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ECOLOGICAL RIGHTS FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

ECOLOGICAL RIGHTS FOUNDATION,

Plaintiff,

v.

ATD TOOLS, INC.,

Defendant.

Case No. CGC-16-554041

CONSENT JUDGMENT

1. INTRODUCTION

1.1 On September 2, 2016, the ECOLOGICAL RIGHTS FOUNDATION ("ERF") acting on behalf of itself and the general public, filed a complaint for civil penalties and injunctive relief ("Complaint") in San Francisco County Superior Court, Case No. CGC-16-554041, against ATD TOOLS, INC. ("ATD"). The Complaint alleges, among other things, that these defendants violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* ("Proposition 65"). In particular, ERF alleged that ATD knowingly and intentionally exposed persons to tools that consist of, or which incorporate components made of, leaded brass and/or bronze (hereinafter "leaded-brass tools"). ERF further alleged that lead and lead compounds are chemicals known to the State of California to cause cancer and birth defects or other reproductive harm, without first providing a clear and reasonable warning to such individuals.

1.2 On April 29, 2016, ERF sent a 60-Day Notice letter ("Notice Letter") to ATD, the California Attorney General, all California District Attorneys, and all City Attorneys for California cities with populations exceeding 750,000, containing its allegations concerning certain leaded-brass tools offered for sale in California without Proposition 65 warnings.

1.3 ATD is a business that employs ten or more persons and manufactures, distributes, markets, and/or offers for sale within the State of California certain tools containing brass components which are alleged to contain lead and/or lead compounds. Lead and lead compounds are chemicals known to the State of California to cause cancer, and lead is a chemical known to the State of California to cause reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under specified circumstances, products containing lead and/or lead compounds that are sold or distributed in the State of California are subject to the Proposition 65 warning requirement set forth in Health and Safety Code Section 25249.6. ERF alleges that leaded brass tools, including tools manufactured, distributed, sold and/or marketed by ATD for use in California require a warning under Proposition 65.

1.4 For purposes of this Consent Judgment, the term "Covered Products" shall be defined as brass hammers and brass punch sets, to the extent these products are distributed and sold within the State of California, and are manufactured, distributed, marketed and/or sold by ATD, regardless of whether they bear ATD's labels.

1.5 For purposes of this Consent Judgment, the parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over ATD as to the acts alleged in the Complaint, that venue is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations contained in the Complaint and of all claims that were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

1.6 This Consent Judgment resolves claims that are denied and disputed. The parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any material allegation of the Complaint, each and every allegation of which ATD denies; nor may this Consent Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of ATD or any other person or entity related to the Defendant.

2. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNINGS

2.1 All Covered Products that ATD ships for distribution 90 days after entry of this Consent Judgment (the "Effective Date") or thereafter, but not earlier, must either meet the reformulation standard set forth in Section 2.2 of this Consent Judgment, or must meet the warning requirements set forth in Section 2.3 below.

2.2 Covered Products are deemed to meet the reformulation standard referenced in Section 2.1 of this Consent Judgment and thus deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements if the subject brass components meet the following criteria: (a) the brass shall have no lead as an intentionally added constituent; and (b) the brass shall have a lead content by weight of no more than 0.03% (300 parts per million, or

"300 ppm"). ATD may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the brass component, 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.

2.3 Covered Products are deemed to meet the warning requirements of Section 2.1 of this Consent Judgment, and thus deemed to comply with Proposition 65 if ATD provides Proposition 65 warnings as follows:

> **WARNING**: This product can expose you to lead, which is known to the State of California to cause birth defects or other reproductive harm. ***Wash hands after handling***. For more information go to www.P65Warnings.ca.gov.

The word "**WARNING**" shall be in all capital letters and bold print. The words "***Wash hands after handling***" shall be in italic letters and bold print. ATD may utilize a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. ATD shall provide such warning directly on or with the unit package of the Covered Products. Such warning shall be prominently affixed to or printed on each Covered Product or its label or package. If printed on the label itself, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the Covered Product.

(a) The requirements for product labeling, set forth in subparagraph (a) above are imposed pursuant to the terms of this Consent Judgment. The parties recognize that product labeling is not the exclusive method of providing a warning under Proposition 65 and its implementing regulations.

(b) If Proposition 65 warnings for lead or lead compounds should no longer be required, ATD shall have no further warning obligations pursuant to this Consent Judgment. Except as provided in section 2.1 above, in the event that ATD ceases to implement or modifies the warnings required under this Consent Judgment

(because of a change on the law or otherwise), ATD shall provide written notice to ERF (through Ecology Law Center) of its intent to do so, and of the basis for its intent, no less than thirty (30) days in advance. ERF shall notify ATD in writing of any reasonable objection within thirty (30) days of its receipt of such notice, or such objection by ERF shall be waived.

3. SETTLEMENT PAYMENTS

3.1 Civil Penalties and Payments In Lieu of Penalties

Pursuant to Health and Safety Code section 25249.7(b)(2), based solely on the sales of its House Brand Covered Products, ATD shall pay $10,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will provide these payments in two checks for the following amounts made payable to: 1) "OEHHA" in the amount of $7,500, and 2) "Ecological Rights Foundation" in the amount of $2,500.

3.2 Attorneys' Fees and Litigation Costs

In settlement of all of the claims that are alleged, or could have been alleged, in the Complaint concerning Covered Products, ATD shall pay $17,500 to the Ecology Law Center to cover Plaintiff's attorneys' fees and costs.

3.3 Payments

All Payments shall be sent no later than 10 days after the Effective Date via USPS certified mail, return receipt requested, to the following addresses:
All payments to Ecological Rights Foundation and Ecology Law Center shall be delivered to:

Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, CA 95061

The payment to OEHHA shall be delivered to:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

4. ENTRY OF CONSENT JUDGMENT

4.1 The parties hereby request that the Court promptly enter this Consent Judgment. Upon entry of the Consent Judgment, ATD and ERF waive their respective rights to a hearing or trial on the allegations of the Complaint.

5. MATTERS COVERED BY THIS CONSENT JUDGMENT

5.1 This Consent Judgment is a final and binding resolution between ERF, acting on behalf of itself and (as to those matters raised in the 60 Day Notice) in the public interest, and ATD of any violation of Proposition 65 with respect to lead exposures allegedly arising from the Covered Products whether based on actions committed by ATD, or by any other person or entity within ATD's chain of distribution of the Covered Products, including, but not limited to, manufacturers, distributors, wholesale or retail sellers, and any other person in the course of doing business. As to lead exposures allegedly arising from the Covered Products, compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by ATD and its parent, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their manufacturers, customers, distributors, wholesalers, retailers, or any other person in the course of doing business, and the successors and assigns of any of these who may manufacture, use, maintain, distribute, market or sell Covered Products, with the requirements of Proposition 65.

5.2 As to lead exposures allegedly arising from the Covered Products, ERF, acting on behalf of itself and its agents, successors and assigns, waives all rights to institute any form of legal action, and releases all claims against ATD and its parent, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or any other person in the course of doing business, and the successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the Covered

Products, whether under Proposition 65 or otherwise. In furtherance of the foregoing, ERF, acting on behalf of itself hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it with respect to the Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

> "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."

ERF understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if ERF suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, it will not be able to make any claim for those damages against ATD, its parent, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or any other person in the course of doing business, and the successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, ERF acknowledges that it intends these consequences for any such claims which may exist as of the date of this release but which ERF does not know exist, and which, if known, would materially affect its decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

6. ENFORCEMENT OF JUDGMENT

6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties hereto. The parties may, by noticed motion or order to show cause before the Superior Court of San Francisco County, giving the notice required by law, enforce the terms and conditions contained herein.

7. MODIFICATION OF JUDGMENT

This Consent Judgment may be modified only upon written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and upon entry of a modified Consent Judgment by the Court.

8. AUTHORITY TO STIPULATE

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

9. RETENTION OF JURISDICTION

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

10. 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 and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

11. GOVERNING LAW

The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.

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: DECEMBER 15, 2016

ECOLOGICAL RIGHTS FOUNDATION

James Lamport, EXEC. DIR.

James Lamport, Executive Director
Ecological Rights Foundation

DATED: December 14, 2016

ATD Products, Inc.

William F. Robinson, Jr.

By: William F. Robinson, Jr.
Its: President, ATD Tools, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT