in
26 the notice.

27 9.2 Within thirty (30) days of receiving the notice described in section 9.1, DGL shall
28 either (1) withdraw the product, or (3) refute the information provided under section 9.1. Should

1 the Parties be unable to resolve the dispute, either party may seek relief under section 5.

2 **10. GOVERNING LAW**

3 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
4 California and apply within the State of California. In the event that Proposition 65 is repealed,
5 preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Noticed
6 Chemical and/or the Products, then DGL shall provide written notice to CAG of any asserted
7 change in the law, and shall have no further obligations pursuant to this Consent Judgment.

8 **11. PROVISION OF NOTICE**

9 11.1 All notices required pursuant to this Consent Judgment and correspondence shall be
10 sent by (a) first-class registered or certified mail; or (b) a recognized overnight delivery service
11 (i.e. UPS or Federal Express) to the following:

12 For CAG:

13 Reuben Yeroushalmi
14 YEROUSHALMI & ASSOCIATES
15 9100 Wilshire Boulevard, Suite 610E
16 Beverly Hills, CA 90212

For DGL:

DGL Group, Ltd.
Attn: Ezra Zaafarani
195 Raritan Center Parkway
Edison, NJ 08837

16 With a copy to:

17 Margaret Carew Toledo
18 TOLEDO DON LLP
19 3001 Douglas Blvd., Suite 340
20 Roseville, CA 95661

20 **12. COURT APPROVAL**

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

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

25 12.3 In the event that the California Attorney General, or any other person, files an
26 appeal challenging this Consent Judgment and the Consent Judgment is reversed or modified in
27 any way by the appellate court, CAG and its counsel shall refund all payments made by DGL
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1 pursuant to Section 3 of this Consent Judgment within fifteen (15) days of the appellate court
2 opinion becoming final.

3 **13. EXECUTION AND COUNTER PARTS**

4 13.1 This Consent Judgment may be executed in counterparts, which taken together
5 shall be deemed to constitute one document. Facsimile or pdf signatures shall be construed as
6 valid as the original.

7 **14. AUTHORIZATION**

8 14.1 The undersigned are authorized to execute this proposed Consent Judgment on
9 behalf of their respective parties and have read, understood and agreed to all of the terms and
10 conditions of this proposed Consent Judgment. Except as explicitly provided herein, each party is
11 to bear its own attorneys' fees and costs.

12 Dated: 6-10-13

CONSUMER ADVOCACY GROUP, INC.

14 
15 Name and Title: Michel Sabean - director *Executive*

17
18 Dated: _____

DGL GROUP, LTD.

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21 _____
Ezra Zaafarani, Chief Executive Officer

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10 conditions of this proposed Consent Judgment. Except as explicitly provided herein, each party is
11 to bear its own attorneys' fees and costs.

12 Dated: _____

CONSUMER ADVOCACY GROUP, INC.

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Name and Title: _____

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18 Dated: 6-25-13

DGL GROUP, LTD.

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Ezra Zaafarani, Chief Executive Officer

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ORDER AND JUDGMENT

Based upon the Consent Judgment between Consumer Advocacy Group, Inc. and DGL Group, 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