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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.)
ABB INSTALLATION PRODUCTS, INC., a)
corporation, DO IT BEST CORP., a)
corporation, and DOES 1 through 100,)
inclusive,)
Defendants.)

CASE NO. 22STCV30703

[PROPOSED] CONSENT JUDGMENT

Judge: Douglas W. Stern
Dept.: 68
Compl. Filed: September 20, 2022

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 APS&EE, LLC (“Plaintiff”) and ABB Installation Products, Inc. (“Defendant”).
5 Plaintiff and Defendant shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** Plaintiff is an organization based in California with an interest in
7 protecting the environment, improving human health and the health of ecosystems, and
8 supporting environmentally sound practices, which includes promoting awareness of exposure to
9 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

10 **1.1.3** Plaintiff alleges that Defendant is a person in the course of doing business
11 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
12 65”).

13 **1.2 Allegations**

14 **1.2.1** Plaintiff alleges that Defendant sold : (1) Heavy Duty Ground Clamps,
15 including #36020, 510389, 0-51411-36020-7 (identified as ABB product number L1802B-1), as
16 well as 1/2" to 1" T&B heavy duty ground clamp #510423 (identified as ABB product number
17 L160B-1) (hereinafter “Ground Clamps”); and (2) T&B branded steel rigid elbow conduits,
18 including #524481 (hereinafter “Conduits”, and collectively with Ground Clamps, the
19 “Products”) in the State of California, causing users in California to be exposed to lead without
20 providing a “clear and reasonable warning” in violation of Proposition 65. Lead is potentially
21 subject to Proposition 65 warning requirements because it is listed by the State of California as a
22 chemical known to cause cancer and birth defects or other reproductive harm.

23 **1.2.2** On October 1, 2021, Plaintiff provided a Sixty-Day Notice of Violation
24 (the “Notice”), along with a Certificate of Merit, to Defendant, as well as Do It Best Corp., Ray
25 Collins Enterprises, Inc. dba B&B Do It Center, and the various public enforcement agencies
26 regarding the alleged violation of Proposition 65 with respect to the Products. On January 13,
27 2022, Plaintiff provided a Supplemental Sixty-Day Notice of Violation (the “Supplemental
28 Notice”), along with a Certificate of Merit, to the aforementioned entities as well as Halex/Scott

1 Fetzter Company and Scott Fetzter Company with respect to the Products. The Notice and
2 Supplemental Notice shall hereinafter collectively be referred to as the “Notices.”

3 **1.3 No Admissions**

4 Defendant denies all allegations in Plaintiff’s Notices and maintains that the Products
5 have been, and are, in compliance with all laws, and that Defendant has not violated Proposition
6 65. This Consent Judgment shall not be construed as an admission of any fact, conclusion of law,
7 issue of law, violation of law, fault, wrongdoing, or liability by Defendant (or by any of
8 Defendant’s respective parents, subsidiaries, affiliates, shareholders, directors, members,
9 officers, employees, attorneys, agents, suppliers, franchisees, licensees, customers, distributors,
10 wholesalers, retailers, including all other upstream and downstream entities and persons in the
11 distribution chain of any Product, and the predecessors, successors, and assigns of each of them)
12 but to the contrary as a compromise of claims that are expressly contested and denied. Nothing in
13 this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense
14 the Defendant may have in any other or future legal proceeding. However, nothing in this section
15 shall affect the Parties’ obligations, duties, and responsibilities under this Consent Judgment.

16 **1.4 Compromise**

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

21 **1.5 Jurisdiction and Venue**

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

27 **1.6 Effective Date**

28 The “Effective Date” shall be the date this Consent Judgment is approved and entered by

1 the Court.

2 **2. INJUNCTIVE RELIEF**

3 **2.1 Reformulation**

4 As of the Effective Date, Defendant shall not distribute or sell Conduits in California
5 unless a) the galvanizing solution in which the Conduits are submerged has a lead content by
6 weight of no more than 100 parts per million (0.01%), and the finished Conduit produces a test
7 result no higher than a ratio of 1.0 microgram of lead per 100 square centimeters based on a wipe
8 sample collected using NIOSH Method 9100 or equivalent (“Reformulated Products”), or (b)
9 Conduits that are not Reformulated Products are distributed, sold, or offered for sale with a clear
10 and reasonable warning as described below in Section 2.2.

11 **2.2 Clear And Reasonable Warnings**

12 **2.2.1** Any Conduits that are not Reformulated Products shall be accompanied by
13 a clear and reasonable warning that complies with the method and content specified in Title 27,
14 California Code of Regulations, Section 25600 et seq., as amended August 30, 2016 and
15 subsequently thereafter, pertaining to such products.

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

25 **2.3 Existing Inventory Excluded**

26 The requirements of Section 2 shall not apply to Conduits that ABB sold or distributed to
27 downstream suppliers before the Effective Date, which Conduits are subject to the releases in
28 Section 5 of this Consent Judgment.

1 **3. ENFORCEMENT OF JUDGMENT**

2 A Party may enforce any of the terms and conditions of this Consent Judgment only after
3 that Party first provides thirty (30) days' written notice to the Party allegedly failing to comply
4 with the terms and conditions of this Consent Judgment and attempts to resolve such Party's
5 failure to comply in an open and good faith manner.

6 **4. PAYMENTS**

7 **4.1 Civil Penalty Pursuant To Proposition 65**

8 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
9 total civil penalty of seven thousand five hundred dollars (\$7,500.00) to be apportioned in
10 accordance with Health and Safety Code section 25249.12(c)(1) and (d), with 75% (\$5,625.00)
11 for State of California Office of Environmental Health Hazard Assessment ("OEHHA"), and the
12 remaining 25% (\$1,875.00) for Plaintiff.

13 Defendant shall issue these payments as part of the total payment described below in
14 Section 4.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire
15 transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective
16 payments to OEHHA and Plaintiff.

17 **4.2 Reimbursement Of Plaintiff's Fees And Costs**

18 Defendant shall collectively reimburse Plaintiff's reasonable experts' and attorneys' fees
19 and costs incurred in prosecuting the instant action, for all work performed through execution of
20 this Consent Judgment, in the amount of thirty-two thousand dollars (\$32,000.00). Accordingly,
21 Defendant shall remit total payment via a wire transfer to Law Offices of Lucas T. Novak in the
22 amount of thirty-nine thousand five hundred dollars (\$39,500.00), which includes the civil
23 penalty described in Section 4.1, within five (5) business days of the Effective Date.

24 **5. RELEASES**

25 **5.1 Plaintiff's Release Of Defendant**

26 This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf
27 of itself and in the public interest, and Defendant, of any violation of Proposition 65 regarding
28 failure to warn about lead exposure from the Conduits that were sold by Defendant before and up

1 to the Effective Date.

2 Plaintiff, in consideration of the promises and monetary payments contained herein,
3 hereby releases Defendant and its parents, subsidiaries, affiliates, shareholders, directors,
4 members, officers, employees, attorneys, agents, suppliers, franchisees, licensees, customers,
5 distributors, wholesalers, retailers, and all downstream entities and persons in the distribution
6 chain of any Conduit, and the predecessors, successors, and assigns of each of them, including,
7 without limitation, Do It Best Corp., Ray Collins Enterprises, Inc. dba B&B Do It Center, as well
8 as Halex/Scott Fetzer Company and Scott Fetzer Company (collectively “Released Parties”),
9 from all claims of violation of Proposition 65 (including, without limitation, obligations to pay
10 civil penalties, payment in lieu of civil penalties and expenses, such as expert analysis fees,
11 expert fees, attorneys’ fees, and costs) regarding failure to warn about lead exposure from the
12 Conduits that were distributed or sold by Defendant before and up to the Effective Date.

13 Plaintiff, acting in its individual capacity only and not in the public interest, in
14 consideration of the promises and monetary payments contained herein, hereby releases the
15 Released Parties from all claims of violation of Proposition 65 (including, without limitation,
16 obligations to pay civil penalties, payment in lieu of civil penalties and expenses, such as expert
17 analysis fees, expert fees, attorneys’ fees, and costs) regarding failure to warn about lead
18 exposure from the Ground Clamps that were distributed or sold by Defendant before and up to
19 the Effective Date.

20 Within ten (10) business days after receipt of payment from Defendant as described in
21 Section 4 above, Plaintiff shall file a request for dismissal without prejudice of Do It Best Corp.
22 and Does 1 through 100.

23 **5.2 Defendant’s Release Of Plaintiff**

24 Defendant, by this Consent Judgment, waives all rights to institute any form of legal
25 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,
26 experts, successors and assignees for actions or statements made or undertaken, whether in the
27 course of investigating claims or seeking enforcement of Proposition 65 against Defendant in
28 this matter. If any Released Party should institute any such action, then Plaintiff’s release of said

Released Party in this Consent Judgment shall be rendered void and unenforceable.

5.3 Waiver Of Unknown Claims

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE 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 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

6. COURT APPROVAL

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

7. SEVERABILITY

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

1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **9. NOTICE**

5 All correspondence and notice required to be provided under this Consent Judgment shall
6 be in writing and delivered personally or sent by overnight courier or certified mail addressed as
7 follows:

8 **TO DEFENDANT:**

9 Jennifer Hartman King, Esq.
10 Hartman King PC
11 520 Capitol Mall, Suite 750
Sacramento, CA 95814

TO PLAINTIFF:

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

12 **10. COUNTERPARTS**

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

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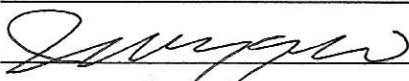
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11. **AUTHORIZATION**

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

AGREED TO:

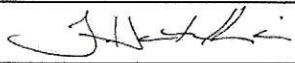
Date: 12.28.22

By: 

Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 12/27/2022

By: 

Authorized Representative of ABB Installation Products, Inc.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT