

1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
YEROUSHALMI & ASSOCIATES
3 9100 Wilshire Boulevard, Suite 610E
4 Beverly Hills, California 90212
Telephone: 310.623.1926
5 Facsimile: 310.623.1930

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

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11

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

14 Plaintiff,

15 v.

16 COST PLUS, INC., a California corporation,
17 COST PLUS WORLD MARKET, INC., a
18 Texas corporation, and DOES 1-20

19 Defendants.

CASE NO. BC488266

CONSENT JUDGMENT [PROPOSED]

Dept: 57

Judge: Hon. Ralph Dau

Complaint filed: July 13, 2012

20 **1. INTRODUCTION**

21 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
22 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and
23 defendant Cost Plus, Inc. ("Cost Plus"), with each a Party and collectively referred to as
24 "Parties."

25 1.2 Cost Plus employs ten or more persons, is a person in the course of doing business
26 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
27 & Safety Code §§ 25249.6 et seq. ("Proposition 65"), and sells Bottle Stoppers.
28

1 **1.3 Notices of Violation.**

2 1.3.1 On or about November 3, 2011, CAG served Cost Plus and various public
3 enforcement agencies with a document entitled “60-Day Notice of Violation” (the
4 “November 3, 2011 Notice”) that provided the recipients with notice of alleged violations
5 of Health & Safety Code § 25249.6 for failing to warn individuals in California of
6 exposures to di(2-ethylhexyl)phthalate (DEHP) contained in Chrome Bottle Stoppers
7 with O-Rings.

8 1.3.2 No public enforcer has commenced or diligently prosecuted the
9 allegations set forth in the November 3, 2011 Notice.

10 **1.4 Complaint.**

11 On July 13, 2012, CAG filed a Complaint for civil penalties and injunctive relief
12 (“Complaint”) in Los Angeles Superior Court, Case No. BC488266. The Complaint alleges,
13 among other things, that Cost Plus violated Proposition 65 by failing to give clear and reasonable
14 warnings of exposure to DEHP from Chrome Bottle Stoppers with O-Rings.

15 **1.5 Consent to Jurisdiction**

16 For purposes of this Consent Judgment, the parties stipulate that this Court has
17 jurisdiction over the allegations of violations contained in the Complaint and personal
18 jurisdiction over Cost Plus as to the acts alleged in the Complaint, that venue is proper in the
19 City and County of Los Angeles and that this Court has jurisdiction to enter this Consent
20 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of
21 all claims which were or could have been raised by any person or entity based in whole or in
22 part, directly or indirectly, on the facts alleged therein or arising therefrom or related to.

23 **1.6 No Admission**

24 This Consent Judgment resolves claims that are denied and disputed. The parties enter
25 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
26 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
27 constitute an admission with respect to any material allegation of the Complaint, each and every
28

1 allegation of which Cost Plus denies, nor may this Consent Judgment or compliance with it be
2 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Cost Plus.

3 **2. DEFINITIONS**

4 2.1 "Covered Products" means Bottle Stoppers sold by Cost Plus.

5 2.2 "Effective Date" means the date that this Consent Judgment is entered by the
6 Court.

7 **3. INJUNCTIVE RELIEF/REFORMULATION**

8 3.1 Within 30 days of the Effective Date Cost Plus shall not sell or offer for sale in
9 California Covered Products that contain DEHP with more than 0.1% DEHP by weight.

10 **4. SETTLEMENT PAYMENT**

11 Within fifteen (15) days of service of the notice of approval of this Consent Judgment by
12 the Court, Defendant shall pay a total of fifty thousand dollars (\$50,000.00) (herein "Settlement
13 Payment") by separate checks apportioned as follows:

14 4.1 **Civil Penalties.** Cost Plus shall issue two separate checks for a total amount of
15 four thousand dollars (\$4,000.00.) as penalties pursuant to Health & Safety Code § 25249.12: (a)
16 one check made payable to the State of California's Office of Environmental Health Hazard
17 Assessment (OEHHA) in the amount of three thousand dollars (\$3,000.00), representing 75% of
18 the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of one
19 thousand dollars (\$1,000.00), representing 25% of the total penalty. Two separate 1099s shall be
20 issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010,
21 Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,000.00. The second 1099 shall
22 be issued in the amount of \$1,000.00 to CAG and delivered to: Yeroushalmi & Associates, 9100
23 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

24 4.2 **Payment In Lieu of Civil Penalties:** Cost Plus shall pay one thousand dollars
25 (\$1,000.00) in lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG will use this
26 payment for investigation of the public's exposure to Proposition 65 listed chemicals through
27 various means, laboratory fees for testing for Proposition 65 listed chemicals, expert fees for
28

1 evaluating exposures through various mediums, including but not limited to consumer product,
2 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
3 hiring consulting and retained experts who assist with the extensive scientific analysis necessary
4 for those files in litigation, in order to reduce the public's exposure to Proposition 65 listed
5 chemicals by notifying those persons and/or entities believed to be responsible for such
6 exposures and attempting to persuade those persons and/or entities to reformulate their products
7 or the source of exposure to completely eliminate or lower the level of Proposition 65 listed
8 chemicals, thereby addressing the same public harm as allegedly in the instant Action. Further,
9 should the court require it, CAG will submit under seal, an accounting of these funds as
10 described above as to how the funds were used.

11 4.3 **Reimbursement of Attorneys' Fees and Costs:** Within fifteen business days of
12 service of the notice of entry of this Consent Judgment by the Court, Cost Plus shall pay forty-
13 five thousand dollars (\$45,000.00) to "Yeroushalmi & Associates" as reimbursement for the
14 investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs and
15 expenses for all work performed through the approval of this Consent Judgment.
16

17
18 4.4 All payments above shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
19 Associates, 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.
20

21 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

22 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
23 behalf of itself and in the public interest and Cost Plus and its officers, directors, insurers,
24 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
25 companies and their successors and assigns ("Defendant Releasees"), including but not limited to
26 each of its suppliers, customers, distributors, wholesalers, retailers, or any other person in the
27 course of doing business, and the successors and assigns of any of them, who may use, maintain,
28 distribute or sell Covered Products ("Downstream Defendant Releasees"), for all claims for

1 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from
2 Covered Products as set forth in the Notice. Cost Plus and Defendant Releasees' compliance
3 with this Consent Judgment shall constitute compliance with Proposition 65 with respect to
4 DEHP from Covered Products as set forth in the Notice.

5 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
6 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
7 indirectly, any form of legal action and releases all claims, including, without limitation, all
8 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
9 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
10 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
11 fixed or contingent (collectively "Claims"), against Cost Plus, Defendant Releasees, and
12 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
13 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
14 Products manufactured, distributed, or sold by Cost Plus and Defendant Releasees. In
15 furtherance of the foregoing, as to alleged exposures to DEHP from Covered Products, CAG
16 hereby waives any and all rights and benefits which it now has, or in the future may have,
17 conferred upon it with respect to the Claims arising from any violation of Proposition 65 or any
18 other statutory or common law regarding the failure to warn about exposure to DEHP from
19 Covered Products by virtue of the provisions of section 1542 of the California Civil Code, which
20 provides as follows:
21

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

27 CAG understands and acknowledges that the significance and consequence of this waiver of
28 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from
any violation of Proposition 65 or any other statutory or common law regarding the failure to

1 warn about exposure to DEHP from Covered Products, including but not limited to any exposure
2 to, or failure to warn with respect to exposure to DEHP from the Covered Products, CAG will
3 not be able to make any claim for those damages against Cost Plus or the Defendant Releasees or
4 Downstream Defendant Releasees. Furthermore, CAG acknowledges that it intends these
5 consequences for any such Claims arising from any violation of Proposition 65 or any other
6 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
7 Products as may exist as of the date of this release but which CAG does not know exist, and
8 which, if known, would materially affect their decision to enter into this Consent Judgment,
9 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
10 negligence, or any other cause.

11 **6. ENFORCEMENT OF JUDGMENT**

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

19 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
20 proceeding to enforce Section 0 of this Consent Judgment, CAG shall provide a Notice of
21 Violation ("NOV") to Cost Plus. The NOV shall include for each of the Covered Products: the
22 date(s) the alleged violation(s) was observed and the location at which the Covered Products
23 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
24 Covered Products, including an identification of the component(s) of the Covered Products that
25 were tested.
26
27
28

1 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
2 alleged violation if, within 30 days of receiving such NOV, Cost Plus serves a Notice of
3 Election (“NOE”) that meets one of the following conditions:

4 (a) The Covered Products were shipped by Cost Plus for sale in
5 California before the Effective Date, or

6 (b) Since receiving the NOV Cost Plus has taken corrective action by
7 either (i) removing the Covered Products identified in the NOV from sale in California
8 and destroying or returning the Covered Products to the vendor, or (ii) providing a clear
9 and reasonable warning for the Covered Products identified in the NOV pursuant to 27
10 Cal. Code Regs. § 25603.

11 6.2.2 **Contested NOV.** Cost Plus may serve an NOE informing CAG of its
12 election to contest the NOV within 30 days of receiving the NOV.

13 (a) In its election, Cost Plus may request that the sample(s) Covered
14 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
15 laboratory.

16 (b) If the confirmatory testing establishes that the Covered Products do
17 not contain DEHP in excess of the level allowed in Section 0 CAG shall take no further
18 action regarding the alleged violation. If the testing does not establish compliance with
19 Section 0, Cost Plus may withdraw its NOE to contest the violation and may serve a new
20 NOE pursuant to Section 0.

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

24 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
25 prevailing party in said proceeding shall be entitled to recover its reasonable attorneys’ fees and
26 costs. Further, such party may seek whatever fines, costs, penalties or remedies as may be
27 provided by law for any violation of Proposition 65 or this Consent Judgment.
28

1 **7. ENTRY OF CONSENT JUDGMENT**

2 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
3 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
4 Cost Plus waive their respective rights to a hearing or trial on the allegations of the Complaint.

5 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
6 and any and all prior agreements between the parties merged herein shall terminate and become
7 null and void, and the actions shall revert to the status that existed prior to the execution date of
8 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
9 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
10 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
11 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
12 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

13 **8. MODIFICATION OF JUDGMENT**

14 8.1 This Consent Judgment may be modified only upon written agreement of the
15 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
16 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

17 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
18 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

19 **9. RETENTION OF JURISDICTION**

20 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
21 terms of this Consent Judgment.

22 **10. DUTIES LIMITED TO CALIFORNIA**

23 This Consent Judgment shall have no effect on Covered Products sold outside the State of
24 California.

25 **11. SERVICE ON THE ATTORNEY GENERAL**

26 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
27 California Attorney General so that the Attorney General may review this Consent Judgment
28

1 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
2 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
3 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
4 the parties may then submit it to the Court for approval.

5 **12. ATTORNEY FEES**

6 12.1 Except as specifically provided in Section 0, each Party shall bear its own costs
7 and attorney fees in connection with this action.

8 **13. ENTIRE AGREEMENT**

9 13.1 This Consent Judgment contains the sole and entire agreement and understanding
10 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
11 negotiations, commitments and understandings related hereto. No representations, oral or
12 otherwise, express or implied, other than those contained herein have been made by any party
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
14 deemed to exist or to bind any of the parties.

15 **14. GOVERNING LAW**

16 14.1 The validity, construction and performance of this Consent Judgment shall be
17 governed by the laws of the State of California, without reference to any conflicts of law
18 provisions of California law.

19 14.2 The Parties, including their counsel, have participated in the preparation of this
20 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
21 Consent Judgment was subject to revision and modification by the Parties and has been accepted
22 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
23 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
24 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
25 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
26 resolved against the drafting Party should not be employed in the interpretation of this Consent
27 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.
28

1 **15. EXECUTION AND COUNTERPARTS**

2 15.1 This Consent Judgment may be executed in counterparts and by means of
3 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
4 one document.

5 **16. NOTICES**

6 16.1 Any notices under this Consent Judgment shall be by personal delivery or First
7 Class Mail.

8
9 If to CAG:

10 Reuben Yeroushalmi, Esq.
11 9100 Wilshire Boulevard, Suite 610E
12 Beverly Hills, CA 90212
(310) 623-1926

13 If to Cost Plus:

14 President
15 Cost Plus, Inc.
16 200 Fourth Street
17 Oakland, CA 94607

18 With a copy to:

19 Merrit M. Jones
20 Bryan Cave LLP
21 560 Mission Street, 25th Floor
San Francisco, CA 94105

22 **17. AUTHORITY TO STIPULATE**

23 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
25 of the party represented and legally to bind that party.
26
27
28

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

AGREED TO:
Date: 6-10-, 2013

AGREED TO:
Date: _____, 2013

By: *Michel Sassoon - executive director*
Plaintiff, CONSUMER ADVOCACY GROUP, INC.

By: _____
Defendant, COST PLUS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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

AGREED TO:

Date: _____, 2013

AGREED TO:

Date: June 13th, 2013

By: _____
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: 
Defendant, COST PLUS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT