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9 Attorneys for Plaintiff
JAY EPPS

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

JAY EPPS,
Plaintiff,
v.
ACE HARDWARE CORPORATION,
Defendant.

Lead Consolidated Case No. CGC-25-624135
(Carcinogens in Mothballs Action)

[Assigned for All Purposes to the Honorable
Ethan P. Schulman – Dept. 304]

[PROPOSED] CONSENT JUDGMENT

(Health & Saf. Code, § 25249.6 *et seq.* and
Code Civ. Proc., § 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 Ace Hardware Corporation (“Defendant”), with Plaintiff and Defendant each referred
5 to 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 Defendant employs ten (10) or more persons. Plaintiff alleges that Defendant is a person in
12 the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act
13 of 1986, California Health & Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Plaintiff alleges that Defendant sells online, imports, facilitates, and/or distributes for sale
16 in California moth preventives on Defendant’s website at the URL www.acehardware.com (“Ace
17 Website”), limited to those manufactured by Willert Home Products, Inc. and/or branded under its
18 “Enoz” name, containing *p*-Dichlorobenzene (*p*-DCB) to consumers in California. Plaintiff
19 further alleges it did so without providing a clear and reasonable warning for the risk of cancer as
20 required by Proposition 65, because *p*-DCB is listed pursuant to Proposition 65 as a chemical
21 known to the State of California to cause cancer. The products, as alleged, contain as much as
22 ninety nine percent (99%) of the toxicant according to the manufacturer’s safety data sheet as well
23 as the product label.

24 **1.5 Product Description**

25 The products covered by this Consent Judgment are moth preventive products
26 manufactured by Willert Home Products, Inc. and/or branded under its Enoz name, containing *p*-
27 DCB, expressly limited to items sold on the Ace Website for delivery to a California shipping
28 address (“Covered Products”). Solely for purposes of this Consent Judgment, the Parties agree

1 that there are variations of moth preventives manufactured by Willert Home Products, Inc. and/or
2 branded under its Enoz name.

3 **1.6 Notice of Violation**

4 On January 24, 2025, Plaintiff served Defendant and certain requisite public enforcement
5 agencies with a 60-Day Notice of Violation (Attorney General Notice Number 2025-00274),
6 alleging that Defendant violated Proposition 65 when it did not warn consumers in California that
7 certain moth preventives manufactured by Willert Home Products, Inc. and/or branded under its
8 Enoz name expose users to *p*-DCB (“Notice”). To the best of the Parties’ knowledge, no public
9 enforcer commenced an action or prosecuted the allegations set forth in the Notice.

10 **1.7 Complaint**

11 On April 8, 2025, Plaintiff filed a complaint in the Superior Court in and for the County of
12 San Francisco against Ace, alleging violations of California Health & Safety Code §25249.6, based
13 on exposures to *p*-DCB contained in moth preventives manufactured by Willert Home Products,
14 Inc. and/or branded under its “Enoz” name (Case No. CGC-25-624140, herein referred to as the
15 “Complaint”). Since then, on April 9, 2025, Plaintiff filed a notice of related case and, on May 16,
16 2025, filed an application for a complex case designation. Plaintiff served his first set of special
17 interrogatories on May 2, 2025. Shortly thereafter, Defendant filed its answer on May 22, 2025.
18 At an initial case management conference held on August 15, 2025, Department 304 of the Court
19 designated the matter as complex, consolidated it with lead case *Epps v. Amazon.com, Inc.*, Case
20 No. CGC-25-624135, as well as other actions and stayed all discovery pending a ruling on
21 Defendant's forthcoming motion for judgment on the pleadings. Defendant filed that motion on
22 October 16, 2025. The discovery stay was lifted during a subsequent case management conference
23 held on November 20, 2025, and, on November 24, 2025, the Court issued an order overruling
24 Defendant’s motion.

25 **1.8 No Admission**

26 Defendant denies all material, factual and legal allegations contained in the Notice and
27 Complaint and maintains that all Covered Products offered for sale, sold, or distributed in
28 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall

1 be construed as either a waiver or admission by the Defendant of any fact, finding, issue of law or
2 violation of law, in this or any other matter; nor shall compliance with this Consent Judgment
3 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of
4 law or violation of law. This Consent Judgment is the product of negotiation and compromise and
5 is accepted by Defendant solely for purposes of settling, compromising, and resolving issues
6 disputed in the Notice and Complaint. Nothing in this Consent Judgment shall be construed to
7 modify, reduce, alter or limit any obligations or responsibilities, whether contractual, legal,
8 equitable, or otherwise, owed to Defendant by any shareholder, retailer, member, vendor, supplier,
9 or other third-party, as to the Covered Products, regardless of whether upstream or downstream
10 from Defendant, and nothing herein shall be deemed to waive, diminish, or otherwise limit any
11 corresponding rights of Defendant. This subsection shall not, however, diminish or otherwise
12 affect the obligations, responsibilities, and duties under this Consent Judgment.

13 **1.9 Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over Defendant as to the allegations contained in the Notice and Complaint, that venue
16 is proper in the County of San Francisco and that the Court has jurisdiction to enter and enforce
17 the provisions of this Consent Judgment pursuant to law, including Proposition 65 and Code of
18 Civil Procedure section 664.6.

19 **1.10 Effective and Compliance Dates**

20 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
21 Consent Judgment is approved by the Court. For purposes of this Consent Judgment, the term
22 “Compliance Date” shall mean thirty (30) calendar days after the Effective Date.

23 **2. INJUNCTIVE RELIEF**

24 **2.1 Injunctive Relief**

25 As to Covered Products sold through the Ace Website for shipment to any California
26 address after the Compliance Date, Defendant, at its option, agrees to: (i) ensure clear and
27 reasonable Proposition 65 warnings for the Covered Products, as set forth in Section 2.2, on the
28 Ace Website; or (ii) cease selling the Covered Products for shipment to any address in California

1 on the Ace Website, as set forth in subsection 2.3. The Parties further understand and agree that
2 certain Covered Products may appear online without a warning but are not available for shipment
3 to any California address, and that such availability complies with this subsection 2.1 so long as
4 those Covered Products are not shipped to a California address.

5 **2.2 Clear and Reasonable Warnings for Ace Website**

6 Each warning shall be prominently placed with such conspicuousness as compared with
7 other words, statements, designs, or devices as to render it likely to be read and understood by an
8 ordinary individual under customary conditions of purchase or use, as provided for in this Section
9 2.2.

10 (a) The warning shall consist of the following language or other similar language that is
11 in compliance with Proposition 65 or its implementing regulations in effect as of Defendant’s sale
12 of the Covered Product:

13 **⚠ WARNING:** This product can expose you to *p*-Dichlorobenzene, which is
14 known to the State of California to cause cancer. For more
15 information go to www.P65Warnings.ca.gov.

16 The word “WARNING” can be substituted with “CA WARNING” or “CALIFORNIA
17 WARNING,” so long as it is in all capital letters and in bold print.

18 Defendant may also, but is not required to, use the following short-form warning or
19 other similar language that is in compliance with Proposition 65 or its implementing regulations in
20 effect as of Defendant’s sale of the Covered Product:

21 **⚠ WARNING:** Cancer risk from exposure to *p*-Dichlorobenzene. See
22 www.P65Warnings.ca.gov.

23 The word “WARNING” can be substituted with “CA WARNING” or “CALIFORNIA
24 WARNING,” so long as it is in all capital letters and in bold print.

25 (b) The warning shall be provided using one or more of the following methods or
26 locations of display: (i) on the product display page; (ii) a clearly marked hyperlink using the word
27 “WARNING” or the words “ATTENTION,” “CA WARNING” or “CALIFORNIA WARNING”
28 on the product page that links to the warning; (iii) on the same page as the order confirmation for

1 the Covered Products (e.g., the review cart URL); (iv) on the page displayed to the purchaser
2 during the checkout process prior to payment for any shipment recipient with a California address;
3 or (v) in any other prominently placed location that complies with Proposition 65.

4 **2.3 Option to Delist**

5 On or before the Compliance Date, the Defendant may, at its option, comply with the
6 injunctive commitments set forth in subsection 2.1 by delisting any Covered Product such that it is
7 unavailable for online sale for shipment to a California address, provided that any such previously
8 delisted Covered Product may be reinstated for online sale to California consumers only if it
9 complies with subsections 2.1 through 2.2 prior to the date of relisting.

10 **2.4 Foreign Language**

11 To the extent the Defendant specifically integrates a foreign language translation feature
12 into the Ace Website (as opposed to user-implemented third-party translation features, such as
13 those in third-party internet browsers not controlled by Defendant), the Proposition 65 warning
14 shall appear in the same foreign language.

15 **2.5 Right to Cure**

16 To the extent Plaintiff identifies any Covered Products in the future that Plaintiff believes
17 do not comply with Proposition 65 or this Consent Judgment, Plaintiff agrees to notify Defendant
18 in the manner set forth in Section 8 and to provide Defendant with forty-five (45) calendar days
19 from the date electronic notice is provided to either (a) cure the alleged violation, (b) provide a
20 Proposition 65 warning in connection with the Covered Product(s), or (c) take other action to
21 ensure that the Covered Product is not sold in California.

22 Such notice to the Defendant shall contain information sufficient for the Defendant to
23 identify the Covered Product, such as the stock keeping unit (SKU) number and/or the Universal
24 Product Code (UPC) together with a screenshot of the Covered Product's online listing and specific
25 URL on the Ace Website. If the alleged non-compliance is cured, Plaintiff shall take no further
26 action to enforce Proposition 65 or this Consent Judgment with respect to the alleged failure to
27 comply with Proposition 65 or the terms of this Consent Judgment, and the matter shall be deemed
28 to be resolved. Further, so long as the Defendant cures the alleged non-compliance relating to a

1 Covered Product subject to this Consent Judgment within the forty-five (45) calendar days, the
2 Defendant shall not be in breach or violation of this Consent Judgment in any respect. In the event
3 Plaintiff advises the Defendant of any alleged non-compliant Covered Product as discussed herein,
4 Plaintiff shall not be entitled to financial remuneration, provided the Defendant timely remedies the
5 non-compliant Covered Product as discussed herein.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty Payments**

8 Pursuant to Health & Safety Code section 25249.7, subdivision (b), and in settlement of all
9 claims alleged in the Notice, Defendant agrees to pay a total of \$20,000 in civil fines. The penalty
10 payment shall be allocated according to Health and Safety Code section 25249.12, subdivisions
11 (c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental
12 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Plaintiff in
13 settlement of all alleged violations and claims referred to in the Notice, Complaint and this
14 Consent Judgment. Within ten (10) calendar days of the Effective Date or Willert Home Products,
15 Inc.’s receipt of current W-9 forms for Plaintiff and OEHHA, whichever date is later, Willert
16 Home Products, Inc., on behalf of Defendant, shall pay the penalty amount by electronic transfer
17 or by checks made payable to “OEHHA” and “Jay Epps,” as set forth in Section 3.3 below.

18 For these payments, Willert Home Products, Inc., on behalf of Defendant, shall make two
19 (2) separate payments in the following amounts: (a) \$15,000 payable to “OEHHA”; and (b)
20 \$5,000 payable to “Jay Epps.” Plaintiff’s counsel shall be responsible for remitting the penalty
21 payments paid by Willert Home Products, Inc., on behalf of Defendant under this Consent
22 Judgment, to OEHHA and Jay Epps. The assessment of fines is based upon, among other
23 statutory factors, the number of the Covered Products sold and shipped to consumers in California
24 during the relevant period as disclosed to Plaintiff by Defendant.

25 **3.2 Reimbursement of Attorneys’ Fees and Costs**

26 The Parties acknowledge that Epps and his counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
28 to be resolved after the material terms of the agreement had been settled. Shortly after the other

1 settlement terms had been finalized, Defendant expressed a desire to resolve Plaintiff's fees and
2 costs. The Parties then negotiated a resolution of the compensation due to Plaintiff's counsel
3 under general contract principles, Proposition 65 implementing regulation for fee awards at
4 California Code of Regulations, title 11, section 3201 and/or the private attorney general doctrine
5 codified at California Code of Civil Procedure section 1021.5. The reimbursement shall cover all
6 fees and costs incurred by Plaintiff investigating, bringing this matter to the Defendant's attention
7 and negotiating a settlement for the claims alleged in the Notice in furtherance of the public
8 interest for the Covered Products. For all work performed in connection with the claims alleged in
9 the Notice through the mutual execution of this agreement and any further efforts to conclude this
10 consolidated action, such as seeking court approval, Defendant shall reimburse Plaintiff's counsel
11 \$70,000.

12 Within ten (10) calendar days of the Effective Date or Willert Home Products, Inc.'s
13 receipt of a current W-9 form from Chanler LLC, whichever date is later, Willert Home Products,
14 Inc., on behalf of Defendant, shall make a payment in the amount of \$70,000 by electronic transfer
15 or by check made payable to "Chanler LLC," as set forth in Section 3.3 below.

16 **3.3 Form of Settlement Proceeds**

17 For the settlement payments noted above in Sections 3.1 and 3.2 for civil penalties and
18 attorneys' fees and costs, Willert Home Products, Inc., on behalf of Defendant may, in addition to
19 the option of payment by checks, transmit the proceeds by wire transfer to "Chanler LLC, IOLTA
20 Account," in accordance with the wire instructions to be provided by Plaintiff or his counsel
21 within ten (10) calendar days of the Effective Date.

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

23 Chanler, LLC
24 Attn: Proposition 65 Controller
25 72 Huckleberry Hill Road
26 New Canaan, CT 06840

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Public Release**

28 This Consent Judgment is a full, final, and binding resolution between Plaintiff, acting on

1 behalf of the public and on behalf of himself and each of his past, current, and future agents,
2 representatives, attorneys, successors, and/or assignees, and Defendant and its past, current, and
3 future direct and indirect subsidiaries, affiliated entities under common ownership, predecessors,
4 successors, directors, officers, managers, shareholders, members (including entities which are
5 members and operating individual retail locations), employees, agents, assignees, attorneys, and
6 retailers (collectively, with Defendant, the “Releasees”) of, from, and with regard to any and all
7 alleged or actual violations of Proposition 65 for a failure to warn about exposures to *p*-DCB from
8 the Covered Products that were packaged, imported, supplied, distributed, sold, or offered for sale
9 on the Defendant’s website to customers in California or with shipment addresses in California
10 prior to the Compliance Date.

11 **4.2 Private Releases**

12 In further consideration of the promises and agreements contained herein, Plaintiff, in his
13 individual capacity and not on behalf of the public, and on behalf of himself and his past and
14 present agents, representatives, attorneys, successors, and assignees, hereby waives all rights to
15 institute or participate in, directly or indirectly, any form of legal action and releases any and all
16 claims he may have, including without limitation all actions or causes of action at law or in equity,
17 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses,
18 including but not limited to investigation fees, expert fees, and attorneys’ fees, against Releasees
19 and Willert Home Products, Inc., whether as a direct or indirect supplier of the Covered Products
20 to Defendant, and direct or indirect suppliers of the Covered Products to the Defendant, under
21 Proposition 65 arising from or relating to the Covered Products.

22 In further consideration of the promises and agreements contained herein, Defendant, on its
23 own behalf and on behalf of its past, current, and future agents, representatives, attorneys,
24 successors and/or assignees, hereby waives any and all claims against Plaintiff and his attorneys
25 and other representatives, for any and all actions taken or statements made (or those that could
26 have been taken or made) by Plaintiff and his attorneys and other representatives in the course of
27 enforcing the claims in this consolidated matter or with respect to the Covered Products, Notice or
28 Complaint.

1 **4.3 California Civil Code Section 1542**

2 It is possible that other claims not known to the Parties, including those arising out of the
3 facts alleged in the Notice and relating to Covered Products made available by Defendant through
4 the Compliance Date, may develop or be discovered. Plaintiff, in his individual capacity only and
5 on behalf of his past and present agents, representatives, attorneys, successors, and assignees, and
6 Defendant acknowledge that this Consent Judgment is expressly intended to cover and include all
7 such claims through the Compliance Date, including all rights of action arising therefrom. The
8 Parties further acknowledge that the claims released in Sections 4.1 and 4.2 above may include
9 unknown claims, and Plaintiff expressly waives California Civil Code section 1542 with respect to
10 any such unknown claims related to the Covered Products.

11 California Civil Code section 1542 provides:

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

19 Plaintiff and Defendant each acknowledge and understand the significance and
20 consequences of this specific waiver of California Civil Code section 1542.

21 **5. COURT APPROVAL**

22 Plaintiff agrees to comply with the reporting requirements referenced in Health & Safety
23 Code section 25249.7, subdivision (f) and to seek, by formal and properly noticed motion
24 (including with service to the Office of the California Attorney General being fully effectuated at
25 least forty-five (45) calendar days prior to a requested hearing thereon), approval of this Consent
26 Judgment’s terms pursuant to Proposition 65 and its associated entry as a consent judgment by the
27 Court. This Consent Judgment shall not be effective until it is approved and entered by the Court
28 and shall be null and void if, for any reason, it is not approved by the Court. This Consent
Judgment shall not be offered or admitted for any purpose in any lawsuit, action, matter, or

1 proceeding, except to enforce its terms as to the Covered Products and Defendant's obligations
2 hereunder.

3 **6. SEVERABILITY**

4 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
5 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
6 remaining provisions shall not be adversely affected.

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California
9 and apply within the State of California. In the event that Proposition 65 is repealed, preempted,
10 or is otherwise amended or rendered inapplicable by reason of law generally, or as to any of the
11 Covered Products or any of the alleged violations set forth in either the Notice or Complaint, then
12 Defendant may seek modification of this Consent Judgment pursuant to Section 11 below.
13 Nothing in this Consent Judgment shall be interpreted to relieve Defendant from its obligation to
14 comply with any other applicable state or federal law or regulation.

15 **8. NOTICE**

16 Unless specified herein, all correspondence and notice required or permitted by this
17 Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) U.S. First-Class Mail,
18 registered or certified, return receipt requested; or (c) a recognized overnight courier to any Party
19 by the other Party at the following addresses. In addition to (a), (b) or (c) above, any notice
20 required or permitted by this Consent Judgment shall also be provided via electronic mail if an
21 email address is provided for the recipient below:
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1 To Defendant:
2 Kerilyn Johnson
3 Vice President, General Counsel and
4 Secretary
5 Ace Hardware Corporation
6 2915 Jorie Blvd.
7 Oak Brook, IL 60523
8 KeJohn@acehardware.com

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

6 With a copy to:

7 Bao M. Vu
8 Stoel Rives LLP
9 1 Montgomery Street, Suite 3230
10 San Francisco, CA 94104
11 bao.vu@stoel.com

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

14 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

18 **10. ENTIRE AGREEMENT**

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

28 **11. MODIFICATION**

This Consent Judgment may be modified only by: (a) a written agreement of the Parties
and the entry of a modified consent judgment by the Court thereon; or (b) upon a successful

1 motion of any party for good cause shown and the entry of a modified consent judgment by the
2 Court thereon. Any Party seeking to modify this Consent Judgment shall attempt in good faith to
3 meet and confer with all affected Parties for thirty (30) calendar days prior to filing a motion to
4 modify the Consent Judgment.

5 **12. AUTHORIZATION**


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

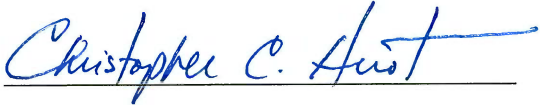
10 **AGREED TO:**

AGREED TO:

12 Date: February 11, 2026

Date: February 12, 2026

13
14 By: 

By: 

15 Jay Epps

Name: Christopher Huot

Title: Corporate Vice President, Merchandising

ACE HARDWARE CORPORATION

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APPROVED AS TO FORM:

Date: February 11, 2026



By: _____

CLIFFORD A. CHANLER
Counsel for Plaintiff

APPROVED AS TO FORM:

Date: February 12, 2026



By: _____

BAO M. VU
Counsel for Defendant

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____, 2026

Judge of the Superior Court of the State of California