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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

GABRIEL ESPINOZA, Plaintiff, v. ACE HARDWARE CORPORATION, Defendant.	Case No.: CGC-25-625280 **CONSENT JUDGMENT** Judge: Joseph M. Quinn Dept.: 302 Hearing Date: July 2, 2026 Hearing Time: 9:00 AM Complaint Filed: May 13, 2025

1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Gabriel Espinoza acting on behalf of the public interest (hereinafter "Espinoza") and Ace Hardware Corporation ("Ace" or "Defendant") with Espinoza and Defendant collectively referred to as the "Parties" and each of them as a "Party." Espinoza is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Ace is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed individuals to bisphenol A (BPA) from its sales of *Ross*® root feeders without providing a clear and reasonable exposure warning pursuant to Proposition 65. BPA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 **Notices of Violation/Action.** On February 26, 2025, Espinoza served Ace and various public enforcement agencies with documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of *Ross*® root feeders expose users in California to BPA. On May 13, 2025, Espinoza filed a complaint (the "Complaint" or "Action"). On July 11, 2025, Espinoza served a further "60-Day Notice of Violation" ("Amended Notice") on Ace and the supplier of the *Ross*® root feeders, Easy Gardener Products, Inc. dba The Jobe's Company. The Notice and Amended Notice are collectively referred to herein as the "Notices". No public enforcer has brought and is diligently prosecuting the claims alleged in the Notices.

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution

of all claims which were or could have been raised in the Action based on the facts alleged therein and in the Notices.

1.5 **No Admission.** Defendant denies the material allegations contained in Espinoza's Notices and Complaint and maintains that it has not violated Proposition 65. Defendant maintains that independent testing provided by the supplier of the Covered Products as hereinbelow defined confirmed the Covered Products do not cause exposure to BPA. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. To the contrary, this Consent Judgment is a compromise of claims that are expressly contested and denied. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

2. DEFINITIONS

2.1 **Covered Products.** The term "Covered Products" means *Ross*® root feeders that are manufactured, distributed, shipped into California and offered for sale in California that expose users to BPA, including by Ace.

2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is entered as a Judgment of the Court.

3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

3.1 **Reformulation of Covered Products.** Commencing within sixty (60) days of the Effective Date, and continuing thereafter, Covered Products that Ace directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) meet the reformulation standard pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Products.

Further, all Covered Products in the stream of commerce as of sixty (60) days of the Effective Date, including but not limited to Covered Products packaged and in Ace's possession, custody, or control, shall not be subject to this Section 3.1 and may be distributed, sold, or offered for sale in California as-is ("Sell-Through Inventory"), and such Sell-Through Inventory shall expressly be covered by the releases in Section 5 of this Consent Judgment.

3.2 **Reformulation Standard.** "Reformulated Products" shall mean any Covered Products subject to this Consent Judgment that achieves a wipe test result equal to, or less than, 3 micrograms of BPA.

3.2.1 **Wipe Test Protocol.** The "Wipe Test Protocol" for determining if a Covered Product is a Reformulated Product is as follows:

(a) Accessible sample surface of the Covered Product is rubbed by wipe sample swabs/paper wetted with HPLC grade water heated to 98 °F two (2) times along longitudinal, latitudinal and diagonal orientation.

(b) Wipe sample swabs/paper is extracted with methanol on wrist shaker for one (1) hour and analyzed by LC/MS/MS.

3.3 **Clear and Reasonable Warning**. Commencing within 60 days of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream of commerce within 60 days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

(a) **Warning**. The "Warning" shall consist of the statement:

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

(b) **Alternative Warning**: Ace may, but is not required to, use the alternative short-form warning as set forth in this § 3.3(b) ("**Alternative Warning**") as follows:

⚠ **WARNING**: Reproductive Harm - www.P65Warnings.ca.gov.

3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Product does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word "**WARNING:**". The **Warning** or **Alternative Warning** shall be affixed to or printed on the Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process only if such electronic device or automatic process provides the **Warning** or **Alternative Warning** without the purchaser having to seek it out, providing that the **Warning** or **Alternative Warning** is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A **Warning** or **Alternative Warning** provided via an electronic device or automatic process does not apply to internet purchases, which are subject to the provisions of Section 25602(b). The **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Covered Product and shall be at least the same size as those other safety warnings. If "consumer information," as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Ace shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by OEHHA. An **Alternative Warning** on a Covered Product manufactured and labeled after January 1, 2028 shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Ace offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning,** or a clearly marked hyperlink using the word

"**WARNING,**" appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, Ace shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered Product and exposures at issue.

4. MONETARY TERMS

4.1 **Civil Penalty.** Ace shall pay $2,000.00 as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

4.1.1 Within ten (10) days of the Effective Date, Ace shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of $1,500.00; and to (b) "Gabriel Espinoza" in the amount of $500.00. Payment owed to Espinoza pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Ace shall pay $20,000.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention of Ace, litigating and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

5. RELEASE OF ALL CLAIMS

5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza acting on his own behalf, and on behalf of the public interest, and Ace, its past, current, and future direct and indirect subsidiaries, affiliated entities under common ownership, predecessors, successors, directors, officers, managers, shareholders, members (including entities which are members and operating individual retail locations), employees, agents, assignees, attorneys, retailers, and retail customers ("Defendant Releasees"), and all entities from or to whom they directly or indirectly acquire, purchase, distribute or sell Covered Products, including but not limited to Easy Gardener Products, Inc. dba The Jobe's Company, Lawn & Garden LLC, manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers, and its parents, subsidiaries, and affiliates, franchisees, and cooperative members (" Releasees"), of all claims for violations of Proposition 65 based on exposure to BPA from use of the Covered Products manufactured, distributed, or sold by Ace or Releasees within 60 days of the Effective Date or that

constitute Sell-Through Inventory. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that no other actions by private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and take any action with respect to any violation of Proposition 65 based on exposure to BPA from use of the Covered Products that was alleged in the Complaint, or that could have been brought pursuant to the Notices ("Proposition 65 Claims"). Ace's compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Ace with regard to exposure to BPA from use of the Covered Products, including but not limited to the Sell-Through Inventory.

5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current agents, representatives, attorneys, and successors and assignees, and *not* in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases Ace, Defendant Releasees, and Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by Ace, Defendant Releasees, and Releasees, including but not limited to Sell-Through Inventory. With respect to the foregoing waivers and releases in this paragraph, Espinoza hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the 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.

5.3 Ace waives any and all claims against Espinoza, his attorneys and other representatives, for any and all actions taken, or statements made (or those that could have been taken or made) by Espinoza and his attorneys and other representatives, whether in the course of

investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and with respect to Covered Products.

6. INTEGRATION

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

7. NOTICES

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

For Defendant:

Kerilyn Johnson
Vice President, General Counsel and Secretary
Ace Hardware Corporation
2915 Jorie Blvd.
Oak Brook, IL 60523

With a Copy to:

Bao M. Vu
Stoel Rives LLP
1 Montgomery Street, Suite 3230
San Francisco, CA 94104

And

For Espinoza:

Evan Smith
Brodsky Smith
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212

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

8. COUNTERPARTS; FACSIMILE SIGNATURES

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

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL

9.1 Espinoza agrees to comply with the requirements set forth in California Health & Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment. Defendant agrees it shall support approval of such Motion.

9.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30 days, the case shall proceed on its normal course.

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

10. MODIFICATION

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

11. ATTORNEY'S FEES

11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

12. RETENTION OF JURISDICTION

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

13. AUTHORIZATION

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

AGREED TO:	**AGREED TO:**
Date:_____	Date: 5/8/2026
By:_____	By: Signed by: Brian Wilberg BA204B951F46468
GABRIEL ESPINOZA	ACE HARDWARE CORPORATION

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:_____

_____
Judge of Superior Court

12. RETENTION OF JURISDICTION

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

13. AUTHORIZATION

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

AGREED TO:

Date: 5 | 15 | 26

By: _____
GABRIEL ESPINOZA

AGREED TO:

Date: _____

By: _____
ACE HARDWARE CORPORATION

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

_____
Judge of Superior Court