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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)

[PROPOSED] CONSENT JUDGMENT

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](http://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 safe-harbor regulations in effect as of Defendant’s sale of the  
12 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](http://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 safe-harbor regulations in effect as  
20 of Defendant’s sale of the Covered Product:

21 **⚠ WARNING:** Cancer risk from exposure to *p*-Dichlorobenzene. See  
22 [www.P65Warnings.ca.gov](http://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, employees, agents, assignees,  
5 and attorneys (collectively, with Defendant, the “Releasees”) of, from, and with regard to any and  
6 all alleged or actual violations of Proposition 65 for a failure to warn about exposures to *p*-DCB  
7 from the Covered Products that were packaged, imported, supplied, distributed, sold, or offered  
8 for sale on the Defendant’s website to customers in California or with shipment addresses in  
9 California prior to the Compliance Date.

10 **4.2 Private Releases**

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

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

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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: Jay Epps

By: Christopher C. Huot

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