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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF SAN DIEGO

10 EVELYN WIMBERLEY,

11 Plaintiff,

12 v.

13 THE HOME DEPOT, INC.

14 Defendant.

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Case No. 37-2011-00092181-CU-PO-CTL

UNLIMITED JURISDICTION

**STIPULATION RE ENTRY OF  
CONSENT JUDGMENT AS TO  
LEHIGH CONSUMER PRODUCTS  
LLC**

Complaint Filed: June 1, 2011

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Stipulation and [Proposed] Order Re Consent Judgment (“Consent Judgment”) is  
4 hereby entered into by and between Evelyn Wimberley acting on behalf of the public interest  
5 (hereinafter “Wimberley”) and Lehigh Consumer Products LLC, (hereinafter “Leigh”), with  
6 Wimberley and Lehigh collectively referred to as the “Parties” and each of them as a “Party.”  
7 Wimberley is an individual residing in California who seeks to promote awareness of exposures  
8 to toxic chemicals and improve human health by reducing or eliminating hazardous substances  
9 contained in consumer products. Lehigh employs ten or more persons and is a person in the  
10 course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et  
11 seq.

12 **1.2 Allegations and Representations**

13 Wimberley alleges that Lehigh has offered for sale in the State of California and that  
14 Lehigh’s customer, The Home Depot, Inc. (“Home Depot”) has sold in California, swivel snap  
15 hooks and other hardware with exposed brass containing lead, and that such sales have not been  
16 accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical  
17 known to the State of California to cause cancer and birth defects or other reproductive harm.  
18 Wimberley has cited “Swivel Snaps Snap Hook UPC 0 7151405013 3” as a specific example of  
19 the Lehigh brass hardware items that are the subject of her allegations.

20 For purposes of this Consent Judgment only, Lehigh represents that: 1) Swivel Snaps  
21 Snap Hooks and related hooks, belts, and eyes are brass hardware items manufactured for and  
22 distributed to Home Depot and others by Lehigh, 2) Lehigh is an indirect, wholly-owned  
23 subsidiary of Jarden Corporation, and 3) Lehigh believes that the maximum number of Swivel  
24 Snaps Snap Hooks and Bolts shipped to Home Depot for sale in California during 2010 was less  
25 than 5,000 units.

26 **1.3 Product Description**

27 The products that are covered by this Settlement Agreement are defined as follows:  
28 hardware, including hooks, bolts and eyes, containing exposed leaded brass manufactured and

1 distributed by Lehigh and sold in California. All such items shall be referred to herein as the  
2 “Products.”

3 **1.4 Notices of Violation/Complaint**

4 On or about January 24, 2011, Wimberley served Home Depot and all public enforcement  
5 agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of  
6 California with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided  
7 Home Depot and such public enforcers with notice that alleged that Home Depot was in violation  
8 of Proposition 65 for failing to warn consumers and customers that the Products exposed users in  
9 California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice to  
10 Home Depot within sixty days plus service time relative to the provision of the Notice to them by  
11 Wimberley, such that Wimberley filed a complaint in the matter as captioned above June 1, 2011.

12 On or about August 15, 2011, Wimberley also served Lehigh and all public enforcement  
13 agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of  
14 California with a Notice that alleged Lehigh and all such public enforcers with notice that alleged  
15 that Lehigh was also in violation of Proposition 65 for failing to warn that the Products exposed  
16 users in California to lead. Provided that no public enforcer has filed suit against Lehigh for the  
17 Proposition 65 claims addressed by this Consent Judgment during the sixty day (plus service  
18 time) period associated with Wimberley’s Notice to Lehigh, the complaint Wimberley previously  
19 filed against Home Depot, as captioned above, shall be deemed amended to include Lehigh as a  
20 defendant, so as to permit the concurrent entry of this Consent Judgment and bring the entire case  
21 to judgment.

22 **1.5 Stipulation as to Jurisdiction/No Admission**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
24 jurisdiction over Lehigh as to the allegations contained in the complaint filed in this matter, that  
25 venue is proper in the County of San Diego, and that this Court has jurisdiction to approve, enter,  
26 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
27 claims which were or could have been raised in the complaint based on the facts alleged therein  
28 and/or in the Notices.



1 Lehigh denies the material factual and legal allegations contained in Wimberley's Notice  
2 and maintains that all products that it has sold and distributed in California, including the  
3 Products, have been and are in compliance with Proposition 65. Nothing in this Consent  
4 Judgment shall be construed as an admission by Lehigh of any fact, finding, issue of law, or  
5 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as  
6 an admission by Lehigh of any fact, finding, conclusion, issue of law, or violation of law, such  
7 being specifically denied by Lehigh. However, this section shall not diminish or otherwise affect  
8 the obligations, responsibilities, and duties of Lehigh under this Consent Judgment.

9 **1.6 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
11 Consent Judgment is entered as a judgment of the Court.

12 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

13 **2.1 Reformulation Option.** The Products shall be deemed to comply with  
14 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements  
15 for lead if the exposed brass components that are part of the Products meet the following criteria:  
16 (a) the brass alloy from which the brass components are made shall have no lead as an  
17 intentionally added constituent; and (b) the brass alloy from which the brass components are  
18 made shall have a lead content by weight of no more than 0.03% (300 parts per million, or "300  
19 ppm"). Lehigh may comply with the above requirements by relying on information obtained  
20 from its suppliers regarding the content of the brass alloy from which the brass components are  
21 made, provided such reliance is in good faith. Obtaining test results showing that the lead content  
22 is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of  
23 quantification (as distinguished from detection) of less than 200 ppm shall be deemed to establish  
24 good faith reliance.

25 **2.2 Warning Option.** Products that do not meet the warning exemption standard set  
26 forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below.  
27 The warning requirements set forth in Section 2.3 below shall apply only to: (1) Products that  
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1 Lehigh manufactures after 180 days after the Effective Date; and (2) Products manufactured,  
2 distributed, marketed, sold or shipped for sale or use inside the State of California.

3       **2.3** Where required under Sections 2.1 and 2.2 above, Lehigh shall provide  
4 Proposition 65 warnings as follows:

5           (a) Lehigh may use either of the following warning statements:

6                   (1) **WARNING:** This product contains lead, a chemical known to the  
7 State of California to cause birth defects or other reproductive  
8 harm.

9 or, where Lehigh has reason to believe that chemicals listed under Proposition 65  
10 in addition to lead are present in a Product,

11                   (2) **WARNING:** This product contains lead and other chemicals  
12 known to the State of California to cause [cancer and] birth defects  
13 or other reproductive harm.

14       (b) Where utilized as an alternative to meeting the criteria set forth in Section  
15 2.1, Lehigh shall provide the warning language set forth in subsection 2.3(a) and  
16 2.3(b)

17                   (1) with the unit package of the Products. Such warning shall be  
18 prominently affixed to or printed on each Product's label or  
19 package or, if not the label or package of each Product, then  
20 displayed on box, bin, or shelf from which the Product is offered  
21 for sale in California. If printed on the label itself, the warning  
22 shall be contained in the same size font and same section that states  
23 other safety warnings, if any, concerning the use of the Product. If  
24 no other warnings are present then printed in a conspicuous location  
25 and in same size font as other printed words such to be noticed by  
26 the normal user of the product. Leigh may continue to utilize, on an  
27 ongoing basis, unit packaging containing substantively the same  
28 Proposition 65 warnings as those set forth in Section 2.3(a) above,

1 but only to the extent such packaging materials have already been  
2 printed within ninety days following the Effective Date, or  
3 (2) in the owner's manual of another product in which the Product is a  
4 component, but only if the other product: (i) may cause serious  
5 injury or bodily harm unless used as directed; (ii) is sophisticated,  
6 difficult to understand or install, set-up, or assemble; or (iii) has one  
7 or more features a consumer must read about in order to know how  
8 to program or use the Product. If the warning is given in the  
9 owners manual pursuant to this subsection, it shall be located in one  
10 of the following places in the manual: the outside of the front  
11 cover; the inside of the front cover; the first page other than the  
12 cover; or the outside of the back cover. The warning shall be  
13 printed or stamped in the manual or contained in a durable label or  
14 sticker affixed to the manual in a font no smaller than the font used  
15 for other chemically-related safety warnings in the manual.  
16 Alternatively, the warning may be included in a safety warning  
17 section of the owner's manual. Leigh may continue to utilize, on an  
18 ongoing basis, owners manuals containing substantively the same  
19 Proposition 65 warnings and without the additional admonitions as  
20 those set forth in paragraph 2.3(a) above, but only to the extent such  
21 manuals have already been printed within ninety days following the  
22 Effective Date. Owners manual warnings may only be allowed if  
23 the owners manual is sold in the same package and at the same time  
24 as the other product and not for Products sold separately.

25 (c) Any Products that have been purchased by Lehigh or distributed, shipped,  
26 or sold by Lehigh prior to the Effective Date are not required to meet the  
27 requirements of sections 2.1, 2.2, or 2.3(a) or (b) above. The Parties also  
28 recognize that the requirements set forth in sections 2.2 and 2.3(a) and (b) above

1 are not the exclusive methods of providing a warning under Proposition 65 and its  
2 implementing regulations and that they may or may not be appropriate in other  
3 circumstances.

4 (d) If Proposition 65 warnings for lead or lead compounds should no longer be  
5 required, Lehigh shall have no further warning obligations pursuant to this Consent  
6 Judgment. Except as provided in Section 2.1 above, in the event that Lehigh  
7 ceases to implement or modifies the warnings required under this Consent  
8 Judgment (because of a change in the law or otherwise), Lehigh shall provide  
9 written notice to Wimberley (through counsel) of its intent to do so, and of the  
10 basis for its intent, no less than thirty (30) days in advance.

11 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

12 With regard to all claims that have been raised or which could be raised with respect to  
13 failure to warn pursuant to Proposition 65 with regard to lead in the Products, Lehigh shall pay a  
14 civil penalty of \$4,000 pursuant to Health and Safety Code section 25249.7(b), to be apportioned  
15 in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to  
16 the State of California's Office of Environmental Health Hazard Assessment and the remaining  
17 25% of the penalty remitted to Wimberley, as provided by California Health & Safety Code  
18 § 25249.12(d) and the instructions directly below.

19 Lehigh shall issue two separate checks for the penalty payment: (a) one check made  
20 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of  
21 the total penalty (i.e., \$3,000); and (b) one check in an amount representing 25% of the total  
22 penalty (i.e., \$1,000) made payable directly to Wimberley. Lehigh shall mail these payments  
23 within thirty days following the Effective Date, to the following addresses respectively, providing  
24 a copy of its checks and transmittal letters to Wimberley's counsel at that time as well:

25 Proposition 65 Settlement Coordinator  
26 California Department of Justice  
27 1515 Clay Street, 20<sup>th</sup> Floor  
28 Oakland, CA 94612-1413



1 Evelyn Wimberley  
2 C/O Law Offices of Stephen Ure, PC  
3 1518 Sixth Ave, San Diego, CA 92101

4 **4. REIMBURSEMENT OF FEES AND COSTS**

5 The parties reached an accord on the compensation due to Wimberley and her counsel  
6 under the private attorney general doctrine and principles of contract law. Under these legal  
7 principles, Lehigh shall reimburse Wimberley's counsel for fees and costs, incurred as a result of  
8 investigating, bringing this matter to Lehigh's attention, and negotiating a settlement in the public  
9 interest. Lehigh shall pay Wimberley's counsel \$25,000.00 for all attorneys' fees, expert and  
10 investigation fees, and related costs associated with this matter and the Notice. Lehigh shall wire  
11 said monies to the "Law Offices of Stephen Ure, PC" (tax identification number 42-1641673) no  
12 later than October 31, 2011. The Law Offices of Stephen Ure, PC will provide and Lehigh will  
13 confirm receipt of bank wire instructions prior to that date. Other than the payment required  
14 hereunder, each side is to bear its own attorneys' fees and costs.

15 In the event the Court does not grant Wimberley's motion for approval of or enter this  
16 Consent Judgment within one (1) year after it has been fully executed by the parties, the parties  
17 shall meet and confer as to (and jointly agree on) whether to modify the language or appeal the  
18 ruling. If the parties do not jointly agree on a course of action to take, then the case shall proceed  
19 in its normal course on the trial court's calendar and Wimberley's counsel shall refund Lehigh the  
20 payment provided pursuant to this paragraph in full within thirty (30) days of Lehigh providing  
21 written notice thereof.

22 **5. RELEASE OF ALL CLAIMS**

23 **5.1 Release of Lehigh and Downstream Customers**

24 In further consideration of the promises and commitments herein contained, and for the  
25 payments to be made pursuant to Sections 3 and 4 above, Wimberley, on behalf of herself, her  
26 past and current agents, representatives, attorneys, successors and/or assignees, and in the interest  
27 of the general public, hereby waives all rights to institute or participate in, directly or indirectly,  
28 any form of legal action and releases all claims, including, without limitation, all actions, and

1 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
2 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and  
3 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
4 (collectively "Claims"), against Lehigh and each of its downstream distributors, wholesalers,  
5 licensors, licensees, auctioneers, retailers (including, but not limited to, Home Depot),  
6 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,  
7 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,  
8 agents, and employees, and sister and parent entities (collectively "Releasees"). This release is  
9 limited to those claims that arise from Lehigh's alleged failure to warn about exposures to or  
10 identification of lead contained in the Products. In conjunction with this release, within thirty  
11 days following the Effective Date, Wimberley shall file a dismissal of its claims against Home  
12 Depot in the above captioned action so that the Court's records reflect that they are no longer  
13 pending as the result of this Consent Judgment, thereby bringing an end to the case.

14 In addition to the foregoing, Wimberley, on behalf of herself, her past and current agents,  
15 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,  
16 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
17 action and releases any other Claims that she could make against Lehigh or its Releasees arising  
18 up to the Effective Date. With respect to the foregoing waivers and releases in this paragraph,  
19 Wimberley hereby specifically waives any and all rights and benefits which she now has, or in the  
20 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil  
21 Code, which provides as follows:

22 **A GENERAL RELEASE DOES NOT EXTEND TO**  
23 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR**  
24 **SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF**  
25 **EXECUTING THE RELEASE, WHICH IF KNOWN BY**  
26 **HIM MUST HAVE MATERIALLY AFFECTED HIS**  
27 **SETTLEMENT WITH THE DEBTOR.**

28 **5.2 Lehigh's Release of Wimberley**

Lehigh waives any and all claims against Wimberley, her attorneys and other  
representatives, for any and all actions taken or statements made (or those that could have been



1 taken or made) by Wimberley and her attorneys and other representatives, whether in the course  
2 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this  
3 matter, and/or with respect to the Products.

4 **6. SEVERABILITY AND MERGER**

5 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
6 document are held by a court to be unenforceable, the validity of the enforceable provisions  
7 remaining shall not be adversely affected.

8 This Consent Judgment contains the sole and entire agreement of the Parties and any and  
9 all prior negotiations and understandings related hereto shall be deemed to have been merged  
10 within it. No representations or terms of agreement other than those contained herein exist or  
11 have been made by any Party with respect to the other Party or the subject matter hereof.

12 **7. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of  
14 California and apply within the State of California. Compliance with the terms of this Consent  
15 Judgment resolves any issue, now or in the future, with the requirements of Proposition 65 with  
16 respect to alleged exposures to lead arising from the Products. In the event that Proposition 65 is  
17 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products,  
18 then Lehigh shall provide written notice to Wimberley of any asserted change in the law, and  
19 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
20 extent that, the Products are so affected.

21 **8. NOTICES**

22 Unless specified herein, all correspondence and notices required to be provided pursuant  
23 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
24 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
25 other party at the following addresses:  
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27  
28



1 For Lehigh:

2 Mark P. Clements  
3 Vice-president, Products Litigation  
4 2111 East 37th Street N  
5 Wichita, KS 67219

With a copy to:

Robert L. Falk, Esq.  
William F. Tarantino, Esq.  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105

6 For Wimberley:

7 Stephen Ure  
8 Law Offices of Stephen Ure, PC.  
9 1518 Sixth Avenue  
10 San Diego, California 92101

11 Any party, from time to time, may specify in writing to the other party a change of address to  
12 which all notices and other communications shall be sent.

13 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile, each of which  
15 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
16 same document.

17 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**

18 **APPROVAL**

19 Wimberley agrees to comply with the requirements set forth in California Health & Safety  
20 Code §25249.7(f) and to bring a motion for approval of this Consent Judgment following the  
21 filing of a complaint by Wimberley against Lehigh at the conclusion of the 60-day period of  
22 Wimberley's Notice letter to Lehigh (i.e., provided that no authorized public prosecutor of  
23 Proposition 65 has elected to bring the noticed claims against Lehigh himself).

24 Except with respect to section 4 above, this Consent Judgment shall not be effective until  
25 it is approved and entered by the Court and, except with respect to section 4 above, shall be null  
26 and void if, for any reason, it is not approved and entered by the Court within six months after it  
27 has been fully executed by the Parties.  
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**11. MODIFICATION**

This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document.

**APPROVED AS TO FORM:**


Dated: October \_\_\_\_\_, 2011

MORRISON & FOERSTER LLP

By: \_\_\_\_\_  
William F. Tarantino  
Attorneys for Defendant,  
LEHIGH CONSUMER PRODUCTS LLC

Dated: October 25, 2011

LAW OFFICES OF STEPHEN URE, PC

By:  \_\_\_\_\_  
Stephen Ure, Esq.  
Attorneys for Plaintiff,  
EVELYN WIMBERLEY

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The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document.

**APPROVED AS TO FORM:**

Dated: October 31, 2011

MORRISON & FOERSTER LLP

By: 

William F. Tarantino  
Attorneys for Defendant,  
LEHIGH CONSUMER PRODUCTS LLC

Dated: October \_\_\_\_\_, 2011

LAW OFFICES OF STEPHEN URE, PC

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

Stephen Ure, Esq.  
Attorneys for Plaintiff,  
EVELYN WIMBERLEY