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Attorney for Plaintiff, APS&EE, LLC

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

APS&EE, LLC, a limited liability company,

Plaintiff,

v.

ACE HARDWARE CORPORATION, a
corporation, and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. 21STCV06179

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Stephanie M. Bowick

Dept.: 19

Compl. Filed: February 16, 2021

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, Ace Hardware Corporation
5 (“Defendant or ACE”). 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 **1.2.1** Plaintiff alleges that Defendant shipped or distributed Ace Hardware
15 brand of Rubber Couplings, or connectors also known as Flexible Couplings, constructed out of
16 plastic or rubber manufactured by Pipeconx including T Coupling for 3” plastic or cast iron,
17 #4126439, 0-82901-08454-9 (hereinafter collectively the “Products”) into the State of California
18 causing users in California to be exposed to hazardous levels of Di (2-ethylhexyl) Phthalate
19 (“DEHP”) without providing “clear and reasonable warnings”, in violation of Proposition 65.
20 DEHP is potentially subject to Proposition 65 warning requirements because it is listed as known
21 to cause cancer and reproductive toxicity.

22 **1.2.2** On September 22, 2020, Plaintiff sent a Sixty-Day Notice of Violation
23 (the “Notice”) to Defendant and the various public enforcement agencies regarding the alleged
24 violation of Proposition 65 with respect to the Products. On February 16, 2021, Plaintiff, acting
25 in the public interest, filed the instant action (the “Complaint”) in the Superior Court for the
26 County of Los Angeles, alleging violations of Proposition 65.

1 **1.3 No Admissions**

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

8 **1.4 Compromise**

9 The Parties enter into this Consent Judgment in order to resolve the controversy
10 described above in a manner consistent with prior Proposition 65 settlements and consent
11 judgments that were entered in the public interest and to avoid prolonged and costly litigation
12 between them.

13 **1.5 Jurisdiction and Venue**

14 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
15 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
16 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
17 this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and
18 Proposition 65.

19 **1.6 Effective Date**

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

22 **2. INJUNCTIVE RELIEF**

23 **2.1 Reformulation Standard**

24 After the Effective Date, Defendant shall not ship or distribute the Products into
25 California, unless (a) the Products contain no more than 1,000 parts per million (0.1%) of DEHP
26 (“Reformulated Products”), or (b) the Product is distributed, sold, or offered for sale with a clear
27 and reasonable warning as described below in Section 2.2. There shall be no obligation to
28

1 provide a warning for Products that Defendant has already shipped or distributed prior to the
2 Effective Date, which Products are subject to the release in section 4.1.

3 **2.2 Proposition 65 Warnings**

4 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,
5 Defendant shall use a warning with the capitalized and emboldened wording substantially similar
6 to the following:

7 **WARNING:** This product can expose you to chemicals, including DEHP, which
8 are known to the State of California to cause cancer and birth
9 defects or other reproductive harm. For more information go to
 www.P65Warnings.ca.gov.

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

15 **2.2.2** The Products shall carry said warning directly on each unit or its label or
16 package, with such conspicuousness as compared with other words, statements or designs as to
17 render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is
18 sold by Defendant on the internet shall also provide the warning message by a clearly marked
19 hyperlink on the product display page, or otherwise prominently displayed to the purchaser
20 before the purchaser completes his or her purchase of the Product. For Products that Defendant
21 knowingly provides for a downstream retailer to sell on the internet, Defendant shall include an
22 instruction that the retailer comply with the warning requirements of this section.

23 **2.3 Additional Warnings Required or Permitted By Law or Regulation**

24 In addition to the warning requirements set forth in Section 2.2 above, Defendant may
25 comply with this Consent Judgment by using other warning text and transmission methods set
26 forth in 27 Cal. Code Regs. § 25601, et seq., and amended subsequently thereafter, or other text
27 or methods authorized or mandated by those regulations, or other State of California regulations
28 or legislation pertaining to Proposition 65 warnings related to such Products.

1 **3. PAYMENTS**

2 **3.1 Civil Penalty Pursuant To Proposition 65**

3 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
4 total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with
5 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of
6 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
7 25% (\$1,000.00) for Plaintiff.

8 Defendant shall issue these payments collectively as part of the total payment described
9 below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the
10 wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective
11 payments to OEHHA and APS&EE.

12 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

13 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
14 incurred in prosecuting the instant action, for all work performed through execution and approval
15 of this Consent Judgment, in the amount of twenty-six thousand dollars (\$26,000.00).

16 Defendant shall remit total payment via wire transfer to Law Offices of Lucas T. Novak
17 in the amount of thirty thousand dollars (\$30,000.00), which includes the civil penalty described
18 in Section 3.1, within thirty (30) calendar days of the Effective Date. Wire instructions have been
19 exchanged between the parties’ counsel.

20 **4. RELEASES**

21 **4.1 Plaintiff’s Release Of Defendant**

22 This Consent Judgment is a full, final, and binding resolution between Plaintiff acting on
23 its own behalf, and in the public interest, and ACE and its parents, shareholders, members,
24 retailers, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
25 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
26 successors and assigns (“Defendant Releasees”), and all entities from whom they directly or
27 indirectly obtain Products (“Upstream Releasees”), and to whom Defendant Releasees directly or
28 indirectly distribute or sell Products, including but not limited to suppliers, distributors,

1 wholesalers, customers, licensors, licensees, retailers, including but not limited to franchisees,
2 cooperative members, and their affiliates, subsidiaries, successors, or assigns (“Downstream
3 Releasees”), of all claims for violations of Proposition 65 based on failure to warn about
4 exposure to DEHP from Products, as set forth in the Notice, with respect to any Products
5 distributed or shipped by ACE into California prior to the Effective Date. Compliance with the
6 terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to the
7 Products.

8 In further consideration of the promises and agreements herein contained, and for the
9 payments to be made pursuant to Section 3 above, Plaintiff acting on behalf of itself, its past and
10 current agents, representatives, attorneys, and successors and/or assignees, and not in its
11 representative capacity, further waives all rights to institute or participate in, directly or
12 indirectly, any form of legal action against ACE, Defendant Releasees, Upstream Releasees and
13 Downstream Releasees and releases any and all manner of actions, causes of action, claims,
14 demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages,
15 charges, losses, costs, expenses, and attorneys’ fees (collectively “Claims”), but only to the
16 extent that such legal action or Claims are with respect to any alleged violations of Proposition
17 65 from the Products distributed or shipped by ACE into California before the Effective Date.

18 **4.2 Defendant’s Release Of Plaintiff**

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

24 **4.3 Waiver Of Unknown Claims**

25 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil
26 Code which provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

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

10 **5. COURT APPROVAL**

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

18 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

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

25 **8. NOTICES**

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

1 TO DEFENDANT:

2 Craig A. Tristao, Esq.
3 COLEMAN & HOROWITT, LLP
4 499 W Shaw Avenue, Suite 116
Fresno, CA 93704

TO PLAINTIFF

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

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6 **9. COUNTERPARTS**

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

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1 **10. AUTHORIZATION**

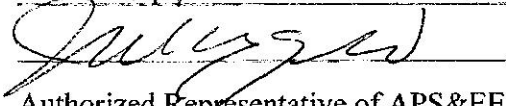
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
5 Consent Judgment and is 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:

5/19/21

10 By:



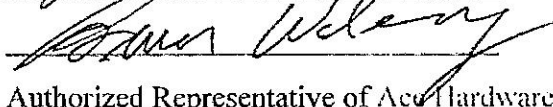
11 Authorized Representative of APS&EE, LLC

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13 **AGREED TO:**

14 Date:

5-19-2021

15 By:



16 Authorized Representative of Acc Hardware Corporation

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18 **IT IS SO ORDERED.**

19 Dated: _____

JUDGE OF THE SUPERIOR COURT