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CORPORATION

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14 CENTRAL DISTRICT

15 AFS ENTERPRISES, LLC,)	Unlimited Jurisdiction
)	
16)	CASE NO. BC515012
17 Plaintiff,)	<i>Honorable Michael Linfield</i>
)	<i>Department</i>
18 vs.)	
)	CONSENT JUDGMENT PURSUANT TO
19)	STIPULATION OF THE PARTIES
20 WESTINGHOUSE LIGHTING)	<u>Hearing Set For:</u>
CORPORATION; and DOES 1 to 10,)	Date:
21 Inclusive,)	Time:
)	Place: 111 N. Hill St., Los Angeles, CA 90012
22 Defendants.)	

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25 This consent judgment pursuant to stipulation of the parties (this "Consent Judgment") is
26 entered into by Plaintiff AFS ENTERPRISES, LLC and Defendant WESTINGHOUSE LIGHTING
27 CORPORATION ("WLC" or "Settling Defendant"), who hereby agree:
28

1 **INTRODUCTION**

2 This Consent Judgment relates to the failure of Defendant and Orchard Supply Hardware
3 Stores Corporation (“OSH”), a necessary party to this action that is currently protected by the
4 Automatic Stay of Section 362 of the Bankruptcy Code due to the filing of a Voluntary Petition for
5 Chapter 11 Bankruptcy¹, to warn persons of exposure to lead, which is a chemical known to the State
6 of California to cause birth defects, or other reproductive harm. Under the Safe Drinking Water and
7 Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as
8 “Proposition 65,” businesses must provide persons with a “clear and reasonable warning” before
9 exposing individuals to chemicals known to the state to cause cancer or reproductive harm.

10 The parties have engaged in extended settlement negotiations prior to the initiation and during
11 the pendency of the ongoing litigation. In these negotiations, Plaintiff was represented by the Law
12 Office of Daniel N. Greenbaum, and Defendant was represented by the Law Office of Howard J.
13 Anderson.

14 The parties have agreed to settle this matter without litigation pursuant to the terms of this
15 Consent Judgment. Furthermore, the parties enter into this Consent Judgment pursuant to a
16 compromise and settlement of the allegations in the Complaint. The parties believe that the
17 resolution embodied in this Consent Judgment is fair and reasonable and fulfills the responsibility of
18 counsel of record, *to wit*, the Law Office of Daniel N. Greenbaum, to the citizens of the State of
19 California;² that its terms are appropriate in light of certain corrective efforts Defendant made or will
20 make, and that entry of this Consent Judgment is in the best interest of the public.

21 The parties, after opportunity for review by counsel, hereby stipulate and consent to the entry
22 of this Consent Judgment as set forth below.

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26 ¹ Filed on June 17, 2013, in the U.S. Bankruptcy Court, District of Delaware (Delaware), Bankruptcy Petition
No. 13-11565-CSS.

27 ² Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition 65 may be brought by
28 “any person in the public interest.” Business and Professions Code sections 17200 et seq. provide that actions to enforce
that statute may be brought in a private “Attorney General” action.

1 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

2 **CONSENT JUDGMENT PURSUANT TO STIPULATION**

3 **1. DEFINITIONS**

4 Except where otherwise expressly defined in this Consent Judgment, all terms shall be
5 interpreted consistent with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
6 Safety Code section 25249.5 *et seq.*, including the regulations promulgated pursuant to those
7 sections.

8 **2. COMPLAINT AND SCOPE OF AGREEMENT**

9 The Complaint in this action alleges that Defendant and OSH violated the Safe Drinking
10 Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 *et seq.*, for
11 which a Private Enforcer may seek civil liability pursuant to Section 25249.7(f) of the Health and
12 Safety Code. This Consent Judgment resolves all allegations and violations made in the Complaint
13 by Defendant and OSH, which the parties have agreed will be covered by this Consent Judgment.

14 By execution of this Consent Judgment, Settling Defendant does not admit any violations of
15 Proposition 65 or the Unfair Competition Act or any other law, and specifically denies that it has
16 committed any such violations.

17 Nothing in this Consent Judgment shall be construed as a decision by the Court on any issue
18 of law or fact or as an admission by any party of any fact, issue of law or violation of law, nor shall
19 compliance with this Consent Judgment constitute or be construed as an admission by any party of
20 any fact, issue of law, or violation of law.

21 **3. JURISDICTION AND VENUE**

22 The parties agree that the Superior Court of California, County of Los Angeles, has subject
23 matter jurisdiction over the matters alleged in this action and personal jurisdiction over the parties to
24 this Consent Judgment, and that the Superior Court for the County of Los Angeles is the proper
25 venue of this action.

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2 **4. CIVIL PENALTY AND ATTORNEY FEES**

3 4.1 Civil Penalty Payment

4 Notwithstanding the Defendant’s claim that individuals cannot be exposed to the lead because
5 Defendant’s Product is coated with lacquer, Settling Defendant shall, within thirty (30) days after
6 entry of this Consent Judgment, pay the sum of two thousand dollars (\$2,000) as follows: the civil
7 penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c) and
8 (d), with seventy-five percent (75%)of these funds remitted to the State of California’s Office of
9 Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%)
10 of the penalty remitted to AFS Enterprises, LLC.

11 4.2 Attorney Fees Payment

12 Within thirty (30) days of filing this Consent Judgment with the Superior Court of the State of
13 California, County of Los Angeles, and delivering proof of filing thereof to Carl F. Thon at
14 thonc@westinghouselighting.com, with a copy to Howard J. Anderson, Esq., at
15 anderson.howard@sbcglobal.net, Defendant shall forthwith pay the sum total of ten thousand dollars
16 (\$10,000) for attorney’s fees and costs, incurred before and after litigation (the “Settlement
17 Amount”), with a check made payable to Plaintiff’s counsel, *to wit*, Law Office of Daniel N.
18 Greenbaum in trust for AFS Enterprises, LLC, and delivered to Plaintiff’s counsel at the address set
19 forth on Page 1 of this Consent Judgment. Defendant shall pay its own attorneys’ fees and costs,
20 incurred before and after litigation.

21 **5. OFFICE OF THE ATTORNEY GENERAL**

22 THE COURT IS HEREBY ADVISED THAT FAILURE TO OBJECT OR OTHERWISE
23 RESPOND BY THE OFFICE OF THE ATTORNEY GENERAL, STATE CALIFORNIA
24 DEPARTMENT OF JUSTICE, TO A SETTLEMENT SHALL NOT BE CONSTRUED AS
25 ENDORSEMENT OF OR CONCURRENCE IN ANY SETTLEMENT.

26 **6. RELEASES**

27 6.1 PLAINTIFF ACTING ON ITS OWN BEHALF AND IN THE PUBLIC INTEREST
28 RELEASES DEFENDANT WLC AND OSH FROM ALL CLAIMS FOR VIOLATIONS OF

1 PROPOSITION 65 UP THROUGH THE EFFECTIVE DATE BASED ON EXPOSURE TO LEAD
2 FROM THE SPECIFIC PRODUCT (LAMP FINIAL) AS SET FORTH IN THE NOTICE(S) OF
3 VIOLATION. COMPLIANCE WITH THE TERMS OF THIS CONSENT JUDGMENT
4 CONSTITUTES COMPLIANCE WITH PROPOSITION 65 WITH RESPECT TO EXPOSURES
5 TO THE SPECIFIC PRODUCT (LAMP FINIAL) AS SET FORTH IN THE NOTICE(S) OF
6 VIOLATION.

7 6.2 Plaintiff, itself, and all of its successors, predecessors, beneficiaries, executors,
8 trustees, administrators, subrogees, agents, attorneys, representatives, sub-contractors, employees,
9 officers, directors, partners, shareholders, principals, parent corporations, subsidiaries and/or affiliates
10 (any other corporations in which they may have any interest), irrevocably and absolutely releases and
11 forever discharges WLC and OSH and all of their predecessors and successors in interest, assignees,
12 nominees, authorized franchisees, and past and present entities, subsidiaries, affiliates, divisions,
13 officers, directors, employees, stockholders, attorneys, servants, representatives, partners, and agents,
14 of and from all claims, obligations, actions, or causes of action (however denominated), whether in
15 law, statute or in equity and whether known or unknown, present or contingent, for any injury,
16 damage or loss whatsoever which they may now have, own or claim to have against WLC and OSH
17 by reason of any matter whatsoever occurring prior to and through the execution of this Consent
18 Judgment, including, but not in any sense limited to, all claims that were or that could have been
19 asserted in this action for any reason whatsoever, but excluding any and all representations,
20 warranties, obligations, duties and covenants arising from this Consent Judgment. Each party further
21 agrees and undertakes not to make any claim or take any proceedings against any other person or
22 entity which might claim contribution or indemnity from the other party. THIS SECTION 6.2
23 RELEASE IS A GENERAL RELEASE AND THE PARTIES INTEND AND AGREE THAT IT
24 SHALL BE INTERPRETED, CONSTRUED AND ENFORCED AS SUCH.

25 7. **SURVIVAL**

26 The parties hereby agree that the provisions of this Consent Judgment, including, without
27 limitation, the releases made herein, shall survive the execution of this Consent Judgment and the
28 performance by the parties of their respective obligations under this Consent Judgment.

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8. SEVERABILITY

Any part, provision or representation of this Consent Judgment that is prohibited or unenforceable, or is held by a court of competent jurisdiction to be void or unenforceable, in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining parts, provisions or representations herein, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby knowingly, voluntarily and intelligently waive any provision of law that prohibits or renders void or unenforceable any part, provision, representation or warranty hereof.

9. INTEGRATION

This Consent Judgment constitutes the entire agreement between the parties and may not be amended or supplemented except as provided for in this Consent Judgment.

10. SUCCESSORS AND ASSIGNS

This Consent Judgment shall be binding upon and inure to the benefit of the parties' successors and assigns.

11. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment may be modified only by the Court, or upon written consent by the parties and the approval of the Court.

12. AUTHORIZATION TO SIGN

Each party hereby represents and warrants that the individual signing this Consent Judgment on its behalf is duly authorized to enter into this Consent Judgment and to execute and legally bind such party to it.

13. COUNTERPARTS

This Consent Judgment may be executed in counterparts, by Portable Document Format, *i.e.*, PDF, and facsimiles, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument.

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14. GOVERNING LAW

California law shall govern the interpretation, construction and enforcement of this Consent Judgment.

15. RETENTION OF JURISDICTION

15.1 The parties agree that this Court, *to wit*, Superior Court of the State of California, County of Los Angeles, has exclusive jurisdiction to interpret and enforce this Consent Judgment. The Court shall retain continuing jurisdiction to enforce the terms of this Consent Judgment and to address any other matters arising out of or regarding this Consent Judgment.

15.2 This Consent Judgment shall go into effect immediately upon entry thereof.

16. INTERPRETATION

This Consent Judgment was drafted equally by all parties. The parties agree that the rule of construction holding that ambiguity is construed against the drafting party shall not apply to the interpretation of this Consent Judgment.

17. FINAL CONSENT JUDGMENT

Upon approval and entry of this Consent Judgment, this Consent Judgment shall constitute a Final Consent Judgment by the parties thereto.

SO STIPULATED.

FOR PLAINTIFF AFS ENTERPRISES, LLC:

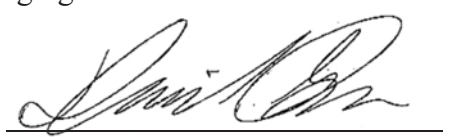
Dated: November 19, 2013

Signature: 

Print Name: Alisa Fried

Title: Managing Member

Dated: November 19, 2013

Signature: 

Daniel N. Greenbaum, Esq.

Attorney for Plaintiff

1 FOR DEFENDANT WESTINGHOUSE LIGHTING CORPORATION:

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Dated: December 4, 2013

Signature: 

Print Name: Carl F. Thon

Title: Sr. Vice President of Operations

Dated: December 4, 2013

Signature: 

Nigel J. Burns, Esq.

Attorney for Defendant

IT IS HEREBY ORDERED:

Entered this _____ day of _____, 2014.

Judge of the Superior Court of Los Angeles County