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County of Los Angeles

JUN 03 2016

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County of Los Angeles

JUN 03 2016

By Sally Fletcher Deputy  
Sally Fletcher  
Sherri R. Carter, Executive Officer/Clerk

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, Isabel Ruggeri

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

10 ISABEL RUGGERI, an individual, )  
11 Plaintiff, )  
12 v. )  
13 ACE HARDWARE CORPORATION, a )  
14 corporation, JMF MANUFACTURING, LLC, )  
15 a limited liability company, and DOES 1 )  
16 through 100, inclusive, )  
17 Defendants. )

CASE NO. BC609017

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Teresa A. Beaudet  
Dept.: 50  
Compl. Filed: February 3, 2016

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, Isabel Ruggeri  
4     ("Plaintiff"), on the one hand, and Defendants, JMF Manufacturing, LLC ("JMF") and Ace  
5     Hardware Corporation ("Ace") (JMF and Ace collectively referred to herein as "Defendants"),  
6     on the other hand, with Plaintiff and Defendants each individually referred to as a "Party" and  
7     collectively as the "Parties."

8             Plaintiff is a citizen of the state of California with an interest in protecting the  
9     environment, improving human health and the health of ecosystems, and supporting  
10    environmentally sound practices, which includes promoting awareness of exposure to toxic  
11    chemicals and reducing exposure to hazardous substances found in consumer products.  
12    Defendants employ ten (10) or more employees and each is a "person in the course of doing  
13    business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
14    *California Health & Safety Code section 25249.6 et seq.* ("Proposition 65").

15            **1.2     Allegations**

16            The term "Covered Products" means brass flare and compression fittings and other brass  
17    plumbing fittings manufactured, imported, sold or distributed for sale in California by JMF  
18    including, but not limited to, Ace brass adapter Item #41176 and Ace compression connector  
19    Item #4337598. Plaintiff alleges that Defendants sold the Covered Products in the State of  
20    California causing users in California to be exposed to lead and lead compounds without  
21    providing clear and reasonable warnings required by Proposition 65. Lead and lead compounds  
22    are listed pursuant to Proposition 65 as chemicals known to the State of California to cause  
23    cancer and birth defects or other reproductive harm.

24            On October 6, 2015 and November 24, 2015, Plaintiff provided a "Notice of Violation"  
25    to the Defendants and various public enforcement agencies regarding the alleged Proposition 65  
26    violations. Plaintiff subsequently filed the instant action in the Superior Court for the County of  
27    Los Angeles, alleging the violations of Proposition 65.

28    ///

1           **1.3 No Admissions**

2           Defendants deny all allegations in Plaintiff's Notices of Violation and Complaint and  
3 maintain that the Covered Products have been, and are, in compliance with all laws, and that  
4 Defendants have not violated Proposition 65. This Agreement shall not be construed as an  
5 admission of liability by Defendants but to the contrary as a compromise of claims that are  
6 expressly contested and denied. However, nothing in this section shall affect the Parties'  
7 obligations, duties, and responsibilities under this Agreement.

8           **1.4 Jurisdiction And Venue**

9           For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled  
10 Court has jurisdiction over Defendants as to the allegations in the Complaint, that venue is  
11 proper in Los Angeles County, and that this Court has jurisdiction to enter and enforce the  
12 provisions of this Consent Judgment pursuant to California Code of Civil Procedure ("CCP")  
13 § 664.6 and Proposition 65.

14           **1.5 Effective Date**

15           The "Effective Date" shall be the date this Consent Judgment is approved by the Court.

16 **2. INJUNCTIVE RELIEF AND REFORMULATION**

17           **2.1 Reformulation**

18           Commencing on the Effective Date, and continuing thereafter, as to the Covered  
19 Products, Defendants shall not sell in California any Covered Products containing more than 100  
20 parts per million (0.01%) of lead when analyzed pursuant to Environmental Protection Agency  
21 testing methodologies 3050B or equivalent without providing a clear and reasonable warning as  
22 described in section 2.2 below.

23           **2.2 Clear And Reasonable Warnings**

24           Commencing on the Effective Date, and continuing thereafter, for Covered Products that  
25 are distributed for sale, offered for sale, and/or sold by a Defendant in California and do not meet  
26 the reformulation standard described in section 2.1 above, each unit not meeting said  
27 reformulation shall be accompanied by the following specific warning with the capitalized and  
28 emboldened wording:

1  
2       **"WARNING:** This product contains chemicals known to the State of California  
3       to cause cancer, birth defects and other reproductive harm."

4       This statement shall be prominently displayed on the Covered Product or on the  
5       packaging of the Covered Product with such conspicuousness, as compared with other words,  
6       statements or designs as to render it likely to be read and understood by an ordinary consumer  
7       prior to sale. Moreover, each Defendant shall notify its downstream retailers, downstream  
8       distributors, and downstream wholesalers by first-class mail, email, facsimile, or equivalent  
9       means, that any Covered Products that are not reformulated pursuant to Section 2.1 or labeled  
10      with a Proposition 65 warning pursuant to this section may not be sold to California consumers  
11      without providing a clear and reasonable warning that complies with this section.

12      **3.     PAYMENTS**

13           **3.1     Civil Penalty Pursuant To Proposition 65**

14           In settlement of all causes of action in Plaintiff's Complaint, Defendants shall  
15      collectively pay a total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in  
16      accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00)  
17      paid to State of California Office of Environmental Health Hazard Assessment ("OEHHA"), and  
18      the remaining 25% (\$1,000.00) paid to Plaintiff.

19           Payment shall be made in the form of two (2) checks for the civil penalty: (1) a check or  
20      money order made payable to "OEHHA" in the amount of \$3,000.00; and (2) a check or money  
21      order made payable to "Law Offices of Lucas T. Novak" in the amount of \$1,000.00.

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

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

26           **3.2     Reimbursement Of Plaintiff's Fees And Costs**

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

1 agreement and entry of this Consent Judgment, in a collective payment of twenty one thousand  
2 dollars (\$21,000.00). Defendants shall issue a check or money order made payable to "Law  
3 Offices of Lucas T. Novak" within five (5) business days of the Effective Date, to:

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

7 **4. RELEASES**

8 **4.1 Plaintiff's Public Release Of Proposition 65 Claims Against Defendants**

9 The Parties enter into this Consent Judgment with the understanding that the  
10 commitments made herein, and actions to be taken by Defendants under this Consent Judgment,  
11 confer a significant benefit to the public, as set forth in CCP section 1021.5 and Cal. Code Regs.,  
12 tit. 11, section 3201. Accordingly, Plaintiff, acting in her individual capacity, her past and current  
13 agents, representatives, attorneys, successors and assignees, and in the public interest, in  
14 consideration of the promises and monetary payments contained herein, hereby releases  
15 Defendants, their parents, subsidiaries, shareholders, directors, members, officers, employees,  
16 attorneys, successors and assignees, as well as their downstream retailers, downstream  
17 distributors, and downstream wholesalers, including Santa Barbara Home Improvement Center  
18 ("Downstream Releasees") from the claims asserted in Plaintiff's Complaint and Notices of  
19 Violation regarding violation of Proposition 65 with respect to the Covered Products up to the  
20 Effective Date.

21 **4.2 Defendants' Release Of Plaintiff**

22 Defendants, their parents, subsidiaries, shareholders, directors, members, officers,  
23 employees, attorneys, successors and assignees, and on behalf of the Downstream Releasees,  
24 waive all rights to institute any form of legal action against Plaintiff, her past and current agents,  
25 representatives, attorneys, experts, successors and assignees, for actions or statements made or  
26 undertaken, whether in the course of investigating claims or seeking enforcement of Proposition  
27 65 against Defendants in this matter.

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**4.3 Waiver Of Unknown Claims**

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

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

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

**5. COURT APPROVAL**

Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent Judgment is not effective until it is approved and entered by the Court. It is the intention of the Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such approval, the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement in a timely manner, including cooperating on drafting and filing any papers in support of the required motion for judicial approval.

**6. SEVERABILITY**

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

**7. GOVERNING LAW**

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

1 **11. AUTHORIZATION**

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

7  
8 **AGREED TO:**

9 Date: 12-14-15

10 Printed Name: BRIAN MICHAELSEN

11 By: [Signature]

12 Authorized Officer of Defendant, JMF Manufacturing, LLC

13  
14 **AGREED TO:**

15 Date: 2-17-2016

16 Printed Name: John Suran

17 By: [Signature]

18 Authorized Officer of Defendant, Ace Hardware Corporation

19  
20 **AGREED TO:**

21 Date: 3/4/16

22 By: [Signature]

23 Plaintiff, Isabel Ruggieri

24 Per the parties agreement at the hearing on 6/3/16, the wording on page 4, ll. 2-3 is  
25 modified as follows: "cancer and birth defects or other reproductive harm"  
IT IS SO ORDERED.

26  
27 Dated: 4/2/16

[Signature]  
JUDGE OF THE SUPERIOR COURT