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6 Attorneys for Plaintiff. Maureen Parker

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 MAUREEN PARKER.

11 Plaintiff.

12 v.

13 ACE HARDWARE, INC.,
14 DOES 1-25

15 Defendants.

Case No. 37-2012-00102048-CU-NP-CTL

UNLIMITED JURISDICTION

**STIPULATION RE ENTRY OF
CONSENT JUDGMENT**

Complaint Filed: August 9, 2012

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 Maureen Parker acting on behalf of the public interest
5 (hereinafter “Parker”) and Ace Hardware Corporation (hereinafter “Ace”) and Southern Sales &
6 Marketing Group, Inc (hereinafter “Southern Sales”). Collectively Ace and Southern Sales shall
7 be referred hereafter as “Defendants,” with Parker, Ace and Southern Sales collectively referred
8 to as the “Parties” and each of them as a “Party.” Parker is an individual residing in California
9 who seeks to promote awareness of exposures to toxic chemicals and improve human health by
10 reducing or eliminating hazardous substances contained in consumer products. Defendants each
11 employ ten or more persons and that each is a person in the course of doing business for purposes
12 of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

13 **1.2 Allegations and Representations**

14 Parker alleges that Defendants have offered for sale in the State of California and have
15 sold in California, gas grill accessories 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 Parker has cited "Grill Mark Gas Gauge" UPC 843518005422, hereafter ("Gas Gauges"), as a
19 specific example of the grill accessories that are the subject of her allegations.

20 For purposes of this Consent Judgment only, Southern Sales represents that such grill
21 accessories are distributed to Ace and others by Southern Sales; that a portion of such grill
22 accessories are sold in California; and that Defendants had no reason to believe that the item
23 contained lead until receiving Parker’s 60-Day Notice on or about August 15, 2011.

24 **1.3 Product Description**

25 The products that are covered by this Consent Judgment are defined as Gas Grill Gauges
26 and other grilling accessories, containing exposed brass or other metals containing lead that are
27 distributed by Southern Sales to Ace and others and sold in California. All such items shall be
28 referred to herein as the “Products.”

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1.4 Notices of Violation/Complaint

On or about August 15, 2011, Parker served Ace, and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) and on July 13, 2012 served the same on Southern Sales and various public enforcement agencies (referred to collectively as the "Notice"), alleging that Ace and Southern Sales were in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Parker, such that Parker filed a complaint in the matter as captioned above on August 9, 2012 ("Complaint").

1.5 Stipulation as to Jurisdiction/No Admission

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

Defendants deny the material allegations contained in Parker's Notice and Complaint and maintain that they have not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendants. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendants under this Consent Judgment.

1.6 Effective Date

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

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For purposes of this Consent Judgment, the term “Execution Date” shall mean the date this Consent Judgment is signed by all parties in Clause 14 below.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

A Product that is manufactured on or after 90 days after the Effective Date that Southern Sales distributes or otherwise ships for sale or use in California shall either be (a) reformulated pursuant to Section 2.1 or (b) include a warning as provided in Section 2.3.

2.1 Reformulation Option. The Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the exposed brass or other metal components that are part of the Products meet the following criteria:

(a) the alloy from which the components are made shall have no lead as an intentionally added constituent; and (b) the alloy from which the components are made shall have a lead content by weight of no more than 0.03% (300 parts per million, or “300 ppm”). Defendants may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the alloy from which the components are made, provided such reliance is in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish good faith reliance.

2.2 Warning Alternative. Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. The warning requirements set forth in Section 2.3 below shall apply only to Products manufactured on or after 90 days after the Effective Date that Southern Sales distributes or otherwise ships for sale or use in California.

1 **2.3 Warnings.** Where required under Section 2.2 above, Southern Sales shall provide
2 Proposition 65 warnings as follows:

3 **California Prop. 65 WARNING: This product contains lead, a chemical known to**
4 **the State of California to cause birth defects or other reproductive harm.**

5 **OR**

6 **California Prop. 65 WARNING: This product contains one or more chemicals**
7 **known to the State of California to cause cancer and birth defects or other**
8 **reproductive harm.**

9 **2.4** Where utilized as an alternative to meeting the criteria set forth in Section 2.1,
10 Southern Sales shall provide the warning language set forth in Section 2.3 either:

11 (a) With the unit package of the Products or affixed to the Products. Such warning shall be
12 prominently affixed to or printed on each Product's label or package or the Product itself. If
13 printed on the label, the warning shall be contained in the same section that states other safety
14 warnings, if any, concerning the use of the Product; Southern Sales may continue to utilize, on an
15 ongoing basis, unit packaging containing substantively the same Proposition 65 warnings as those
16 set forth in Section 2.3 above, but only to the extent such packaging materials have already been
17 printed within ninety days of the Effective Date, or

18 (b) In the owner's manual of another product in which the Product is a component, but only if
19 the other product: (i) may cause serious injury or bodily harm unless used as directed; (ii) is
20 sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has one or more
21 features a consumer must read about in order to know how to program or use the Product. If the
22 warning is given in the owner's manual pursuant to this subsection, it shall be located in one of
23 the following places in the manual: the outside of the front cover; the inside of the front cover;
24 the first page other than the cover; or the outside of the back cover. The warning shall be printed
25 or stamped in the manual or contained in a durable label or sticker affixed to the manual in a font
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1 no smaller than the font used for other chemically-related safety warnings in the manual.
2 Alternatively, the warning may be included in a safety warning section of the owner's manual.
3 Southern Sales may continue to utilize, on an ongoing basis, owner's manuals containing
4 substantively the same Proposition 65 warnings and without the additional admonitions as those
5 set forth in Section 2.3 above, but only to the extent such manuals have already been printed
6 within ninety days of the Effective Date. Owner's manual warnings may only be allowed if the
7 owner's manual is sold in the same package and at the same time as the other product and not for
8 Products sold separately.
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10 **2.5** The requirements for warnings, set forth in Section 2.3 above are imposed
11 pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the
12 exclusive methods of providing a warning under Proposition 65 and its implementing regulations
13 and that they may or may not be appropriate in other circumstances.
14

15 **2.6** If Proposition 65 warnings for lead or lead compounds or other specified
16 chemicals should no longer be required, Defendants shall have no further warning obligations
17 pursuant to this Settlement Agreement. Except in the event that a change in the law requires
18 modification or ceases to require such warnings in the event that Defendants cease(s) to
19 implement or modifies the warnings required under this Settlement Agreement, Defendants shall
20 provide written notice to Parker (through counsel) of its intent to do so, and of the basis for its
21 intent, no less than thirty (30) days in advance.
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24 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE**

25 **§25249.7(b)**

26 With regard to all claims that have been raised or which could be raised with respect to
27 failure to warn pursuant to Proposition 65 with regard to lead in the Products, Defendant(s) shall
28

1 pay a civil penalty of \$3,000 pursuant to Health and Safety Code section 25249.7(b), to be
2 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these
3 funds remitted to the State of California's Office of Environmental Health Hazard Assessment
4 and the remaining 25% of the penalty remitted to Parker, as provided by California Health &
5 Safety Code § 25249.12(d) and the instructions directly below.

6 Defendant(s) shall issue two separate checks for the penalty payment: (a) one check made
7 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of
8 the total penalty (i.e., \$2250.00); and (b) one check in an amount representing 25% of the total
9 penalty (i.e., \$750.00) made payable directly to Parker. Defendant(s) shall mail these payments
10 within fifteen days following the Effective Date, to the following addresses respectively,
11 providing a copy of its checks and transmittal letters to Parker's counsel at that time as well:

12 Proposition 65 Settlement Coordinator
13 California Department of Justice
14 1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

15 Maureen Parker
16 C/O Law Offices of Stephen Ure, PC
17 1518 Sixth Ave. San Diego, CA 92101

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

19 The parties reached an accord on the compensation due to Parker and her counsel under
20 the private attorney general doctrine and principles of contract law. Under these legal principles,
21 Defendant(s) shall reimburse Parker's counsel for fees and costs, incurred as a result of
22 investigating, bringing this matter to Defendant(s) attention, and negotiating a settlement in the
23 public interest. Defendant(s) shall pay Parker's counsel \$20,000.00 for all attorneys' fees, expert
24 and investigation fees, and related costs associated with this matter and the Notice. Defendant(s)
25 shall wire said monies to the "Law Offices of Stephen Ure, PC, Trust Account" (tax identification
26 number 42-1641673) within fifteen days following the Effective Date. The Law Offices of
27 Stephen Ure, PC will provide Defendant(s) with wire instruction and tax identification
28 information on or before the Effective Date. Other than the payment required hereunder, each

1 side is to bear its own attorneys' fees and costs.

2
3 **5. RELEASE OF ALL CLAIMS**

4 **5.1 Release of Defendants and Downstream Customers**

5 Parker, on behalf of herself *and in the public interest*, releases Defendants and each of its
6 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees,
7 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,
8 and their respective officers, directors, attorneys, representatives, shareholders, agents,
9 successors, assigns, and employees, and sister and parent entities (collectively "Releasees") from
10 all claims for violations of Proposition 65, up through the deadlines provided herein for
11 complying with terms of this Consent Judgment, based on exposure to lead from the Products as
12 set forth in her Notice of Violation. Compliance with the terms of this Consent Judgment
13 constitutes compliance with Proposition 65 with respect to exposures to lead from the Products.
14 The Parties further understand and agree that this release shall not extend upstream to any entities
15 that manufactured the Products for Southern Sales or any component parts thereof or to any
16 distributors or suppliers who sold Products or any component parts thereof to Southern Sales
17 ("Upstream Entities").

18 In addition to the foregoing, Parker, on behalf of herself, her past and current agents,
19 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,
20 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
21 action and releases any other Claims that she could make against Defendants or their Releasees
22 arising up to the Effective Date with respect to violations of Proposition 65 based upon the
23 Products. With respect to the foregoing waivers and releases in this paragraph, Parker hereby
24 specifically waives any and all rights and benefits which she now has, or in the future may have,
25 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
26 provides as follows:
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A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Parker understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if Parker suffers future damages arising out of or resulting from, or relate directly or indirectly to, in whole or in part, the Products, she will not be able to make any claim for those damages against Defendants or Releases or any other person in the course of business involving the Products and the successors and assigns of any of them, who may use, maintain, distribute, sell, or supply the Products. Furthermore, Parker acknowledges that she intends these consequences for any such claims which may exist as of the date of this release but which Parker does not know exist, and which, if known, would materially affect her decision to enter into this Settlement Agreement, regardless of whether her lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

5.2 Defendants’ Release of Parker

Defendants waive any and all claims against Parker, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Parker and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

6. ENFORCEMENT

Any Party may, by motion or application for an order to show cause, enforce the terms and conditions contained in this Settlement Agreement. A Party may enforce any of the terms and conditions of this Settlement Agreement only after that Party first provides 30 days notice to

1 the Party allegedly failing to comply with the terms and conditions of this Settlement Agreement
2 and attempts to resolve such Party's failure to comply in an open and good faith manner.

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4 **7. 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.

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13 **8. GOVERNING LAW**

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

22
23 **9. NOTICES**

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

2 Karen Aldridge Crawford
3 Nelson Mullins Riley & Scarborough LLP
4 Meridian / 17th Floor
5 1320 Main Street
6 Columbia, SC 29201

7 and

8 For Parker:

9 Stephen Ure
10 Law Offices of Stephen Ure, PC.
11 1518 Sixth Avenue
12 San Diego, California 92101

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

15 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

19 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
20 **APPROVAL**

21 Parker agrees to comply with the requirements set forth in California Health & Safety
22 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and
23 Defendants shall support approval of such Motion.

24 This Consent Judgment shall not be effective until it is approved and entered by the Court
25 and shall be null and void if, for any reason, it is not approved and entered by the Court within
26 twelve months after it has been fully executed by the Parties.

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12. 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.

13. ATTORNEY'S FEES

13.1 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

14. RETENTION OF JURISDICTION

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

15. 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 and certifies that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein, each Party is to bear its own fees and costs.

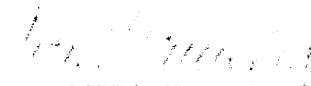
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APPROVED AS TO FORM:

Dated: September _____, 2012

On behalf of Defendants Southern Sales & Marketing Group, Inc. and Ace Hardware Corporation

By: 
Cory Manning, Esq.
Karen Aldridge Crawford, Esq.
Nelson Mullins Riley & Scarborough
Attorneys for Defendants
Southern Sales & Marketing Group, Inc. and
Ace Hardware Corporation

Dated: September _____, 2012

LAW OFFICES OF STEPHEN URE, PC

By: _____
Stephen Ure, Esq.
Attorneys for Plaintiff,
Maureen Parker

IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: September _____, 2012

Date: September _____, 2012

By: _____

By: 

Maureen Parker

On Behalf of:
Southern Sales and Marketing Group, Inc.
Ace Hardware Corporation

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Dated: September _____, 2012

Nelson Mullins Riley & Scarborough LLP

By: _____
Karen Aldridge Crawford
Attorneys for Defendant
Southern Sales & Marketing Group, Inc.

Dated: September 27, 2012

LAW OFFICES OF STEPHEN URE, PC

By:  _____
Stephen Ure, Esq.
Attorneys for Plaintiff,
MAUREEN PARKER

IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: 9.27.12

Date: _____

By: Maureen Parker

By: _____

MAUREEN PARKER

On Behalf of:
Southern Sales and Marketing Group, Inc.