

1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
3 **YEROUSHALMI & ASSOCIATES**
9100 Wilshire Boulevard, Suite 240W
4 Beverly Hills, California 90212
Telephone: 310.623.1926
5 Facsimile: 310.623.1930

6 Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO**

10
11 **CONSUMER ADVOCACY GROUP, INC.,**
12 in the public interest,

13 Plaintiff,

14 v.

15
16 **THOMAS & BETTS CORPORATION, a**
Tennessee Corporation; **THOMAS & BETTS**
17 **INTERNATIONAL, INC., a Delaware**
Corporation; **TRUE VALUE COMPANY, a**
18 **Delaware Corporation; and DOES 1-20;**

19 Defendants.
20

CASE NO. CGC-12-523788

CONSENT JUDGMENT [PROPOSED]

Room: 610

Judge: Hon. Cynthia M. Lee

Filed: August 28, 2012

21 **1. INTRODUCTION**

22 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
23 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and
24 defendants THOMAS & BETTS CORPORATION ("TBC"), THOMAS & BETTS
25 INTERNATIONAL, INC. ("TBI"), and TRUE VALUE COMPANY ("TVC") (all defendants
26 collectively referred to as "DEFENDANTS"), with each a Party and collectively referred to as
27 "Parties."
28

1 1.2 DEFENDANTS employ ten or more persons, is a person in the course of doing
2 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
3 California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65"), and manufactures,
4 distributes, and sells Red Dot® Portable Outdoor Flood Light #B660GR ("Lights").

5 **1.3 Notice of Violation.**

6 1.3.1 On or about July 25, 2011, CAG served DEFENDANTS and various
7 public enforcement agencies with a document entitled "60-Day Notice of Violation" (the
8 "July 25, 2011 Notice") that provided the recipients with notice of alleged violations of
9 Health & Safety Code § 25249.6 for failing to warn individuals in California of
10 exposures to di(2-ethylhexyl)phthalate (DEHP) contained in the Lights.

11 1.3.2 No public enforcer has commenced or diligently prosecuted the
12 allegations set forth in the July 25, 2011 Notice.

13 **1.4 Complaint.**

14 On August 28, 2012, CAG filed a Complaint for civil penalties and injunctive relief
15 ("Complaint") in San Francisco Superior Court, Case No. CGC-12-523788. The Complaint
16 alleges, among other things, that DEFENDANTS violated Proposition 65 by failing to give clear
17 and reasonable warnings of exposure to DEHP from Lights.

18 **1.5 Consent to Jurisdiction**

19 For purposes of this Consent Judgment, the parties stipulate that this Court has
20 jurisdiction over the allegations of violations contained in the Complaint and personal
21 jurisdiction over DEFENDANTS as to the acts alleged in the Complaint, that venue is proper in
22 the City and County of San Francisco and that this Court has jurisdiction to enter this Consent
23 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of
24 all claims which were or could have been raised by any person or entity based in whole or in
25 part, directly or indirectly, on the facts alleged therein or arising therefrom or related to.

26 **1.6 No Admission**

27 This Consent Judgment resolves claims that are denied and disputed. The parties enter
28

1 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
2 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
3 constitute an admission with respect to any material allegation of the Complaint, each and every
4 allegation of which DEFENDANTS denies, nor may this Consent Judgment or compliance with
5 it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
6 DEFENDANTS.

7 **2. DEFINITIONS**

8 2.1 "Covered Products" means Red Dot® Portable Outdoor Flood Light #B660GR,
9 limited to those manufactured, distributed, and/or sold by TBC, TBI and TVC.

10 2.2 "Effective Date" means the date of service of Notice of the Court's approval of
11 this Consent Judgment.

12 **3. INJUNCTIVE RELIEF/CLEAR AND REASONABLE WARNINGS**

13 3.1 Within sixty (60) days of the date this Consent Judgment is entered by the Court,
14 DEFENDANTS shall not sell or offer for sale in California Covered Products without first
15 providing a "clear and reasonable warning" under Proposition 65 pursuant to 27 Cal. Code Regs.
16 § 25603 with the following language:
17

18 "WARNING: This product contains a chemical known to the State of California to cause
19 cancer and reproductive toxicity."

20 This warning shall: (a) be displayed on the product's labeling, packaging, shelving, or
21 display; (b) be set out in a text box on a separate line or in a separate paragraph; and (c) be
22 displayed with such conspicuousness, as compared with other words, statements, or designs as to
23 render it likely to be read and understood by an ordinary individual.

24 **4. SETTLEMENT PAYMENT**

25 4.1 Within ten (10) business days of the Effective Date, DEFENDANTS shall pay a
26 total of Fifty-Two Thousand Dollars (\$52,000.00) by separate checks apportioned as set forth
27 below.
28

1 4.1.1 **Civil Penalties.** DEFENDANTS shall issue two separate checks for a total
2 amount of two thousand dollars (\$2,000.00) as penalties pursuant to Health & Safety Code §
3 25249.12: (a) one check made payable to the State of California's Office of Environmental
4 Health Hazard Assessment (OEHHA) in the amount of \$1,500.00, representing 75% of the total
5 penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$500.00,
6 representing 25% of the total penalty. Two separate 1099s shall be issued for the above
7 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184
8 (EIN: 68-0284486) in the amount of \$1,500.00. The second 1099 shall be issued in the amount
9 of \$500.00 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard,
10 Suite 240W, Beverly Hills, California 90212.

11 4.1.2 **Payment In Lieu of Civil Penalties:** DEFENDANTS shall pay
12 \$2,000.00 in lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG will use this
13 payment for investigation of the public's exposure to Proposition 65 listed chemicals through
14 various means, laboratory fees for testing for Proposition 65 listed chemicals, expert fees for
15 evaluating exposures through various mediums, including but not limited to consumer product,
16 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
17 hiring consulting and retained experts who assist with the extensive scientific analysis necessary
18 for those files in litigation, as well as administrative costs incurred during the litigation, in order
19 to reduce the public's exposure to Proposition 65 listed chemicals by notifying those persons
20 and/or entities believed to be responsible for such exposures and attempting to persuade those
21 persons and/or entities to reformulate their products or the source of exposure to completely
22 eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing the same
23 public harm as allegedly in the instant Action. Further, should the court require it, CAG will
24 submit under seal, an accounting of these funds as described above as to how the funds were
25 used. The check shall be made payable to "Consumer Advocacy Group, Inc." and delivered to
26 Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W,
27 Beverly Hills, California 90212.
28

1 4.1.3 **Reimbursement of Attorneys' Fees and Costs:** DEFENDANTS shall
2 pay \$48,000.00 to "Yeroushalmi & Associates" as reimbursement for the investigation fees and
3 costs, testing costs, expert fees, attorney fees, and other litigation costs and expenses for all work
4 performed through the approval of this Consent Judgment.

5 4.2 Payments pursuant to 4.1.1, 4.1.2 and 4.1.3 shall be delivered to: Reuben
6 Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA
7 90212.

8 4.5 **Escrow Account:** Within ten (10) business days of the Effective Date, TBC &
9 TBI agree to place \$13,000 in an escrow account ("Escrow Funds"). The Escrow Funds will be
10 used to explore the feasibility of reformulation of the Covered Products. If after one year
11 following entry of this Consent Judgment or when the \$13,000 is exhausted (whichever occurs
12 first), TBC & TBI, in their sole discretion, determines that reformulation is not feasible, "clear
13 and reasonable warning" labels will continue to be utilized on all Covered Products distributed
14 for sale in California.

15 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

16 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
17 behalf of itself and in the public interest and DEFENDANTS and its officers, directors, insurers,
18 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
19 companies and their successors and assigns ("Defendant Releasees"), including but not limited to
20 each of its suppliers, customers, distributors, wholesalers, retailers, or any other person in the
21 course of doing business, and the successors and assigns of any of them, who may use, maintain,
22 distribute or sell Covered Products ("Downstream Defendant Releasees"), for all claims for
23 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from
24 Covered Products as set forth in the Notice. DEFENDANTS and Defendant Releasees'
25 compliance with this Consent Judgment shall constitute compliance with Proposition 65 with
26 respect to DEHP exposures from Covered Products as set forth in the Notice.
27
28

1 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
2 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
3 indirectly, any form of legal action and releases all claims, including, without limitation, all
4 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
5 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
6 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
7 fixed or contingent (collectively "Claims"), against DEFENDANTS, Defendant Releasees, and
8 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
9 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
10 Products manufactured, distributed, or sold by DEFENDANTS and Defendant Releasees. In
11 furtherance of the foregoing, as to alleged exposures to DEHP from Covered Products, CAG
12 hereby waives any and all rights and benefits which it now has, or in the future may have,
13 conferred upon it with respect to the Claims arising from any violation of Proposition 65 or any
14 other statutory or common law regarding the failure to warn about exposure to DEHP from
15 Covered Products by virtue of the provisions of section 1542 of the California Civil Code, which
16 provides as follows:

17
18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
20 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
 DEBTOR.

21 CAG understands and acknowledges that the significance and consequence of this waiver of
22 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
23 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from
24 any violation of Proposition 65 or any other statutory or common law regarding the failure to
25 warn about exposure to DEHP from Covered Products, including but not limited to any exposure
26 to, or failure to warn with respect to exposure to DEHP from the Covered Products, CAG will
27 not be able to make any claim for those damages against DEFENDANTS or the Defendant
28 Releasees or Downstream Defendant Releasees. Furthermore, CAG acknowledges that it intends

1 these consequences for any such Claims arising from any violation of Proposition 65 or any
2 other statutory or common law regarding the failure to warn about exposure to DEHP from
3 Covered Products as may exist as of the date of this release but which CAG does not know exist,
4 and which, if known, would materially affect their decision to enter into this Consent Judgment,
5 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
6 negligence, or any other cause.

7 **6. ENFORCEMENT OF JUDGMENT**

8 6.1 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, City and County of San Francisco, giving the notice required by law, enforce the
11 terms and conditions contained herein. A Party may enforce any of the terms and conditions of
12 this Consent Judgment only after that Party first provides 30 days' notice to the Party allegedly
13 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
14 such Party's failure to comply in an open and good faith manner.

15 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
16 proceeding to enforce Section 3 of this Consent Judgment, CAG shall provide a Notice of
17 Violation ("NOV") to DEFENDANTS. The NOV shall include for each of the Covered
18 Products: the date(s) the alleged violation(s) was observed and the location at which the Covered
19 Products were offered for sale, and shall be accompanied by all test data obtained by CAG
20 regarding the Covered Products, including an identification of the component(s) of the Covered
21 Products that were tested.

22 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
23 alleged violation if, within 30 days of receiving such NOV, DEFENDANTS serves a
24 Notice of Election ("NOE") that meets one of the following conditions:

25 (a) The Covered Products were shipped by DEFENDANTS for sale in
26 California before the Effective Date, or
27
28

1 (b) Since receiving the NOV DEFENDANTS has taken corrective
2 action by either (i) requesting that its customers in California remove the Covered
3 Products identified in the NOV from sale in California and destroy or return the Covered
4 Products to DEFENDANTS, or (ii) providing a clear and reasonable warning for the
5 Covered Products identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

6 6.2.2 **Contested NOV.** DEFENDANTS may serve an NOE informing CAG of
7 its election to contest the NOV within 30 days of receiving the NOV.

8 (a) In its election, DEFENDANTS may request that the sample(s)
9 Covered Products tested by CAG be subject to confirmatory testing at an EPA-accredited
10 laboratory.

11 (b) If the confirmatory testing establishes that the Covered Products do
12 not contain DEHP, CAG shall take no further action regarding the alleged violation. If
13 the testing does not establish compliance with Proposition 65, DEFENDANTS may
14 withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section
15 6.2.2.

16 (c) If DEFENDANTS does not withdraw an NOE to contest the NOV,
17 the Parties shall meet and confer for a period of no less than 30 days before CAG may
18 seek an order enforcing the terms of this Consent Judgment.
19

20 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
21 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
22 violation of Proposition 65 or this Consent Judgment.

23 7. ENTRY OF CONSENT JUDGMENT

24 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
25 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
26 DEFENDANTS waive their respective rights to a hearing or trial on the allegations of the
27 Complaint.
28

1 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
2 and any and all prior agreements between the parties merged herein shall terminate and become
3 null and void, and the actions shall revert to the status that existed prior to the execution date of
4 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
5 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
6 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
7 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
8 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

9 **8. MODIFICATION OF JUDGMENT**

10 8.1 This Consent Judgment may be modified only upon written agreement of the
11 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
12 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

13 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
14 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

15 **9. RETENTION OF JURISDICTION**

16 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
17 terms of this Consent Judgment.

18 **10. DUTIES LIMITED TO CALIFORNIA**

19 This Consent Judgment shall have no effect on Covered Products sold outside the State of
20 California.

21 **11. SERVICE ON THE ATTORNEY GENERAL**

22 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
23 California Attorney General so that the Attorney General may review this Consent Judgment
24 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
25 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
26 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
27 the parties may then submit it to the Court for approval.
28

1 **12. ATTORNEY FEES**

2 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
3 and attorney fees in connection with this action.

4 **13. ENTIRE AGREEMENT**

5 13.1 This Consent Judgment contains the sole and entire agreement and understanding
6 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
7 negotiations, commitments and understandings related hereto. No representations, oral or
8 otherwise, express or implied, other than those contained herein have been made by any party
9 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
10 deemed to exist or to bind any of the parties.

11 **14. GOVERNING LAW**

12 14.1 The validity, construction and performance of this Consent Judgment shall be
13 governed by the laws of the State of California, without reference to any conflicts of law
14 provisions of California law.

15 14.2 The Parties, including their counsel, have participated in the preparation of this
16 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
17 Consent Judgment was subject to revision and modification by the Parties and has been accepted
18 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
19 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
20 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
21 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
22 resolved against the drafting Party should not be employed in the interpretation of this Consent
23 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.
24

25 **15. EXECUTION AND COUNTERPARTS**

26 15.1 This Consent Judgment may be executed in counterparts and by means of
27 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
28 one document.

1 **16. NOTICES**

2 16.1 Any notices under this Consent Judgment shall be by personal delivery or First
3 Class Mail.

4
5 If to CAG:

6 Reuben Yeroushalmi, Esq.
7 9100 Wilshire Boulevard, Suite 240W
8 Beverly Hills, CA 90212
9 (310) 623-1926

10 If to THOMAS & BETTS CORPORATION or THOMAS & BETTS
11 INTERNATIONAL, INC.:

12 Thomas & Betts Corporation
13 8155 T&B Blvd.
14 Memphis, TN 38125

15 With a copy to:

16 John Verber, Esq.
17 Burnham Brown
18 P.O. Box 119
19 Oakland, CA 94604
20 Phone: 510.444.6800
21 Fax: 510.835.6666

22 If to TRUE VALUE COMPANY:

23 True Value Company
24 8600 West Bryn Mawr Avenue
25 Chicago, IL 60631

26 With a copy to:

27 John Verber, Esq.
28 Burnham Brown
P.O. Box 119
Oakland, CA 94604
Phone: 510.444.6800
Fax: 510.835.6666

1 **17. AUTHORITY TO STIPULATE**

2 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
4 of the party represented and legally to bind that party.

5 **AGREED TO:**
6 Date: 2-24-14, 2014

AGREED TO:
Date: _____, 2014

7
8
9 By: 
10 For Plaintiff, CONSUMER ADVOCACY
11 GROUP, INC.

By: _____
For Defendants, THOMAS & BETTS
CORPORATION and THOMAS & BETTS
INTERNATIONAL, INC.

AGREED TO:
Date: _____, 2014

By: _____
For Defendant, TRUE VALUE COMPANY.

12
13
14
15
16
17
18
19
20 **IT IS SO ORDERED.**

21
22 Date: _____

JUDGE OF THE SUPERIOR COURT

1 **17. AUTHORITY TO STIPULATE**

2 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
4 of the party represented and legally to bind that party.

5 **AGREED TO:**

6 Date: _____, 2014

AGREED TO:

Date: February 24, 2014

9 By: _____
10 For Plaintiff, CONSUMER ADVOCACY
11 GROUP, INC.

By: Kimberly Crew
For Defendants, THOMAS & BETTS
CORPORATION and THOMAS & BETTS
INTERNATIONAL, INC.

AGREED TO:

Date: February 24, 2014

By: Kimberly Crew
For Defendant, TRUE VALUE COMPANY.

20 **IT IS SO ORDERED.**

22 Date: _____

JUDGE OF THE SUPERIOR COURT