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Sherri R. Carter, Executive Officer/Clerk
By *R. Castle* Deputy
R. Castle

FILING WINDOW

1 Lucas Novak (SBN 257484)
2 LAW OFFICES OF LUCAS T. NOVAK
3 8335 W Sunset Blvd., Suite 217
4 Los Angeles, CA 90069
5 Telephone: (323) 337-9015
6 Email: lucas.nvk@gmail.com

7 Attorney for Plaintiff, Darren Kenny

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 DARREN KENNY, an individual,)
11)
12 Plaintiff,)
13)
14 v.)
15)
16 AUTOZONE STORES, INC., a corporation,)
17 and DOES 1 through 100, inclusive,)
18)
19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO. BC523833

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Hon. Debre K. Weintraub
Dept.: "47"

Compl. Filed: October 8, 2013

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff, Darren Kenny
4 (“Plaintiff”) and Defendant, AutoZone Stores, Inc. (“Defendant”). Plaintiff and Defendant shall
5 hereinafter collectively be referred to as the “Parties.”

6 Plaintiff is a citizen of the state of California with an interest in protecting the
7 environment, improving human health and the health of ecosystems, and supporting
8 environmentally sound practices, which includes promoting awareness of exposure to toxic
9 chemicals and reducing exposure to hazardous substances found in consumer products.
10 Defendant employs ten (10) or more employees and is a person in the course of doing business
11 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
12 65”).

13 **1.2 Allegations**

14 Plaintiff alleges that Defendant distributed, supplied, and/or sold brass padlocks
15 manufactured by or otherwise obtained from Master Lock Company LLC (“Master Lock”) that
16 allegedly exposed users in the State of California to hazardous levels of lead and lead
17 compounds (collectively, “LEAD”), including Brass Padlock 1-3/16”, 8819D (SKU 0-71649-
18 22265-8) (hereinafter, the “Products”), without providing “clear and reasonable warnings,” in
19 violation of Proposition 65. LEAD is potentially subject to Proposition 65 warning
20 requirements.

21 On August 2, 2013, a sixty-day notice of violation (“60-Day Notice”), along with a
22 Certificate of Merit, was provided by Plaintiff to Defendant and various public enforcement
23 agencies regarding the alleged violation of Proposition 65 with respect to the Products.

24 On October 8, 2013, in the interest of the general public, Plaintiff filed the instant action in the
25 Superior Court for the County of Los Angeles, alleging violation of Proposition 65 with respect
26 to the Products.

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1 **1.3 No Admissions**

2 Defendant denies all allegations in Plaintiff's 60-Day Notice and Complaint, and
3 maintains that the Products have been, and are, in compliance with all laws, and that Defendant
4 has not violated Proposition 65. This Consent Judgment shall not be construed as an admission
5 of liability by Defendant but to the contrary as a compromise of claims that are expressly
6 contested and denied. However, nothing in this section shall affect the Parties' obligations,
7 duties, and responsibilities under this Consent Judgment.

8 **1.4 Jurisdiction And Venue**

9 For purposes of this Consent Judgment, the Parties stipulate that the above-entitled Court
10 has jurisdiction over Defendant as to the allegations of the Complaint, that venue is proper in Los
11 Angeles County, ~~and that this Court has jurisdiction to enter and enforce this Consent Judgment~~
12 ~~pursuant to California Code of Civil Procedure section 304.0.~~

13 **1.5 Effective Date**

14 The "Effective Date" shall be the date upon which this Consent Judgment is entered by
15 the Court.

16 **2. INJUNCTIVE RELIEF AND WARNINGS**

17 **2.1 Injunctive Relief**

18 Within sixty (60) days of the Effective Date, Defendant shall not sell or offer for sale in
19 California any of the Products that yield more than 1.0 microgram of lead when using a wipe test
20 pursuant to NIOSH Test Method 9100, and yield more than 100 parts per million ("ppm") lead
21 when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent
22 methodologies utilized by federal or state agencies for the purpose of determining lead content in
23 a solid substance, without providing "clear and reasonable warnings" as described in paragraph
24 2.2 below. In addition, as of the Effective Date, Defendant agrees and represents that Master
25 Lock will place said warnings on all units of Brass Padlock 1-3/16", 8819D (SKU 0-71649-
26 22265-8) in its custody that are purchased by AutoZone and intended to be sold and/or offered
27 for sale in California.

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1 **2.2 Clear And Reasonable Warnings**

2 Each unit shall be accompanied by the following specific warning with the capitalized,
3 emboldened and italicized wording:

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

7 Each unit shall carry said warning directly on each unit or its label or package, near the
8 product name, price, or UPC code, in a sufficiently conspicuous manner reasonably calculated to
9 be seen by the ordinary consumer.

10 **3. PAYMENTS**

11 **3.1 Civil Penalty Pursuant To Proposition 65**

12 In settlement of all causes of action in Plaintiff’s Complaint, Defendant shall pay a total
13 civil penalty of two thousand five hundred dollars (\$2,500.00) to be apportioned in accordance
14 with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,875.00) paid to State
15 of California Office of Environmental Health Hazard Assessment, and the remaining 25%
16 (\$625.00) paid to Plaintiff.

17 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
18 made payable to “Law Offices of Lucas T. Novak in Trust for Office of Environmental Health
19 Hazard Assessment” in the amount of \$1,875.00; and (2) a check or money order made payable
20 to “Law Offices of Lucas T. Novak in Trust for Darren Kenny” in the amount of \$625.00.

21 Defendant shall remit the payments within five (5) business days of the Effective Date, to:

22
23 Lucas T. Novak, Esq.
24 LAW OFFICES OF LUCAS T. NOVAK
25 8335 W Sunset Blvd., Suite 217
26 Los Angeles, CA 90069

27 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

28 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
incurred in prosecuting the instant action, for all work performed through execution of this

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1 agreement and entry of this Consent Judgment. Accordingly, Defendant shall issue a check or
2 money order made payable to "Law Offices of Lucas T. Novak" in the amount of nineteen
3 thousand five hundred dollars (\$19,500.00). Defendant shall remit the payment within five (5)
4 business days of the Effective Date, to:

5 Lucas T. Novak, Esq.
6 LAW OFFICES OF LUCAS T. NOVAK
7 8335 W Sunset Blvd., Suite 217
8 Los Angeles, CA 90069

9 **4. RELEASES**

10 **4.1 Plaintiff's Public Release Of Proposition 65 Claims**

11 Plaintiff, acting on his behalf and in the public interest, releases and discharges (a)
12 Defendant, its parents, shareholders, divisions, subdivisions, subsidiaries and affiliates, and their
13 successors and assigns (collectively, the "Defendant Releasees"), and (b) Master Lock Company,
14 LLC, its parents, shareholders, divisions, subdivisions, subsidiaries, and their successors and
15 assigns (collectively, the "Master Lock Releasees"), and all entities within the chain of
16 distribution of the Products between Master Lock Releasees and Defendant Releasees, from any
17 violations or claims arising under Proposition 65 for unwarned exposures to LEAD from the
18 Products sold and/or offered for sale by Defendant prior to the Effective Date, as set forth in the
19 60-Day Notice. Compliance with the terms of this Consent Judgment constitutes compliance
20 with Proposition 65 with respect to exposures to LEAD from the Products.

21 **4.2 Defendant's Release Of Plaintiff**

22 Defendant, by this Consent Judgment, waives all rights to institute any form of legal
23 action against Plaintiff, his past and current agents, representatives, attorneys, experts,
24 successors, and/or assignees, for actions or statements made or undertaken, whether in the course
25 of investigating claims or seeking enforcement of Proposition 65 against Defendant in this
26 matter.

27 **4.3 Waiver Of Unknown Claims**

28 Each of the Parties acknowledges that it is familiar with Section 1542 of California *Civil Code* which provides as follows:

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1 "A general release does not extend to claims which the creditor does not
2 know or suspect to exist in his or her favor at the time of executing the
3 release, which if known by him or her must have materially affected his or
4 her settlement with the debtor."

5 Each of the parties waives and relinquishes any right or benefit it has or may have under
6 Section 1542 of California *Civil Code* or any similar provision under the statutory or non-
7 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
8 and benefits pertaining to the claims in this Consent Judgment. The Parties acknowledge that
9 each may subsequently discover facts in addition to, or different from, those that it believes to be
10 true with respect to the claims released herein. The Parties agree that this Consent Judgment and
11 the releases contained herein shall be and remain effective in all respects notwithstanding the
12 discovery of such additional or different facts.

13 **5. COURT APPROVAL**

14 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
15 Motion for Approval & Entry of Consent Judgment in the above-entitled Court. This Consent
16 Judgment is not effective until it is approved and entered by the Court and shall be null and void
17 if, for any reason, it is not approved and entered by the Court within one (1) year after its full
18 execution by all Parties. It is the intention of the Parties that the Court approve this Consent
19 Judgment, and in furtherance of obtaining such approval, the Parties and their respective counsel
20 agree to mutually employ their best efforts to support the entry of this agreement in a timely
21 manner, including cooperating on drafting and filing any papers in support of the required
22 motion for judicial approval.

23 **6. SEVERABILITY**

24 Subsequent to Court approval of this Consent Judgment, should any part or provision of
25 this Consent Judgment, for any reason, be declared by a Court to be invalid, void or
26 unenforceable, the remaining portions and provisions shall continue in full force and effect.

27 **7. GOVERNING LAW**

28 The terms of this Consent Judgment shall be governed by the laws of the State of

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1 California.

2 **8. NOTICES**

3 All correspondence and notices required to be provided under this Consent Judgment
4 shall be in writing and delivered personally or sent by first class or certified mail addressed as
5 follows:

6 TO DEFENDANT:

TO PLAINTIFF:

7 Levi W. Heath, Esq.
8 BARNES & THORNBURG LLP
9 2029 Century Park East, Suite 300
10 Los Angeles, CA 90067-2904

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

11 **9. INTEGRATION**

12 This Consent Judgment constitutes the entire agreement between the parties with respect
13 to the subject matter hereof and may not be amended or modified except in writing.

14 **10. COUNTERPARTS**

15 This Consent Judgment may be executed in counterparts, each of which shall be deemed
16 an original, and all of which, when taken together, shall constitute the same document. Execution
17 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
18 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
19 Judgment shall have the same force and effect as the originals.

20 **11. AUTHORIZATION**

21 The undersigned are authorized to execute this Consent Judgment on behalf of their
22 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
23 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
24 Consent Judgment and not subject to any conflicting obligation which will or might prevent or
25 interfere with the execution or performance of this Consent Judgment by said party.

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1 AGREED TO:

2 Date: 6/3/14

3
4 By: [Signature]

5 Authorized Agent of Defendant, AutoZone Stores, Inc.

6
7 AGREED TO:

8 Date: 6/3/2014

9
10 By: [Signature]

11 Plaintiff, Darren Kenny

12
13
14 IT IS SO ORDERED.

15
16 Dated: 9/18/14

[Signature]
17 JUDGE OF THE SUPERIOR COURT

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23 APPROVED AS TO LEGAL FORM
24 Attest: [Signature]
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