

Jonathan M. Genish (SBN 259031)
jgenish@blackstonepc.com
Michael N. Jones (SBN 244320)
mjones@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Blvd., Suite 745
Beverly Hills, California 90211
Telephone: (310) 622-4278
Facsimile: (855) 786-6356

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.

SHAWSHANK LEDZ INC., a Business Entity
Form Unknown,

And DOES 1 to 10

Defendants.

CASE NO. 20STCV01824

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Dept. 72

Judge: Hon. Judge Ruth Ann Kwan

Complaint filed: January 14, 2020

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 Shawshank Ledz Inc. (“Defendant” and “Shawshank”), with each referred to as a “Party” and collectively referred to as “Parties.”

1.2 Defendant and Products

Defendant is an Arizona corporation that is qualified to and does conduct business in California and employs ten (10) or more persons. CPG alleges that Defendant manufactured, caused to be manufactured, sold, or distributed a Back Scratcher (referred to hereinafter as

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

5 **1.3 Listed Chemical.**

6 Di (2-ethylhexyl) Phthalate (“DEHP”) has been listed by the State of California as a
7 chemical known to cause cancer and birth defects or other reproductive harm.

8 **1.4 Notice of Violation.**

9 On December 28, 2018, CPG served Defendant, Anawalt Lumber Co. Inc., and various
10 public enforcement agencies with a document titled “60-Day Notice of Violation” (AG
11 2018-02367) that provided the recipients with notice of alleged violations of Health & Safety Code
12 § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in the
13 Covered Products sold by Defendant (“Notice”). No public enforcer has commenced or diligently
14 prosecuted the allegations set forth in the Notice.

15 **1.5 Complaint and Answer.**

16 On January 14, 2020, CPG filed a Complaint for civil penalties and injunctive relief
17 (“Complaint”) in the above-captioned action. The Complaint alleges, among other things, that
18 Defendant violated Proposition 65 by failing to give clear and reasonable warnings of exposure to
19 DEHP from the Covered Products. Defendant filed a General Denial and Affirmative Defenses on
20 April 2, 2020. Defendant denies these allegations and maintains that prior to service of the Notice,
21 it sold the Covered Products with a Proposition 65 warning and undertook efforts to reformulate the
22 Covered Products, and at all times subsequent to the Notice, it sold only reformulated Covered
23 Products as required by Proposition 65.

24 **1.6 Consent to Jurisdiction.**

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

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

19 **1.8** The "Effective Date" is the date that this Consent Judgment is approved and entered
20 by the Court.

21 **2. INJUNCTIVE RELIEF**

22 **2.1** Within 30 days of the Effective Date, Defendant shall cease selling, offering for sale
23 in California, or distributing for sale in California, any Covered Products unless they contain no
24 more than 0.1% DEHP by weight.

25 **2.2** For any Covered Products that may exist in Defendant's inventory as of the Effective
26 Date that is not a reformulated product, and to the extent Defendant sells Covered Products after the
27 Effective Date that are not reformulated, Defendant shall provide a Proposition 65 compliant
28 warning on the packaging. However, all Covered Products distributed or sold by Defendant prior

1 to the Effective Date may be sold or offered for sale without any Proposition 65 warning regardless
2 of whether or not they are reformulated products. Compliance with the terms of this Section 2 shall
3 be deemed compliance with Proposition 65 law.

4 **2.3** The following warning is deemed to comply with Proposition 65:

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

8 or

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

10
11 The warning shall be accompanied by a symbol consisting of a black exclamation point in a
12 yellow equilateral triangle with a black outline. Where the label, labeling, package, shelf tag or sign
13 for the Products is not printed using the color yellow, the symbol may be printed in black and white.
14 The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height
15 of the word “**WARNING.**” The warning shall be provided directly on each Covered Product or its
16 label, labeling, package, shelf tag or sign with such conspicuousness as compared with other words,
17 statements or designs as to render it likely to be seen, read and understood by an ordinary individual
18 under customary conditions of purchase. However, if Defendant opts to use the Short-Form
19 Warning, said warning must be provided on each Covered Product or its label or package.

20 If Defendant sells Covered Products that contain more than 0.1% DEHP by weight via an
21 internet website to customers located in California, the warning requirements of this section shall be
22 deemed to satisfy the Internet warning requirements of Proposition 65.

23 **3. SETTLEMENT PAYMENT**

24 **3.1 Payment and Due Date.**

25 Within thirty (30) days of the Effective Date, Defendant shall pay a total of thirty-two
26 thousand five hundred dollars (\$32,500.00) in full and complete settlement of all claims by CPG
27 related to the Notice and Complaint as to Defendant, as follows:
28

1 **3.1.1 Civil Penalty:** Defendant agrees to pay two thousand seven hundred and
2 fifty dollars (\$2,750.00) as penalties pursuant to Health & Safety Code § 25249.12, which shall be
3 apportioned and distributed by CPG as follows:

4 (a) CPG and its counsel shall be responsible for issuing a check made
5 payable to the State of California's Office of Environmental Health Hazard Assessment
6 ("OEHHA") in the amount of two thousand and sixty three dollars (\$2,063.00) representing 75% of
7 the total penalty and another check to CPG in the amount of six hundred and eighty seven dollars
8 (\$687.00) representing 25% of the total penalty; and

9 **3.1.2 Reimbursement of Attorneys' Fees and Costs:** Defendant shall pay
10 twenty-nine thousand seven hundred and fifty dollars (\$29,750.00) to Blackstone Law, APC as
11 complete reimbursement for any and all reasonable investigation fees and costs, attorneys' fees,
12 expert fees, report costs, and any and all other costs and expenses incurred as a result of
13 investigating, bringing this matter to the Defendant's attention, litigating, negotiating a settlement in
14 the public interest, and seeking and obtaining court approval of this Consent Judgment.

15 **3.2** All payments referenced in paragraphs 3.1.1 and 3.1.2 above, shall be made payable
16 to Plaintiff's counsel Blackstone Law APC:

17 Bank: First Republic Bank

18 Routing No.: 321081669

19 Account No.: 80006597266

20 Beneficiary: Blackstone Law APC IOLTA

21
22
23 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

24 **4.1** This Consent Judgment is a full, final, and binding resolution between CPG, on
25 behalf of itself and in the public interest, on the one hand, and (i) Defendant and their officers,
26 directors, attorneys, agents, insurers, employees, parents, shareholders, divisions, subdivisions,
27 subsidiaries, partners, affiliates, sister companies, and their successors and assigns (collectively
28 referred to as "Defendant Releasees"); (ii) all entities to which Defendant Releasees directly or
indirectly has distributed or sold the Covered Products, including, but not limited to, Anawalt

1 Lumber Co., downstream distributors, suppliers, wholesalers, customers, retailers (iii) and the
2 successors and assigns of any of them (the released entities listed in (i) through (iv) of this
3 Section 4.1 are collectively referred to as "Released Parties") for all claims for violations of
4 Proposition 65 for alleged exposures to DEHP from Covered Products manufactured, distributed, or
5 sold by Defendant on or before the Effective Date, regardless of the date on which such Covered
6 Products may ultimately be sold by any Released Parties. Defendant's compliance with this
7 Consent Judgment shall constitute compliance by any Released Parties with Proposition 65 with
8 respect to DEHP in the Covered Products manufactured, distributed, or sold after the Effective
9 Date. Nothing in this Section affects CPG's right to commence or prosecute an action under
10 Proposition 65 against any person other than the Released Parties.

11 **4.2** CPG on behalf of itself, its past and current agents, members, managers,
12 representatives, attorneys, successors, and/or assignees (collectively, the "CPG Releasers"), hereby
13 waives all rights to institute or participate in, directly or indirectly, any form of legal action and
14 releases all claims, including, without limitation, all actions, and causes of action, in law or in
15 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
16 (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature
17 whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against the
18 Released Parties arising from any violation of Proposition 65 or any other statutory or common law
19 regarding alleged exposures to, or the failure to warn about alleged exposures to, DEHP from the
20 Covered Products. It is possible that Claims not known to the Parties arising out of the facts alleged
21 in the Notice or the Complaint and relating to the Covered Products will develop or be discovered.
22 CPG, on behalf of itself and the CPG Releasers, acknowledges that this Consent Judgment is
23 expressly intended to cover and include all such Claims. CPG has full knowledge of the contents of
24 California Civil Code §1542. CPG, on behalf of itself and the CPG Releasers, acknowledges that
25 the Claims released in this Section 4 may include unknown Claims, and nevertheless waives
26 California Civil Code §1542 as to any such unknown Claims. California Civil Code §1542 reads as
27 follows:
28

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

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

7 **5. ENFORCEMENT OF JUDGMENT**

8 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
9 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
10 California, Los Angeles County, enforce the terms and conditions contained herein. A Party may
11 enforce any of the terms and conditions of this Consent Judgment only after that Party first provides
12 10 days' notice to the Party allegedly failing to comply with the terms and conditions of this
13 Consent Judgment, and attempts to resolve such Party's failure to comply in an open and good faith
14 manner.

15 **5.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
16 proceeding to enforce the terms of this Consent Judgment, CPG shall provide a Notice of Violation
17 ("NOV") to the Defendant. The NOV shall include for each of the Covered Products: the date(s)
18 the alleged violation(s) was observed and the location at which the Covered Products were offered
19 for sale, and shall be accompanied by all test data obtained by CPG regarding the Covered Products,
20 including an identification of the component(s) of the Covered Products that were tested.

21 **5.2.1 Non-Contested NOV.** CPG shall take no further action of any kind
22 regarding the alleged violation if, within 60 days of receiving such NOV, the Defendant serves a
23 Notice of Election ("NOE") not to contest the NOV that meets one of the following conditions:

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

26 (b) A statement that since receiving the NOV the Defendant has taken
27 corrective action by either: (i) taking all steps necessary to bring the sale of the product into
28 compliance under the terms of this Consent Judgment; or (ii) requesting that its customers or stores

1 in California, as applicable, remove the Covered Product identified in the NOV from sale in
2 California or provide a Proposition 65 warning; or (iii) refute the information provided in the NOV.

3 **5.2.2 Contested NOV.** Defendant may serve a Notice of Election ("NOE")
4 informing CPG of its election to contest the NOV within 60 days of receiving the NOV.

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

7 (b) If the confirmatory testing establishes that the Covered Products do
8 not contain DEHP in excess of the level allowed in Section 2.1, above, CPG shall take no further
9 action regarding the alleged violation. If the testing does not establish compliance with Section 2.1,
10 above, the Defendant may withdraw its NOE to contest the violation and may serve a new NOE
11 pursuant to Section 6.2.1.

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

15 **5.3** In any proceeding brought by either Party to enforce this Consent Judgment, the
16 prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.

17 **6. ENTRY OF CONSENT JUDGMENT**

18 **6.1** CPG shall file a motion seeking approval of this Consent Judgment pursuant to
19 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CPG and
20 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

21 **6.2** If this Consent Judgment is not approved in full by the Court: (a) this Consent
22 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
23 become null and void, and the actions shall revert to the status that existed prior to the execution
24 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
25 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have
26 any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in
27 any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify
28 the terms of the Consent Judgment and to resubmit it for approval.

1 **7. MODIFICATION OF JUDGMENT**

2 **7.1** Except as otherwise provided herein, this Consent Judgment may be modified only
3 upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court
4 thereon, or upon motion of any Party as provided by law and upon entry of a modified Consent
5 Judgment by the Court.

6 **7.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to
7 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

8 **7.3** Within fifteen (15) days of CPG receiving payments mentioned under Section 3 of
9 this Consent Judgment, CPG shall file a request for dismissal of the Complaint with prejudice.

10 **8. RETENTION OF JURISDICTION**

11 **8.1** This Court shall retain jurisdiction of this matter to implement and enforce the terms
12 of this Consent Judgment under Code of Civil Procedure § 664.6.

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

14 **9.1** CPG shall serve a copy of this Consent Judgment, signed by both Parties, on the
15 California Attorney General so that the Attorney General may review this Consent Judgment prior
16 to its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney
17 General has received the aforementioned copy of this Consent Judgment, and in the absence of any
18 written objection by the Attorney General to the terms of this Consent Judgment, CPG may then
19 submit it to the Court for approval.

20 **10. ATTORNEY FEES**

21 **10.1** Except as specifically provided in Section 3.1.2, each Party shall bear its own costs
22 and attorney fees in connection with this action.

23 **11. ENTIRE AGREEMENT**

24 **11.1** This Consent Judgment contains the sole and entire agreement and understanding of
25 the Parties with respect to the entire subject matter hereof and any and all prior discussions,
26 negotiations, commitments and understandings related hereto. No representations, oral or
27 otherwise, express or implied, other than those contained herein have been made by any Party
28

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
2 to exist or to bind any of the Parties.

3 **12. GOVERNING LAW**

4 **12.1** The validity, construction and performance of this Consent Judgment shall be
5 governed by the laws of the State of California, without reference to any conflicts of law provisions
6 of California law.

7 **12.2** The terms of this Consent Judgment shall be governed by the laws of the State of
8 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
9 inapplicable by reason of law generally, or DEHP is no longer listed as a chemical subject to
10 Proposition 65, or if any of the provisions of this Consent Judgment are rendered inapplicable or are
11 no longer required as a result of any such repeal, preemption or change, or is rendered inapplicable
12 by reason of law generally or as to the Covered Products, then any Defendant subject to this
13 Consent Judgment may provide written notice to CPG of any asserted change in the law, and shall
14 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
15 the Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to
16 relieve a Defendant from any obligation to comply with any pertinent state or federal law or
17 regulation.

18 **12.3** In the event that, after the Effective Date, the Office of Environmental Health Hazard
19 Assessment establishes safe harbor levels that are higher than the reformulation standard herein, or
20 promulgates one or more regulations requiring or permitting warning text and/or methods of
21 transmission different than those set forth above, Defendant shall be entitled to use, at its discretion,
22 such lower reformulation standard or other warning text and/or methods of transmission without
23 further notice to CPG.

24 **12.4** The Parties, including their counsel, have participated in the preparation of this
25 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
26 Consent Judgment was subject to revision and modification by the Parties and has been accepted
27 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
28 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of

1 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
2 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
3 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
4 regard, the Parties hereby waive California Civil Code § 1654.

5 **13. EXECUTION AND COUNTERPARTS**

6 **13.1** This Consent Judgment may be executed in counterparts and by means of facsimile
7 or portable document format (pdf), which taken together shall be deemed to constitute one
8 document and have the same force and effect as original signatures.

9 **14. NOTICES**

10 **14.1** Any notices under this Consent Judgment shall be by personal delivery or First-Class
11 Mail.

12 If to CPG:

13 Jonathan M. Genish
14 Blackstone Law, APC
15 8383 Wilshire Blvd., Suite 745
16 Beverly Hills, CA 90211

17 If to Shawshank:

18 H. Kim Sim
19 Conkle, Kremer & Engel
20 3130 Wilshire Blvd., Suite 500
21 Santa Monica, CA 90403-2351

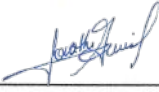
22 Any Party, from time to time, may specify in writing to the other Party a change of
23 address to which all notices and other communications shall be sent.

24 **15. AUTHORITY TO STIPULATE**

25 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
26 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of
27 the Party represented and legally to bind that Party.
28

1
2 **AGREED TO:**
3 **CONSUMER PROTECTION GROUP, LLC**

4 Date: June 12, 2020

5 By: 

6 Name: Jonathan M. Genish

7 Its: Attorney for Consumer Protection Group, LLC

AGREED TO:
SHAWSHANK LEDZ INC.

Date: 6/8/2020

By: 

Name: Robert Vasquez

Its: President

8
9 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

10
11
12 Dated: _____

13
14 _____
15 Judge of the Superior Court
16 Hon. Ruth Ann Kwan
17
18
19
20
21
22
23
24
25
26
27
28