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JAY EPPS

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

JAY EPPS,
Plaintiff,
v.
AMAZON.COM, INC.,
Defendant.

Case No. CGC-24-613812

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6, *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Plaintiff Jay Epps (“Plaintiff”) and
4 Defendant Amazon.com, Inc. (“Amazon”), with Plaintiff and Amazon each referred to
5 individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Amazon employs ten or more persons. Further, for the purposes of this litigation only,
12 Plaintiff alleges that Amazon is a person in the course of doing business for purposes of the Safe
13 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5,
14 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Plaintiff alleges that Amazon imports, distributes, sells, facilitates, and/or offers for sale
17 lead tape, and that it does so without providing the health hazard warning required by Proposition
18 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to
19 cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment specifically include lead tape that is
22 offered for sale on amazon.com to consumers in California (hereinafter referred to as the “Covered
23 Product” or “Covered Products”).

24 **1.6 Notices of Violation**

25 On January 29, 2024, Plaintiff alleges that he served Amazon and certain requisite public
26 enforcement agencies with a 60-Day Notice of Violation (Attorney General Notice Number 2024-
27 00447) (hereinafter referred to as the “January Notice”), alleging that Amazon violated
28 Proposition 65 when it did not warn customers or consumers in California that certain lead tape

1 products expose users to lead. To the best of the Parties' knowledge, no public enforcer has
2 commenced and is diligently prosecuting the allegations set forth in the January Notice.

3 On April 26, 2024, Plaintiff served Amazon and certain requisite public enforcement
4 agencies with another 60-Day Notice of Violation (Attorney General Notice Number 2024-01650)
5 (hereinafter referred to as the "April Notice"), alleging that Amazon violated Proposition 65 when
6 it did not warn customers or consumers in California that certain lead tape products expose users
7 to lead. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
8 prosecuting the allegations set forth in the April Notice.

9 The January Notice and April Notice shall be referred to collectively as the "Notices."

10 **1.7 Complaint**

11 On April 9, 2024, Plaintiff filed the Complaint in the instant action (San Francisco Superior
12 Court Case No. CGC-24-613812) (the "Complaint") naming Amazon as the only defendant for the
13 alleged violations of Proposition 65 that are the subject of the Notices.

14 **1.8 No Admission**

15 Amazon denies all material, factual and legal allegations contained in the Notices and
16 Complaint and maintains that it has complied with all applicable laws as they pertain to the
17 distribution, offering for sale, or sale of the Covered Products in California. Nothing in this
18 Consent Judgment shall be construed as an admission by Amazon of any fact, finding, conclusion,
19 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be
20 construed as an admission by Amazon of any fact, finding, conclusion, issue of law, or violation
21 of law. This subsection 1.8 shall not, however, diminish or otherwise affect the obligations,
22 responsibilities, and duties under this Consent Judgment.

23 **1.9 Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Amazon as to the allegations contained in the Complaint, that venue is proper in
26 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions
27 of this Consent Judgment pursuant to law including Proposition 65 and Code of Civil Procedure
28 § 664.6.

1 **1.10 Effective, Compliance, and Execution Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
3 Consent Judgment is approved by the Court. For purposes of this Consent Judgment, the term
4 “Compliance Date” shall mean ninety (90) calendar days after the Effective Date. For purposes of
5 this Consent Judgment, the term “Execution Date” shall mean the date of the last signature to this
6 Consent Judgment.

7 **2. INJUNCTIVE RELIEF**


8 **2.1 Warning Standards on Covered Products**

9 (a) Amazon agrees, promises, and represents that, by the Compliance Date, to
10 the extent it ships or sells Covered Products in California, Amazon will either:

11 (1) provide the Section 2.1(b) warning on each Covered Product’s online
12 product page on amazon.com by (A) Amazon applying the Section 2.1(b) warning itself, or (B)
13 Amazon instructing vendors and third-party sellers of the Covered Products to fulfill their existing
14 contractual obligation by providing the Section 2.1(b) warning on each Covered Product’s online
15 product page on amazon.com and Amazon confirming prompt placement of the Section 2.1(b)
16 warning on each Covered Product’s online product page on amazon.com; or

17 (2) cease allowing the Covered Products to be offered without a Section
18 2.1(b) warning for sale in California on amazon.com.

19 (b) The warnings required by Section 2.1(a) shall be provided in a conspicuous
20 and prominent manner such that they will be likely to be read or seen by the consumer prior to or at
21 the time of the sale or purchase. The Parties agree that placement of the warning set forth below on
22 each Covered Product’s online product page on amazon.com shall constitute compliance by
23 Amazon with Proposition 65 with respect to any Covered Products:

24 ** WARNING:** This product can expose you to chemicals including lead, which is
25 known to the State of California to cause cancer and birth defects
26 or other reproductive harm. For more information go to
27 www.P65Warnings.ca.gov.

28

1 Amazon may alternatively use the following short-form warning (Short-Form Warning) language
2 so long as it is allowed under Proposition 65’s implementing regulations:

3
4  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

5 (c) Amazon shall notify in writing all vendors and third-party sellers of the Covered
6 Products of the legal requirement to provide the Section 2.1(b) warning statement for each Covered
7 Product online, and that the California Attorney General requires that vendors and third-party
8 sellers of the Covered Products that are subject to Proposition 65 also apply the Section 2.1(b)
9 warning statement, or a Proposition 65 compliant warning, directly on the packaging of the
10 Covered Products. Amazon shall not be responsible or liable for failures of any vendors or third-
11 party sellers of the Covered Products to fulfill their independent Proposition 65 obligations.

12 (d) To the extent that the product information for any of the Covered Products appears
13 in a foreign language (e.g., if a potential purchaser chooses to review amazon.com’s website in
14 Spanish, using amazon.com’s translation feature), the Proposition 65 warning shall appear in the
15 same foreign language.

16 (e) The Parties agree that placement of the Section 2.1 warnings set forth above on each
17 Covered Product’s online product page on amazon.com shall constitute compliance by Amazon
18 with Proposition 65 with respect to any Covered Products.

19 **2.2 Covered Products in the Stream of Commerce**

20 Any Covered Products sold prior to the Compliance Date shall not be subject to the
21 requirements of Section 2.1.

22 **2.3 Right to Cure (No Assignment or Transfer of Claims)**

23 Plaintiff shall have the exclusive right to enforce the provisions of this Consent Judgment.
24 Plaintiff represents and warrants neither he nor his agents or attorneys have assigned or otherwise
25 transferred, or attempted to assign, or transfer, any claim or claims against Amazon based on the
26 Notices, Action or otherwise related to the subject matter of this Consent Judgment. Plaintiff
27 further warrants that neither he nor his agents or attorneys are aware of any other potential private
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1 enforcer or attorney who intends to bring litigation based on the subject matter of the Consent
2 Judgment.

3 To the extent Plaintiff, his agents, or his attorneys identify any Covered Product for sale on
4 amazon.com to consumers in California, which they believe is not in compliance with this
5 Consent Judgment, Plaintiff agrees to advise Amazon of such alleged breach in the manner set
6 forth in Section 8, and provide Amazon with 45 calendar days (calculated from the date written
7 notice is provided electronically) to cure any alleged violation, including by providing a
8 Proposition 65 warning or taking action to ensure that the product is not sold to any purchaser with
9 a shipping address in California. Such notice to Amazon shall contain information sufficient for
10 Amazon to identify the product(s) and the product's seller, which shall include the Amazon
11 Standard Identification Number (ASIN), the name of the product, a screenshot of the product's
12 online listing, and at least a summary explanation as to why Plaintiff believes it is a Covered
13 Product, or a product similar in nature thereto, and not in compliance.

14 If the alleged non-compliance is cured within the 45 calendar days, then Amazon shall: (i)
15 not be deemed in breach or violation of Proposition 65 based on the Notices, Action or this
16 Consent Judgment in any respect; (ii) Plaintiff shall take no further action to enforce Proposition
17 65 based on the Notices, Action or this Consent Judgment; (iii) Plaintiff shall not be entitled to
18 seek or recover any civil penalties; (iv) Plaintiff and his counsel shall not be entitled to seek or
19 recover any attorneys' fees or costs, or any other available remedies arising from or relating to the
20 alleged failure to comply with Proposition 65 or the terms of this Consent Judgment; and (v) the
21 matter shall be deemed to be resolved by and between Amazon and Plaintiff as to such products.

22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Civil Penalty Payments**

24 Within thirty (30) calendar days of the Effective Date and Amazon's receipt of a current
25 W-9 from Plaintiff and California's Office of Environmental Health Hazard Assessment
26 (OEHHA), whichever date is later, pursuant to California Health & Safety Code § 25249.7(b), and
27 in settlement of all alleged violations and claims referred to in the Notices, Complaint, and this
28 Consent Judgment, Amazon agrees to pay \$200,000.00 in civil penalties. Amazon's civil penalty

1 payment will be allocated according to California Health & Safety Code § 25249.12(c)(1) and (d),
2 with seventy-five percent (75%) of the penalty paid to the OEHHA, and the remaining twenty-five
3 percent (25%) to Plaintiff. Amazon shall issue its payment in two checks made payable to (a)
4 “OEHHA” in the amount of \$150,000.00; and (b) “Jay Epps” in the amount of \$50,000.00.
5 Plaintiff’s counsel shall send the portions of the penalties paid by Amazon to OEHHA and
6 Plaintiff.

7 **3.2 Reimbursement of Attorneys’ Fees and Costs**

8 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
9 without reaching terms on attorneys’ fees and costs and allowing this provision to be adjudicated
10 by the court. The Parties then negotiated the reasonable compensation to be paid to Plaintiff’s
11 counsel under general contract principles, the Proposition 65 implementing regulation for fee
12 awards at 11 California Code of Regulations § 3201, and the private attorney general doctrine
13 codified at California Code of Civil Procedure § 1021.5, for all work performed through the
14 mutual execution of this Consent Judgment and court approval of the same.

15 Within thirty (30) calendar days of the Effective Date and Amazon’s receipt of a current
16 W-9 from Chanler LLC, whichever date is later, Amazon shall pay \$250,000 to Plaintiff’s counsel
17 by electronic transfer, as set forth in Section 3.3 below, or by check made payable to “Chanler
18 LLC” as reimbursement for investigation fees and costs, attorneys’ fees, and any other costs
19 incurred as a result of investigating, bringing this matter to Amazon’s attention, litigating, and
20 negotiating a settlement in the public interest and any further efforts to conclude this action, such
21 as seeking court approval.

22 **3.3 Form of Settlement Proceeds**

23 For the settlement payments noted above in Sections 3.1 and 3.2 for civil penalties and
24 attorneys’ fees and costs, Amazon may transmit the proceeds by wire transfer to “Chanler LLC,
25 IOLTA Account,” in accordance with the wire instructions to be provided by Plaintiff or his
26 counsel on or before the Effective Date.

27 All non-electronic transfer payments shall be delivered to the following address:

28 Chanler, LLC

Attn: Proposition 65 Controller
72 Huckleberry Hill Road
New Canaan, CT 06840

4. CLAIMS COVERED AND RELEASED

4.1 Public Release

Plaintiff, acting on his own behalf and in the public interest, and on behalf of his past, current, and future agents, representatives, attorneys, successors, and assigns, hereby releases Amazon, and its past, current, and future direct and indirect subsidiaries, affiliates, affiliated entities under common ownership, predecessors, agents, directors, members, managers, officers, employees, representatives, shareholders, insurers, beneficiaries, attorneys, successors, and assignees (collectively, "Releasees") of, from, and with regard to any and all alleged or actual violations arising under Proposition 65 for a failure to warn about exposures to lead from Covered Products that were manufactured, produced, packaged, imported, supplied, distributed, sold, or offered for sale on amazon.com to customers in California prior to the Compliance Date,

This release does not apply to any vendors or third-party sellers of the Covered Products.

Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Releasees with respect to the alleged or actual failure to warn about exposures to lead from the Covered Products

4.2 Plaintiff's Individual Release of Proposition 65 Claims relating to the Notices, Complaint, and/or Action

In further consideration of the promises and agreements herein contained, Plaintiff, on behalf of himself and each of his past and current agents, representatives, attorneys, successors, and/or assignees, but not on behalf of the public, hereby releases, and waives all rights to institute or participate in, directly or indirectly, any form of legal action against Releasees, as well as against any vendors or third-party sellers of the Covered Products (the "Other Releasees"), as it pertains to, any claims that he may have against Releasees or Other Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees with respect to any alleged violations of Proposition 65 for unwarned

1 exposures to lead from the Covered Products manufactured, sold, or distributed for sale prior to the
2 Compliance Date. For the avoidance of doubt, while the release in Section 4.1 does not apply to
3 any vendors or third-party sellers of the Covered Products, this release in this Section 4.2 does
4 apply to vendors or third-party sellers of the Covered Products as Other Releasees.

5 The releases in this Section 4.2 are provided in Plaintiff’s individual capacity and are not
6 releases on behalf of the public.

7 **4.3 Plaintiff’s Individual Release of Unknown Claims Related to Lead in Covered**
8 **Products**

9 It is possible that other claims not known to the Parties arising out of the facts contained in
10 the Notices, Complaints, and/or Actions, relating to the Covered Products, will hereafter be
11 discovered or developed. Plaintiff, on behalf of himself only, and Amazon acknowledge that this
12 Consent Judgment is expressly intended to cover and include all such claims as to the Covered
13 Products through and including the Compliance Date, including all rights of action therefor. The
14 Parties acknowledge that the claims released in Sections 4.2 may include unknown claims, and
15 nevertheless Plaintiff in particular intends to release such claims, and in doing so waives California
16 Civil Code § 1542, which reads as follows:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
18 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
19 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
20 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

21 Plaintiff understands and acknowledges that the significance and consequence of this
22 waiver of California Civil Code §1542 is that, even if Plaintiff suffers future damages arising out
23 of, resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
24 including, but not limited to any exposure to, or failure to warn with respect to exposure to, the
25 Covered Products, Plaintiff will not be able to make any claim for those damages against Amazon
26 or any of the Releasees or Other Releasees.

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1 **4.4 Amazon’s Release of Plaintiff**

2 Amazon, on its own behalf and on behalf of its past and current agents, representatives,
3 attorneys, successors and assignees, hereby waives any and all claims against Plaintiff and his
4 attorneys and other representatives, for any and all actions taken or statements made (or those that
5 could have been taken or made) by Plaintiff and his attorneys and other representatives in the
6 course of investigating the claims at issue in this matter, seeking to enforce Proposition 65 against
7 it in this matter, or with respect to the Covered Products.

8 **4.5 Representations**

9 Plaintiff’s counsel agrees that as of the Effective Date of this Agreement, they are not
10 aware of, and have not been informed of, any other person, potential claimant, plaintiff, or attorney
11 who, to their knowledge, intends to bring the same or similar claims against the Releasees or Other
12 Releasees, as defined above, that Plaintiff has asserted in the Notices or Complaint concerning the
13 Covered Products. Plaintiff’s counsel agrees that, as of the Execution Date of this Agreement, they
14 have identified to Defendant by ASIN all Covered Products of which they are aware that contain
15 lead and that are offered for sale on amazon.com to consumers in California.

16 **5. COURT APPROVAL**

17 This Consent Judgment shall be null and void and shall never be introduced into evidence
18 or otherwise used in any proceeding for any purpose (other than to allow the Court to determine if
19 there was a material breach of the following paragraph of this Section 5) if, for any reason, it is not
20 approved and entered by the Court within one year after it has been fully executed by all Parties.

21 Plaintiff and Amazon agree to support the entry of this agreement as a judgment, and to
22 obtain the Court’s approval of their settlement in an expedited manner as allowed by law. The
23 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f)(4), a noticed
24 motion is required for judicial approval of this Consent Judgment, which Plaintiff shall primarily
25 draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ
26 their reasonable best efforts, and those of their counsel, to support the entry of this agreement as a
27 judgment. For purposes of this section, “best efforts” shall include, at a minimum, supporting the
28 motion for approval, assisting in drafting the motion as needed, jointly requesting the Court to

1 have the motion heard on regular motion notice as allowed, and, if requested by Plaintiff,
2 responding to any objection that any third-party may file or lodge, and appearing at the hearing
3 before the Court if so requested.

4 **6. SEVERABILITY**

5 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment,
6 any 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 amended or rendered inapplicable by reason of law generally, or as to any of the
12 Covered Products or any of the alleged violations set forth in any of the Notices and/or Complaint,
13 then Amazon may seek modification of this Consent Judgment pursuant to Section 12 below.
14 Nothing in this Consent Judgment shall be interpreted to relieve Amazon from its obligation to
15 comply with any other applicable state or federal law or regulation.

16 The Parties agree that if OEHHA changes any of its applicable regulations, including its
17 warning regulations, then Amazon may either conform with the revised regulations or continue to
18 conform with the terms provided in this Consent Judgment if the new implementing regulations so
19 allow.

20 **8. NOTICE**

21 Unless specified herein, all correspondence and notice required or permitted by this
22 Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) first-class registered
23 or certified mail, return receipt requested; or (c) a recognized overnight courier to any Party by the
24 other at the following addresses. In addition to (a), (b), or (c) above, any notice required or
25 permitted by this Consent Judgment shall also be provided via electronic mail if an email address
26 is provided for the recipient below:
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To Amazon:

Amazon.com, Inc.
410 Terry Avenue N
Seattle, WA 98109
[Amazon Legal Department]

To Plaintiff:

Attn: Proposition 65 Coordinator
Chanler, LLC
72 Huckleberry Hill Road
New Canaan, CT 06840
clifford@chanlerllc.com

With a Copy To:

Gregory L. Doll, Esq.
Doll Amir & Eley LLP
725 S. Figueroa St., Suite 3275
Los Angeles, CA 90017
gdoll@dollamir.com

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

10. COMPLIANCE WITH REPORTING REQUIREMENTS

Plaintiff and his counsel agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties or any of their counsel except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically contained or referred to in this Consent Judgment have been made by any Party hereto or any of their counsel. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto or any of their counsel.

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (a) a written agreement of the Parties
3 and the entry of a modified Consent Judgment by the Court thereon; or (b) upon a successful
4 motion of any party and the entry of a modified Consent Judgment by the Court thereon. Any
5 Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with
6 all affected Parties prior to filing a motion to modify the Consent Judgment.

7 **13. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood, and agreed to all of the terms and conditions
10 contained herein.

11 **AGREED TO:**

AGREED TO:

13 Date: July 23, 2024

Date: July 24, 2024

14
15 By: Jay Elps
16 JAY ELPS

Signed by:
15 By: Alexis Collins
16 AMAZON.COM, INC.

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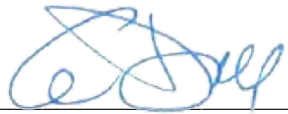
APPROVED AS TO FORM AND AGREED AS TO SECTION 4.5:

Date: July 23, 2024

By: 
CLIFFORD A. CHANLER
Counsel for Plaintiff

APPROVED AS TO FORM:

Date: July 23, 2024

By: 
GREGORY L. DOLL
Counsel for Defendant

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____, 2024

Judge of the Superior Court of the State of California