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FILED
Superior Court of California
County of Los Angeles

07/28/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: R. Duarte Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

Plaintiff,

v.

APEX PRODUCTS, LLC, an Illinois limited
liability company,

Defendant.

Case No.: 19STCV41723

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

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2 Plaintiff Ecological Alliance, LLC ("Plaintiff"), and Defendant Apex Products, LLC
3 ("Defendant") hereby enter into this Stipulated Consent Judgment ("Consent Judgment") as
4 follows:

5 WHEREAS: On or about July 26, 2019, Plaintiff, through Plaintiff's counsel, served a 60
6 Day Notice on Defendant, the California Attorney General, the District Attorneys of every
7 County in the State of California, and the City Attorneys for every City in the State of California
8 with a population greater than 750,000 (collectively, "Public Prosecutor(s)") alleging that
9 Defendant violated California's Safe Drinking Water and Toxic Enforcement Act of 1986,
10 California Health and Safety Code § 25249.6, et seq., and its implementing regulations
11 (collectively, "Proposition 65") and that Plaintiff intended to file an enforcement action in the
12 public interest; and

13 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed grass shears
14 with covers (collectively the "Covered Products") that were sold or distributed for sale in
15 California and further alleges that those Covered Products expose consumers in the State of
16 California to chemicals including Diisononyl phthalate [DINP], which are listed by the State of
17 California pursuant to California Health and Safety Code § 25249.8; and

18 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
19 to DINP in Covered Products without being provided the Proposition 65 warning set out at
20 California Health and Safety Code § 25249.6 and its implementing regulations ("Proposition 65
21 Warning");

22 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has
23 violated Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

24 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and
25 believes that this objective is achieved by the actions described in this Consent Judgment; and

26 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
27 and expense of litigation.

28 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
PLAINTIFF ACTING ON ITS OWN AND IN THE PUBLIC INTEREST AND DEFENDANT

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2 AS FOLLOWS:
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4 INTRODUCTION

5 1.1. On July 26, 2019, Plaintiff served the 60-Day Notice upon Defendant and on
6 Public Prosecutors. No Public Prosecutors commenced an enforcement action. No
7 Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file
8 its Complaint against Defendant in the present action.

9 1.2. Defendant employs ten (10) or more persons.

10 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
11 "Parties") stipulate that: 1) this Court has jurisdiction over the allegations of violation
12 contained in the Complaint, and personal jurisdiction over Defendant as to the acts
13 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this
14 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
15 claims which were or could have been raised in the Complaint based on the facts alleged
16 therein with respect to the Covered Products, and of all claims which were or could have
17 been raised by any person or entity based in whole or in part, directly or indirectly, on the
18 facts alleged in the 60-Day Notice, in the present action, or arising therefrom or related
19 thereto, with respect to Covered Products, including any Proposition 65 claim arising out
20 of an exposure to Covered Products (collectively, "Proposition 65 Claims").

21 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
22 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
23 resolving the issues raised therein both as to past and future conduct. By execution of
24 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit
25 any fact, conclusion of law, or violation of law, nor shall Defendant's compliance with
26 the Consent Judgment constitute or be construed as an admission by Defendant of any
27 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and
28 legal allegations in the 60-Day Notice and the Complaint and expressly denies any
wrongdoing whatsoever.

2. DEFINITIONS

- 2.1. “Effective Date” shall mean, with respect to this Consent Judgment, the date the Consent Judgment has been approved and entered by the Court.

3. INJUNCTIVE RELIEF

- 3.1. For each Covered Product, Defendant agrees to undertake, or cause to be undertaken on its behalf, either (a) reformulation of the Covered Product to bring it within the Proposition 65 exemption identified in Section 3.2 below, or (b) provide a warning as prescribed in Sections 3.3-3.4 below. Compliance with this Section 3.1 will constitute compliance by Defendant with all requirements of Proposition 65 relating to DINP exposure in the Covered Products:

3.2. Proposition 65 Exemption for the Covered Products

Subject to Section 3.5, any Covered Product that is sold, or offered for sale, to consumers in the State of California after the Effective Date shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DINP, if no “Accessible Component Part” of such Covered Product contains more than 0.1 percent (1,000 parts per million) of DINP. For purposes of this Consent Judgment, “Accessible Component Part” shall mean components of the Covered Products to which a person would be exposed to DINP by direct contact during normal use of the Covered Product.

3.3. Warning Option

Subject to section 3.5, Covered Products that do not meet the warning exemption standard set forth in Section 3.2 above, shall be accompanied by a warning as described in Section 3.4 below. This warning requirement shall only be required as to Covered Products that are manufactured, distributed, marketed, sold or shipped for sale to consumers by Defendant in the State of California, after the Effective Date. No Proposition 65 warning shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date, and all such Covered Products are hereby deemed to be exempt from Proposition 65 with respect to DINP.

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3 3.4. Warning Language

4 Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of
5 the following warning statements, or a warning otherwise compliant with Proposition 65
6 including California Health and Safety Code § 25249.6 ,on or within the unit
7 packaging of the Covered Products, or affixed to the Covered Products, displayed in a
8 reasonably conspicuous manner:

9 (1) **WARNING:** This product can expose you to DINP, which is
10 known to the State of California to cause cancer, birth defects or
11 other reproductive harm. For more info go to
12 www.P65Warnings.ca.gov.

13 (2) **WARNING:** Cancer and Reproductive Harm –
14 www.P65Warnings.ca.gov.

15 If Defendant elects to use the warning statements identified in either (1) or (2)
16 above, it may also include a symbol consisting of a black exclamation point in a
17 yellow equilateral triangle with a bold black outline. Where the sign, label or shelf
18 tag for the product is not printed using the color yellow, the symbol may be printed
19 in black and white. The symbol shall be placed to the left of the text of the
20 warning, in a size no smaller than the height of the word “WARNING”.

21 3.5. 90-Day Grace Period

22 Although Defendant shall be deemed in compliance on the Effective Date, Defendant
23 shall have a ninety (90)-day grace period from the Effective Date to complete the
24 reformulation or warning steps provided in Sections 3.1 – 3.4.

25 **4. MONETARY RELIEF**

26 4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total sum of
27 \$25,000 which includes \$5,000 in civil penalties and \$20,000 in payment of Plaintiff’s
28 costs and reasonable attorney’s fees. The \$5,000 civil penalty shall be apportioned
pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$3,750, paid to

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2 the State of California's Office of Environmental Health Hazard Assessment and 25%, or
3 \$1,250, payable to Plaintiff.

4 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's
5 counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the
6 portions due to the State of California Office of Environmental Health Hazard
7 Assessment and to Plaintiff.

8 Bank: Bank of America, N.A.

9 Routing Transit No.: 026009593

10 Account No.: 325104702031

11 Beneficiary: Custodio & Dubey LLP

12 5. CLAIMS COVERED AND RELEASE

13 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
14 behalf of itself, and acting in the public interest, and Defendant, and all of Defendant's
15 parent companies, as well as all of Defendant's officers, directors, members,
16 shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions,
17 affiliates, suppliers, franchisees, licensees, and retailers, their parent and all subsidiaries,
18 and affiliates, thereof, their respective employees, agents and assigns, as well as all other
19 upstream and downstream entities including ACE Hardware Corporation the distribution
20 chain for any of the Covered Products, and the predecessors, successors, and assigns of
21 any of them (collectively, the "Released Parties"), for any alleged violation of
22 Proposition 65, and its implementing regulations, for failure to provide Proposition 65
23 warnings for the Covered Products with respect to DINP, and fully resolves all claims
24 that have been brought, or which could have been brought in this action up to and
25 including the Effective Date. Plaintiff on behalf of itself, and in the public interest,
26 hereby discharges the Released Parties from any and all claims, actions, causes of action,
27 suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that
28 could have been asserted, with respect to any alleged violation of Proposition 65 arising

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2 from the failure to provide Proposition 65 warnings about exposures to DINP for any or
3 all of the Covered Products, through and including the Effective Date.

4 5.2. It is possible that other claims not known to the Parties arising out of the facts
5 contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered
6 Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on
7 the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment
8 is expressly intended to cover and include all such claims through and including the
9 Effective Date, including all rights of action thereon. Plaintiff and Defendant
10 acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown
11 claims, and nevertheless intend to release such claims, and in doing so waive California
12 Civil Code § 1542 which reads as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
14 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
15 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
16 RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE
17 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
18 DEBTOR OR RELEASED PARTY.

19 5.3. Plaintiff understands and acknowledges that the significance and consequence of
20 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
21 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
22 Covered Products, including but not limited to any exposure to, or failure to warn with
23 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim
24 for those damages against any of the Released Parties.

25 5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute
26 compliance with Proposition 65 with respect to exposure to DINP in the Covered
27 Products as set forth in the 60 Day Notice and/or the Complaint.

28 **6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)**

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2 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
3 referenced in California Health and Safety Code § 25249.7(f).

4 **7. PROVISION OF NOTICE**

- 5 7.1. When any Party is entitled to receive any notice or writing under this Consent
6 Judgment, the notice or writing shall be sent by first class certified mail with return
7 receipt requested, or by electronic mail, as follows:

8 To Defendant:

9 Lee N. Smith, Esq.
10 Coleman & Horowitz, LLP
11 499 W. Shaw Ave., Ste. 116
12 Fresno, CA 93704
13 lsmith@ch-law.com

14 To Plaintiff:

15 Vineet Dubey, Esq.
16 Custodio & Dubey LLP
17 448 S. Hill St., Ste 615
18 Los Angeles, CA 90013
19 dubey@cd-lawyers.com

- 20 7.2. Any party may modify the person and address to whom the notice is to be sent by
21 sending the other Party notice that is transmitted in the manner set forth in section 7.1.

22 **8. COURT APPROVAL**

- 23 8.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and
24 file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that
25 Defendant shall support. This Consent Judgment shall not become effective until
26 approved and entered by the Court. If this Consent Judgment is not entered by the Court,
27 it shall be of no force or effect, and shall not be introduced into evidence or otherwise
28 used in any proceeding for any purpose.

9. GOVERNING LAW AND CONSTRUCTION

- 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
California.

10. ENTIRE AGREEMENT

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2 10.1. This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof, and any and all prior
4 discussions, negotiations, commitments, or understandings related thereto, if any, are
5 hereby merged herein and therein.

6 10.2. There are no warranties, representations, or other agreements between the Parties
7 except as expressly set forth herein. No representations, oral or otherwise, express or
8 implied, other than those specifically referred to in this Consent Judgment have been
9 made by any Party hereto.

10 10.3. No other agreements not specifically contained or referenced herein, oral or
11 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
12 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or
13 to bind any of the Parties hereto only to the extent that they are expressly incorporated
14 herein.

15 10.4. No supplementation, modification, waiver, or termination of this Consent
16 Judgment shall be binding unless executed in writing by the Party to be bound thereby,
17 and approved and ordered by the Court.

18 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
19 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
20 shall such waiver constitute a continuing waiver.

21 **11. RETENTION OF JURISDICTION**

22 11.1. This Court shall retain jurisdiction of this matter to implement or modify the
23 Consent Judgment.

24 **12. NO EFFECT ON OTHER SETTLEMENTS**

25 12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any
26 claim against another entity on terms that are different from those contained in this
27 Consent Judgment.

28 **13. EXECUTION IN COUNTERPARTS**

13.1. This Consent Judgment may be executed in counterparts, each of which shall be

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2 deemed to be an original, and all of which, taken together, shall constitute the same
3 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic
4 means, shall constitute legal and binding execution and delivery. Any photocopy of the
5 executed Consent Judgment shall have the same force and effect as the original.

6 **14. AUTHORIZATION**

7 14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent
8 Judgment on behalf of their respective parties, and have read, understood, and agree to all
9 of the terms and conditions of this Consent Judgment.

10 **15. SEVERABILITY**

11 15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is
12 declared by a Court to be invalid, void, or unenforceable, the remaining portions or
13 provisions shall continue in full force and effect.

14 **AGREED TO:**

15 **Ecological Alliance LLC**

16 Date: February 12, 2020

17 By: [Signature]

18 Harmony Welsh, Managing Member

19 **AGREED TO:**

20 **Apex Products, LLC**

21 Date: Feb 19, 2020

22 By: [Signature]

23 Jamie Chiou, Vice President

24
25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &
26 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

27 **07/28/2020**

28 Dated: _____



[Signature]

JUDGE OF THE SUPERIOR COURT
Stephanie M. Bowick / Judge