



1 **1. RECITALS**

2 **1.1 The Parties**

3 1.1.1 This Consent Judgment is entered into by and between Isabel Ruggeri  
4 (“Plaintiff”), on the one hand, and HD Supply Repair And Remodel, LLC doing business as HD  
5 Supply Home Improvement Solutions (“Defendant”), on the other hand. Plaintiff and Defendant  
6 shall hereinafter collectively be referred to as the “Parties.”

7 1.1.2 Plaintiff is a citizen of the State of California with an interest in protecting  
8 the environment, improving human health and the health of ecosystems, and supporting  
9 environmentally sound practices, which includes promoting awareness of exposure to toxic  
10 chemicals and reducing exposure to hazardous substances found in consumer products.

11 1.1.3 Defendant employs ten (10) or more employees and is a person in the  
12 course of doing business as the term is defined in California *Health & Safety Code* section  
13 25249.6 et seq. (“Proposition 65”).

14 **1.2 Allegations**

15 1.2.1 Plaintiff alleges that Defendant manufactured, distributed, supplied, and/or  
16 sold tape measures, including HD Supply tape measure 1” x 25’ (4-00007-75882-7) (hereinafter,  
17 the “Products”) in the State of California causing users in California to be exposed to hazardous  
18 levels of lead without providing “clear and reasonable warnings”, in violation of Proposition 65.  
19 Lead is subject to Proposition 65 warning requirements because it is listed as known to cause  
20 cancer and birth defects and other reproductive harm.

21 1.2.2 On October 20, 2014, a sixty-day notice of violation (the “60-Day  
22 Notice”), along with a Certificate of Merit, was provided by Plaintiff to Defendant, HD Supply,  
23 Inc., HD Supply Holdings, Inc. and various public enforcement agencies regarding the alleged  
24 violation of Proposition 65 with respect to lead in the Products. Defendant asserts that HD  
25 Supply, Inc. and HD Supply Holdings, Inc. are only holding companies and therefore are not  
26 subject to the claims asserted in the 60-Day Notice. Plaintiff subsequently filed the instant action  
27 in the public interest in the Superior Court for the County of Los Angeles, alleging violation of  
28 Proposition 65 with respect to the Products.

1           **1.3 No Admissions**

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

8           **1.4 Compromise**

9           The Parties enter into this Consent Judgment in order to resolve the controversy  
10 described above in a manner consistent with prior Proposition 65 settlements and consent  
11 judgments that were entered on behalf of the public interest and to avoid prolonged and costly  
12 litigation between them.

13           **1.5 Jurisdiction And Venue**

14           For purposes of this Consent Judgment, the Parties stipulate that the above-entitled Court  
15 has jurisdiction over Defendant as to the allegations of the Complaint and that venue is proper in  
16 Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of  
17 this Consent Judgment pursuant to California Code of Civil Procedure ("CCP") § 664.6 and  
18 Proposition 65.

19           **1.6 Effective Date**

20           The "Effective Date" shall be the date upon which this Consent Judgment is approved by  
21 the Court.

22 **2. INJUNCTIVE RELIEF AND REFORMULATION**

23           **2.1 Reformulation Standard**

24           As of the Effective Date, Defendant shall not sell or offer for sale in California the  
25 Products if they contain more than 100 parts per million of lead in their accessible surfaces when  
26 analyzed pursuant to Environmental Protection Agency testing methodologies 3050B or  
27 equivalent and/or by other methodologies to confirm lead content levels. As of the Effective  
28 Date, if the Products do not meet this Reformulation Standard, then clear and reasonable

1 Proposition 65 warnings must accompany each unit, as described below in paragraphs 2.2.1 and  
2 2.2.2.

3 **2.2 Proposition 65 Warnings**

4 2.2.1 If the Products do not meet the Reformulation Standard described above in  
5 paragraph 2.1, then Defendant shall not manufacture, distribute, supply, and/or sell for use or  
6 sale in California any Products containing the lead in their accessible surfaces unless clear and  
7 reasonable Proposition 65 warnings are provided with each unit with the following specific  
8 warning with the capitalized and emboldened wording:

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

12 The bracketed text may, but is not required to, be used. Defendant may use the bracketed  
13 “[chemicals]” in place of “a chemical” if it knows or has reason to believe that more than one  
14 listed chemicals are present in the Products. A comma may be placed after the word “cancer.”  
15 The warning shall be affixed to each unit or its label or package in a sufficiently conspicuous  
16 manner reasonably calculated to be seen by the ordinary consumer. Alternatively, the warning  
17 statement may appear on a shelf tag or sign at the retail store, provided that the statement is  
18 displayed in close proximity to the point of display of the Product with such conspicuousness, as  
19 compared with other words, statements or designs as to render it likely to be read and understood  
20 by an ordinary consumer of the Product prior to sale.

21 2.2.2 The warning text and method of transmission set forth above are clear and  
22 reasonable within the meaning of California Health & Safety Code Section 25249.6. In the event  
23 that the California Office of Environmental Health Hazard Assessment adopts by regulation  
24 different Proposition 65 warning text and/or methods of transmission applicable to the Products  
25 than are set forth herein, Defendant shall be entitled to implement such other text and/or method  
26 of transmission without being deemed in breach of this Consent Judgment.

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1 **3. PAYMENTS**

2 **3.1 Civil Penalty Pursuant To Proposition 65**

3 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a  
4 total civil penalty of five thousand dollars (\$5,000.00) to be apportioned in accordance with  
5 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,750.00) paid to State of  
6 California Office of Environmental Health Hazard Assessment, and the remaining 25%  
7 (\$1,250.00) paid to Ruggeri.

8 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order  
9 made payable to "Law Offices of Lucas T. Novak in Trust for Office of Environmental Health  
10 Hazard Assessment" in the amount of \$3,750.00; and (2) a check or money order made payable  
11 to "Law Offices of Lucas T. Novak in Trust for Isabel Ruggeri" in the amount of \$1,250.00.  
12 Defendant shall remit the payments within five (5) business days of the Effective Date, to:

13 Lucas T. Novak, Esq.  
14 LAW OFFICES OF LUCAS T. NOVAK  
15 8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

16 **3.2 Reimbursement Of Ruggeri's Fees And Costs**

17 Defendant shall reimburse Ruggeri's reasonable experts' and attorney's fees and costs  
18 incurred in prosecuting the instant action, for all work performed through execution of this  
19 Consent Judgment. Accordingly, Defendant shall issue a check or money order made payable to  
20 "Law Offices of Lucas T. Novak" in the amount of twenty two thousand five hundred dollars  
21 (\$22,500.00). Defendant shall remit the payment within five (5) business days of the Effective  
22 Date, to:

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

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1 **4. RELEASES**

2 **4.1 Plaintiff's Release Of Defendant**

3 Plaintiff, acting in her individual capacity, her past and current agents, representatives,  
4 attorneys, successors and assignees, and in the public interest (the "Releasers"), in consideration  
5 of the promises and monetary payments contained herein, hereby releases Defendant, its parents,  
6 subsidiaries, affiliates under common ownership and control (including HD Supply, Inc. and HD  
7 Supply Holdings, Inc.), shareholders, directors, members, officers, employees, attorneys,  
8 successors and assignees, as well as its downstream distributors, retailers, and franchisees  
9 (collectively "Released Parties"), from any violation(s) or claimed violation(s) of Proposition 65  
10 against the Released Parties regarding the failure to warn about exposure to lead in the Products  
11 sold or distributed by Defendant prior to the Effective Date, even if sold by Defendant's  
12 downstream distributors, retailers, and franchisees after the Effective Date (the "Claim"). This  
13 Consent Judgment is a full, final and binding resolution between Releasers and the Released  
14 Parties of the Claim.

15 **4.2 Defendant's Release Of Ruggeri**

16 Defendant, its parents, subsidiaries, affiliates under common ownership and control  
17 (including HD Supply, Inc. and HD Supply Holdings, Inc.), shareholders, directors, members,  
18 officers, employees, attorneys, successors and assignees, and on behalf of its downstream  
19 distributors, retailers, and franchisees, by this Consent Judgment, waive all rights to institute any  
20 form of legal action against Ruggeri, her past and current agents, representatives, attorneys,  
21 experts, successors and assignees, for actions or statements made or undertaken, whether in the  
22 course of investigating claims or seeking enforcement of Proposition 65 against Defendant in  
23 this matter.

24 **4.3 Waiver Of Unknown Claims**

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

27 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**  
28 **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**

1           **OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**  
2           **WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**  
3           **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

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

12   **5.    COURT APPROVAL**

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

22   **6.    SEVERABILITY**

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

26   **7.    GOVERNING LAW**

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

1 **8. NOTICES**

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

TO DEFENDANT:	TO PLAINTIFF:
Celia Peressini Vice President, Legal HD Supply, Inc. 3100 Cumberland Blvd. Suite 1480 Atlanta, GA 30339	Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
With a copy to:  Ann G. Grimaldi, Esq. Grimaldi Law Offices 50 California St., Suite 1500 San Francisco, CA 94111	

17 **9. COUNTERPARTS**

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

23 **10. AUTHORIZATION**

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



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**AGREED TO:**

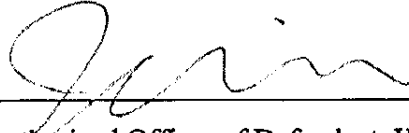
Date: \_\_\_\_\_

By: \_\_\_\_\_

Plaintiff, Isabel Ruggeri

**AGREED TO:**

Date: \_\_\_\_\_

By:  \_\_\_\_\_

Authorized Officer of Defendant, HD Supply Repair And Remodel, LLC doing business  
as HD Supply Home Improvement Solutions

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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**AGREED TO:**

Date: June 26, 2015

By: [Signature]  
Plaintiff, Isabel Ruggeri

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Officer of Defendant, HD Supply Repair And Remodel, LLC doing business  
as HD Supply Home Improvement Solutions

**IT IS SO ORDERED.**

Dated: 7-30-2015

**ELIZABETH R. FEFFER**  
JUDGE OF THE SUPERIOR COURT