

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

**REVISED 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
20 Trial Date: None Set

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.

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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 without
7 clear and reasonable Proposition 65 warnings as described in subsection 2.2 below if they contain
8 more than 300 parts per million (“ppm”) of Lead in their accessible surfaces when analyzed pursuant
9 to Environmental Protection Agency testing methodologies 3050B or equivalent.

10 **2.2 Proposition 65 Warnings Obligations**

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

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

18 CVS may alternatively provide the following specific warning if it reasonably believes that
19 other Proposition 65 chemicals may be present in the product:

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

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

1 warnings:

2 “**WARNING:** This product contains lead, a chemical known to the State of California to cause
3 cancer, birth defects, and other reproductive harm.”

4 or

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

7 **3. PAYMENTS**

8 **3.1 Civil Penalty Pursuant to Proposition 65**

9 In settlement of all claims referred to in this Settlement Agreement, CVS shall pay a total civil
10 penalty of Three Thousand Three Hundred Seventy Five Dollars (\$3,375.00) to be apportioned in
11 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,531.25) paid to
12 State of California Office of Environmental Health Hazard Assessment, and the remaining 25%
13 (\$843.75) paid to Zargarbashi.

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

19 Manee Pazargad, Esq.

20 GP LAW GROUP, APC

21 204 South Beverly Drive, Suite 115

22 Beverly Hills, CA 90212

23 **3.2 Reimbursement of Zargarbahsi’s Fees and Costs**

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

1 Parties, to:

2 Manee Pazargad, Esq.

3 GP LAW GROUP, APC

4 204 South Beverly Drive, Suite 115

5 Beverly Hills, CA 90212

6 **4. RELEASES**

7 **4.1 Zargarbashi's Release of CVS**

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

13 **4.2 CVS' Release of Zargarbashi**

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

20 **4.3 Binding Effect of Settlement**

21 This Settlement is a full, final, and binding resolution between Zargarbashi, on behalf of
22 himself and in the public interest, and CVS, of any alleged violation of Proposition 65 or its
23 implementing regulations for failure to provide Proposition 65 warnings of exposure to lead from the
24 handling, use, or consumption of the Products and fully resolves all claims that have been, could have
25 been, or could be asserted in this action up to and including the Effective Date for failure to provide
26 Proposition 65 warnings for the Products. Zargarbashi, on behalf of himself and in the public interest,
27 hereby discharges CVS and its respective officers, directors, shareholders, employees, agents, parent
28 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers, distributors,

1 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any
2 Product, and the predecessors, successors and assigns of any of them (collectively, “Released
3 Parties”), from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
4 penalties, fees, costs and expenses asserted, or that could have been asserted, as to any alleged
5 violation of Proposition 65 arising from the failure to provide Proposition 65 warnings on the Covered
6 Products regarding lead.

7 **4.4 Waiver of Unknown Claims**

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

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

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

18 **4.5 Application**

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

22 **5. COURT APPROVAL**

23 Upon execution of this Settlement by all Parties, Zargarbashi shall file a noticed Motion for
24 Approval in the above-entitled Court. This Agreement is not effective until it is approved and
25 entered by the Court and shall be null and void if, for any reason, it is not approved and entered by
26 the Court within one (1) year after its full execution by all Parties. It is the intention of the Parties
27 that the Court approve this Settlement, and in furtherance of obtaining such approval, the Parties and
28 their respective counsel agree to mutually employ their best efforts to support the entry of this

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1 Settlement in a timely manner, including cooperating on drafting and filing any papers in support of
2 the required motion for judicial approval. If the California Attorney General objects to any term in
3 this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a timely
4 manner, and if possible prior to the hearing on the motion.

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

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

12 **7. APPLICATION OF CONSENT JUDGMENT**

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

19 **8. SEVERABILITY**

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

23 **9. GOVERNING LAW**

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

25 **10. NOTICES**

26 All correspondence and notices required to be provided under this Settlement shall be in
27 writing and delivered personally or sent by first class or certified mail addressed as follows:
28

<p>TO CVS:</p> <p>Joshua G. Simon, Esq. CALL & JENSEN 610 Newport Center Drive, Suite 700 Newport Beach, CA 92660</p>	<p>TO ZARGARBASHI:</p> <p>Manee Pazargad, Esq. GP LAW GROUP, PAC 204 South Beverly Drive, Suite 115 Beverly Hills, CA 90212</p>
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11. **INTEGRATION**

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

12. **COUNTERPARTS**

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

13. **AUTHORIZATION**

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

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

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

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

1 (2) Make the findings pursuant to California Health and Safety Code section
2 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.
3

4 **STIPULATED TO:**
5

6 Date: _____
7

8 By: _____
9 Authorized Officer of CVS Pharmacy, Inc.

10 **STIPULATED TO:**
11

12 Date: 7-1-15
13

14 By: *Ali Zargarbashi*
15 Ali Zargarbashi
16

17
18 **ORDER AND JUDGMENT**

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

21 IT IS SO ORDERED, ADJUDGED AND DECREED.
22

23 Dated: _____, 2015

24 Judge of the Superior Court
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26
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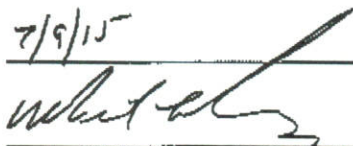
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1 (2) Make the findings pursuant to California Health and Safety Code section
2 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

3
4

5 **STIPULATED TO:**

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9

Date: 7/9/15
By: 
Authorized Officer of CVS Pharmacy, Inc.

10
11

12 **STIPULATED TO:**

13
14
15

Date: _____
By: Ali Zargarbashi

16
17

18 **ORDER AND JUDGMENT**

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

21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22
23

Dated: _____, 2015

Judge of the Superior Court

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

3
4 **STIPULATED TO:**

5
6 Date: _____

7
8 By: _____
9 Authorized Officer of CVS Pharmacy, Inc.

10 **STIPULATED TO:**

11
12 Date: _____

13
14 By: _____
15 Ali Zargarbashi

16
17
18 **ORDER AND JUDGMENT**

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

21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22 Dated: _____, 2015

23 _____
24 Judge of the Superior Court