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11 Attorneys for Plaintiff
Consumer Advocacy Group, Inc.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES – WEST DISTRICT

15
16 CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

17 Plaintiff,

18 v.

19
20 HOBBY LOBBY STORES, INC., an
Oklahoma Corporation, and DOES 1-20;

21 Defendants.
22

CASE NO. BC496089

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Judge: Hon. Mitchell Beckloff

Department: M

Complaint Filed: November 29, 2012

23 **1. INTRODUCTION**

24 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
25 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the interest of the
26 public, and defendant, Hobby Lobby Stores, Inc. (referred to as “Defendant”) with each a Party
27 to the action and collectively referred to as “Parties.” This Consent Judgment is intended to fully

1 resolve all claims, demands, and allegations related to this action and the Notices of Violation
2 referred to herein.

3 **1.2 Defendant and Products**

4 1.2.1 Defendant is an Oklahoma corporation which employs ten or more
5 persons. For purposes of this Consent Judgment, Defendant is deemed a person in the course of
6 doing business in California and is subject to the provisions of the Safe Drinking Water and
7 Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
8 (“Proposition 65”).

9 1.2.2 Defendant manufactures, causes to be manufactured, sells, or distributes
10 Plastic Artificial Grapes, including but not limited to Way To Grow! Artificial Fruit Green
11 Grapes, Item #760868 and Way To Grow! Artificial Fruit Red Grapes, Item #760926 (referred to
12 hereinafter as “Grapes Covered Products”). Additionally, Defendant formerly manufactured,
13 caused to be manufactured, sold or distributed 1 Piece Rotary Hole Punch “Adjusts to punch six
14 different sized holes, “For use on leather plastic, vinyl, etc.”, #257097, A-5567 (referred to
15 hereinafter as “Hole Punch Covered Product”). (The Grapes Covered Products and Hole Punch
16 Covered Product together referred to hereinafter as the “Covered Products.”)

17 **1.3 Chemicals Of Concern**

18 Di(2-ethylhexyl)phthalate (“DEHP”) is known to the State of California to cause
19 cancer and/or birth defects or other reproductive harm.

20 **1.4 Notices of Violation.**

21 1.4.1 On March 15, 2012 CAG served Defendant, Hobby Lobby #491, and
22 various public enforcement agencies with a document entitled “60-Day Notice of Violation”
23 (“March 15, 2012 Notice”) that provided the recipients with notice of alleged violations of
24 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
25 DEHP contained in Hole Punch Covered Products sold by Defendant. No public enforcer has
26 commenced or diligently prosecuted the allegations set forth in the March 15, 2012 Notice.
27

1 (each and every allegation of which Defendants deny), any fact, conclusion of law, issue of law
2 or violation of law, including without limitation, any admission concerning any violation of
3 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or the
4 meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as
5 used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor
6 compliance with its terms, shall constitute or be construed as an admission by the Parties of any
7 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
8 any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations,
9 or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in
10 any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice,
11 waive or impair any right, remedy, argument, or defense the Parties may have in any other or
12 future legal proceeding, except as expressly provided in this Consent Judgment.

13 **2. DEFINITIONS**

14 2.1 “Covered Products” means Grapes Covered Products and Hole Punch Covered
15 Product. “Covered Products” are limited to those products which were subject to the “Notices”
16 served by CAG and sold by the Defendant.

17 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
18 Court.

19 2.3 “Notices” means the March 15, 2012 Notice and March 20, 2012 Notice sent by
20 CAG.

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

23 3.1 Within 30 days of the Effective Date, Defendant shall not sell the Covered
24 Products in California unless they are reformulated to contain less than 0.1% by weight (1,000
25 parts per million) of DEHP.

26 3.2 For any Covered Products still existing in Defendant’s inventory as of the
27

1 Effective Date, Defendant shall place a Proposition 65 compliant warning on those Covered
2 Products. Any warning provided pursuant to this section shall be affixed to the packaging of, or
3 directly on, the Covered Products, and be prominently placed with such conspicuousness as
4 compared with other words, statements, designs, or devices as to render it likely to be read and
5 understood by an ordinary individual under customary conditions before purchase or use. The
6 warning shall state:

7 **WARNING:** This product contains a chemical known to the State of California
8 to cause cancer and birth defects or other reproductive harm.

9
10 **4. SETTLEMENT PAYMENT**

11 **4.1 Payment and Due Date:** Within ten (10) days of the approval of the Consent
12 Judgment, Defendant shall pay a total of five hundred and fifty-thousand dollars and zero cents
13 (\$550,000) in full and complete settlement of all monetary claims by CAG related to the Notices
14 and this action, divided as follows:

15 **4.1.1 Civil Penalty:** Defendant shall issue separate checks totaling twenty-eight
16 thousand dollars (\$28,000) as penalties pursuant to Health & Safety Code § 25249.12:

17 (a) Defendant will issue a check made payable to the State of California's
18 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of twenty-one
19 thousand dollars (\$21,000) representing 75% of the total penalty; and

20 (b) Defendant will issue a check payable to "Consumer Advocacy Group,
21 Inc." in the amount of seven thousand dollars (\$7,000) representing 25% of the total penalty; and

22 (c) Defendant shall issue separate 1099s for each of the above payments:
23 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
24 0284486) in the amount of \$21,000. Defendant will also issue a 1099 to CAG c/o Yeroushalmi
25 & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212 in the
26 amount of \$7,000. CAG will provide W9 information to Defendant at least 10 days before
27 payments are due.

1 **4.1.2 Payment In Lieu of Civil Penalties:** Defendant shall pay twenty-two
2 thousand dollars (\$22,000) in lieu of civil penalties payable to “Consumer Advocacy Group,
3 Inc.” CAG will use this payment for investigation of the public’s exposure to Proposition 65
4 listed chemicals through various means, including laboratory fees for testing for Proposition 65
5 listed chemicals, administrative costs and fees related to such activities, expert fees for
6 evaluating exposures through various mediums, including but not limited to consumer product,
7 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
8 hiring consulting and retained experts who assist with the extensive scientific analysis necessary
9 for those files in litigation, as well as administrative costs and fees related to such activities in
10 order to reduce the public’s exposure to Proposition 65 listed chemicals by notifying those
11 persons and/or entities believed to be responsible for such exposures and attempting to persuade
12 those persons and/or entities to reformulate their products or the source of exposure to
13 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing
14 the same public harm as allegedly in the instant Action. Further, should the court require it,
15 CAG will submit under seal, an accounting of these funds as described above as to how the funds
16 were used.

17
18 **4.1.3 Reimbursement of Attorneys’ Fees and Costs:** Defendant shall pay five
19 hundred thousand dollars (\$500,000) payable to “Yeroushalmi & Yeroushalmi” as
20 reimbursement for reasonable investigation fees and costs, attorneys’ fees, and any other costs
21 incurred as a result of investigating, bringing this matter to Defendant’s attention, litigating, and
22 negotiating a settlement in the public interest. CAG will provide W9 information to Defendant
23 concerning Yeroushalmi & Yeroushalmi at least 10 days before payment is due.

24 **4.2** All payments in sections 4.1.1, 4.1.2, and 4.1.3 above shall be delivered to:
25 Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly
26 Hills, CA 90212.

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

2 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
3 behalf of itself and in the public interest and Defendant, of any alleged violation of Proposition
4 65 that was or could have been asserted by CAG against Defendant for failure to provide
5 Proposition 65 warnings of exposure to DEHP from the Covered Products as set forth in the
6 Notices for the Covered Products, and fully resolves all claims that have been or could have been
7 asserted in this action up to and including the date of entry of Judgment for failure to provide
8 Proposition 65 warnings for the Covered Products regarding DEHP. CAG, on behalf of itself
9 and in the public interest, hereby discharges Defendant and its parent companies, subsidiaries,
10 divisions, affiliates, suppliers, franchisees, licensors, licensees, customers, distributors,
11 wholesalers, retailers and all other downstream entities in the distribution chain of any of the
12 Covered Products, and the predecessors, successors and assigns of any of them, and all of their
13 respective officers, directors, shareholders, members, managers, employees, agents (collectively,
14 "Released Parties"), from all claims up through the Effective Date for violations of Proposition
15 65 based on exposure to DEHP from the Covered Products. Compliance with the terms of this
16 Consent Judgment shall be deemed to constitute compliance by the Released Parties with
17 Proposition 65 regarding alleged exposures to DEHP from the Covered Products. Nothing in
18 this Section affects CAG's right to commence or prosecute an action under Proposition 65
19 against any person other than Defendant or Released Parties.
20

21 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
22 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
23 indirectly, any form of legal action and releases all claims, including, without limitation, all
24 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
25 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
26 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
27 fixed or contingent (collectively "Claims"), against the Released Parties arising from any
28

1 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
2 about exposure to DEHP from the Covered Products. In furtherance of the foregoing, as to
3 alleged exposures to DEHP from the Covered Products, CAG on behalf of itself only, hereby
4 waives any and all rights and benefits which it now has, or in the future may have, conferred
5 upon it with respect to Claims arising from any violation of Proposition 65 or any other statutory
6 or common law regarding the failure to warn about exposure to DEHP from the Covered
7 Products by virtue of the provisions of section 1542 of the California Civil Code, which provides
8 as follows:

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

14 CAG understands and acknowledges that the significance and consequence of this waiver of
15 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
16 resulting from, or related directly or indirectly to, in whole or in part, claims arising from any
17 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
18 about exposure to DEHP from the Covered Products, including but not limited to any exposure
19 to, or failure to warn with respect to exposure to DEHP from the Covered Products, and CAG
20 will not be able to make any claim for those damages against Released Parties. Furthermore,
21 CAG acknowledges that it intends these consequences for any such Claims arising from any
22 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
23 about exposure to DEHP from Covered Products as may exist as of the date of this release but
24 which CAG does not know exist, and which, if known, would materially affect their decision to
25 enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of
26 ignorance, oversight, error, negligence, or any other cause.

1 **6. ENFORCEMENT OF JUDGMENT**

2 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
3 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
4 California, Los Angeles County, giving the notice required by law, enforce the terms and
5 conditions contained herein. A Party may enforce any of the terms and conditions of this
6 Consent Judgment only after that Party first provides 90 days notice to the Party allegedly failing
7 to comply with the terms and conditions of this Consent Judgment and attempts to resolve such
8 Party's failure to comply in an open and good faith manner.

9 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
10 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of
11 Violation ("NOV") to Defendants. The NOV shall include for each of the Covered Products: the
12 date(s) the alleged violation(s) was observed and the location at which the Covered Products
13 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
14 Covered Products, including an identification of the component(s) of the Covered Products that
15 were tested.

16 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
17 alleged violation if, within 60 days of receiving such NOV, Defendants serves a Notice of
18 Election ("NOE") that meets one of the following conditions:

19 (a) The Covered Products were shipped by Defendant for sale in
20 California before the Effective Date, or

21 (b) Since receiving the NOV Defendant has taken corrective action by
22 either (i) requesting that its customers or stores in California, as applicable, remove the
23 Covered Products identified in the NOV from sale in California and either destroy or
24 return the Covered Products to Defendant or vendor, as applicable, or (ii) providing a
25 clear and reasonable warning for the Covered Products identified in the NOV pursuant to
26 27 Cal. Code Regs. § 25603.
27

1 6.2.2 **Contested NOV.** Defendant may serve an NOE informing CAG of its
2 election to contest the NOV within 30 days of receiving the NOV.

3 (a) In its election, Defendant may request that the sample(s) Covered
4 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
5 laboratory.

6 (b) If the confirmatory testing establishes that the Covered Products do
7 not contain DEHP in excess of the levels allowed in Section 3.1, above, CAG shall take
8 no further action regarding the alleged violation. If the testing does not establish
9 compliance with Section 3.1, above, Defendant may withdraw its NOE to contest the
10 violation and may serve a new NOE pursuant to Section 6.2.1.

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

14 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
15 prevailing party shall be entitled to recover its reasonable attorney's fees.

16 **7. ENTRY OF CONSENT JUDGMENT**

17 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
18 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG,
19 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint
20 and FAC. CAG and Defendant agree to support the entry of the Consent Judgment and to obtain
21 the Court's approval of their settlement in a timely manner.

22 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
23 and any and all prior agreements between the parties merged herein shall terminate and become
24 null and void, and the actions shall revert to the status that existed prior to the execution date of
25 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
26 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
27

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 under Code of Civil Procedure § 664.6.

13 **10. DUTIES LIMITED TO CALIFORNIA**

14 10.1 This Consent Judgment shall have no effect on Covered Products sold by
15 Defendants 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 Sections 4.1.3 and 6.3 above, each Party shall
25 bear its own costs and attorney fees in connection with this action.
26

1 **13. ENTIRE AGREEMENT**

2 13.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
4 negotiations, commitments and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **14. GOVERNING LAW**

9 14.1 The validity, construction and performance of this Consent Judgment shall be
10 governed by the laws of the State of California, without reference to any conflicts of law
11 provisions of California law.

12 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
14 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
15 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
16 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
17 subject to this Consent Judgment may provide written notice to CAG of any asserted change in
18 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,
19 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
20 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state
21 or federal law or regulation.

22 14.3 The Parties, including their counsel, have participated in the preparation of this
23 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
24 Consent Judgment was subject to revision and modification by the Parties and has been accepted
25 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
26 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
27

1 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
2 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
3 resolved against the drafting Party should not be employed in the interpretation of this Consent
4 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

5 **15. EXECUTION AND COUNTERPARTS**

6 15.1 This Consent Judgment may be executed in counterparts and by means of
7 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
8 one document and have the same force and effect as original signatures.

9 **16. NOTICES**

10 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
11 Class Mail.

12
13 If to CAG:

14 Reuben Yeroushalmi
15 Yeroushalmi and Yeroushalmi
16 9100 Wilshire Boulevard, Suite 240W
17 Beverly Hills, CA 90212
18 (310) 623-1926

19 If to Hobby Lobby Stores, Inc.:

20 Peter M. Dobelbower, Vice President - Legal
21 Hobby Lobby Stores, Inc.
22 7707 SW 44th St.
23 Oklahoma City, OK 73179

24 With a copy to:

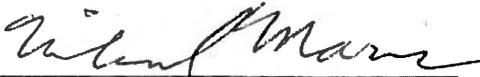
25 Melissa Jones
26 Stoel Rives, LLP
27 500 Capitol Mall, Suite 1600
28 Sacramento, CA 95814

17. **AUTHORITY TO STIPULATE**

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

AGREED TO:

Date: Feb 9, 2016



Name: Michael Marcus

Title: Director

CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date: FEB 9, 2016



Name: PETER M. DORELBONER

Title: VP-LEGAL

HOBBY LOBBY STORES, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT