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LOS ANGELES
SUPERIOR COURT

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Attorney for Plaintiff, APS&EE, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

APS&EE, LLC, a limited liability company,)
Plaintiff,)

v.)

ILLINOIS INDUSTRIAL TOOL, INC. DBA)
GREAT LAKES WHOLESALE GROUP, a)
corporation, DOLGEN CALIFORNIA, LLC, a)
limited liability company, DOLLAR)
GENERAL CORP., a corporation,)
DOLGENCORP, LLC, a limited liability)
company, and DOES 1 through 100, inclusive,)

Defendants.)

CASE NO. BC666303

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Hon. Terry A. Green

Dept.: 14

Compl. Filed: June 26, 2017

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment ("Consent Judgment") is entered into by and
4 between Plaintiff, APS&EE, LLC ("Plaintiff") and Defendant, Illinois Industrial Tool, Inc.
5 ("Defendant"). Plaintiff and Defendant shall hereinafter collectively be referred to as the
6 "Parties."

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

11 **1.1.3** Defendant is a corporation and a person in the course of doing business as
12 the term is defined in California *Health & Safety Code* section 25249.6 et seq. ("Proposition
13 65").

14 **1.2 Allegations**

15 Plaintiff has alleged that Defendant manufactured, distributed, sold, and/or offered to sell
16 the DG Hardware brand of hammers, including #N0048, 4-30000-66175-6, through Dollar
17 General retail stores in California (hereinafter the "Product(s)"). Plaintiff has alleged that the
18 Products cause users to be exposed to unsafe levels of Di-n-Butyl Phthalate ("DBP"), Di (2-
19 ethylhexyl) Phthalate also known as Bis (2-ethylhexyl) Phthalate ("DEHP"), and Lead, without
20 providing a clear and reasonable warning required by Proposition 65. DBP is listed by the State
21 of California as known to cause birth defects and other reproductive harm. DEHP is listed as
22 known to cause cancer and reproductive toxicity, developmental, male. Lead is listed as known
23 to cause cancer and birth defects or other reproductive harm.

24 On March 6, 2017, Plaintiff provided a sixty-day notice of violation ("60-Day Notice"),
25 along with a Certificate of Merit, to Dolgen California, LLC, Dollar General Corp., Dolgencorp,
26 LLC, and the various public enforcement agencies regarding the alleged violation of Proposition
27 65. On March 31, 2017, Plaintiff provided a supplemental sixty-day notice of violation
28 ("Supplemental Notice"), along with a Certificate of Merit, to Illinois Industrial Tool, Inc. dba

1 Great Lakes Wholesale Group, Dolgen California, LLC, Dollar General Corp., Dolgencorp,
2 LLC, and the various public enforcement agencies regarding the alleged violation of Proposition
3 65. On June 26, 2017, Plaintiff, acting in the public interest, filed the instant action in the
4 Superior Court for the County of Los Angeles, alleging violations of Proposition 65. The 60-Day
5 Notice and Supplemental Notice shall hereinafter be referred to as the "Notices".

6 **1.3 No Admissions**

7 Defendant denies all allegations in Plaintiff's Notices and Complaint and maintains that
8 the Products have been, and are, in compliance with all laws, and that Defendant has not violated
9 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by
10 Defendant but to the contrary as a compromise of claims that are expressly contested and denied.
11 However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities
12 under this Consent Judgment.

13 **1.4 Jurisdiction And Venue**

14 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
15 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
16 in 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 **1.5 Effective Date**

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

22 **2. INJUNCTIVE RELIEF AND REFORMULATION**

23 **2.1 Reformulation**

24 As of the Effective Date, Defendant shall not distribute, sell or offer for sale a Product in
25 California unless (a) the Product contains no more than 100 parts per million (0.01%) of lead or
26 DBP, and no more than 1000 parts per million (0.1%) of DEHP ("Reformulated Product"), or (b)
27 the Product is distributed, sold, or offered for sale with a clear and reasonable warning as
28 described below in Section 2.2.

2.2 Clear And Reasonable Warnings

2.2.1 For any Product that is not a Reformulated Product, such Product shall be accompanied by a clear and reasonable warning. Defendant shall provide the following warning statements (or other warnings consistent with the applicable regulations governing such warnings) as follows:

For Products manufactured before August 30, 2018:

“WARNING: This product may contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.”

For Products manufactured on or after August 30, 2018:

“WARNING: This product can expose you to chemicals, including [lead and/or DEHP and/or DBP]¹, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

The warning for Products manufactured on or after August 30, 2018 shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

The warning required for Products manufactured on or after August 30, 2018 may be used by Defendant on any Products manufactured before that date.

2.2.2 Each unit shall carry the warning directly on each unit or its label or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is sold by Defendant on the internet shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product.

3. PAYMENTS

¹ In accordance with 27 Cal. Code Regs., section 25603, operative Aug. 30, 2018, the warning must expressly identify at least one of the Listed Chemicals present in the Product, as applicable.

1 **3.1 Civil Penalty Pursuant To Proposition 65**

2 In settlement of all causes of action in Plaintiff's Complaint, Defendant shall pay a total
3 civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health*
4 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California
5 Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25%
6 (\$500.00) for Plaintiff.

7 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
8 made payable to "OEHHA" in the amount of \$1,500.00; and (2) a check or money order made
9 payable to "Law Offices of Lucas T. Novak" in the amount of \$500.00. Defendant shall remit
10 the payments within five (5) business days of the Effective Date, to:

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

15 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

16 Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs
17 incurred in prosecuting the instant action, for all work performed through execution of this
18 agreement and entry of this Consent Judgment. Accordingly, Defendant shall issue a check or
19 money order made payable to "Law Offices of Lucas T. Novak" in the amount of eighteen
20 thousand dollars (\$18,000.00). Defendant shall remit the payment within five (5) business days
21 of the Effective Date, to:

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

26 **4. RELEASES**

27 **4.1 Plaintiff's Release Of Proposition 65 Claims Against Defendant**

28 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
the promises and monetary payments contained herein, hereby releases Defendant, its parents,
subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and

1 assignees, as well as Defendant's downstream distributors, wholesalers, and retailers, including
2 Dolgen California, LLC, Dollar General Corp., and Dolgencorp, LLC (collectively "Released
3 Parties"), from any violation arising under Proposition 65 pertaining to the failure to warn about
4 exposures to DBP, DEHP, or Lead from the Products manufactured, sold or distributed for sale
5 in California prior to the Effective Date, as alleged or otherwise asserted in the Notices or
6 Plaintiff's Complaint.

7 **4.2 Defendant's Release Of Plaintiff**

8 Defendant waives all rights to institute any form of legal action against Plaintiff, its
9 shareholders, directors, members, officers, employees, attorneys, experts, successors and
10 assignees for actions or statements made or undertaken, whether in the course of investigating
11 claims or seeking enforcement of Proposition 65 against Defendant in this matter.

12 **4.3 Waiver Of Unknown Claims**

13 Each of the Parties acknowledges that it is familiar with California Civil Code § 1542
14 which provides:

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

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

28 **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

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 California.

8. NOTICES

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

TO DEFENDANT:

Christopher T. Sheean
Swanson, Martin & Bell LLP
330 N. Wabash Ave.
Suite 3300
Chicago, Illinois 60611

TO PLAINTIFF:

Lucas T. Novak, Esq.
Law Offices of Lucas T. Novak
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

9. INTEGRATION

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

10. COUNTERPARTS

This Consent Judgment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Consent Judgment by email, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed

Consent Judgment shall have the same force and effect as the originals.

11. AUTHORIZATION

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

AGREED TO:

Date:

2/2/18

By:

PS

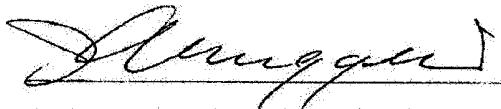
Authorized Officer of Illinois Industrial Tool, Inc.

AGREED TO:

Date:

2/7/18

By:



Authorized Officer of APS&EE, LLC

IT IS SO ORDERED.

MAY 09 2018

Dated: _____

Judge Terry A. Green

JUDGE OF THE SUPERIOR COURT

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Telephone: (323) 337-9015
Email: lucas.nvk@gmail.com

Attorney for Plaintiff, APS&EE, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

APS&EE, LLC, a limited liability company,)
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ILLINOIS INDUSTRIAL TOOL, INC. DBA)
GREAT LAKES WHOLESALE GROUP, a)
corporation, DOLGEN CALIFORNIA, LLC, a)
limited liability company, DOLLAR)
GENERAL CORP., a corporation,)
DOLGENCORP, LLC, a limited liability)
company, and DOES 1 through 100, inclusive,)

Defendants.)

CASE NO. BC666303

~~PROPOSED~~ ORDER GRANTING
MOTION TO APPROVE PROPOSITION
65 SETTLEMENT AND ~~PROPOSED~~
CONSENT JUDGMENT

Date: May 9, 2018
Time: 8:45 a.m.
Dept.: 14

Judge: Hon. Terry A. Green
Dept.: 14
Compl. Filed: June 26, 2017

Unlimited Jurisdiction

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1 Plaintiff, APS&EE, LLC ("Plaintiff") and Defendant, Illinois Industrial Tool, Inc.
2 ("Defendant") have agreed that judgment should be entered in this Proposition 65 action
3 pursuant to the terms of the Consent Judgment executed by the parties. After consideration of all
4 papers submitted and arguments presented, the Court finds that the settlement agreement set
5 forth in the Consent Judgment meets the criteria established by California *Health and Safety*
6 *Code* section 25249.7, in that:

- 7 1. the injunctive relief required by the Consent Judgment complies with Proposition 65;
- 8 2. the reimbursement of attorney's fees and costs pursuant to the Consent Judgment is
9 reasonable; and
- 10 3. the civil penalty required by the Consent Judgment is reasonable.

11 Accordingly, the Motion To Approve Proposition 65 Settlement and [Proposed] Consent
12 Judgment is GRANTED.

13
14 **IT IS SO ORDERED.**

15 **MAY 09 2018**
16 Dated: _____

Judge Terry A. Green

JUDGE OF THE SUPERIOR COURT