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San Francisco County Superior Court

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 IN AND FOR THE COUNTY OF SAN FRANCISCO

11 PEOPLE OF THE STATE OF CALIFORNIA)
12 ex rel. DANIEL E. LUNGREN, Attorney
General of the State of California,

13 Plaintiffs,

14 v.

15 ARKIE LURES, INC., BULLET WEIGHTS,
16 INC., THE DANIELSON COMPANY,
17 SOUTH BEND SPORTING GOODS and
WATER GREMLIN COMPANY

18 Defendants.

Case No. **971479**
CONSENT JUDGMENT

19
20
21 **1. INTRODUCTION**

22 1.0 On August 3, 1995 the People of the State of California ex rel. Daniel E.
23 Lungren ("People") filed a Complaint for Civil Penalty and Injunctive Relief
24 ("Complaint") in San Francisco County Superior Court, against Arkie Lures, Inc., Bullet
25 Weights, Inc., The Danielson Company, South Bend Sporting Goods, and Water
26 Gremlin Company (collectively "Defendants"). The People's Complaint alleges that
27

1 Defendants violated provisions of the Safe Drinking Water and Toxic Enforcement Act
2 of 1986, Health and Safety Code sections 25249.5 et seq. ("Proposition 65"), and
3 Business and Professions Code sections 17200 et seq. ("Unfair Competition Act"), by
4 knowingly exposing persons to lead, a chemical known to the State of California to
5 cause birth defects or other reproductive harm, without first providing a clear and
6 reasonable warning to such individuals.

7 1.1 Defendants are businesses that employ more than ten persons and
8 manufacture, distribute and sell within the State of California certain fishing products
9 that contain lead, a chemical which the State of California placed on its list of
10 chemicals "known to cause reproductive toxicity" pursuant to Health and Safety Code
11 section 25249.9 on February 27, 1987 and thus have been subject to Proposition 65
12 warning requirements since February 27, 1988. The products covered by this Consent
13 Judgment ("Covered Products") are listed below:

- 14 a. split shot lead fishing weights;
- 15 b. lead or lead alloy fishing weights;
- 16 c. other fishing products containing lead or lead alloy components, including
17 but not limited to jigs, lures and rigs.

18 1.2 For purposes of this Consent Judgment the parties stipulate that this
19 Court has jurisdiction over the allegations of violations contained in the Complaint and
20 personal jurisdiction over Defendants as to the acts alleged in the Complaint, that
21 venue is proper in the County of San Francisco and that this Court has jurisdiction to
22 enter this Consent Judgement as a resolution of the allegations contained in the
23 Complaint.

24 1.3 The parties enter into this Consent Judgment pursuant to a settlement of
25 disputed claims between the parties for the purpose of avoiding prolonged litigation
26 and to insure that the requirements of Proposition 65 are expeditiously carried out.
27 This Consent Judgment shall not constitute an admission with respect to any allegation

1 of the complaint, nor may it be used as evidence of any wrongdoing or misconduct or
2 liability on the part of Defendants.

3 **2. SETTLEMENT PAYMENT**

4 2.0 Within thirty (30) days of the entry of this Consent Judgment, Defendants
5 shall pay to the People a civil penalty of \$15,000 pursuant to Health & Safety Code
6 sections 25249.7(b) and 25192 in settlement of the disputed claims referred to in this
7 Consent Judgment.

8 2.1 Within thirty (30) days of the approval of this Consent Judgment,
9 Defendants shall pay \$15,000 to the Pacific Justice Center ("PJC") representing
10 reasonable costs and attorneys fees incurred by PJC in investigating this matter and
11 negotiating this Consent Judgment.

12 2.3 Payment of the amounts specified in paragraph 2.0 above shall be made
13 to the Attorney General of the State of California, 2101 Webster Street, 12th Floor,
14 Oakland, CA 94612. The payment shall note that the payment is made in connection
15 with the settlement of this action and shall be sent to the attention of Deputy Attorney
16 General Susan S. Fiering.

17 **3. ENTRY OF CONSENT JUDGMENT**

18 3.0 The parties hereby request that the Court promptly enter this Consent
19 Judgment. Provided the Court enters the Consent Judgment, Defendants and the
20 People waive their respective rights to a hearing or trial on the allegations of the
21 Complaint.

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

23 4.0 This Consent Judgment constitutes a full and final settlement of all claims
24 and causes of action for declaratory, injunctive and monetary relief set out in the
25 Complaint filed in this case up to and including the date of entry of this Consent
26 Judgment. The parties believe that this Consent Judgment will further the objectives of
27 Proposition 65.

1 5. ADDITIONAL ENFORCEMENT ACTIONS: CONTINUING OBLIGATIONS

2 5.0 The People do not waive any right to take further enforcement actions
3 regarding any claims or allegations of violations not addressed by this Consent
4 Judgment.

5 6. ENFORCEMENT OF JUDGMENT

6 6.0 The terms of this Consent Judgment shall be enforced exclusively by the
7 the parties hereto. The parties may, by noticed motion or order to show cause before
8 the Superior Court of San Francisco County, giving the notice required by law, enforce
9 the terms and conditions contained herein. In any action brought by the People to
10 enforce this Consent Judgment, the People may seek whatever fines, costs, penalties or
11 remedies as may be provided by law for any violation of the Consent Judgment. Any
12 violation of the terms of the Consent Judgment that also violate Proposition 65 or the
13 Unfair Competition Act or any other laws may subject Defendants to civil penalties
14 under those statutes to be sought in a separate civil action.

15 7. MODIFICATION OF JUDGMENT

16 7.0 This Consent Judgment may be modified only upon written agreement of
17 the parties and upon entry of a modified Consent Judgment by the Court thereon, or
18 upon motion of any party as provided by law and upon entry of a modified Consent
19 Judgment by the Court.

20 8. INJUNCTIVE RELIEF -- CLEAR AND REASONABLE WARNING

21 8.0 As long as any of the Covered Products continue to contain lead
22 Defendants shall provide a clear and reasonable warning under the circumstances and
23 in the manner described in paragraph 8.1 below, that the Covered Product contains a
24 chemical known to the State of California to cause birth defects or other reproductive
25 harm.

26 8.1 Defendants shall provide a Proposition 65 warning for the Covered
27 Products as follows:

1 (a) All defendants shall, within thirty (30) days of the entry of this Consent
2 Judgment:

3 (i) send by first class mail "Proposition 65 Warning Letters," in a form
4 approved by the Attorney General, and the specified enclosures, to
5 distributors and, where known, to retail stores that sell the Covered
6 Products;

7 (ii) The Proposition 65 Warning Letter, when sent directly to a retailer,
8 shall contain as enclosures at least two (2) warning signs printed on 65-
9 pound stock in a size and format to be approved by the Attorney
10 General, to be displayed in front of or next to the Covered Products so
11 that the warning is visible to the consumer and will be understood to
12 apply only to the affected products. When sent to a distributor, the
13 Proposition 65 Warning Letter shall contain at least twenty (20) warning
14 signs as described above and shall indicate that additional signs are
15 available on request. The warnings shall state:

16 **WARNING:** This product contains lead, a chemical known to the State of
17 California to cause birth defects or other reproductive harm. Do not
18 place your hands in your mouth after handling the product. Do not place
the product in your mouth. Wash your hands after touching this product.

19 (iii) The Proposition 65 Warning Letter, when sent to a distributor, shall
20 include twenty (20) copies of a Retailer Proposition 65 Notice to be
21 forwarded by the distributor to the retailers, along with the warning signs.
22 The Retailer Proposition 65 Notice shall inform the retailer to post the
23 warning signs in front of or next to the Covered Products so that the
24 warning is visible to the consumer and will be understood to apply only to
25 the affected products. The form of the Retailer Proposition 65 Warning
26 Notice shall be approved by the Attorney General.

27 (iv) The Proposition 65 Warning Letter shall also contain as an enclosure

1 a postcard in a form approved by the Attorney General instructing the
2 recipient to sign and return the card to indicate that he/she has received
3 the material and will comply with Proposition 65 by providing the
4 appropriate warnings or by transmitting the material to the retailers and
5 instructing them to provide the appropriate warnings.

6 (v) In the event that any Defendant does not receive the signed return
7 postcard within twenty days of mailing, Defendant shall cease shipping
8 any Covered Products to the retailer or distributor until (a) the retailer or
9 distributor subsequently returns the signed postcard to defendant or (b)
10 the Covered Products have a Proposition 65 warning affixed to the label
11 or container as set forth in paragraph (c) below.

12 (b) Each Defendant shall repeat the procedure set forth in paragraph (a)
13 above within one year from the original date of mailing and yearly
14 thereafter, except that, any Defendant who properly implements option
15 (c) (label warning) below within 120 days of the date of mailing of
16 warning letters and signs, need not repeat the mailing set forth in
17 paragraph (a) above.

18 (c) In addition to complying with paragraph (a) above, Defendants may, at
19 the point of manufacture, or prior to shipment to California or
20 distribution within California, affix to or print on the product container,
21 cap, label, unit package, or (where the product is too small to receive a
22 warning directly on the container) on the display of such Covered
23 Products that are intended for sale in California either of the following
24 warnings:

25 **WARNING:** This product contains lead, a chemical known to the
26 State of California to cause birth defects or other
27 reproductive harm. Do not place your hands in your
mouth after handling the product. Do not place the
product in your mouth. Wash your hands after

1 touching this product.

2 or

3 **WARNING:** This product contains lead, a chemical known to the State
4 of California to cause birth defects or other reproductive
5 harm.

6 Such warning shall be prominently affixed to or printed on each Covered
7 Product with such conspicuousness, as compared with other words,
8 statements, designs, or devices on the label as to render it likely to be
9 read and understood by an ordinary individual under customary conditions
10 of purchase or use. The warning shall be at least the same size as the
11 largest of any other safety warnings on the product container and the
12 word "warning" shall be in all capital letters and in bold print. If printed
13 on the label itself the warning shall be contained in the same section of
14 the label that states other safety warnings concerning the use of the
15 product. The Attorney General agrees to review any labeling proposed to
16 be used under this section and advise any Defendant as to whether he
17 believes such labeling to comply with this section.

18 (d) The requirement for product labeling, set forth in subparagraph (c) above
19 is imposed pursuant to the terms of this stipulation. The parties
20 recognize that product labeling is not the exclusive method of providing a
21 warning under Proposition 65 and its implementing regulations.

22 9. **AUTHORITY TO STIPULATE**

23 9.0 Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the party he or she represents to enter into this Consent Judgment and
25 to execute it on behalf of the party represented and legally to bind that party.

26 10. **RETENTION OF JURISDICTION**

27 10.0 This Court shall retain jurisdiction of this matter to implement the
Consent Judgment.

