

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, APS&EE, LLC

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

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

11 Plaintiff, )

12 v. )

13 GREAT NECK SAW MANUFACTURERS, )  
14 INC., a corporation, and DOES 1 through 100, )  
15 inclusive, )

16 Defendants. )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

CASE NO. BC672282

~~PROPOSED~~ ~~CONSENT~~ JUDGMENT

Judge: Hon. Mark Mooney

Dept.: 68

Compl. Filed: August 15, 2017

Unlimited Jurisdiction

ORIGINAL FILED

OCT 23 2017

LOS ANGELES  
SUPERIOR COURT

RECEIVED

AUG 24 2017

FILING WINDOW

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, Great Neck Saw Manufacturers,  
5 Inc. (“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 that employs ten (10) or more employees and is  
12 a person in the course of doing business as the term is defined in California *Health & Safety*  
13 *Code* section 25249.6 et seq. (“Proposition 65”).

14 **1.2 Allegations**

15 Plaintiff has alleged that Defendant manufactured, distributed, sold, and/or offered to sell  
16 the “Great Neck” brand of screwdrivers, containing unsafe levels of Di (2-ethylhexyl) Phthalate  
17 also known as Bis (2-ethylhexyl) Phthalate (“DEHP”), including, without limitation #92018,  
18 34pc, 0-76812-92018-8, in the State of California causing users to be exposed to DEHP without  
19 providing a clear and reasonable warning required by Proposition 65. DEHP is listed pursuant to  
20 Proposition 65 as a chemical known to the State of California to cause cancer and reproductive  
21 toxicity, developmental, male. For purposes of this Consent Judgment, the terms “Product” or  
22 “Products” shall mean and are defined as screwdrivers that are or have been manufactured, sold  
23 or distributed for sale in California by Defendant.

24 Plaintiff provided a sixty-day notice of violation dated May 5, 2017 (“60-Day Notice”),  
25 along with a Certificate of Merit, to Defendant and various public enforcement agencies  
26 regarding the alleged violation of Proposition 65. Plaintiff, acting in the public interest,  
27 subsequently filed the instant action in the Superior Court for the County of Los Angeles,  
28 alleging violations of Proposition 65.

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

14          **1.5     Effective Date**

15          The "Effective Date" shall be the date on which Plaintiff serves written notice that this  
16 Consent Judgment has been approved and entered by the Court.

17   **2.     INJUNCTIVE RELIEF AND REFORMULATION**

18          **2.1     Reformulation**

19          As of the Effective Date, Defendant shall not distribute, sell, or offer for sale the Products  
20 in California unless (a) the Product contains no more than 1000 parts per million (0.1%) of  
21 DEHP or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable  
22 warning as described in Section 2.2.

23               **2.1.1   Existing Inventory**

24          The injunctive requirements of Section 2 shall not apply to Products that were  
25 manufactured or in the stream of commerce as of the Effective Date, which products are subject  
26 to the releases provided in Section 4.1.

27          **2.2     Clear And Reasonable Warnings**

28               **2.2.1   For Products manufactured before August 30, 2018, whenever a clear and**

1 reasonable warning is required under Section 2.1, it shall state the following with the capitalized  
2 and emboldened wording:

3       **“WARNING:** This product contains DEHP, a chemical known to the State of  
4 California to cause cancer and birth defects or other reproductive harm.”

5       If it has reason to believe that the Products contain additional chemicals listed  
6 under Proposition 65, then Defendant may elect to use the word “chemicals” in place of  
7 “DEHP, a chemical”.

8               **2.2.2** For Products manufactured after August 30, 2018, whenever a  
9 clear and reasonable warning is required under Section 2.1, Defendant shall use the  
10 following warning with the capitalized and emboldened wording:

11               **WARNING:** This product can expose you to DEHP, which is known to the State  
12 of California to cause cancer and birth defects or other  
13 reproductive harm. For more information go to  
14 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15       If it has reason to believe the Products contain additional chemicals listed under  
16 Proposition 65, then Defendant may accomplish a clear and reasonable warning by using the  
17 following statement in lieu of the one set forth in section 2.2.2 above:

18               **WARNING:** This product can expose you to chemicals including DEHP, which  
19 is known to the State of California to cause cancer and birth  
20 defects or other reproductive harm. For more information go to  
21 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

22       The warning required under this subsection 2.2.2 shall be accompanied by a symbol  
23 consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline.  
24 Where the label for the product is not printed using the color yellow, the symbol may be printed  
25 in only black and white. The symbol shall be placed to the left of the text of the warning, in a  
26 size no smaller than the height of the word “WARNING”.

27       The warnings for Products manufactured after August 30, 2018 may also be used by  
28 Defendant on any Products manufactured before that date.

1           2.2.3 Each unit shall carry said warning directly on each unit or its label or  
2 package, with such conspicuousness as compared with other words, statements or designs as to  
3 render it likely to be read and understood by an ordinary consumer prior to sale.

4           A Product that is sold by Defendant on the internet shall also provide the warning  
5 message required by this Section 2.2. by a clearly marked hyperlink on the product display page,  
6 or otherwise prominently displayed to the purchaser before the purchaser completes his or her  
7 purchase of the Product.

8   **3.    PAYMENTS**

9       **3.1    Civil Penalty Pursuant To Proposition 65**

10       In settlement of all causes of action in Plaintiff's Complaint, Defendant shall pay a total  
11 civil penalty of three thousand dollars (\$3,000.00) to be apportioned in accordance with *Health*  
12 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,250.00) paid to State of California  
13 Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25%  
14 (\$750.00) paid to Plaintiff.

15       Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order  
16 made payable to "OEHHA" in the amount of \$2,250.00; and (2) a check or money order made  
17 payable to "Law Offices of Lucas T. Novak" in the amount of \$750.00. Defendant shall remit  
18 the payments within ten (10) business days of the Effective Date, to:

19       Lucas T. Novak, Esq.  
20       LAW OFFICES OF LUCAS T. NOVAK  
21       8335 W Sunset Blvd., Suite 217  
22       Los Angeles, CA 90069

22       **3.2    Reimbursement Of Plaintiff's Fees And Costs**

23       Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs  
24 incurred in prosecuting the instant action, for all work performed through execution of this  
25 agreement and entry of this Consent Judgment. Accordingly, Defendant shall issue a check or  
26 money order made payable to "Law Offices of Lucas T. Novak" in the amount of twenty  
27 thousand five hundred dollars (\$20,500.00). Defendant shall remit the payment within ten (10)  
28 business days of the Effective Date, to:

1  
2 Lucas T. Novak, Esq.  
3 LAW OFFICES OF LUCAS T. NOVAK  
4 8335 W Sunset Blvd., Suite 217  
5 Los Angeles, CA 90069

6 **4. RELEASES**

7 **4.1 Plaintiff's Releases Of Proposition 65 Claims Against Defendant**

8 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of  
9 the promises and monetary payments contained herein, hereby releases Defendant, its parents,  
10 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and  
11 assignees, as well as Defendant's downstream distributors, wholesalers, and retailers, including  
12 but not limited to Wal-Mart Stores, Inc., (collectively "Released Parties"), from any violation  
13 arising under Proposition 65 pertaining to the failure to warn about exposures to DEHP from the  
14 Great Neck brand of screwdrivers manufactured, sold or distributed for sale in California prior to  
15 the Effective Date to the extent alleged or otherwise asserted in the 60-Day Notice or Plaintiff's  
16 Complaint.

17 Plaintiff, acting only in its individual capacity, also hereby releases Defendant and the  
18 Released Parties from any violation arising under Proposition 65 pertaining to the failure to warn  
19 about exposures to DEHP from the Products manufactured, sold or distributed for sale in  
20 California prior to the Effective Date, whether the Products are sold under Defendant's own  
21 brand name or as identified in the document provided by Defendant to Plaintiff entitled  
22 Confidential List Of Private Labels Defendant Owns Or Has Been Authorized To Use For  
23 Screwdrivers.

24 As of the Effective Date, compliance with the terms of this Consent Judgment shall be  
25 deemed compliance with the requirements of Proposition 65 with respect to DEHP in the  
26 Products, whether the Products are sold under Defendant's own brand name or under private  
27 labels Defendant owns or has been authorized to use.

28 **4.2 Defendant's Release Of Plaintiff**

Defendant, acting in its individual capacity and on behalf of all of the other Released

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

#### 5 **4.3 Waiver Of Unknown Claims**

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

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
9 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT  
10 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
11 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR  
HER SETTLEMENT WITH THE DEBTOR.

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

#### 19 **5. COURT APPROVAL**

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

#### 27 **6. SEVERABILITY**

28 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. Prior to initiating any further Proposition 65 action pertaining to the failure to warn about exposures to DEHP from the Great Neck brand of screwdrivers, Plaintiff shall first notify Defendant in writing and provide it with an opportunity to cure the alleged deficiency within a period of thirty (30) days of receipt thereof. The notice and cure portion of this paragraph shall apply to Plaintiff only, and not to any other enforcer of Proposition 65.

**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:**

Robert L. Falk, Esq.  
Morrison Foerster LLP  
425 Market Street, 32<sup>nd</sup> Floor  
San Francisco, CA 94105

**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:

8/8/17

By:

Donna Jacoff  
Authorized Officer of Great Neck Saw Manufacturers, Inc.

**AGREED TO:**

Date:

8/9/17

By:

[Signature]  
Authorized Officer of APS&EE, LLC

**IT IS SO ORDERED.**

Dated:

10/23/17

**MARK V. MOONEY**

JUDGE OF THE SUPERIOR COURT