

1 ARNOLD & PORTER LLP
TRENTON H. NORRIS (No. 164781)
2 trenton.norris@aporter.com
SARAH ESMAILI (No. 206053)
3 sarah.esmaili@aporter.com
Three Embarcadero Center, 10th Floor
4 San Francisco, CA 94111-4024
Telephone: 415.471.3100
5 Facsimile: 415.471-3400

6 Attorneys for Defendant
GRANT PRODUCTS, LLC
7
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

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

13 Plaintiff,

14 v.

15 GRANT PRODUCTS, LLC, et al.

16 Defendants.
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Case No.: BC554828

[PROPOSED] CONSENT JUDGMENT

Complaint filed: August 14, 2014

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Plaintiff Consumer Advocacy Group,
4 Inc. (“Plaintiff”) acting on behalf of itself and in the interest of the public and Defendant Grant
5 Products, LLC (“Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties”
6 and individually as a “Party.”

7 **1.2 Plaintiff**

8 Plaintiff is an individual residing in California who seeks to promote awareness of exposures
9 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
10 contained in consumer products.

11 **1.3 Chemical of Concern**

12 **1.3.1** Di(2-ethylhexyl)phthalate (“DEHP”) is known to the State of California to
13 cause cancer and/or birth defects or other reproductive harm.

14 **1.3.2** Butyl Benzyl Phthalate (“BBP”) is known to the State of California to cause
15 developmental reproductive toxicity.

16 **1.4 Defendant**

17 Defendant is a business that employs ten or more persons and is a person in the course of
18 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
19 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

20 **1.5 Plaintiff’s Allegations**

21 Plaintiff alleges that Defendant manufactures, distributes, and/or sells Covered Products, as
22 defined below. Plaintiff alleges that Defendant has caused exposures to DEHP and BBP in Covered
23 Products without first providing the clear and reasonable warning required by Proposition 65. DEHP
24 is listed pursuant to Proposition 65 as a chemical known to the state of California to cause cancer,
25 birth defects or other reproductive harm. BBP is listed pursuant to Proposition 65 as a chemical
26 known to the state of California to cause birth defects or other reproductive harm.

1 **1.6 Notices of Violation**

2 **1.6.1** On or about October 8, 2013, CAG served the Defendants named in the
3 Complaint and various public enforcement agencies with a document entitled “60-Day Notice of
4 Violation” (the “October 8, 2013 Notice”) that provided the recipients with notice of alleged
5 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
6 exposures to DEHP contained in the Covered Products.

7 **1.6.2** On or about August 19, 2014, CAG served various Defendants named in the
8 Complaint and various public enforcement agencies with a document entitled “60-Day Notice of
9 Violation” (the “August 19, 2014 Notice”) that provided the recipients with notice of alleged
10 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
11 exposures to DEHP and BBP contained in the Covered Products.

12 **1.6.3** On or about October 13, 2014, CAG served various Defendants named in the
13 Complaint and various public enforcement agencies with a document entitled “60-Day Notice of
14 Violation” (the “October 13, 2014 Notice”) that provided the recipients with notice of alleged
15 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
16 exposures to DEHP and BBP contained in the Covered Products.

17 **1.6.4** On or about November 10, 2014, CAG served various Defendants named in
18 the Complaint and various public enforcement agencies with a document entitled “60-Day Notice of
19 Violation” (the “November 10, 2014 Notice”) that provided the recipients with notice of alleged
20 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
21 exposures to DEHP and BBP contained in the Covered Products.

22 **1.6.4** No public enforcer has commenced or diligently prosecuted the allegations set
23 forth in any of the Notices.

24 **1.7 Complaint**

25 **1.7.1** On August 14, 2014, Plaintiff filed the instant action for civil penalties and
26 injunctive relief, against Defendants (1) Grant Products, LLC; (2) O’Reilly Automotive, Inc.,
27 O’Reilly Automotive Stores, O’Reilly Auto Parts (collectively referred to as “O’Reilly Defendants”);
28 and (3) various other defendants (“Complaint”). The Complaint alleges, among other things, that

1 Defendants violated Health & Safety Code § 25249.6 (“Proposition 65”), by failing to give clear and
2 reasonable warnings of exposure to DEHP from the Covered Products.

3 **1.7.2** On December 17 2014, Plaintiff filed a First Amended Complaint penalties
4 and injunctive relief (“FAC”) in Los Angeles Superior Court, Case No. BC554828. The FAC
5 alleges, among other things, that Defendants violated Health & Safety Code § 25249.6 (“Proposition
6 65”), by failing to give clear and reasonable warnings of exposure to DEHP and BBP from the
7 Covered Products. The Complaint and the FAC are collectively referred to herein as the
8 “Complaint.”

9 **1.8 No Admission**

10 Defendant denies Plaintiff’s claim that it has violated Proposition 65 with respect to alleged
11 exposures to DEHP and BBP in the Covered Products. Nothing in this Consent Judgment shall be
12 construed as an admission by Defendant of any fact, finding, conclusion of law, issue of law, or
13 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
14 admission of any fact, finding, conclusion of law, issue of law, or violation of law.

15 **1.9 Consent to Jurisdiction**

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

22 **1.10 Definitions**

23 **1.10.1** “Covered Products” means steering wheels sold, manufactured, shipped
24 and/or otherwise distributed for California sale only by Defendant to Downstream Defendant
25 Releasees (as defined in Section 4.1) and any other customers.

26 **1.10.2** For purposes of this Consent Judgment, the term “Effective Date” shall mean
27 the date on which this Consent Judgment is approved by the Court.

28 **1.10.2** For purposes of this Consent Judgment, the term “Execution Date” shall

1 mean the date on which this Consent Judgment is fully executed by the Parties.

2 **1.10.4** “Notices” means the October 8, 2013 Notice, August 19, 2014 Notice,
3 October 13, 2014 Notice and November 10, 2014 Notice.

4 **2. INJUNCTIVE RELIEF**

5 **2.1** Commencing after the Effective Date, any Covered Products that Defendant sells in
6 California, or distributes for sale in California, shall be Reformulated Covered Products. For
7 purposes of this Consent Judgment, Reformulated Covered Products are defined as Covered Products
8 that contain less than 1,000 parts per million (“ppm”) (0.1%) by weight of DEHP or BBP.

9 **2.2** Any Covered Products existing in Defendant’s inventory that Defendant sells in
10 California or distributes for sale in California between the Execution Date and Effective Date shall
11 either be Reformulated Covered Products or shall carry a warning that complies with Proposition 65.

12 The warning shall be prominently placed upon the exterior of a product’s label or the exterior
13 of other labeling with such conspicuousness, as compared with other words, statements, designs or
14 devices in the label or labeling as to render it likely to be read and understood by an ordinary
15 individual. The warning shall state as follows:

16 “**WARNING:** This product contains chemicals known to the State of California to
17 cause cancer, and birth defects or other reproductive harm.”

18 **2.3** Covered Products that Defendant already distributed or sold prior to the Execution
19 Date are not subject to the requirements of Section 2, and are fully covered under the release of
20 claims in Section 4.

21 **3. SETTLEMENT PAYMENTS**

22 **3.1 Payment and Due Date**

23 In full and final settlement of Plaintiff’s Proposition 65 claims against Defendant with respect
24 to alleged exposures to DEHP and BBP in the Covered Products, Defendant shall pay a total
25 settlement payment of sixty-two thousand dollars (\$62,000) to be apportioned as set forth in Sections
26 3.1.1 through 3.1.3, below.

27 **3.1.1 Civil Penalty Payment**

28 Pursuant to Health & Safety Code § 25249.7(b), Defendant shall pay a civil penalty of eleven

1 thousand dollars (\$11,000.00). This penalty payment will be apportioned according to Health &
2 Safety Code § 25249.12 (c)(1) & (d) as follows: one check shall be payable to “OEHHA” in the
3 amount of eight-thousand, two-hundred and fifty dollars (\$8,250.00), representing seventy-five
4 percent (75%) of the penalty amount earmarked for the California Office of Environmental Health
5 Hazard Assessment (“OEHHA”) and another check shall be payable to Consumer Advocacy Group
6 in the amount of two-thousand, seven hundred and fifty dollars (\$2,750.00), representing twenty-five
7 (25%) of the penalty amount earmarked for Plaintiff.

8 **3.1.2 Payment In Lieu of Civil Penalties:** Defendant shall pay six-thousand
9 dollars (\$6,000.00) in lieu of civil penalties to “Consumer Advocacy Group, Inc.” Plaintiff will use
10 this payment for investigation of the public’s exposure to Proposition 65 listed chemicals through
11 various means, laboratory fees for testing for Proposition 65 listed chemicals, expert fees for
12 evaluating exposures through various mediums, including but not limited to consumer product,
13 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of hiring
14 consulting and retained experts who assist with the extensive scientific analysis necessary for those
15 files in litigation, in order to reduce the public’s exposure to Proposition 65 listed chemicals by
16 notifying those persons and/or entities believed to be responsible for such exposures and attempting
17 to persuade those persons and/or entities to reformulate their products or the source of exposure to
18 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing the
19 same public harm as alleged in the instant Action. Further, should the court require it, Plaintiff will
20 submit under seal, an accounting of these funds as described above as to how the funds were used.
21 The check shall be made payable to “Consumer Advocacy Group, Inc.” and delivered to Reuben
22 Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,
23 California 90212.

24 **3.1.3 Reimbursement of Plaintiff’s Fees and Costs**

25 The Parties reached an accord on the compensation due to Plaintiff and its counsel under
26 general contract principles and the private attorney general doctrine codified at California Code of
27 Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs that may
28 be incurred on appeal, if any. Under these legal principles, Defendant shall pay forty-five thousand

1 (\$45,000.00) to “Yeroushalmi & Associates” as reimbursement for fees and costs incurred
2 investigating, litigating, and enforcing this matter, including the fees and costs incurred (and yet to
3 be incurred) drafting, negotiating, and obtaining the Court’s approval of this Consent Judgment in
4 the public interest.

5 **3.2 Payment Delivery Address**

6 All payments required by this section shall be delivered to the following address: Reuben
7 Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,
8 California 90212. Prior to the Effective Date, Plaintiff shall provide Defendant with tax
9 identification information for the payees.

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

12 This Settlement Agreement is a full, final and binding resolution between Plaintiff, on behalf
13 of itself and the public, and Defendant, of any alleged violation of Proposition 65 asserted by Plaintiff
14 against Defendant and its parent, subsidiaries, and affiliated entities under common ownership
15 (collectively referred to as “Defendant Releasees”), the O’Reilly Defendants, and each person or
16 entity to whom Defendant Releasees directly or indirectly have distributed or sold the Covered
17 Products, including, but not limited to, their downstream distributors, wholesalers, customers
18 (including but not limited to O’Reilly Auto Enterprises, LLC), retailers, franchisors, franchisees,
19 cooperative members, licensors, and licensees (collectively referred to as “Downstream Defendant
20 Releasees”), and the directors, officers, employees, attorneys, and agents of any of the Defendant
21 Releasees, O’Reilly Defendants, or Downstream Defendant Releasees (the entities and individuals
22 released in this Section 4.1 are collectively referred to as the “Releasees”), arising from alleged
23 exposures to DEHP and BBP from the Covered Products manufactured, distributed, or sold by
24 Defendant.

25 **4.2 Plaintiff’s Public Release of Proposition 65 Claims**

26 Plaintiff, acting in the public interest pursuant to Health & Safety Code § 25249.7(d), hereby
27 waives all rights to institute or participate in, directly or indirectly, any form of legal action against
28 Releasees and forever releases any and all claims against Releasees, including, without limitation,

1 all actions and causes of action (in law or in equity), claims, suits, liabilities, demands, obligations,
2 damages, costs, fines, penalties, expenses (including, but not limited to, investigation fees, expert
3 fees, and attorneys' fees) or losses of any nature whatsoever, whether known or unknown, fixed or
4 contingent (collectively, "Claims"), arising from any violation of Proposition 65 with respect to
5 alleged exposures to DEHP and BBP in the Covered Products distributed or sold by Defendant
6 before the Effective Date. Compliance with the terms of this Consent Judgment constitutes
7 compliance with Proposition 65 with respect to any exposures to DEHP and BBP from the Covered
8 Products.

9 **4.3 Plaintiff's Individual Release of Claims**

10 In addition, Plaintiff, on behalf of itself, its past and current agents, representatives,
11 attorneys, and successors and/or assignees, hereby provides a release which shall be effective as a
12 full and final accord and satisfaction, as a bar to all Claims under Proposition 65 or any other
13 statutory or common law that may be asserted against Defendant and the Releasees, whether known
14 or unknown, suspected or unsuspected, arising out of alleged exposures to DEHP and BBP in the
15 Covered Products distributed or sold by Defendant prior to the Effective Date.

16 It is possible that other Claims not known to Plaintiff arising out of the facts alleged in the
17 Notices or the Complaint will develop or be discovered. Plaintiff, on behalf of itself, its past and
18 current agents, representatives, attorneys, and successors and/or assignees, and not in its
19 representative capacity, acknowledges that this Consent Judgment is expressly intended to cover
20 and include all such Claims, including all rights of action therefor. Plaintiff has full knowledge of
21 the contents of California Civil Code § 1542. Plaintiff acknowledges that, in connection with the
22 individual release provided in this Section 4.3, the Claims released in Sections 4.1 and 4.2 may
23 include unknown Claims, and nevertheless waives California Civil Code § 1542 as to any such
24 unknown Claims. California Civil Code § 1542 reads as follows:

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

1 Plaintiff, on behalf of itself, its past and current agents, representatives, attorneys, and
2 successors and/or assignees, and not in its representative capacity, acknowledges and understands the
3 significance and consequences of this specific waiver of California Civil Code § 1542.

4 **4.4 Defendant's Release of Plaintiff**

5 Defendant and its past and current agents, representatives, attorneys, successors, and/or
6 assignees, hereby waives any and all claims against Plaintiff, its attorneys and other representatives,
7 for any and all actions taken or statements made (or those that could have been taken or made) by
8 Plaintiff and its attorneys and other representatives, whether in the course of investigating claims,
9 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered
10 Products.

11 **5. MODIFICATION OF JUDGMENT AND RIGHTS THEREUNDER**

12 **5.1** This Consent Judgment may be modified only upon written agreement of the Parties
13 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as
14 provided by law and upon entry of a modified Consent Judgment by the Court. Any Party may waive
15 in writing any right it may have under this Consent Judgment.

16 **5.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to
17 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

18 **6. ENFORCEMENT OF JUDGMENT**

19 **6.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
20 hereto. Except as otherwise agreed to by the Parties, the Parties may, by noticed motion or order to
21 show cause before the Superior Court of California, City and County of Los Angeles, giving the
22 notice required by law, enforce the terms and conditions contained herein. A Party may enforce any
23 of the terms and conditions of this Consent Judgment only after that Party first provides notice to the
24 Party allegedly failing to comply with the terms and conditions of this Consent Judgment and
25 provides 60 days in which the Parties shall attempt to resolve such Party's failure to comply by
26 meeting and conferring in good faith.

27 **6.2** If Plaintiff is the prevailing Party in any dispute regarding compliance with the terms
28 of this Consent Judgment, it may seek any fines, costs, penalties, or remedies provided by law for

1 failure to comply with California Health and Safety Code 25249.5 *et seq.* A prevailing Party in such
2 a dispute regarding compliance with the terms of this Consent Judgment is entitled to seek recovery
3 of its reasonable attorneys' fees and costs incurred in any such motion or proceeding pursuant to the
4 provisions of Code of Civil Procedure section 1021.5.

5 **7. RETENTION OF JURISDICTION**

6 This Court shall retain jurisdiction of this matter to implement and enforce the terms of this
7 Consent Judgment.

8 **8. DUTIES LIMITED TO CALIFORNIA**

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

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

12 Plaintiff shall serve a copy of this Consent Judgment, signed by both Parties, on the California
13 Attorney General so that the Attorney General may review this Consent Judgment prior to its
14 submittal to the Court for approval. No sooner than forty five (45) days after the Attorney General
15 has received the aforementioned copy of this Consent Judgment, and in the absence of any written
16 objection by the Attorney General to the terms of this Consent Judgment, the Parties may then submit
17 it to the Court for approval.

18 **10. ATTORNEY FEES**

19 Except as specifically provided in Sections 4 and 6.2, each Party shall bear its own costs and
20 attorney fees in connection with this action.

21 **11. SEVERABILITY**

22 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
23 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be
24 adversely affected.

25 **12. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the state of California
27 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
28 otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then

1 Defendant may provide written notice to Plaintiff of any asserted change in the law, and shall have no
2 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
3 Covered Products are so affected.

4 **13. NOTICES**

5 Unless specified herein, all correspondence and notices required by this Consent Judgment
6 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
7 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

8 For Defendant:

9 Trenton H. Norris
10 Sarah Esmaili
11 Arnold & Porter, LLP
12 One Embarcadero Center, 10th Floor
13 San Francisco, CA 94111

14 For Plaintiff:

15 Reuben Yeroushalmi
16 Yeroushalmi & Associates
17 9100 Wilshire Boulevard, Suite 240W
18 Beverly Hills, CA 90212

19 Any Party, from time to time, may specify in writing to the other Party a change of address to which
20 all notices and other communications shall be sent.

21 **14. COUNTERPARTS; FACSIMILE SIGNATURES**

22 This Consent Judgment may be executed in counterparts and by facsimile or portable
23 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
24 taken together, shall constitute one and the same document.

25 **15. POST EXECUTION ACTIVITIES**

26 **15.1** Plaintiff agrees to comply with the reporting form requirements referenced in
27 California Health & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to
28 California Health & Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial
approval of the settlement. In furtherance of obtaining such approval, Plaintiff and Defendant and
their respective counsel agree to mutually employ their best efforts to support the entry of this
agreement as a Consent Judgment and to obtain judicial approval of the same in a timely manner.

1 For purposes of this section, "best efforts" shall include, at a minimum, cooperating on the drafting
2 and filing of the moving papers and supporting the motion for judicial approval.

3 15.2 Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to
4 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, Plaintiff and
5 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

6 15.3 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment and
7 any and all prior agreements between the Parties merged herein shall terminate and become null and
8 void, and the actions shall revert to the status that existed prior to the execution date of this Consent
9 Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation,
10 documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect,
11 nor shall any such matter be admissible in evidence for any purpose in this Action, or in any other
12 proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of
13 the Consent Judgment and to resubmit it for approval.

14 15.4 Within five (5) business days of the Effective Date, Plaintiff shall file a request for
15 dismissal of all O'Reilly Defendants, if Plaintiff has not already done so.

16 16. SUCCESSORS AND ASSIGNS

17 This Consent Judgment shall be binding upon, and inure to the benefit, of the successors or
18 assigns of any Party.

19 17. AUTHORIZATION

20 The undersigned are authorized to execute this Consent Judgment and have read, understood,
21 and agree to all of the terms and conditions contained herein.

22 **AGREED TO:**

23 Date: July 20, 2015

24 By: [Signature]
25 CONSUMER ADVOCACY GROUP

22 **AGREED TO:**

23 Date: July 22, 2015

24 By: [Signature]
25 GRANT PRODUCTS, LLC

26 Print Name Julio Segovia
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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT