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Attorneys for Plaintiff.

Consumer Protection Group, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CONSUMER PROTECTION GROUP, LLC,
IN THE PUBLIC INTEREST.

PLAINTIFF,

V.

SHAXON INDUSTRIES, INC., a California
Corporation and FRY'S ELECTRONICS,
INC., a California Corporation.

DEFENDANTS.

CASE NO. 19STCV30306

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Dept. 72

Judge: Hon. Ruth Ann Kwan

Complaint filed: August 26, 2019

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Plaintiff Consumer Protection Group, LLC ("CPG") acting on behalf of itself and in the interest of the public, and Defendant Shaxon Industries, Inc. ("Defendant" and "Shaxon"), with each referred to as a "Party" and collectively referred to as "Parties."

1.2 Defendant and Products

Defendant is a California corporation that is doing business at all times in California and employs ten (10) or more persons. CPG alleges that Defendant manufactured, caused to be manufactured, sold, or distributed copper wire solid core ("Wires") and Shaxon network cables

1 testers ("Testers") (Wires and Testers collectively referred to hereinafter as "Covered Products").
2 For purposes of this Consent Judgment, Defendant is deemed a person in the course of doing
3 business in California and subject to the provisions of the Safe Drinking Water and Toxic
4 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").
5 The Covered Products are limited only to those sold or supplied by Defendant.

6 **1.3 Listed Chemicals.**

7 Diisononyl Phthalate ("DINP"), is listed by the State of California as a chemical known to
8 cause cancer. Di(2-ethylhexyl)phthalate ("DEHP"), also known as Diethyl Hexyl Phthalate has been
9 listed by the State of California as a chemical known to cause cancer and birth defects or other
10 reproductive harm.

11 **1.4 Notice of Violation.**

12 On or about November 12, 2018, and on or about November 26, 2018, Plaintiff served
13 notices of alleged violations of Health and Safety Code section 25249.6, concerning consumer
14 product exposures to Shaxon Industries, Inc., Fry's Electronics, Inc., and to the California Attorney
15 General, County District Attorneys, and City Attorneys for each County containing a population of
16 at least 750,000 people in whose jurisdiction the violations allegedly occurred, concerning Wires
17 containing DINP and Testers containing DEHP.

18 **1.5 Complaint.**

19 On August 26, 2019, CPG filed a Complaint for civil penalties and injunctive relief
20 ("Complaint") in the above-captioned action. In the First Cause of Action, CPG alleges, among
21 other things, that Defendant violated Proposition 65 by failing to give clear and reasonable warnings
22 of exposure to DINP from Wires. In the Second Cause of Action, CPG alleges, among other things,
23 that Defendant violated Proposition 65 by failing to give clear and reasonable warnings of exposure
24 to DEHP from Testers.

25 **1.6 Consent to Jurisdiction.**

26 For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction
27 over the allegations of violations contained in the Notices and Complaint and personal jurisdiction
28 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Los

1 Angeles and that this Court has jurisdiction to enter this Consent Judgment as a full and final
2 settlement and resolution of the allegations contained in the Complaint and of all claims which were
3 or could have been raised by any person or entity based in whole or in part, directly or indirectly, on
4 the facts alleged therein or arising therefrom or related thereto.

5 **1.7 No Admission.**

6 This Consent Judgment resolves claims that are denied and disputed. The Parties enter into
7 this Consent Judgment pursuant to a full and final settlement of any and all claims between the
8 Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall be
9 construed as an admission by the Parties of any material allegation of the Notices or the Complaint,
10 any fact, conclusion of law, issue of law or violation of law, including without limitation, any
11 admission concerning any alleged violation of Proposition 65 or any other statutory, regulatory,
12 common law, or equitable doctrine. Nothing in this Consent Judgment, nor compliance with its
13 terms, shall constitute or be construed as an admission by the Parties, or give rise to any inference,
14 of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability
15 by Defendant, their officers, directors, employees, or parent, subsidiary or affiliated corporations, or
16 be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any
17 court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or
18 impair any right, remedy, argument, or defense the Parties may have in any other or future legal
19 proceeding, except as expressly provided in this Consent Judgment.

20 **1.8** The "Effective Date" is the date that this Consent Judgment is approved and entered
21 by the Court.

22 **2. INJUNCTIVE RELIEF**

23 **2.1** Within 30 days of the Effective Date, any Wires Defendant manufactures or imports
24 for sale into California must contain no more than 0.1% DINP by weight (1,000 ppm) unless it
25 contains a warning as described in Section 2.2 Within 30 days of the Effective Date, any Testers
26 Defendant manufactures or imports for sale into California must contain no more than 0.1% DEHP
27 by weight (1,000 ppm) unless it contains a warning as described in Section 2.2. Any Covered
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1 Products manufactured or imported prior to 30 days after the Effective Date may be sold through as
2 is.

3 **2.2** For any Covered Products requiring a warning pursuant to Section 2.1, the following
4 warnings are deemed to comply with Proposition 65:

5 For Wires:

6
7 **⚠ WARNING:** This product contains PVC which can expose you to [chemicals including]
8 Diisononyl Phthalate (DINP), which is known to the State of California to cause cancer and
9 birth defects or other reproductive harm. For more information go to
10 www.P65Warnings.ca.gov.

11
12 **Or**

13 **⚠ WARNING:** Cancer www.P65Warnings.ca.gov

14 For Testers:

15 **⚠ WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)
16 phthalate (DEHP) and lead, which are known to the State of California to cause cancer and
17 birth defects or other reproductive harm. For more information go to
18 www.P65Warnings.ca.gov.

19
20 **Or**

21 **⚠ WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

22 The warning shall be accompanied by a symbol consisting of a black exclamation point in a
23 yellow equilateral triangle with a black outline. Where the label, labeling, or package for the
24 Products is not printed using the color yellow, the symbol may be printed in black and white. The
25 symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of
26 the word “**WARNING.**” The warning shall be provided directly on each Product or its label,
27 labeling, or package with such conspicuousness as compared with other words, statements or
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1 designs as to render it likely to be seen, read and understood by an ordinary individual under
2 customary conditions of purchase.

3 If Defendant sell the Covered Products that required a warning pursuant to Section 2.1 via
4 an internet website to customers located in California, the warning requirements of this section shall
5 be satisfied in accordance with applicable regulations.

6 **3. SETTLEMENT PAYMENT**

7 **3.1 Payment and Due Date.**

8 Within ten (10) business days of the Effective Date, or within ten (10) business days of
9 receipt of all W-9 forms for each payee identified in Section 3.1, whichever is later, Defendant shall
10 pay a total of seventy thousand dollars (\$70,000.00) in full and complete settlement of all claims by
11 CPG related to the Notices and Complaint. Defendant shall pay the total settlement payment of
12 \$70,000 directly to CPG's counsel, Blackstone Law APC, and it shall be Blackstone Law APC's
13 responsibility to distribute payments as follows:

14 **3.1.1 Civil Penalty:** Ten thousand dollars (\$10,000.00) as penalties pursuant to
15 Health & Safety Code § 25249.12:

16 Counsel for CPG shall be responsible for issuing a check made payable to the State of
17 California's Office of Environmental Health Hazard Assessment ("OEIHA") in the amount of
18 seven thousand five hundred dollars (\$7,500.00) representing 75% of the total penalty and another
19 check to CPG in the amount of two thousand five hundred dollars (\$2,500.00) representing 25% of
20 the total penalty; and

21 **3.1.2 Additional Settlement Payment:** Seven thousand five hundred dollars
22 (\$7,500.00) in additional settlement payment pursuant to Health & Safety Code § 25249.7(b) and
23 California Code of Regulations, Title 11 § 3203(d). Counsel for CPG shall be responsible for
24 issuing the additional settlement payment of \$7,500 to CPG. CPG will use this portion of the this
25 Additional Settlement Payment as follows, eighty five percent (85%) for fees of investigation,
26 purchasing and testing for Proposition 65 listed chemicals in various products, and for expert fees
27 for evaluating exposures through various mediums, including but not limited to consumer product,
28 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of hiring

1 consulting and retaining experts who assist with the scientific analysis necessary for those files in
2 litigation and to offset the costs of future litigation enforcing Proposition 65 but excluding attorney
3 fees; fifteen percent (15%) for administrative costs incurred during investigation and litigation to
4 reduce the public's exposure to Proposition 65 listed chemicals by notifying those persons and/or
5 entities believed to be responsible for such exposures and attempting to persuade those persons
6 and/or entities to reformulate their products or the source of exposure to completely eliminate or
7 lower the level of Proposition 65 listed chemicals including but not limited to costs of
8 documentation and tracking of products investigated, storage of products, website enhancement and
9 maintenance, computer and software maintenance, investigative equipment, CPG's member's time
10 for work done on investigations, office supplies, mailing supplies and postage.

11 **3.1.3 Reimbursement of Attorneys' Fees and Costs:** Fifty-two thousand five
12 hundred dollars (\$52,500.00) to Blackstone Law, APC as complete reimbursement for any and all
13 reasonable investigation fees and costs, attorneys' fees, expert fees, report costs, and any and all
14 other costs and expenses incurred as a result of investigating, bringing this matter to the Defendant'
15 attention, litigating, negotiating a settlement in the public interest, and seeking and obtaining court
16 approval of this Consent Judgment.

17 **3.2** All payments referenced in paragraphs 3.1.1, 3.1.2, and 3.1.3 above are included in
18 the total settlement amount of \$70,000 and shall be made payable to Plaintiff's counsel, Blackstone
19 Law APC:

20 Bank: First Republic Bank
21 Routing No.: 321081669
22 Account No.: 80006597266
23 Beneficiary: Blackstone Law APC IOLTA

24 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

25 **4.1** This Consent Judgment is a full, final, and binding resolution between CPG, on
26 behalf of itself and in the public interest, on the one hand, and (i) Defendant and its officers,
27 directors, attorneys, agents, insurers, employees, parents, shareholders, divisions, subdivisions,
28 subsidiaries, partners, affiliates, sister companies, and their successors and assigns (collectively

1 referred to as "Defendant Releasees"); (ii) all entities to which Defendant Releasees directly or
2 indirectly has distributed or sold the Covered Products, including, but not limited to, Fry's
3 Electronics, Inc., downstream distributors, suppliers, wholesalers, customers, retailers; and (iii) the
4 successors and assigns of any of them (the released entities listed in (i) through (iii) of this
5 Section 4.1 are collectively referred to as "Released Parties") for all claims for violations of
6 Proposition 65 for alleged exposures to DINP and DEHP from Covered Products manufactured,
7 distributed, or sold by Defendant on or before the Effective Date. Defendant's compliance with this
8 Consent Judgment shall constitute compliance by any Released Parties with Proposition 65 with
9 respect to DINP and DEHP in the Covered Products manufactured, distributed, or sold after the
10 Effective Date. Nothing in this Section affects CPG's right to commence or prosecute an action
11 under Proposition 65 against any person other than the Released Parties.

12 **4.2** CPG on behalf of itself, its past and current agents, representatives, attorneys,
13 successors, and/or assignees (collectively, the "CPG Releasers"), hereby waives all rights to
14 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
15 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
16 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
17 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
18 known or unknown, fixed or contingent (collectively "Claims"), against the Released Parties arising
19 from any violation of Proposition 65 or any other statutory or common law regarding alleged
20 exposures to, or the failure to warn about alleged exposures to DINP and DEHP from the Covered
21 Products. It is possible that Claims not known to the Parties arising out of the facts alleged in the
22 Notice or the Complaint and relating to the Covered Products will develop or be discovered. CPG,
23 on behalf of itself and the CPG Releasers, acknowledges that this Consent Judgment is expressly
24 intended to cover and include all such Claims. CPG has full knowledge of the contents of
25 California Civil Code §1542. CPG, on behalf of itself and the CPG Releasers, acknowledges that
26 the Claims released in this Section 4 may include unknown Claims, and nevertheless waives
27 California Civil Code §1542 as to any such unknown Claims. California Civil Code §1542 reads as
28 follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
2 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
4 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
5 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.
6

7 CPG understands and acknowledges that the significance and consequence of this waiver of
8 California Civil Code §1542.

9 **5. ENFORCEMENT OF JUDGMENT**

10 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
11 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
12 California, Los Angeles County, enforce the terms and conditions contained herein. A Party may
13 enforce any of the terms and conditions of this Consent Judgment only after that Party first provides
14 30 days' notice to the Party allegedly failing to comply with the terms and conditions of this
15 Consent Judgment, and attempts to resolve such Party's failure to comply in an open and good faith
16 manner.

17 **5.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
18 proceeding to enforce the terms of this Consent Judgment, CPG shall provide a Notice of Violation
19 ("NOV") to the Defendant. The NOV shall include for each of the Covered Products: the date(s)
20 the alleged violation(s) was observed and the location at which the Covered Products were offered
21 for sale, and shall be accompanied by all test data obtained by CPG regarding the Covered Products,
22 including an identification of the component(s) of the Covered Products that were tested.

23 **5.2.1 Non-Contested NOV.** CPG shall take no further action of any kind
24 regarding the alleged violation if, within 60 days of receiving such NOV, the Defendant serves a
25 Notice of Election ("NOE") not to contest the NOV that meets one of the following conditions:

26 (a) A statement that the Covered Product was manufactured and shipped
27 by the Defendant for sale in California before the Effective Date; or
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1 (b) A statement that since receiving the NOV the Defendant has taken
2 corrective action by either: (i) taking all steps necessary to bring the sale of the product into
3 compliance under the terms of this Consent Judgment; or (ii) requesting that its customers or stores
4 in California, as applicable, remove the Covered Product identified in the NOV from sale in
5 California and destroy or return the Covered Product to the Defendant or vendor, as applicable.

6 **5.2.2 Contested NOV.** Defendant may serve a NOE informing CPG of its election
7 to contest the NOV within 60 days of receiving the NOV.

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

10 (b) If the confirmatory testing establishes that the Covered Products do
11 not contain DEHP or DINP in excess of the levels allowed in Section 2.1, above, CPG shall take no
12 further action regarding the alleged violation. If the testing does not establish compliance with
13 Section 2.1, above, the Defendant may withdraw its NOE to contest the violation and may serve a
14 new NOE pursuant to Section 5.2.1.

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

18 **5.3** In any proceeding brought by either Party to enforce this Consent Judgment, the
19 prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.

20 **6. ENTRY OF CONSENT JUDGMENT**

21 **6.1** CPG shall file a motion seeking approval of this Consent Judgment pursuant to
22 California Health & Safety Code § 25249.7(f).

23 **6.2** If this Consent Judgment is not approved in full by the Court: (a) this Consent
24 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
25 become null and void, and the actions shall revert to the status that existed prior to the execution
26 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
27 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have
28 any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in

1 any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify
2 the terms of the Consent Judgment and to resubmit it for approval.

3 **7. MODIFICATION OF JUDGMENT**

4 **7.1** This Consent Judgment may be modified only upon written agreement of the Parties
5 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party
6 as provided by law and upon entry of a modified Consent Judgment by the Court.

7 **7.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to
8 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

9 **7.3** Within thirty (30) days of receiving payments as outlined in Section 3, CPG shall
10 file a request for dismissal without prejudice of Defendant and Fry's Electronics, Inc. with respect
11 to the Complaint.

12 **8. RETENTION OF JURISDICTION**

13 **8.1** This Court shall retain jurisdiction of this matter to implement and enforce the terms
14 of this Consent Judgment under Code of Civil Procedure § 664.6.

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

16 **9.1** CPG shall serve a copy of this Consent Judgment, signed by both Parties, on the
17 California Attorney General so that the Attorney General may review this Consent Judgment prior
18 to its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney
19 General has received the aforementioned copy of this Consent Judgment, and in the absence of any
20 written objection by the Attorney General to the terms of this Consent Judgment, the Parties may
21 then submit it to the Court for approval.

22 **10. ATTORNEY FEES**

23 **10.1** Except as specifically provided in Section 3.1.3, each Party shall bear its own costs
24 and attorney fees in connection with this action.

25 **11. ENTIRE AGREEMENT**

26 **11.1** This Consent Judgment contains the sole and entire agreement and understanding of
27 the Parties with respect to the entire subject matter hereof and any and all prior discussions,
28 negotiations, commitments and understandings related hereto. No representations, oral or

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1 otherwise, express or implied, other than those contained herein have been made by any Party
2 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed

3 to exist or to bind any of the Parties.

4 **12. GOVERNING LAW**

5 **12.1** The validity, construction and performance of this Consent Judgment shall be
6 governed by the laws of the State of California, without reference to any conflicts of law provisions
7 of California law.

8 **12.2** The terms of this Consent Judgment shall be governed by the laws of the State of
9 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
10 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
11 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
12 rendered inapplicable by reason of law generally as to the Covered Products, then the Defendant
13 may provide written notice to CPG of any asserted change in the law, and shall have no further
14 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
15 Products are so affected... Nothing in this Consent Judgment shall be interpreted to relieve
16 Defendant from any obligation to comply with any pertinent state or federal law or regulation.

17 **12.3** The Parties, including their counsel, have participated in the preparation of this
18 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
19 Consent Judgment was subject to revision and modification by the Parties and has been accepted
20 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
21 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
22 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
23 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
24 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
25 regard, the Parties hereby waive California Civil Code § 1654.

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1 **13. EXECUTION AND COUNTERPARTS**

2 **13.1** This Consent Judgment may be executed in counterparts and by means of facsimile
3 or portable document format (pdf), which taken together shall be deemed to constitute one
4 document and have the same force and effect as original signatures.

5 **14. NOTICES**

6 **14.1** Any notices under this Consent Judgment shall be by personal delivery or First-Class
7 Mail.

8 If to CPG:

9 Jonathan M. Genish
10 Blackstone Law, APC
11 8383 Wilshire Blvd., Suite 745
12 Beverly Hills, CA 90211

13 If to Shaxon: Curtis C. Chen

14 Law offices of Curtis Chen
15 535 Anton Blvd., Suite 900
16 Costa Mesa, CA 92626-7109

17 With copy to:

18 Jeffrey B. Margulies
19 Norton Rose Fulbright US LLP
20 555 South Flower Street, Forty-First Floor
21 Los Angeles, CA 90071

22 **15. AUTHORITY TO STIPULATE**


23 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of
25 the Party represented and legally to bind that Party.
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AGREED TO:

Date: July 2, 2020

By: 
Consumer Protection Group, LLC

AGREED TO:

Date: July 01, 2020

By: 
Shaxon Industries, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court
Hon. Ruth Ann Kwan