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

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

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

13 Plaintiff,

14 v.

15 CATHAY L.A., INC., a California
16 Corporation; and DOES 1-20;
17 Defendants.

CASE NO. BC603016

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

[Assigned for All Purposes to Honorable
Yvette M. Palazuelos in Dept.28]

Complaint filed: December 3, 2015

18
19 **1. INTRODUCTION**

20 1.1 This Consent Judgment is entered into by and between Plaintiff, CONSUMER
21 ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") acting on behalf of itself and in the interest
22 of the public, and Defendant, CATHAY L.A., INC., ("CATHAY"), with each a Party to the action
23 and collectively referred to as "Parties."

24 **1.2 Defendant and Covered Products**

25 1.2.1 CAG alleges that CATHAY is a California Corporation which employs ten
26 or more persons. For purposes of this Consent Judgment only, CATHAY is deemed a person in
27 the course of doing business in California and subject to the provisions of the Safe Drinking Water

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1 and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
2 (“Proposition 65”).

3 1.2.2 CAG alleges that CATHAY manufactures, causes to be manufactured, sells,
4 or distributes certain Fish Griller Tools in California.

5 **1.3 Listed chemical**

6 1.3.1 DEHP has been listed by the State of California as known to cause cancer
7 and reproductive toxicity.

8 **1.4 Notice of Violation.**

9 1.4.1 On or about October 31, 2013, CAG served CATHAY and various public
10 enforcement agencies with a document titled “60-Day Notice of Intent to Sue for Violation of the
11 Safe Drinking Water and Toxic Enforcement Act of 1986” that alleged violations of Health &
12 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP,
13 contained in certain Fish Griller Tools sold/distributed by CATHAY in California. No public
14 enforcer has commenced or diligently prosecuted the allegations set forth in the October 31, 2013
15 Notice.

16 **1.5 Complaint.**

17 On December 3, 2015, CAG filed a Complaint against Defendant for civil penalties and
18 injunctive relief (the “Complaint”) in Los Angeles County Superior Court, Case No. BC603016,
19 alleging that Defendant violated Proposition 65 for allegedly failing to give clear and reasonable
20 warnings of alleged exposure to DEHP in certain Fish Griller Tools Defendant distributed and/or
21 sold in California.

22 **1.6 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over the subject matter of the Complaint, personal jurisdiction over Defendant as to
25 the acts alleged in the Complaint, that venue is proper in the County of Los Angeles, and that this
26 Court has jurisdiction to enter this Consent Judgment as a full and final settlement and resolution
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1 of the allegations against the Defendant contained in the Complaint, and all claims which were or
2 could have been raised by any person or entity based in whole or in part, directly or indirectly, on
3 the facts alleged therein or arising therefrom or related thereto.

4 **1.7 No Admission**

5 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
6 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
7 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
8 shall be construed as an admission by the Parties of any material allegation in the Notices or the
9 Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind,
10 including without limitation, any admission concerning any alleged or actual violation of
11 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, including
12 but not limited to the meaning of the terms “knowingly and intentionally expose” or “clear and
13 reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this
14 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
15 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of
16 fault, wrongdoing, or liability by any Defendant, its officers, directors, employees, or parent,
17 subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative
18 or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this
19 Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the
20 Parties may have in any other or future legal proceeding, except as expressly provided in this
21 Consent Judgment.
22

23 **2. DEFINITIONS**

24 2.1 “Covered Products” means the Fish Grilling Press with Red Vinyl Coated Handle,
25 Cathay Item 98036, sold or supplied by CATHAY.

26 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
27 Court.

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1 2.3 “DEHP” means Diethyl Hexyl Phthalate.

2 2.4 “Listed Chemical” means DEHP.

3 2.5 “Notice” means Plaintiff’s October 31, 2013 “60-Day Notice of Intent to Sue for
4 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”.

5 **3. INJUNCTIVE RELIEF, REFORMULATION & CLEAR AND REASONABLE**
6 **WARNINGS.**

7 3.1 After the Effective Date, Defendant shall not sell, offer for sale, or ship for sale
8 any Covered Products, unless the level of DEHP does not exceed 0.1% (1,000 parts per million).

9 3.2 For any Covered Products still existing in Defendant’s inventory as of the
10 Effective Date, Defendant shall place a Proposition 65 compliant warning on them. Any
11 warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the
12 Covered Products, and be prominently placed with such conspicuousness as compared with other
13 words, statements, designs, or devices as to render it likely to be read and understood by an
14 ordinary individual under customary conditions before purchase or use. The Parties agree that
15 the following warning language shall constitute compliance with Proposition 65 with respect to
16 the alleged Listed chemical in the Covered Products existing in Defendant’s inventory as of the
17 Effective Date:

18
19 **WARNING:** This product contains chemicals known to the State of California to cause
20 cancer and birth defects or other reproductive harm.

21 **4. SETTLEMENT PAYMENT**

22 4.1 **Payment and Due Date:** Defendant shall pay a total of two hundred and ten
23 thousand dollars, and zero cents (\$210,000.00) in full and complete settlement of any and all claims
24 for civil penalties, damages, attorney’s fees, expert fees or any other claim for costs, expenses or
25 monetary relief of any kind for claims that were or could have been asserted in the Notice or
26 Complaint, as follows:

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1 4.1.1 **Civil Penalty:** Defendant shall issue two separate checks totaling
2 \$17,150.00 as follows for alleged civil penalties pursuant to Health & Safety Code § 25249.12:

3 (a) Defendant will issue one check made payable to the State of California's
4 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of \$12,862.50,
5 representing 75% of the total civil penalty and Defendant will issue a second check to CAG in the
6 amount of \$4,287.50, representing 25% of the total civil penalty;

7 (b) Separate 1099s shall be issued for each of the above payments:
8 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
9 0284486) in the amount of \$12,862.50. Defendant will also issue a 1099 to CAG in the amount
10 of \$4,287.50 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard,
11 Suite 240W, Beverly Hills, California 90212.

12 4.1.2 **Additional Settlement Payments:** Defendant shall pay \$12,850.00, as
13 additional settlement payments to "Consumer Advocacy Group, Inc." pursuant to Health & Safety
14 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG will use this
15 payment as follows, seventy percent (70%) for fees of investigation, purchasing and testing for
16 Proposition 65 listed chemicals in various products, and for expert fees for evaluating exposures
17 through various mediums, including but not limited to consumer product, occupational, and
18 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and
19 retaining experts who assist with the extensive scientific analysis necessary for those files in
20 litigation; twenty percent (20%) for administrative costs incurred during investigation and
21 litigation to reduce the public's exposure to Proposition 65 listed chemicals by notifying those
22 persons and/or entities believed to be responsible for such exposures and attempting to persuade
23 those persons and/or entities to reformulate their products or the source of exposure to completely
24 eliminate or lower the level of Proposition 65 listed chemicals including but not limited to costs
25 of documentation and tracking of products investigated, storage of products, website enhancement
26 and maintenance, computer and software maintenance, investigative equipment, CAG's member's

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1 time for work done on investigations, office supplies, mailing supplies and postage; and ten percent
2 (10%) to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees,
3 thereby addressing the same public harm as allegedly in the instant Action. Within 30 days of a
4 request from the Attorney General, CAG shall provide to the Attorney General copies of
5 documentation demonstrating how the above funds have been spent.

6 **4.1.3 Reimbursement of Attorney Fees and Costs:** Defendant shall pay
7 \$180,000 payable to “Yeroushalmi & Yeroushalmi” as complete reimbursement for any and all
8 reasonable investigation fees and costs, attorneys’ fees, expert fees, and any and all other costs and
9 expenses incurred as a result of investigating, bringing this matter to the Defendant’s attention,
10 litigating, negotiating a settlement in the public interest, and seeking and obtaining court approval
11 of this Consent Judgment.

12 4.2 Other than the payment to OEHHA described above, all payments referenced in
13 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi
14 & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to
15 OEHHA shall be delivered directly to Office of Environmental Health Hazard Assessment, Attn:
16 Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Defendant shall
17 provide written confirmation to CAG upon payment to OEHHA.

18
19 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

20 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
21 behalf of itself and in the public interest, and Defendant and its officers, directors, insurers,
22 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
23 companies, and their successors and assigns (“Defendant Releasees”), and all entities to whom
24 Defendant directly or indirectly distribute or sell Covered Products, including, but not limited to,
25 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
26 licensees, and the successors and assigns of any of them, who may use, maintain, distribute or sell
27 Covered Products (“Downstream Defendant Releasees”), of all claims for alleged or actual

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1 violations of Proposition 65 for alleged exposures to the Listed Chemical from the Covered
2 Products manufactured, distributed or sold by Defendant up through the Effective Date as set forth
3 in the Notice and Complaint. Defendant and Defendant Releasees compliance with this Consent
4 Judgment shall constitute compliance with Proposition 65 with respect to alleged exposures to the
5 Listed Chemical from the Covered Products sold by Defendant Releasees or Downstream
6 Defendant Releasees after the Effective Date. Nothing in this Section affects CAG's right to
7 commence or prosecute an action under Proposition 65 against any person other than Defendant,
8 Defendant Releasees, or Downstream Defendant Releasees. Defendant, Defendant Releasees and
9 Downstream Defendant Releasees are hereafter collectively referred to as the "Released Parties".

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

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

6 CAG understands and acknowledges that the significance and consequence of this waiver of
7 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
8 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
9 violation of Proposition 65 or any other statutory or common law regarding the Covered Products
10 manufactured, distributed or sold by the Released Parties through the Effective Date regarding the
11 failure to warn about actual or alleged exposure to the Listed Chemical from the Covered Products,
12 CAG will not be able to make any claim for those damages, penalties or other relief against the
13 Released Parties. Furthermore, CAG acknowledges that it intends these consequences for any
14 such Claims arising from any violation of Proposition 65 or any other statutory or common law
15 regarding the failure to warn about exposure to the Listed Chemical from the Covered Products as
16 may exist as of the date of this release but which CAG does not know exist, and which, if known,
17 would materially affect their decision to enter into this Consent Judgment, regardless of whether
18 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

19 **6. ENFORCEMENT OF JUDGMENT**

20 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
21 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
22 California, Los Angeles County, enforce the terms and conditions contained herein. A Party may
23 enforce any of the terms and conditions of this Consent Judgment only after that Party first
24 provides 60 days-notice to the Party allegedly failing to comply with the terms and conditions of
25 this Consent Judgment, and attempts to resolve such Party's failure to comply in an open and good
26 faith manner.

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1 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
2 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of Violation
3 (“NOV”) to Defendant. The NOV shall include for each of the Covered Products: (a) the name of
4 the Covered Products; (b) specific dates when the Covered Product was sold by Defendant in
5 California; (c) the store or other place at which the Covered Product was available for sale to
6 consumers; and (d) any other evidence or support for the allegations in the NOV.

7 6.2.1 **Non-Contested NOV.** CAG shall take no further action of any kind
8 regarding the alleged violation if, within 60 days of receiving such NOV, Defendant serves
9 a Notice of Election (“NOE”) not to contest the NOV that meets one of the following
10 conditions:

11 (a) A statement that the Covered Product was manufactured or shipped
12 by Defendant for sale in California before the Effective Date; or

13 (b) A statement that since receiving the NOV Defendant has taken
14 corrective action by either: (i) taking all steps necessary to bring the sale of the product
15 into compliance under the terms of this Consent Judgment; or (ii) requesting that its
16 customers or stores in California, as applicable, remove the Covered Product identified in
17 the NOV from sale in California and destroy or return the Covered Product to Defendant
18 or vendor, as applicable; or (iii) refute the information provided in the NOV.

19 6.2.2 **Contested NOV.** Defendant may serve a Notice of Election (“NOE”)
20 informing CAG of its election to contest the NOV within 60 days of receiving the NOV.

21 (a) In its election, Defendant may request that the sample(s) of Covered
22 Product tested by CAG be subject to confirmatory testing at an EPA- accredited laboratory.

23 (b) If the confirmatory testing establishes that the Covered Products do
24 not contain the Listed Chemical in excess of the levels allowed in Section 3.1, above, CAG
25 shall take no further action regarding the alleged violation. If the testing does not establish
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1 compliance with Section 3.1, above, Defendant may withdraw its NOE to contest the
2 violation and may serve a new NOE pursuant to Section 6.2.1.

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

6 6.3 In any proceeding brought by either Party to enforce this Consent Judgment as
7 detailed above, the prevailing party shall be entitled to recover its reasonable attorney's fees and
8 costs.

9 **7. ENTRY OF CONSENT JUDGMENT**

10 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
11 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
12 Defendant waive their respective rights to a hearing and trial on the allegations in the Notice and
13 Complaint.

14 7.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent
15 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
16 become null and void, and the actions shall revert to the status that existed prior to the execution
17 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
18 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
19 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,
20 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
21 modify the terms of the Consent Judgment and to resubmit it for approval.

22 **8. MODIFICATION OF JUDGMENT**

23 8.1 This Consent Judgment may be modified only upon written agreement of the
24 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
25 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.
26

1 13.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
2 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
3 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
4 rendered inapplicable by reason of law generally as to the Covered Products, then Defendant may
5 provide written notice to CAG of any asserted change in the law, and shall have no further
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
7 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
8 Defendant from any obligation to comply with any other pertinent state or federal law or
9 regulation.

10 13.3 The Parties, including their counsel, have participated in the preparation of this
11 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
12 Consent Judgment was subject to revision and modification by the Parties and has been accepted
13 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
14 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
15 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
16 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
17 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
18 this regard, the Parties hereby waive California Civil Code § 1654.

19
20 **14. EXECUTION AND COUNTERPARTS**

21 14.1 This Consent Judgment may be executed in counterparts and by means of facsimile
22 or portable document format (pdf), which taken together shall be deemed to constitute one
23 document and have the same force and effect as original signatures.

24 **15. NOTICES**

25 15.1 Any notices under this Consent Judgment shall be by delivery of First Class Mail.

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If to CAG:

Reuben Yeroushalmi, Esq.
Yeroushalmi & Yeroushalmi
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

If to Defendant CATHAY LA., INC.:

Rudy R. Perrino, Esq.
rperrino@wfbm.com
WFBM, LLP
707 Wilshire Blvd., Ste. 3280
Los Angeles, CA 90017
Telephone: (213) 489-4820
Attorney for Defendant Cathay L.A., Inc.

16. AUTHORITY TO STIPULATE

16.1 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:

AGREED TO:

Date: 06/16, 2017

Date: _____, 2017



Name: Michael Marcus

Name: _____

Title: Director
CONSUMER ADVOCACY GROUP,
INC.

Title: _____
CATHAY LA., INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1 If to CAG:

2 Reuben Yeroushalmi, Esq.
3 Yeroushalmi & Yeroushalmi
4 9100 Wilshire Boulevard, Suite 240W
5 Beverly Hills, CA 90212

6 If to Defendant CATHAY LA., INC.:

7 Rudy R. Perrino, Esq.
8 rperrino@wfbm.com
9 WFBM, LLP
10 707 Wilshire Blvd., Ste. 3280
11 Los Angeles, CA 90017
12 Telephone: (213) 489-4820
13 Attorney for Defendant Cathay L.A., Inc.

14 **16. AUTHORITY TO STIPULATE**

15 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
16 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of
17 the Party represented and legally to bind that party.

18 AGREED TO:

18 AGREED TO:

19 Date: _____, 2017

19 Date: 6/16/2017, 2017

20 

21 Name: _____

21 Name: David Lim

22 Title: _____
23 CONSUMER ADVOCACY GROUP,
24 INC.

22 Title: Manager
23 CATHAY LA., INC.

25 **IT IS SO ORDERED.**

26 Date: _____

27 JUDGE OF THE SUPERIOR COURT