

1 CALL & JENSEN  
A Professional Corporation  
2 Scott R. Hatch, Bar No. 241563  
Joshua G. Simon, Bar No. 264714  
3 610 Newport Center Drive, Suite 700  
Newport Beach, CA 92660  
4 Tel: (949) 717-3000  
Fax: (949) 717-3100  
5 shatch@calljensen.com  
jsimon@calljensen.com

6 Attorneys for Defendant CVS PHARMACY, INC.  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**  
10

11 ALI ZARGARBASHI, an individual,  
12 Plaintiff,  
13 vs.  
14 CVS PHARMACY, INC., a corporation, and  
DOES 1-100, inclusive,  
15 Defendants.  
16  
17

Case No. BC560511

Assigned for All Purposes to Hon. Richard Rico,  
Dept. 17

**STIPULATED CONSENT JUDGMENT;  
[PROPOSED] ORDER**

Health & Safety Code § 25249.5 et seq.

18 Complaint Filed: October 14, 2014  
19 First Appearance Fee Paid: December 5, 2014  
Trial Date: None Set  
20

21 **1. RECITALS**

22 **1.1 The Parties**

23 This Settlement Agreement (“Settlement”) is entered into by and between Ali Zargarbashi  
24 (“Zargarbashi”) and CVS Pharmacy, Inc. (“CVS”). Zargarbashi and CVS shall hereinafter  
25 collectively be referred to as the “Parties.”

26 Zargarbashi is a citizen of the State of California with an interest in protecting the environment,  
27 improving human health and the health of ecosystems, and supporting environmentally sound  
28 practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure

1 to hazardous substances found in consumer products. CVS employs ten (10) or more employees, and  
2 is a person in the course of doing business as the term is defined in California *Health & Safety Code*  
3 Section 25249.6 et seq. (“Proposition 65”).

#### 4 **1.2 Allegations**

5 Zargarbashi alleges that CVS distributed, supplied and/or sold pull-apart key chains that were  
6 manufactured, distributed, and/or sold by Custom Accessories, Inc., a corporation organized under the  
7 laws of the State of Illinois, (“Custom Accessories”) and/or Custom Accessories’ affiliates  
8 (hereinafter, the “Products”) in the State of California causing users in California to be exposed to  
9 hazardous levels of Lead without providing “clear and reasonable warnings,” in violation of  
10 Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is listed  
11 as known to the State of California to cause birth defects and reproductive harm.

12 On July 9, 2014, a sixty-day notice of violation (“60-Day Notice”), along with a Certificate of  
13 Merit, was provided in the public interest by Zargarbashi pursuant to *Health and Safety Code* Section  
14 25249.7(d) to CVS and various public enforcement agencies regarding the alleged violation of  
15 Proposition 65 with respect to the Lead in the Products. On October 14, 2014, Zargarbashi filed a  
16 Complaint against CVS alleging violation of Proposition 65 with respect to the Products (Los Angeles  
17 Superior Court Case Number BC560511) (the “Complaint”).

#### 18 **1.3 No Admissions**

19 CVS denies all allegations contained in Zargarbashi’s 60-Day Notice and maintains that the  
20 Products have been, and are, in compliance with all laws, and that CVS has not violated Proposition  
21 65. This Settlement shall not be construed as an admission of liability by CVS but to the contrary as a  
22 compromise of claims that are expressly contested and denied. However, nothing in this section shall  
23 affect the Parties’ obligations, duties and responsibilities under this Settlement.

#### 24 **1.4 Compromise**

25 The Parties enter into this Settlement in order to resolve the controversy described above in a  
26 manner consistent with prior Proposition 65 consent judgments on the Lead in the Products that were  
27 entered on behalf of the public interest and to avoid prolonged and costly litigation between them.  
28

1           **1.5     Effective Date**

2           The “Effective Date” shall be one year following the date upon which the Court enters this  
3 consent judgment.

4           **2.     INJUNCTIVE RELIEF AND REFORMULATION**

5           **2.1     Reformulation**

6           As of the Effective Date, CVS shall not sell or offer for sale in California the Products if they  
7 contain more than 300 parts per million (“ppm”) of Lead in their accessible surfaces when analyzed  
8 pursuant to Environmental Protection Agency testing methodologies 3050B or equivalent. As of the  
9 Effective Date, if the Products do not meet this Reformulation Standard, then clear and reasonable  
10 Proposition 65 warnings must accompany the Products, as described in subsection 2.2 below.

11           **2.2     Proposition 65 Warnings Obligations**

12           If the Products do not meet the Reformulation Standard described in subsection 2.1 above, then  
13 CVS shall not manufacture, distribute, supply, and/or sell for use or sale in California the Products  
14 containing Lead in their accessible surfaces unless clear and reasonable Proposition 65 warnings are  
15 provided with the Products with the following specific warning, or a similar warning otherwise  
16 permitted pursuant to Proposition 65:

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

19 Each unit shall carry said warning directly on each unit or its label or package, near the product name,  
20 price, or UPC code, in a sufficiently conspicuous manner reasonably calculated to be seen by the  
21 ordinary consumer. Alternatively, where products are offered for sale on a display rack, the warning  
22 obligation may be fulfilled by means of an Identifying Sign affixed to each display rack in a  
23 sufficiently conspicuous manner reasonably calculated to be seen by the ordinary consumer. Each  
24 Identifying Sign shall not be covered or obscured, and shall be at least 3” by 5” in size on white card  
25 stock, at least 14 point font in black print, with the capitalized and emboldened warning:

26           “**WARNING:** This product contains chemicals, including lead, known to the  
27 State of California to cause cancer, birth defects and other reproductive harm.”  
28

1 **3. PAYMENTS**

2 **3.1 Civil Penalty Pursuant to Proposition 65**

3 In settlement of all claims referred to in this Settlement Agreement, CVS shall pay a total civil  
4 penalty of Three Thousand Three Hundred Seventy Five Dollars (\$3,375.00) to be apportioned in  
5 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,531.25) paid to  
6 State of California Office of Environmental Health Hazard Assessment, and the remaining 25%  
7 (\$843.75) paid to Zargarbashi.

8 CVS shall issue two (2) checks for the civil penalty: (1) a check or money order made payable  
9 to “GP Law Group, APC in Trust for Office of Environmental Health Hazard Assessment” in the  
10 amount of \$2,531.25; and (2) a check or money order made payable to “GP Law Group, APC in Trust  
11 for Ali Zargarbashi” in the amount of \$843.75. CVS shall remit the payments within five (5) business  
12 days of the Court approving the Settlement entered into between the Parties, to:

13 Manee Pazargad, Esq.

14 GP LAW GROUP, APC

15 204 South Beverly Drive, Suite 115

16 Beverly Hills, CA 90212

17 **3.2 Reimbursement of Zargarbahsi’s Fees and Costs**

18 CVS shall pay an agreed sum in reimbursement of Zargarbashi’s reasonable experts’ and attorney’s  
19 fees and costs incurred in prosecuting the instant action, for work performed through execution of this  
20 Settlement. Accordingly, CVS shall issue a check or money order payable to “GP Law Group APC”  
21 in the amount of Ten Thousand One Hundred Twenty Five Dollars (\$10,125.00). CVS shall remit the  
22 payments within five (5) business days of the Court approving the Settlement entered into between the  
23 Parties, to:

24 Manee Pazargad, Esq.

25 GP LAW GROUP, APC

26 204 South Beverly Drive, Suite 115

27 Beverly Hills, CA 90212

28

1 **4. RELEASES**

2 **4.1 Zargarbashi's Release of CVS**

3 Zargarbashi, acting in his individual capacity, his past and current agents, representatives,  
4 attorneys, privies, successors, and/or assignees, in consideration of the promises and monetary  
5 payments contained herein, hereby releases CVS, its affiliates, parents, subsidiaries, shareholders,  
6 directors, members, officers, employees, and attorneys, from the claims asserted in Zargarbashi's 60-  
7 Day Notice dated July 9, 2014 regarding violation of Proposition 65.

8 **4.2 CVS' Release of Zargarbashi**

9 CVS, its parents, subsidiaries, shareholders, directors, members, officers, employees, and  
10 attorneys, by this Settlement, waive all rights to institute any form of legal action against Zargarbashi,  
11 his past and current agents, representatives, attorneys, experts, successors, and/or assignees, for actions  
12 or statements made or undertaken, whether in the court of investigating claims or seeking enforcement  
13 of Proposition 65 against CVS relating to Zargarbashi's 60-Day Notice dated July 9, 2014 in  
14 this matter.

15 **4.3 Binding Effect of Settlement**

16 This Settlement is a full, final, and binding resolution between Zargarbashi, on behalf of  
17 himself and in the public interest, and CVS, of any alleged violation of Proposition 65 or its  
18 implementing regulations for failure to provide Proposition 65 warnings of exposure to lead from the  
19 handling, use, or consumption of the Products and fully resolves all claims that have been, could have  
20 been, or could be asserted in this action up to and including the Effective Date for failure to provide  
21 Proposition 65 warnings for the Products. Zargarbashi, on behalf of himself and in the public interest,  
22 hereby discharges CVS and its respective officers, directors, shareholders, employees, agents, parent  
23 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers, distributors,  
24 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any  
25 Product, and the predecessors, successors and assigns of any of them (collectively, "Released  
26 Parties"), from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
27 penalties, fees, costs and expenses asserted, or that could have been asserted, as to any alleged  
28

1 violation of Proposition 65 arising from the failure to provide Proposition 65 warnings on the Covered  
2 Products regarding lead.

#### 3 **4.4 Waiver of Unknown Claims**

4 Each of the Parties acknowledges that it is familiar with Section 1542 of California *Civil Code*  
5 which provides as follows:

6 A general release does not extend to claims which the creditor does not know or  
7 suspect to exist in his or her favor at the time of executing the release, which if known  
8 by him or her must have materially affected his or her settlement with the debtor.

9 Each of the parties waives and relinquishes any right or benefit it has or may have under Section 1542  
10 of California *Civil Code* or any similar provision under the statutory or non-statutory law of any other  
11 jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties  
12 acknowledge that each may subsequently discover facts in addition to, or different from, those that it  
13 believes to be true with respect to the claims released herein. The Parties agree that this Settlement  
14 and the releases contained herein shall be and remain effective in all respects notwithstanding the  
15 discovery of such additional or different facts.

#### 16 **4.5 Application**

17 Compliance with the terms of this Settlement shall be deemed to constitute compliance with  
18 Proposition 65 by any Released Parties regarding alleged exposures to lead in the Products as set forth  
19 in the 6-Day Notice and the Complaint.

### 20 **5. COURT APPROVAL**

21 Upon execution of this Settlement by all Parties, Zargarbashi shall file a noticed Motion for  
22 Approval in the above-entitled Court. This Agreement is not effective until it is approved and  
23 entered by the Court and shall be null and void if, for any reason, it is not approved and entered by  
24 the Court within one (1) year after its full execution by all Parties. It is the intention of the Parties  
25 that the Court approve this Settlement, and in furtherance of obtaining such approval, the Parties and  
26 their respective counsel agree to mutually employ their best efforts to support the entry of this  
27 Settlement in a timely manner, including cooperating on drafting and filing any papers in support of  
28 the required motion for judicial approval. If the California Attorney General objects to any term in  
this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a timely  
manner, and if possible prior to the hearing on the motion.

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

2 This Court shall retain jurisdiction of this matter to enforce, modify or terminate this Consent  
3 Judgment. If Zargarbashi alleges that any Product fails to comply with this Settlement, then  
4 Zargarbashi shall inform CVS in a reasonably prompt manner of its test results. CVS shall, within  
5 thirty days following such notice, provide Zargarbashi with testing information, from an independent  
6 third-party laboratory demonstrating Defendant's compliance with this Settlement, if warranted. The  
7 Parties shall first attempt to resolve the matter prior to Zargarbashi taking any further legal action

8 **7. APPLICATION OF CONSENT JUDGMENT**

9 This Settlement may apply to, be binding upon, and benefit the Parties and their respective  
10 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
11 affiliates, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
12 retailers, predecessors, successors, and assigns. This Agreement shall have no application to  
13 Products which are distributed or sold exclusively outside the State of California and which are not  
14 used by California consumers.

15 **8. SEVERABILITY**

16 Should any part or provision of this Settlement for any reason be declared by a Court to be  
17 invalid, void, or unenforceable, the remaining portions and provisions shall continue in full force  
18 and effect.

19 **9. GOVERNING LAW**

20 The terms of this Settlement shall be governed by the laws of the State of California.

21 **10. NOTICES**

22 All correspondence and notices required to be provided under this Settlement shall be in  
23 writing and delivered personally or sent by first class or certified mail addressed as follows:

24 TO CVS:

25 Joshua G. Simon, Esq.  
26 CALL & JENSEN  
27 610 Newport Center Drive, Suite 700  
28 Newport Beach, CA 92660

TO ZARGARBASHI:

Manee Pazargad, Esq.  
GP LAW GROUP, PAC  
204 South Beverly Drive, Suite 115  
Beverly Hills, CA 90212

1 **11. INTEGRATION**

2 This Settlement constitutes the entire agreement between the parties with respect to the subject  
3 matter hereof and may not be amended or modified except in writing.

4 **12. COUNTERPARTS**

5 This Settlement may be executed in counter parts, each of which shall be deemed an original,  
6 and all of which, when taken together, shall constitute the same document. Execution and delivery of  
7 this Settlement by e-mail, facsimile, or other electronic means shall constitute legal and binding  
8 execution and delivery. Any photocopy of the executed Settlement shall have the same force and  
9 effect as the originals.

10 **13. AUTHORIZATION**

11 The undersigned are authorized to execute this Settlement on behalf of their respective Parties.  
12 Each Party has read, understood, and agrees to all of the terms and conditions of this Settlement. Each  
13 Party warrants to the other that it is free to enter into this Settlement and not subject to any conflicting  
14 obligation which will or might prevent or interfere with the execution or performance of this  
15 Settlement by said party.

16 **14. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
17 **CONSENT JUDGMENT**

18 This Consent Judgment has come before the Court upon the request of the Parties. The  
19 Parties request the Court to fully review this Consent Judgment and, being fully informed regarding  
20 the matters which are the subject of this action, to:

21 (1) Find that the terms and provisions of this Settlement represent a fair and equitable  
22 settlement of all matters raised by the allegations of the Complaint, that the matter has been  
23 diligently prosecuted, and that the public interest is served by such settlement; and

24 (2) Make the findings pursuant to California Health and Safety Code section  
25 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

26 ///

27 ///

28 ///

1 **STIPULATED TO:**

2

3 Date: \_\_\_\_\_

4

5 By: \_\_\_\_\_  
Authorized Officer of CVS Pharmacy, Inc.

6

7 **STIPULATED TO:**

8

9 Date: \_\_\_\_\_

10

11 By: \_\_\_\_\_  
Ali Zargarbashi

12

13

14

**ORDER AND JUDGMENT**

15

16

17

18

Based upon the Parties' Settlement, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

19

Dated: \_\_\_\_\_, 2015 \_\_\_\_\_  
Judge of the Superior Court

20

21

22

23



24

25

26

27

28

1 STIPULATED TO:

2  
3 Date: 2/26/2015

4 By: Meghan Ziel  
5 Authorized Officer of CVS Pharmacy, Inc.

CVS  
Legal Approval WCF

7 STIPULATED TO:

8  
9 Date: \_\_\_\_\_

10 By: \_\_\_\_\_  
11 Ali Zargarbashi

12  
13  
14 **ORDER AND JUDGMENT**

15 Based upon the Parties' Settlement, and good cause appearing, this Consent Judgment is  
16 approved and Judgment is hereby entered according to its terms.

17 IT IS SO ORDERED, ADJUDGED AND DECREED.

18  
19 Dated: \_\_\_\_\_, 2015  
20 \_\_\_\_\_  
21 Judge of the Superior Court

22  
23  
24 **CALL & JENSEN**  
25 EST. 1981  
26

27  
28

1 **STIPULATED TO:**

2

3 Date: \_\_\_\_\_

4

5 By: \_\_\_\_\_  
Authorized Officer of CVS Pharmacy, Inc.

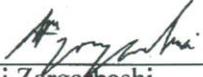
6

7 **STIPULATED TO:**

8

9 Date: 2-20-15

10

11 By:   
Ali Zargarbashi

12

13

14

**ORDER AND JUDGMENT**

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
Judge of the Superior Court

**CALL &  
JENSEN**  
EST. 1981

29

30

31

32

33

34

35

36

37

38