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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UN-LIMITED CIVIL

ALICIA CHIN,  
Plaintiff,  
vs.

ACE HARDWARE CORPORATION; HY-  
KO PRODUCTS COMPANY; and  
Does 1-30, inclusive  
Defendants

Case No.: RG17-866389

*Proposed* CONSENT JUDGMENT

Cal. Health & Safety Code §25249.6 *et seq* &  
Code of Civil Procedure §664.6

**INTRODUCTION**

**1.1 Parties**

This Consent Judgment is entered into by and between plaintiff Alicia Chin ("Chin") and defendant Hy-Ko Products Company ("Hy-Ko"), with Chin and Hy-Ko each referred to individually as a "Party" and collectively as the "Parties."

**1.2 Plaintiff**

Chin is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products.

1           **1.3 Defendants**

2           Hy-Ko employs ten or more persons and each is a person in the course of doing business for  
3 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and  
4 Safety Code section 25249.5 *et seq.* ("Proposition 65").

5           **1.4 General Allegations**

6           Chin alleges that Hy-Ko manufactures, imports, sells and/or distributes for sale in California,  
7 the key topper containing DEHP. Chin alleges that Hy-Ko does so without providing the health  
8 hazard warning that Chin alleges is required by Proposition 65.

9           **1.5 Product Description**

10           The products covered by this Consent Judgment are the key toppers Ace Hardware  
11 Corporation, item # 5087424, & Hy-Ko Products Company Item # 0 29069 75123 4 (Stock #  
12 KC135) containing di(2-ethylhexyl)phthalate ("DEHP") (collectively, "Products").

13           **1.6 Notice of Violation**

14           On April 6, 2017, Chin served Hy-Ko and the requisite public enforcement agencies with a  
15 60-Day Notice of Violation ("Notice"), alleging that Hy-Ko violated Proposition 65 when it  
16 failed to warn its customers and consumers in California that the Products expose users to  
17 DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is  
18 diligently prosecuting an action to enforce the allegations set forth in the Notice.

19           **1.7 Complaint**

20           On July 5, 2017, Chin commenced the instant action, naming Ace Hardware Corporation and  
21 Hy-Ko Products Company, among others, as a defendant for the alleged violations of Proposition  
22 65 that are the subject of the Notice.

23           **1.8 No Admission**

24           Hy-Ko denies the material, factual, and legal allegations contained in the Notice and  
25 Complaint, and maintains that all of the products that it has sold or distributed for sale in  
26 California, including the Products, have been, and are, in compliance with all laws. Nothing in  
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1 this Consent Judgment shall be construed as an admission by Hy-Ko of any fact, finding,  
2 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent  
3 Judgment constitute or be construed as an admission by Hy-Ko of any fact, finding, conclusion  
4 of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise  
5 affect Hy-Ko's obligations, responsibilities, and duties under this Consent Judgment.

#### 6 **1.9 Jurisdiction**

7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
8 jurisdiction over Hy-Ko as to the allegations contained in the Complaint, that venue is proper in  
9 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of  
10 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

#### 11 **1.10 Effective Date**

12 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date  
13 that the Court grants the motion for approval of this Consent Judgment contemplated by Section  
14 5.

### 15 **2. INJUNCTIVE RELIEF:**

#### 16 **2.1 Reformulated Products**


17 Commencing on the Effective Date, and continuing thereafter, Hy-Ko agrees to only import,  
18 manufacture, distribute for sale, ship for sale, sell, and/or offer for sale in California (a)  
19 "Reformulated Products" or (b) Products with a clear and reasonable warning, as defined by the  
20 California Code of Regulations, Title 27, Div. 4, Chap. 1, Art. 6 (commencing at §25600) For  
21 purposes of this Settlement Agreement, "Reformulated Products" are Products containing DEHP  
22 in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to  
23 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other  
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1 methodology utilized by federal or state government agencies for the purpose of determining  
2 DEHP content in a solid substance.

### 3       **2.2     Clear and Reasonable Warning**

4       For purposes of this Consent Judgment and commencing on the Effective Date, Hy-Ko shall,  
5 for all Products it imports, manufactures, distributes for sale, ships for sale, sell, and/or offer for  
6 sale in California that are not Reformulated Products, provide clear and reasonable warnings for  
7 DEHP as set forth in subsections 2.2(a) and 2.2(b) respectively below. Hy-Ko shall employ the  
8 use of the warning symbol, which consists of a black exclamation point in a yellow equilateral  
9 triangle<sup>1</sup> with a bold black outline, provided in subsection 2.2(a) and 2.2(b) respectively below.

10       The warning symbol must be placed to the left of the text of the warning in a size no smaller than  
11 the height of the word "WARNING". The warning shall be prominently placed with such  
12 conspicuousness as compared with other words, statements, designs, or devices as to render it  
13 likely to be read and understood by an ordinary individual under customary conditions before  
14 purchase or use. Each warning shall be provided in a manner such that the customer or user  
15 understands to which specific Products the warning applies, so as to minimize the risk of  
16 customer confusion.

- 17                   (a)        **WARNING:** This product can expose you to chemicals  
18 including DEHP, which is known to the State of California to  
19 cause birth defects and other reproductive harm and cancer.  
20 For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## 21       **3.     MONETARY SETTLEMENT TERMS**

### 22               **3.1     Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

23       Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the  
24 claims referred to in this Consent Judgment, Hy-Ko shall pay \$3000 in civil penalties in  
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26       <sup>1</sup> If the sign, label or shall tag for the product is not printed using the color yellow, the symbol may be provided in black and  
27 white.  
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1 accordance with this Section. Each penalty payment will be allocated in accordance with  
2 California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the  
3 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining  
4 25% of the penalty remitted to Chin. Chin's counsel shall be responsible for remitting Harbor  
5 Freight and Central Purchasing's penalty payment(s) under this Consent Judgment to OEHHA.

### 6 **3.1.1 Civil Penalty Payments**

7 (i) a check shall be delivered to "OEHHA" in the amount of \$2,250, at the  
8 address of "Mike Gyurics, Fiscal Operations Branch Chief, Office of  
9 Environmental Health Hazard Assessment, P. O. Box 4010, Sacramento, CA  
10 95812-4010";

11 (ii) a check payable to Alicia Chin in the amount of \$750, at the address of  
12 "O'Neil Dennis, Esquire, 385 Grand Avenue, Suite 300, Oakland, California,  
13 94610".  
14

### 15 **3.2 Reimbursement of Attorneys' Fees and Costs**

16 The Parties acknowledge that Chin and his counsel offered to resolve this dispute  
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
18 leaving the issue to be resolved after the material terms of the agreement had been settled.  
19 Shortly after the other settlement terms had been finalized, Hy-Ko expressed a desire to resolve  
20 Chin's fees and costs. The Parties then negotiated a resolution of the compensation due to Chin  
21 and his counsel under general contract principles and the private attorney general doctrine  
22 codified at California Code of Civil Procedure § 1021.5. For all work performed through the  
23 mutual execution of this agreement and the Court's approval of the same, but exclusive of fees  
24 and costs on appeal, if any, Hy-Ko shall reimburse Chin and her counsel \$7000. Hy-Ko's  
25 payment shall be delivered to the address in Section 3.4 in the form of a check payable to  
26 "O'Neil Dennis, Esq." The reimbursement shall cover all fees and costs incurred by Chin  
27 investigating, bringing this matter to Hy-Ko's attention, litigating, and negotiating a settlement  
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1 of the matter in the public interest.

2 **3.3 Payment Timing; Payments Held In Trust**

3 Hy-Ko shall deliver all payments required by this Consent Judgment to its counsel  
4 within one week of the date that this agreement is fully executed by the Parties. Hy-Ko's  
5 counsel shall confirm receipt of settlement funds in writing to Chin's counsel and, thereafter,  
6 hold the amounts paid in trust until such time as the Court grants the motion for approval of the  
7 Parties' settlement contemplated by Section 5. Within two days of the Effective Date, Hy-Ko's  
8 counsel shall deliver all settlement payments it has held in trust to Chin's counsel at the address  
9 provided in Section 3.4.

10 **3.4 Payment Address**

11 All payments required by this Consent Judgment shall be delivered to the following  
12 address:

13  
14 O'Neil Dennis, Esq.  
15 385 Grand Ave., Ste. 300  
Oakland, CA 94610

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Chin's Release of Proposition 65 Claims**

18 Chin, acting on her own behalf and in the public interest, releases Hy-Ko and their  
19 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
20 and attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell  
21 the Products including, but not limited to, their downstream distributors, wholesalers, customers,  
22 retailers, franchisers, cooperative members, licensors and licensees, inclusive of Ace Hardware  
23 Corporation ("Downstream Releasees") for any violations arising under Proposition 65 for  
24 unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by  
25 Hy-Ko prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this  
26 Consent Judgment constitutes compliance with Proposition 65 by Hy-Ko with respect to the  
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1 alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or  
2 distributed for sale by Hy-Ko after the Effective Date.

#### 3           **4.2 Chin's Individual Release of Claims**

4 Chin, in her individual capacity only and *not* in her representative capacity, also provides  
5 a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full  
6 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
7 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Chin of any nature,  
8 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged  
9 or actual exposures to DEHP in Products manufactured, imported, distributed or sold by Hy-Ko  
10 before the Effective Date. Chin further agrees to file a request for dismissal of Ace Hardware  
11 Corporation within one (1) week of the Effective Date.

#### 12           **4.3 Hy-Ko's Release of Chin**

13 Hy-Ko, on its own behalf and on behalf of its past and current agents, representatives,  
14 attorneys, successors and/or assignees, hereby waives any and all claims against Chin and his  
15 attorneys and other representatives, for any and all actions taken or statements made (or those  
16 that could have been taken or made) by Chin and his attorneys and other representatives in the  
17 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with  
18 respect to the Products.  
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#### 20       **5. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and  
22 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
23 year after it has been fully executed by the Parties. Chin and Hy-Ko agree to support the entry of  
24 this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely  
25 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section  
26 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which  
27 motion Chin shall draft and file and Hy-Ko shall support, including by appearing at the hearing if  
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1 so requested. If any third-party objection to the motion is filed, Chin and Hy-Ko agree to work  
2 together to file a reply and appear at any hearing. This provision is a material component of the  
3 Consent Judgment and shall be treated as such in the event of a breach.

4 **6. SEVERABILITY**

5 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any  
6 provision of this Consent Judgment is held by a court to be unenforceable, the validity of the  
7 remaining provisions shall not be adversely affected.

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of California  
10 and apply within the State of California. In the event that Proposition 65 is repealed, preempted,  
11 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Hy-  
12 Ko may provide Chin with written notice of any asserted change in the law, and shall have no  
13 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the  
14 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Hy-Ko  
15 from its obligation to comply with any pertinent state or federal law or regulation.

16 **8. NOTICE**

17 Unless specified herein, all correspondence and notice required by this Consent Judgment  
18 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,  
19 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the  
20 following addresses:  
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22 To Hy-Ko :

23 Johnathon Herzog, Esq.  
24 Weston Herzog LLP.  
25 550 N Brand Blvd., Ste. 1990  
26 Glendale, CA 91203

To Chin:

O'Neil Dennis, Esq.  
385 Grand Ave., Ste. 300  
Oakland, CA 94610



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

3 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

7 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

8 Chin and his counsel agree to comply with the reporting form requirements referenced in  
9 California Health and Safety Code section 25249.7(f).

10 **11. MODIFICATION**

11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
12 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion  
13 of any party and the entry of a modified Consent Judgment by the Court thereon.

14 **12. AUTHORIZATION**

15 The undersigned are authorized to execute this Consent Judgment on behalf of their  
16 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
17 Consent Judgment.  
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22 **AGREED TO:**

**AGREED TO:**

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25 ALICIA CHIN

23   
24

25 Hy-Ko Products Company

26 Dated: 1/15/18  
27

26 By: DAVID KAUFMAN  
27 (Print Name)

28 Its: CHAIRMAN / COO  
(Title)

Dated: 12/29/17

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