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13 Attorneys for Defendants
14 **THE KEENEY MANUFACTURING COMPANY**
15 **and LOWE'S HIW, INC., n/k/a LOWE'S HOME**
16 **CENTERS, LLC**

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

ALISA SCHOCHET,
Plaintiff,

v.

THE KEENEY MANUFACTURING COMPANY;
LOWE'S HIW, INC.; and DOES 1 to 25, Inclusive
Defendants.

Case No.: BC 502743
[Assigned for all purposes to the
Honorable Rolf M. Treu, Dept. D 58]

[PROPOSED] CONSENT JUDGMENT

Complaint filed: March 14, 2013

1 **CONSENT JUDGMENT**

2 **1. INTRODUCTION**

3 **1.1 The Parties**

4 This Consent Judgment is entered into by and between Plaintiff Alisa Schochet ("Schochet"),
5 and Defendant Keeney Manufacturing Ltd, Inc. ("Keeney"). Schochet and Keeney are collectively
6 referred to as the "Parties." Schochet is an individual residing in California who is acting as a
7 private enforcer pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California
8 Health & Safety Code §25249.5, *et seq.* ("Proposition 65"), and is enforcing Proposition 65. Keeney
9 employs 10 or more persons and is a person in the course of doing business for the purposes of
10 Proposition 65.

11 **1.2 Notice of Violation**

12 On or about November 13, 2012, Schochet served Keeney, Lowe's HIW Inc., n/k/a Lowe's
13 Home Centers, LLC ("Lowe's"), and various public enforcement agencies with a "60-Day Notice of
14 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Keeney and
15 Lowe's were in violation of Proposition 65. Schochet's Notice alleges that Keeney and Lowe's have
16 manufactured, distributed, and/or offered for sale in California certain plumbing products that
17 expose consumers to lead and lead compounds without the requisite Proposition 65 warnings. Lead
18 and lead compounds (the "Listed Chemical") are listed pursuant to Proposition 65 as a chemical
19 known to the State of California to cause cancer, birth defects and other reproductive harm. The
20 Notice alleges that Keeney's and Lowe's conduct violates Health & Safety Code §25249.6, the
21 warning provision of Proposition 65.

22 **1.3 The Action**

23 On or about March 22, 2013, Schochet filed a complaint in the Los Angeles Superior Court
24 entitled *Schochet v. The Keeney Manufacturing Company, et al.*, Case No. BC502743, seeking civil
25 penalties and injunctive relief pursuant to Proposition 65 (the "Action").

26 **1.4 Covered Products**

27 The products covered by this Consent Judgment are plumbing products made from leaded
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1 brass, or for which leaded brass is a component, that are manufactured, sold, or distributed for sale in
2 California by Keeney.

3 **1.5 No Admission**

4 Keeney and Lowe's deny the material, factual and legal allegations contained in the Notice
5 and the Action, and maintain that all products sold, distributed or offered for sale in California have
6 been and are in compliance with all laws, including, without limitation, Proposition 65. Nothing in
7 this Consent Judgment shall be construed as an admission by Keeney or Lowe's of any fact, finding,
8 conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
9 Judgment constitute or be construed as an admission by Keeney or Lowe's of any fact, finding,
10 conclusion of law, issue of law, or violation of law, the same being specifically denied by Keeney
11 and Lowe's.

12 **1.6 Effective Date**

13 For purposes of this Consent Judgment, the term "Effective Date" shall mean sixty (60) days
14 following the entry of this Consent Judgment.

15 **2. INJUNCTIVE RELIEF**

16 **2.1 Injunctive Relief**

17 As to any Covered Products which are made of brass containing lead (hereinafter "leaded
18 brass"), or which have a component made of leaded brass, and for which the normally intended use
19 of the product involves the user gripping or holding the product by gripping or holding a component
20 made from leaded brass, and where such brass comes into contact with the user, a warning as
21 described in paragraph 2.2 below shall be provided on any units of such Covered Products that
22 Defendant Keeney markets, sells or distributes for sale in the State of California. The warning
23 requirements set forth in paragraph 2.2 below shall not apply to:

24 (a) Covered Products manufactured, distributed, marketed, sold or shipped for sale or use
25 that comply with existing Proposition 65 No Significant Risk Levels (NSRLs) and Maximum
26 Allowable Dose Levels (MADLs) for lead;

27 (b) Covered Products manufactured, distributed, marketed or sold by Keeney, Lowe's
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1 and/or any other defendant or entity within the chain of distribution, before 60 days after entry of
2 this Consent Judgment (the "Effective Date");

3 (c) Covered Products in Keeney or Lowe's inventory, or the inventory of any other
4 defendant or entity within the chain of distribution, on or before the Effective Date;

5 (d) Covered Products manufactured, distributed, marketed, sold or shipped for sale or use
6 outside the State of California; and/or

7 (e) Covered Products for which the normally intended use does not involve the user
8 gripping or holding a leaded brass component of the Covered Product, or when a Covered Product is
9 intended to be installed for a long term duration into a plumbing or irrigation system and the leaded
10 brass component of the Covered Product does not need to be gripped or handled vigorously during
11 the installation, adjustment and/or removal of the Covered Product.

12 **2.2 Product Labeling**

13 A Covered Product shall contain a warning affixed to or printed on the Covered Product's
14 packaging or labeling. The following warning statement shall be provided:

15 "WARNING: This product contains a chemical known to the State of California to cause
16 cancer and birth defects or other reproductive harm."

17 **3. MONETARY PAYMENTS**

18 Keeney shall pay a total amount of \$14,750.00 to be allocated as follows:

19 **3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)**

20 Keeney shall pay \$2,000.00 as a civil penalty pursuant to Health and Safety Code Section
21 25249.7(b). The civil penalty shall be due on the Effective Date. Schochet shall remit 75% of the
22 civil penalty to the California Office of Environmental Health Hazard Assessment ("OEHHA"),
23 pursuant to Health and Safety Code Section 25192.

24 **3.2 Reimbursement of Plaintiff's Attorney Fees and Costs**

25 The Parties reached an accord on the compensation due to Schochet and her counsel under
26 general contract principles and the private attorney general doctrine codified at Code of Civil
27 Procedure Section 1021.5 for all work performed in this matter. Under these legal principles,
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1 Keeney shall pay \$12,750.00 for all attorneys' fees and any other costs incurred as a result of
2 investigating, bringing this matter to Keeney's and Lowe's attention, litigating and negotiating a
3 settlement in the public interest. Keeney shall deliver its payment on the Effective Date in a check
4 payable to "Daniel Greenbaum, Esq. Client Trust Account."

5 **3.3 Payment of Penalties, Attorney's Fees and Costs**

6 All payments required by Sections 3.1 and 3.2 shall be made within ten (10) days of the date
7 this agreement is approved and entered and no longer subject to appeal, in three checks made
8 payable as follows:

- 9 (a) one check to "OEHHA" in the amount of \$1,500;
- 10 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Alisa Schochet" in the
11 amount of \$500;
- 12 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$12,750.00.

13 **3.4 Issuance of 1099 Forms**

14 After the settlement funds have been transmitted to Alissa Schochet's counsel, Keeney shall
15 issue separate 1099 forms, as follows:

- 16 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN: 68-
17 0284486) in the amount of \$1,500;
- 18 (b) a second 1099 form to "Alisa Schochet" in the amount of \$500, whose address and
19 tax identification number shall be furnished upon request;
- 20 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the
21 amount of \$12,750.00.

22 **3.5 Issuance of Payments**

23 **3.5.1** All payments owed to Alisa Shochet pursuant to Section 3.1, shall be
24 delivered to the following payment address:

25 Daniel N. Greenbaum, Esq.
26 Law Office of Daniel N. Greenbaum
14752 Otsego Street
27 Sherman Oaks, CA 91403

28 **3.5.2** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1,

1 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

2 Mike Gyrics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

7 With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum at
8 the address set forth above in 3.5.1, as proof of payment to OEHHA.

9 **4. CLAIMS COVERED AND RELEASED**

10 **4.1 Claims Covered**

11 This Consent Judgment is a full, final and binding resolution between Schochet on behalf of
12 herself, her past and current attorneys, agents, representatives, successors, assigns, Keeney, and its
13 parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,
14 and their successors and assigns, Lowe's and its parent, shareholders, divisions, subdivisions,
15 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns (Keeney and
16 Lowe's are collectively referred to as the "Defendant Releasees"), and all entities to whom they
17 directly or indirectly distribute or sell or have in the past directly or indirectly distributed or sold
18 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
19 franchisees, cooperative members, and licensors and licensees ("Downstream Defendant
20 Releasees"), regarding any violation of Proposition 65 that was or could have been asserted in the
21 Notice or the Action against Defendant Releasees or Downstream Defendant Releasees, based on
22 failure to warn about alleged exposure to chemicals contained in Covered Products prior to the
23 Effective Date.

24 **4.2 Schochet's Release of Keeney and Lowe's**

25 In consideration of the promises and agreements herein contained, the injunctive relief
26 commitments set forth in Section 2, and for the payments to be made pursuant to Section 3,
27 Schochet, on behalf of herself, her past and current agents, representatives, attorneys, including but
28 not limited to Daniel Greenbaum, Esq., successors, and/or assignees, hereby waives all rights to
institute or participate in, directly or indirectly, any form of legal action and release all claims,

1 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
2 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited
3 to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or
4 unknown, fixed, or contingent (collectively "Claims") that were brought or could have been brought
5 against Keeney or Lowe's and the Downstream Defendant Releasees based on claims arising under
6 Proposition 65 with respect to chemicals in the Covered Products, as such claims relate to the
7 alleged failure to warn under Health & Safety Code Section 25249.6.

8 Plaintiff acting on her own behalf and in the public interest releases Keeney and Lowe's and
9 the Downstream Defendant Releasees from all claims for violations of Proposition 65 based on
10 exposure to lead from Covered Products as set forth in the Notice of Violation. Compliance with the
11 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
12 exposures to Covered Products as set forth in the Notice of Violation.

13 **4.3 Keeney and Lowe's Release of Schochet**

14 On behalf of themselves, Keeney and Lowe's waive all rights to institute any form of action
15 against Schochet, her attorneys, consultants, and representatives for all actions taken or statements
16 made in the course of this Action prior to the date of the execution of this Consent Judgment.

17 **4.4 Full Release & Dismissal as to Lowe's**

18 Compliance with the terms of this Consent Judgment by Keeney resolves any issue, now and
19 in the future, concerning compliance by Keeney, Lowe's the Defendant Releasees, and the
20 Downstream Defendant Releasees with the requirements of with Proposition 65 with respect to
21 chemicals in any Covered Products that are manufactured, shipped, or sold by Keeney, Lowe's, the
22 Defendant Releasees or the Downstream Defendant Releasees following the Effective Date.

23 In consideration of the promises and agreements herein contained, upon approval and entry
24 of this Consent Judgment, Plaintiff shall file a dismissal *with prejudice* of the Action in its entirety as
25 to Lowe's.

26 **5. ENFORCEMENT**

27 Any Party may file suit to enforce the terms and conditions contained in this Consent
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Judgment, as provided in this paragraph. A Party may enforce any of the terms and conditions of this Consent Judgment only after that Party first provides thirty (30) days written notice to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good faith manner. The Parties agree that the requirements of this paragraph shall also apply to any alleged failures to comply with the terms and conditions of this Consent Judgment by Downstream Defendant Releasees, in which case notice of such alleged failures shall be given to Keeney.

6. MODIFICATION

This Consent Judgment may be modified from time to time by express written agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion and in accordance with law. A Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

7. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

8. GOVERNING LAW AND APPLICATION

8.1 The terms of this Consent Judgment shall be governed by the laws of the State of California and shall apply only to Covered Products that are sold or offered for sale in the State of California. In the event that Proposition 65 is repealed, preempted, amended or otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Keeney shall have no

1 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
2 Covered Products are so effected.

3 8.2 This Consent Judgment shall apply to and be binding upon Schochet and Keeney its
4 divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns.

5 8.3 The Parties, including their counsel, have participated in the preparation of this
6 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
7 Consent Judgment was subject to revision and modification by the Parties and has been accepted and
8 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
9 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
10 the manner of the preparation of this Consent Judgment.

11 **9. PROVISION OF NOTICE**

12 All notices required pursuant to this Consent Judgment and correspondence shall be in
13 writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt
14 requested; or (iii) a recognized overnight courier on any party by the other party at the following
15 addresses:

16 For Schochet:

17 Daniel Greenbaum, Esq.

18 14752 Otsego Street

19 Sherman Oaks, CA 91403

20 For Keeney and Lowe's:

21 Roger A. Cerda

22 Alston & Bird, LLP

23 333 South Hope Street, 16th Floor,

24 Los Angeles, CA 90071

25 **10. EXECUTION AND COUNTERPARTS**

26 This Consent Judgment may be executed in counterparts, and by facsimile or portable
27 document format (PDF) signature, each of which shall be deemed an original, and all of which,
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when taken together, shall constitute one and the same document.

11. AUTHORIZATION

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

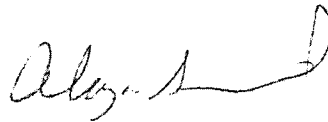
12. COURT APPROVAL

If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED

DATED: February 4, 2014

Alisa Schochet



By: Alisa Schochet

DATED: February __, 2014

The Keency Manufacturing Company

By: Brian Zack

1 when taken together, shall constitute one and the same document.

2 **11. AUTHORIZATION**

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12 **IT IS SO STIPULATED**

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14 DATED: February __, 2014 Alisa Schochet

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17 By: Alisa Schochet

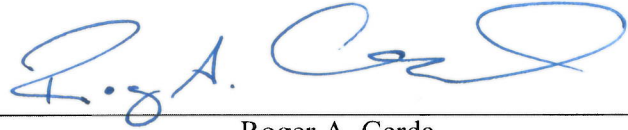
18 DATED: February 4, 2014 The Keeney Manufacturing Company

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21 By: Brian Zack
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1 Agreed as to form:

2 DATED: February 4, 2014

MARK D. JOHNSON
ROGER A. CERDA
ALSTON & BIRD LLP

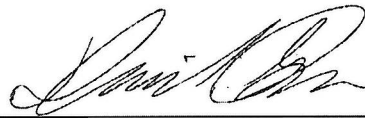
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Roger A. Cerda

6 Attorney for Defendants
7 **THE KEENEY MANUFACTURING COMPANY**
8 **and LOWE'S HIW, INC. , n/k/a LOWE'S HOME**
9 **CENTERS, LLC**

10 DATED: February __, 2014

DANIEL N. GREENBAUM
LAW OFFICES OF DANIEL N. GREENBAUM

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12 

Daniel N. Greenbaum

13 Attorney for Plaintiff
14 **ALISA SCHOCHET**