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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 Q.E.P. CO., INC., ACE HARDWARE  
15 CORPORATION,

16 Defendants.

Case No.: CGC-22-600431

**CONSENT JUDGMENT**

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: April 4, 2023

Hearing Time: 9:30 AM

Complaint Filed: June 29, 2022

1           **1. INTRODUCTION**

2           1.1     **The Parties.** This Consent Judgment is entered into by and between Anthony  
3           Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and Q.E.P. Co., Inc.  
4           (“Q.E.P.”) and Ace Hardware Corporation (collectively with Q.E.P. “Defendants”), with Ferreiro  
5           and Defendants collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro is  
6           an individual residing in California that seeks to promote awareness of exposures to toxic chemicals  
7           and improve human health by reducing or eliminating hazardous substances contained in consumer  
8           products. Defendants are alleged to be persons in the course of doing business for purposes of  
9           Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10           1.2     **Allegations and Representations.** Ferreiro alleges that Defendants have exposed  
11           individuals to Bisphenol A (BPA) from sales of Q.E.P. Diamond Hole Saws without providing a  
12           clear and reasonable exposure warning pursuant to Proposition 65. BPA is listed under Proposition  
13           65 as a chemical known to the State of California to cause reproductive toxicity.

14           1.3     **Notice of Violation/Complaint.** On or about August 13, 2021, Ferreiro served  
15           Q.E.P., Ace Hardware Corporation, and various public enforcement agencies with documents  
16           entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the  
17           “Notice”), alleging that Defendants violated Proposition 65 for failing to warn consumers and  
18           customers that use of Q.E.P. Diamond Hole Saws expose users in California to BPA. No public  
19           enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On June 29,  
20           2022, Ferreiro filed a complaint (the “Complaint”) in the matter.

21           1.4     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22           jurisdiction over Defendants as to the allegations contained in the Complaint filed in this matter,  
23           that venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,  
24           and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
25           claims which were or could have been raised in the Complaint based on the facts alleged therein  
26           and/or in the Notice.

1           1.5 Defendants deny the material allegations contained in Ferreiro’s Notice and  
2 Complaint and maintains that they have not violated Proposition 65, and that, to the best of their  
3 knowledge, the Covered Products that are or have been sold and distributed for sale in California,  
4 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed  
5 as an admission by Defendants of any fact, finding, issue of law, or violation of law; nor shall  
6 compliance with this Consent Judgment constitute or be construed as an admission by Defendants  
7 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by  
8 Defendants. Furthermore, nothing in this Consent Judgment shall prejudice, waive, or impair any  
9 right, remedy, argument, or defense Defendants may have in any other or future legal proceeding,  
10 except as expressly provided in this Consent Judgment. However, this section shall not diminish  
11 or otherwise affect the obligations, responsibilities, and duties of Defendants under this Consent  
12 Judgment.

13 **2. DEFINITIONS**

14           2.1 **Covered Products.** The term “Covered Products” means Q.E.P. Diamond Hole  
15 Saws, Item #s 10571 and 10572, that are manufactured, distributed and/or offered for sale in  
16 California by Q.E.P..

17           2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is  
18 entered as a Judgment of the Court.

19 **3. INJUNCTIVE RELIEF: WARNINGS**

20           3.1 **Compliance.** As of the date this Consent Judgment is signed by both Parties, and  
21 continuing thereafter, Covered Products that Q.E.P. directly manufactures, imports, distributes,  
22 sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2,  
23 below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4,  
24 below. For purposes of this Consent Judgment, a “Reformulated Product” is a Covered Product that  
25 is in compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§  
26 3.3 and 3.4 shall not apply to any Reformulated Product.  
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1           3.2     **Reformulation Standard.** “Reformulated Products” shall mean any Covered  
2 Products that are demonstrated via an exposure assessment conducted in accordance with  
3 applicable Proposition 65 laws and regulations to result in a dermal exposure to BPA from solid  
4 reasonably accessible materials that does not exceed the Maximum Allowable Dose Level for BPA  
5 of 3 micrograms per day. Any such exposure assessment shall, as part of the assessment,  
6 incorporate the use of BPA wipe testing of the Covered Products to quantify BPA migration.”

7           3.3     **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
8 by the Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
9 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendants manufacturer, import,  
10 distribute, sell, or offer for sale in California that is not a Reformulated Product. There shall be no  
11 obligation for Defendants to provide a warning for Covered Products that enter the stream of  
12 commerce prior to the date this Consent Judgment is signed by the Parties. The warning shall  
13 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

14           (a)     **Warning.** The “Warning” shall consist of the statement:

15           ⚠ **WARNING:** This product can expose you to chemicals including Bisphenol A  
16 (BPA), which is known to the State of California to cause birth defects or other  
17 reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

18           (b)     **Alternative Warning:** Q.E.P. may, but is not required to, use the alternative short-  
19 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

20           ⚠ **WARNING:** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

21           3.4     A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word  
22 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
23 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
24 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
25 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
26 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the  
27 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
28 automatic process, providing that the warning is displayed with such conspicuousness, as compared

1 with other words, statements, or designs as to render it likely to be read and understood by an  
2 ordinary individual under customary conditions of purchase or use. A warning may be contained  
3 in the same section of the packaging, labeling, or instruction booklet that states other safety  
4 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
5 those other safety warnings.

6 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s  
7 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where  
8 Q.E.P. offers Covered Products for sale to consumers in California. The requirements of this  
9 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink  
10 using the word “**WARNING**,” appears on the product display page, or by otherwise prominently  
11 displaying the warning to the purchaser prior to completing the purchase. To comply with this  
12 Section, Q.E.P. shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it  
13 has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have  
14 the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet  
15 sellers, provide such sellers with written notice in accordance with Title 27, California Code of  
16 Regulations, Section 25600.2. Third-party internet sellers of the Covered Products that have been  
17 provided with written notice in accordance with Title 27, California Code of Regulations, Section  
18 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning  
19 requirements of this Section.

20 3.5 **Compliance with Warning Regulations.** Defendants shall be deemed to be in  
21 compliance with this Consent Judgment by either adhering to §3.2 of this Consent Judgment, §§  
22 3.3 and 3.4 of this Consent Judgment, or by complying with warning requirements adopted by the  
23 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) applicable  
24 to the Covered Products and the exposure at issue after the Effective Date.

25 **4. MONETARY TERMS**

26 4.1 **Civil Penalty.** Q.E.P. shall pay \$2,000.00 as a Civil Penalty pursuant to Health and  
27 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
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1 Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining  
2 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code  
3 § 25249.12(d).

4 4.1.1 Ferreiro agrees to provide Q.E.P. with IRS W-9 forms for each of the  
5 payees under this Consent Judgment (“Tax Documents”).

6 4.1.2 Within ten (10) days of the Effective Date and receipt by Q.E.P. of the  
7 applicable Tax Documents, whichever is later, Q.E.P. shall issue two separate checks for the Civil  
8 Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b) “Brodsky & Smith in  
9 Trust for Ferreiro” in the amount of \$500.00. Payment owed to Ferreiro pursuant to this Section  
10 shall be delivered to the following payment address:

11 Evan J. Smith, Esquire  
12 Brodsky & Smith  
13 Two Bala Plaza, Suite 805  
14 Bala Cynwyd, PA 19004

15 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
16 to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following address(es):

17 For United States Postal Service Delivery:

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

23 For Non-United States Postal Service Delivery:

24 Mike Gyurics  
25 Fiscal Operations Branch Chief  
26 Office of Environmental Health Hazard Assessment  
27 1001 I Street  
28 Sacramento, CA 95814

A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith at the address set forth above as proof of payment to OEHHA.

4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date and receipt by Q.E.P. of the applicable Tax Documents, whichever is later, Q.E.P. shall pay \$23,000.00 to Brodsky &

1 Smith (“Brodsky & Smith”) as complete reimbursement for Ferreiro’s attorneys’ fees and costs  
2 incurred as a result of investigating, bringing this matter to Q.E.P. attention, litigating and  
3 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code  
4 of Civil Procedure § 1021.5.

5 **5. RELEASE OF ALL CLAIMS**

6 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
7 acting on his own behalf, and on behalf of the public interest, and Defendants and their parents,  
8 shareholders, members, directors, officers, managers, employees, representatives, agents,  
9 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
10 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they  
11 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
12 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
13 retailers, franchisees, and cooperative members (“Downstream Releasees”), of all claims for  
14 violations of Proposition 65 based on exposure to BPA from use of the Covered Products as set  
15 forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by  
16 Q.E.P. prior to the Effective Date. It is the Parties’ intention that this Consent Judgment shall have  
17 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,  
18 her, or its interests or the public interest shall be permitted to pursue and/or take any action with  
19 respect to any violation of Proposition 65 based on exposure to BPA that was alleged in the  
20 Complaint, or that could have been brought pursuant to the Notice against Defendants and/or the  
21 Downstream Releasees of the Covered Products (“Proposition 65 Claims”).

22 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
23 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative  
24 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
25 legal action and releases Q.E.P., Defendant Releasees, and Downstream Releasees from any and  
26 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,  
27 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of  
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1 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the  
2 future, with respect to any alleged violations of Proposition 65 related to or arising from exposure  
3 to BPA from Covered Products manufactured, distributed, or sold by Q.E.P., Defendant Releasees  
4 or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
5 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the  
6 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which  
7 provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
11 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
13 DEBTOR OR RELEASED PARTY.

12 5.3 Q.E.P. waives any and all claims against Ferreiro, his attorneys and other  
13 representatives, for any and all actions taken, or statements made (or those that could have been  
14 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of  
15 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
16 and/or with respect to exposure to BPA from Covered Products.

17 **6. INTEGRATION**

18 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all  
19 prior negotiations and understandings related hereto shall be deemed to have been merged within  
20 it. No representations or terms of agreement other than those contained herein exist or have been  
21 made by any Party with respect to any other Party or the subject matter hereof.

22 **7. GOVERNING LAW**

23 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California and apply within the State of California. If Proposition 65 is repealed or is otherwise  
25 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendants shall  
26 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
27 that, Covered Products are so affected. This Consent Judgment shall not apply to Covered Products  
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1 that are not sold to consumers in California or which do not otherwise cause exposure to BPA in  
2 California from the Covered Products.

3 **8. NOTICES**

4 8.1 Unless specified herein, all correspondence and notices required to be provided  
5 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
6 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party  
7 by any other Party at the following addresses:

8 For Defendants:

9 Karen Palladino Ciccone  
10 Cermak & Inglin LLP  
11 12121 Wilshire Blvd., Suite 322  
Los Angeles, CA 90025

12 And

13 For Ferreiro:

14 Evan Smith  
15 Brodsky & Smith  
16 9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

20 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
22 the same document.

23 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
24 **APPROVAL**

25 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
26 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
27 Defendants agree they shall support approval of such Motion.  
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10.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30 days, the case shall proceed on its normal course.

10.3 If the Court approves this Consent Judgment and is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on its normal course on the trial court's calendar.

**11. MODIFICATION**

11.1 This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by any Party.

**12. RETENTION OF JURISDICTION**

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

**13. AUTHORIZATION**

13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

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**AGREED TO:**

Date: 2/14/23  
By: Anthony Ferrero  
ANTHONY FERREIRO

**AGREED TO:**

Date: 8/3/2022  
By: [Signature] CLAO  
Q.E.P. CO., INC.

**AGREED TO:**

Date: 8/8/2022  
By: [Signature]  
ACE HARDWARE CORPORATION

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court