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

10 APS&EE, LLC, a limited liability company,)
11)
12 Plaintiff,)
13 v.)
14 DAISO CALIFORNIA LLC, a limited)
15 liability company, DAISO HOLDING USA,)
16 INC., a corporation, and DOES 1 through 100,)
17 inclusive,)
18 Defendants.)
19)
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CASE NO. BC678119

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. David Sotelo

Dept.: 40

Compl. Filed: October 3, 2017

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and
4 between Plaintiff, APS&EE, LLC (“Plaintiff”) and Defendant, Daiso California LLC
5 (“Defendant”). Plaintiff and Defendant shall hereinafter collectively be referred to as the
6 “Parties.”

7 **1.1.2** Plaintiff is an organization based in California with an interest in
8 protecting the environment, improving human health and the health of ecosystems, and
9 supporting environmentally sound practices, which includes promoting awareness of exposure to
10 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

11 **1.1.3** Defendant is a person in the course of doing business as the term is
12 defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

13 **1.2 Allegations**

14 Plaintiff has alleged that Defendant manufactured, distributed, sold, and/or offered to sell
15 in California the Daiso Japan hammers, including pipe hammer No. 70, 4-549131-267518, and
16 rubber hammer 8oz, No. 61, 4-549131-097856; Daiso Japan phone holders, including orange
17 Rosso Bianco 4-549131-225891; Daiso Japan pliers, including diagonal plier, No. 39,
18 4549131315004, T013; and Daiso Japan screwdrivers, including 6-in-1, B-027, 4-984343-
19 944343 (hereinafter collectively, the “Covered Product(s)”). Plaintiff has alleged that the
20 Covered Products cause users to be exposed to unsafe levels of Di-n-Butyl Phthalate (“DBP”),
21 Di (2-ethylhexyl) Phthalate (“DEHP”), and/or Lead, without providing a clear and reasonable
22 warning required by Proposition 65. DBP, DEHP, and Lead are listed by the State of California
23 as known to cause cancer and/or birth defects or other reproductive harm, and therefore subject
24 to Proposition 65 warning requirements. Pertaining to each Covered Product, Plaintiff alleges
25 exposure from the following listed chemicals:

- 26 a. DBP, DEHP, and Lead in the Daiso Japan hammers, including pipe hammer No.
27 70, 4-549131-267518, and rubber hammer 8oz, No. 61, 4-549131-097856;
28 b. DEHP and Lead in Daiso Japan screwdrivers, including 6-in-1, B-027, 4-984343-

944343;

c. Lead in Daiso Japan phone holders, including orange Rosso Bianco 4-549131-225891; and

d. Lead in the Daiso Japan pliers, including diagonal plier, No. 39, 4549131315004, T013.

On July 24, 2017, Plaintiff provided sixty-day notices of violation (the “July 24th Notices”) to Daiso California LLC, Daiso Holding USA, Inc. and the various public enforcement agencies with respect to the Proposition 65 violations related to DBP, DEHP, and/or Lead in each of the Covered Products. On February 8, 2018, Plaintiff provided a supplemental sixty-day notice of violation (“February 8th Notice”) to Daiso California LLC, Daiso Holding USA, Inc., and the various public enforcement agencies with respect to the Proposition 65 violations related to DBP, DEHP, and Lead in additional Daiso Japan hammers. The July 24th Notices along with the February 8 Notice shall hereinafter be referred to as the “Notices.”

On October 3, 2017, Plaintiff, acting in the public interest, filed a Complaint in the Superior Court for the County of Los Angeles, alleging violations of Proposition 65. Plaintiff subsequently filed a First Amended Complaint to include the allegations described in the February 8th Notice. The October 3rd Complaint and First Amended Complaint shall hereinafter be referred to as the “Complaint.”

1.3 No Admissions

Defendant denies all allegations in Plaintiff’s Notices and Complaint and maintains that the Covered Products have been, and are, in compliance with all laws, and that Defendant has not violated Proposition 65. This Consent Judgment shall not be construed as an admission of liability by Defendant but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Consent Judgment.

1.4 Jurisdiction And Venue

For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper

1 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
2 this Consent Judgment pursuant to California Code of Civil Procedure (“CCP”) § 664.6 and
3 Proposition 65.

4 **1.5 Effective Date**

5 The “Effective Date” shall be the date this Consent Judgment is approved and entered by
6 the Court.

7 **2. INJUNCTIVE RELIEF AND REFORMULATION**

8 **2.1 Reformulation**

9 To the extent that it has not already done so, no more than thirty (30) days after the
10 Effective Date, Defendant shall not distribute, sell or offer for sale a Covered Product in
11 California unless (a) the Covered Product contains no more than 100 parts per million (0.01%) of
12 lead or DBP, and no more than 1000 parts per million (0.1%) of DEHP (“Reformulated
13 Product”), or (b) the Covered Product is distributed, sold, or offered for sale with a clear and
14 reasonable warning as described below in Section 2.2.

15 **2.2 Clear And Reasonable Warnings**

16 **2.2.1** For any Covered Product that is not a Reformulated Product, such
17 Covered Product shall be accompanied by a clear and reasonable warning. Defendant shall use a
18 warning with the capitalized and emboldened wording as follows:

19 **WARNING:** This product can expose you to chemicals, including [DBP and/or
20 DEHP and/or lead]¹, which are known to the State of California to
21 cause cancer and birth defects or other reproductive harm. For
22 more information go to www.P65Warnings.ca.gov.

23 The warning shall be accompanied by a symbol consisting of a black exclamation point
24 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not
25 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
26 be placed to the left of the text of the warning, in a size no smaller than the height of the word
27 “WARNING”.

28 ¹ The warning must expressly identify at least one of the listed chemicals present in the Covered Product, as applicable.

1 **2.2.2** Each unit shall carry said warning directly on each unit or its label or
2 package, with such conspicuousness as compared with other words, statements or designs as to
3 render it likely to be read and understood by an ordinary consumer prior to sale.

4 **2.2.3** A Covered Product that is sold by Defendant on the internet shall also
5 provide the warning message by a clearly marked hyperlink on the product display page, or
6 otherwise prominently displayed to the purchaser before the purchaser completes his or her
7 purchase of the Covered Product.

8 **3. PAYMENTS**

9 **3.1 Civil Penalty Pursuant To Proposition 65**

10 In settlement of all causes of action in Plaintiff's Complaint, Defendant shall pay a total
11 civil penalty of six thousand dollars (\$6,000.00) to be apportioned in accordance with *Health and*
12 *Safety Code* section 25249.12(c)(1) and (d), with 75% (\$4,500.00) for State of California Office
13 of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% (\$1,500.00)
14 for Plaintiff.

15 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
16 made payable to "OEHHA" in the amount of \$4,500.00; and (2) a check or money order made
17 payable to "Law Offices of Lucas T. Novak" in the amount of \$1,500.00. Defendant shall remit
18 the payments within five (5) business days of the Effective Date, to:

19 Lucas T. Novak, Esq.
20 LAW OFFICES OF LUCAS T. NOVAK
21 8335 W Sunset Blvd., Suite 217
22 Los Angeles, CA 90069

23 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

24 Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs
25 incurred in prosecuting the instant action, for all work performed through execution of this
26 agreement and entry of this Consent Judgment. Accordingly, Defendant shall issue total payment
27 to "Law Offices of Lucas T. Novak" in the amount of thirty-four thousand dollars (\$34,000.00).
28 Defendant shall remit the payment in two installments as follows: (1) a check or money order in
the amount of \$14,000.00 within five (5) business days of the Effective Date, and (2) a check or

1 money order in the amount of \$20,000.00 within ninety (90) calendar days of the Effective Date,
2 to:

3 Lucas T. Novak, Esq.
4 LAW OFFICES OF LUCAS T. NOVAK
5 8335 W Sunset Blvd., Suite 217
6 Los Angeles, CA 90069

7 **4. RELEASES**

8 **4.1 Plaintiff's Release Of Proposition 65 Claims Against Defendant**

9 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
10 the promises and monetary payments contained herein, hereby releases Defendant, its parents,
11 subsidiaries, shareholders, directors, members, officers, employees, affiliated entities under
12 common ownership, attorneys, successors and assignees (including Daiso Holding USA, Inc.), as
13 well as each entity to whom Daiso directly or indirectly distributes or sells the Covered Products,
14 including but not limited to Daiso's distributors, retailers, wholesalers, vendors, customers,
15 marketplace hosts, and the successors and assigns of any of them (collectively "Released
16 Parties"), from any violation arising under Proposition 65 pertaining to the failure to warn about
17 exposures to DBP, DEHP, or Lead from the Covered Products sold or distributed for sale in
18 California by Defendant prior to the Effective Date, as alleged or otherwise asserted in the
19 Notices or Plaintiff's Complaint.

20 **4.2 Defendant's Release Of Plaintiff**

21 Defendant, and on behalf of all of the other Released Parties, by this Consent Judgment,
22 waives all rights to institute any form of legal action against Plaintiff, its shareholders, directors,
23 members, officers, employees, attorneys, experts, successors and assignees for actions or
24 statements made or undertaken, whether in the course of investigating claims or seeking
25 enforcement of Proposition 65 against Defendant in this matter.

26 **4.3 Waiver Of Unknown Claims**

27 Each of the Parties acknowledges that it is familiar with California Civil Code § 1542
28 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT

1 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
2 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
3 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

4 Each of the Parties waives and relinquishes any right or benefit it has or may have under
5 California Civil Code § 1542 or any similar provision under the statutory or non-statutory law of
6 any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits.
7 The Parties acknowledge that each may subsequently discover facts in addition to, or different
8 from, those that it believes to be true with respect to the claims released herein. The Parties
9 agree that this Consent Judgment and the releases contained herein shall be and remain effective
10 in all respects notwithstanding the discovery of such additional or different facts.

11 **5. COURT APPROVAL**

12 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
13 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
14 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
15 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
16 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
17 support the entry of this agreement in a timely manner, including cooperating on drafting and
18 filing any papers in support of the required motion for judicial approval.

19 **6. SEVERABILITY**

20 Should any part or provision of this Consent Judgment for any reason be declared by a
21 Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue
22 in full force and effect.

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California.

26 **8. NOTICES**

27 All correspondence and notices required to be provided under this Consent Judgment
28 shall be in writing and delivered personally or sent by first class or certified mail addressed as

1 follows:

2 TO DEFENDANT:

3 Steven G. Teraoka, Esq.
4 Teraoka & Partners LLP
5 One Embarcadero Center, Suite 1020
San Francisco, CA 94111

TO PLAINTIFF:

Lucas T. Novak, Esq.
Law Offices of Lucas T. Novak
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

6 **9. INTEGRATION**

7 This Consent Judgment constitutes the entire agreement between the parties with respect
8 to the subject matter hereof and may not be amended or modified except in writing.

9 **10. COUNTERPARTS**

10 This Consent Judgment may be executed in counterparts, each of which shall be deemed
11 an original, and all of which, when taken together, shall constitute the same document.
12 Execution and delivery of this Consent Judgment by email, facsimile, or other electronic means
13 shall constitute legal and binding execution and delivery. Any photocopy of the executed
14 Consent Judgment shall have the same force and effect as the originals.

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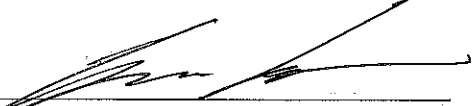
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1 **11. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
5 Consent Judgment and not subject to any conflicting obligation that will or might prevent or
6 interfere with the execution or performance of this Consent Judgment by said party.

7
8 **AGREED TO:**

9 Date: JUNE 7 2018

10
11 By: 

12 Authorized Representative of Daiso California LLC
13 *YOSHINORI MURATA*

14 **AGREED TO:**

15 Date: _____

16
17 By: _____

18 Authorized Representative of APS&EE, LLC
19

20 **IT IS SO ORDERED.**

21 Dated: _____

22 _____
JUDGE OF THE SUPERIOR COURT
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1 **11. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
5 Consent Judgment and not subject to any conflicting obligation that will or might prevent or
6 interfere with the execution or performance of this Consent Judgment by said party.

7
8 **AGREED TO:**

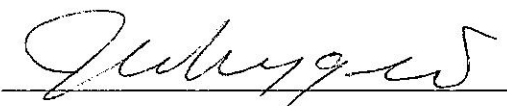
9 Date: _____

10
11 By: _____

12 Authorized Representative of Daiso California LLC

13
14 **AGREED TO:**

15 Date: 5/18/18

16
17 By: 

18 Authorized Representative of APS&EE, LLC

19
20 **IT IS SO ORDERED.**

21 Dated: _____

22 _____
JUDGE OF THE SUPERIOR COURT