

REC'D
MAY 7 2012
FILING WINDOW

1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 **YEROUSHALMI & ASSOCIATES**
9100 Wilshire Boulevard, Suite 610E
5 Beverly Hills, California 90213
6 Telephone: 310.623.1926
Facsimile: 310.623.1930

7 Attorneys for Plaintiffs,
Consumer Advocacy Group, Inc.

FILED
LOS ANGELES SUPERIOR COURT

JUN 14 2012

JOHN A. CLARKE, CLERK

Jeff W. Lipp
BY JEFF W. LIPP, DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,

14 Plaintiff,

15 v.

16 ACE HARDWARE CORP., a Delaware
17 Corporation;

18 Defendant.

CASE NO. BC 465555

[PROPOSED] STIPULATED CONSENT
JUDGMENT AND [PROPOSED]
ORDER

Health & Safety Code, § 25249.5, et seq.

ACTION FILED:
TRIAL DATE:

20 **1. INTRODUCTION**

21 1.1 On July 18, 2011, Plaintiff, Consumer Advocacy Group, Inc. ("CAG"), filed a
22 complaint in the Los Angeles Superior Court entitled Consumer Advocacy Group, Inc. v. Ace
23 Hardware Corp., et al, Case No. BC 465555, and on or about April 9, 2012 submitted a First
24 Amended Complaint ("FAC"), for civil penalties and injunctive relief pursuant to the provisions
25 of California Health & Safety Code § 25249.5, *et seq.* ("Proposition 65") against Ace. CAG and
26 Ace are collectively referred to hereinafter as "Parties."

27 1.2 Ace Hardware Corp. ("Ace") is a corporation that employs 10 or more persons.
28 Ace allegedly has made available for sale in the State of California the following products:

ORIGINAL

1 ProductWorks Battery-operated decorative or holiday lights, including "Ultra LED" 15 Lights,
2 (Green and Red Box) (UPC 5562580091) ("Light Products"); and tape measures with hand
3 straps, including Regal® 12 Ft. Measure Tape ("Tape Measure Products") (Light Products and
4 Tape Measure Products together the "Covered Products"). Plaintiff alleges that the Covered
5 Products contain Lead, a chemical known to the State of California to cause cancer and birth
6 defects or other reproductive harm. (Lead is hereinafter referred to as "Noticed Chemical.")

7 1.3 On or about December 31, 2010 Plaintiff gave notice of alleged violations of
8 Health and Safety Code section 25249.6, concerning consumer product exposures, subject to a
9 private action, to Ace and Crown Hardware, and to the California Attorney General, County
10 District Attorneys, and City Attorneys for each city containing a population of at least 750,000
11 people in whose jurisdictions the violations allegedly occurred, concerning Light Products.

12 1.4 On or about September 6, 2011 Plaintiff gave notice of alleged violations of
13 Health and Safety Code section 25249.6, concerning consumer product exposures, subject to a
14 private action to Ace, and to the California Attorney General, County District Attorneys, and
15 City Attorneys for each city containing a population of at least 750,000 people in whose
16 jurisdictions the violations allegedly occurred, concerning Tape Measure Products.

17 1.5 Ace denies the material allegations of the notices and the FAC, and denies
18 liability for the cause of action alleged in the FAC and in connection with this matter.

19 1.6 For purposes of this Stipulated Consent Judgment only, the Parties stipulate that
20 this Court has jurisdiction over the allegations of violations contained in CAG's FAC and
21 personal jurisdiction over Ace as to the acts alleged in the FAC, that venue is proper in the
22 County of Los Angeles, and that this Court has jurisdiction to enter this Stipulated Consent
23 Judgment as a full and final resolution of all claims which were or could have been raised in the
24 FAC based on the facts alleged therein.

25 1.7 The parties enter into this Stipulated Consent Judgment pursuant to a settlement
26 of certain disputed claims as alleged in the FAC for the purpose of avoiding prolonged and costly
27 litigation, including without limitation the expenditure of significant funds by Ace for scientific
28 analysis and related proceedings before the Office of Environmental Hazard Assessment and/or
the Courts related to the Covered Products, and similar expenditures by CAG to oppose such
analysis and proceedings.

1 1.8 Nothing in this Stipulated Consent Judgment shall be construed as an admission
2 by the Parties of any fact, conclusion of law, issue of law or violation of law, including without
3 limitation, any admission concerning any violation of Proposition 65 or any other statutory,
4 regulatory, common law, or equitable doctrine, or the meaning of the terms "knowingly and
5 intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code
6 section 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with its terms,
7 shall constitute or be construed as an admission by the Parties of any fact, conclusion of law,
8 issue of law, or violation of law, or of fault, wrongdoing, or liability by Ace, its officers,
9 directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as
10 evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum.

11 1.9 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any
12 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
13 except as expressly provided in this Stipulated Consent Judgment.

14 1.10 This Stipulated Consent Judgment is the product of negotiations and compromise
15 and is accepted by the Parties, for purposes of settling, compromising, and resolving issues
16 disputed in this action, including future compliance by Ace with Section 2 of this Stipulated
17 Consent Judgment, and shall not be used for any other purpose, or in any other matter.

18 **2. COMPLIANCE — INJUNCTIVE RELIEF**

19 2.1 Light Products: Ace agrees, promises, and represents that it will not knowingly
20 ship, sell, or offer to be shipped for sale in California as of thirty (30) days after entry by the
21 Court of this Stipulated Consent Judgment (the "Compliance Date"), any Light Product unless it
22 is a Reformulated Light Product, or if not a Reformulated Light Product, provide warnings as set
23 forth in Paragraph 2.3 below. For the purposes of this Paragraph 2.1, Reformulated Light
24 Product shall mean a Light Product with no plastic covering exceeding 100 parts per million of
25 total Lead as tested pursuant to any testing method protocol consistent with Proposition 65.

26 2.2 Tape Measure Products: As of the Compliance Date, Ace agrees, promises, and
27 represents that it will not knowingly ship, sell, or offer to be shipped for sale in California any
28 Tape Measure Product unless it is a Reformulated Tape Measure Product. For the purposes of
this Paragraph 2.2, Reformulated Tape Measure Product shall mean a Tape Measure Product

1 with no surface layer exceeding 100 parts per million of Lead as tested pursuant to any testing
2 method protocol consistent with Proposition 65.

3 2.3 Warning Requirements: To the extent Light Products are not Reformulated Light
4 Product, any such Light Products shipped, sold or offered for sale by Ace after the Compliance
5 Date and in accordance with Paragraph 2.1, shall include the following warnings or any other
6 Proposition 65 warning in compliance with Proposition 65:

7 “**WARNING:** This product contains chemicals, including lead, known to the State of
8 California to cause cancer, and birth defects or other reproductive harm. *Wash hands
9 after handling.*”

10 or

11 “**WARNING:** Handling the cord on this product will expose you to lead, a chemical
12 known to the State of California to cause cancer, and birth defects or other reproductive
13 harm. *Wash hands after handling.*”

14 or

15 “**WARNING:** The power cord on this product contains lead, a chemical known to the
16 State of California to cause cancer, and birth defects or other reproductive harm. *Wash
17 hands after handling.*”

18 The word “WARNING” shall be in all capital letters and in bold typeface. The hand-washing
19 admonition shall be in bold typeface and italicized.

20 3. SETTLEMENT PAYMENT

21 3.1 Within ten (10) days of the approval of this Stipulated Consent Judgment by the
22 Court, Ace shall pay a total of forty thousand dollars (\$40,000) to Consumer Advocacy Group,
23 Inc. and Yeroushalmi & Associates. The payment shall be made by separate checks apportioned
24 as follows:

25 3.1.1 Monetary Payment in Lieu of Civil Penalty: One Thousand dollars (\$1,000.00)
26 shall be paid to CAG in lieu of any civil penalty pursuant to California Health and Safety Code §
27 25249.7(b). CAG will use the payment for such projects and purposes related to environmental
28 protection, worker health and safety, or reduction of human exposure to hazardous substances
(including administrative and litigation costs arising from such projects), as CAG may choose.
The check shall be made payable to Consumer Advocacy Group, Inc. and delivered to Reuben

1 Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills,
2 California 90212.

3 3.1.2 Attorneys' Fees and Costs: \$39,000.00 dollars (Thirty-nine thousand dollars) of
4 such payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable
5 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
6 investigating, bringing this matter to Ace's attention, litigating, and negotiating a settlement in
7 the public interest. The check shall be made payable to Yeroushalmi & Associates and delivered
8 to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E,
9 Beverly Hills, California 90212.

10 **4. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

11 4.1 This written Stipulated Consent Judgment may only be modified by written
12 agreement of CAG and Ace upon stipulation and Order of the Court, or after noticed motion, and
13 upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion of CAG or
14 Ace as provided by law and upon entry of a modified Stipulated Consent Judgment by the Court.

15 **5. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT**

16 5.1 Either party may, by motion or application for an order to show cause before the
17 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth
18 in paragraphs 9.1 and 9.2 of this Stipulated Consent Judgment, enforce the terms and conditions
19 contained in this Stipulated Consent Judgment. The prevailing party shall be entitled to its
20 reasonable attorneys' fees and costs associated with such motion or application.

21 **6. APPLICATION OF STIPULATED CONSENT JUDGMENT**

22 6.1 This Stipulated Consent Judgment shall apply to and be binding upon the Parties
23 hereto, their parent companies, affiliates and each of their divisions, subdivisions and
24 subsidiaries, officers, directors, employees, agents and their successors or assigns, and to the
25 extent allowed by law, on the general public.

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1 **7. CLAIMS COVERED AND RELEASED**

2 **7.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

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4 This Consent Judgment is a full, final and binding resolution between CAG, on behalf
5 of itself and in the public interest, and Ace, of any violation of Proposition 65 that was or could
6 have been asserted by CAG against Ace, its parents, subsidiaries, affiliated entities that are
7 under common ownership, directors, officers, employees, attorneys, representatives,
8 shareholders, agents and each entity to whom Ace Store directly or indirectly distributes, or
9 sells, or from whom Ace receives, Covered Products, including but not limited to past and
10 present upstream and downstream distributors, wholesalers, customers, retailers, franchisees,
11 auctioneers, dealers, cooperative members, licensors, licensees, owners, purchasers, users,
12 parent companies, corporate affiliates, and subsidiaries, and Crown Hardware and
13 ProductWorks with respect to the Light Products (and their past and present downstream
14 distributors, wholesalers, customers, retailers, franchisees, auctioneers, dealers, cooperative
15 members, licensors, licensees, owners, purchasers, users, parent companies, corporate
16 affiliates, and subsidiaries), and Service Tool Company, LLC with respect to Tape Measure
17 Products (and its past and present downstream distributors, wholesalers, customers, retailers,
18 franchisees, auctioneers, dealers, cooperative members, licensors, licensees, owners,
19 purchasers, users, parent companies, corporate affiliates, and subsidiaries), and their respective
20 past and current officers, directors, principals, partners, members, attorneys, representatives,
21 shareholders, agents, and employees (collectively "Releasees"), based on their failure to warn
22 about alleged exposures to Lead contained in the Covered Products.

23 **7.2 Plaintiff's Public Release of Proposition 65 Claims**

24 CAG, acting on its own behalf and in the public interest releases Ace and Releasees
25 from all claims for violations of Proposition 65 up through the Effective Date based on
26 exposure to Lead from the Covered Products, manufactured, distributed, sold and/or offered for
27 sale by Ace, and by Crown Hardware and ProductWorks with respect to Light Products, and by
28

1 Service Tool Company, LLC with respect to Tape Measure Products. Compliance with the
2 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
3 exposures to Lead from the Covered Products.

4 **7.3 Plaintiff's Individual Release of Claims**

5 CAG also, in its individual capacity only and *not* in its representative capacity,
6 provides a release herein to Ace and to Releasees which shall be effective as a full and final
7 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
8 attorneys' fees, damages, losses, claims, liabilities and demands of Plaintiff of any nature,
9 character or kind, whether known or unknown, suspected or unsuspected, limited to and arising
10 out of alleged or actual exposures to Lead in the Covered Products manufactured, distributed,
11 sold and/or offered for sale by Ace, and by Crown Hardware and ProductWorks with respect to
12 Light Products, and by Service Tool Company, LLC with respect to Tape Measure Products. It
13 is possible that other injuries, damages, liability, or claims not now known to the Parties arising
14 out of the facts alleged in the FAC and relating to the exposure of individuals to the Noticed
15 Chemical in the Covered Products will develop or be discovered, and this Stipulated Consent
16 Judgment is expressly intended to cover and include all such injuries, damages, liability, and
17 claims, including all rights of action therefor. CAG has full knowledge of the contents of Section
18 1542 of the California Civil Code. CAG, on behalf of itself only, acknowledges that the claims
19 released in section 7.2 above may include unknown claims and waives Section 1542 as to any
20 such unknown claims. Section 1542 reads as follows:

21 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
22 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
23 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
24 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
25 OR HER SETTLEMENT WITH THE DEBTOR"

26 CAG acknowledges and understands the significance and consequences of this specific waiver
27 of Civil Code Section 1542.

28 **7.4 Defendant's Release of Plaintiff**

Ace, on behalf of itself, its past and current agents, representatives, attorneys,
successors, and/or assignees, hereby waives any and all claims against CAG, its attorneys and

1 other representatives, for any and all actions taken or statements made (or those that could have
2 been taken or made) by CAG and its attorneys and other representatives, whether in the course of
3 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
4 respect to the Covered Products.

5 **8. SEVERABILITY**

6 8.1 In the event that any of the provisions of this Stipulated Consent Judgment are
7 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
8 adversely affected, except to the extent a court invalidates any of the effect of Paragraph 7.2, in
9 which case this Stipulated Consent Judgment shall become null and void.

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11 **9. NOTICE AND CURE**

12 9.1 No action to enforce this Stipulated Consent Judgment may be commenced, and
13 no notice of violation related to the Covered Products may be served or filed against Ace by
14 CAG, unless the party seeking enforcement or alleging violation notifies the other party of the
15 specific acts alleged to breach this Stipulated Consent Judgment at least 90 days before serving
16 or filing any motion, action, or Notice of Violation. Any notice to Ace must contain (a) the name
17 of the product, (b) specific dates when the product was sold in California, (c) the store or other
18 place at which the product was available for sale to consumers, and (d) any other evidence or
19 other support for the allegations in the notice.

20 9.2 Within 30 days of receiving the notice described in Paragraph 9.1, Ace shall
21 either (1) withdraw the product, or (2) refute the information provided under Paragraph 9.1.
22 Should the parties be unable to resolve the dispute, either party may seek relief under Paragraph
23 5.

24 **10. GOVERNING LAW**

25 10.1 The terms of this Stipulated Consent Judgment shall be governed by the laws of
26 the State of California.

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1 **11. PROVISION OF NOTICE**

2 11.1 All notices required pursuant to this Stipulated Consent Judgment and
3 correspondence shall be sent to the following:

4 For Consumer Advocacy Group, Inc.:

5
6 Reuben Yeroushalmi
7 YEROUSHALMI & ASSOCIATES
8 9100 Wilshire Boulevard, Suite 610E
9 Beverly Hills, CA 90212
10 T: 310-623-1926
11 F: 310-623-1930

12 For Ace Hardware Corp.:

13
14 Lee N. Smith
15 Stoel Rives
16 500 Capitol Mall, Suite 1600
17 Sacramento, CA 95814
18 Tel: (916) 447-0700
19 Fax: (916) 447-4781

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21 **12. COURT APPROVAL**

22 12.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be of no
23 further force or effect.

24 12.2 CAG shall comply with Health and Safety Code section 25249.7(0 and with Title
25 11 California Code of Regulations section 3003.

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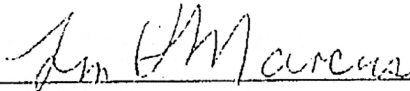
13. EXECUTION AND COUNTERPARTS

13.1 This Stipulated Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document. Facsimile or pdf signatures shall be construed as valid as the original.

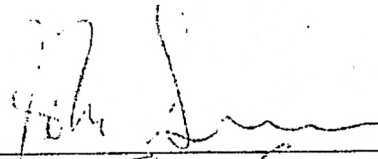
14. AUTHORIZATION

14.1 Each signer of this Stipulated Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to the terms and conditions of this Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment.

CONSUMER ADVOCACY GROUP, INC.

Dated: 4/27/12 By: 
Name: Lyn H Marcus
Title: President

ACE HARDWARE CORP.

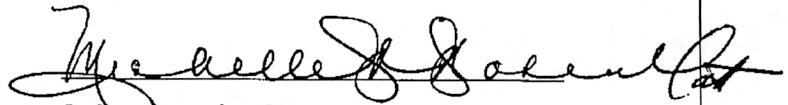
Dated: _____ By: 
Name: John Surname
Title: SVP merchandising

2012/04/27

ORDER

Based upon the Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and Ace, the Consent Judgment is approved and judgment is hereby entered according to the terms herein,

Dated: 6-14-12



Judge, Superior Court

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