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3 11622 El Camino Real, Suite 100
4 San Diego, CA 92130
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7 *Attorney for Plaintiff, Maureen Parker*

F I L E D
Clerk of the Superior Court

MAY 23 2014

By: TIPIN JOHNSON, Deputy

MAY 9 14 AM 10:22

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO
10 UNLIMITED CIVIL JURISDICTION

13 MARUREEN PARKER,)

14)
15 Plaintiff,)

16)
17 and)

18 ACE HARDWARE CORPORATION,)
19 AND DOES 1-25 INCLUSIVE, including)
20 DANCO PRODUCTS INC.)

21 Defendants.)
22)
23)

CASE NO.:

37-2013-00048582-CU-NP-CTL

~~RECEIVED~~

JUDGMENT APPROVING
PROP 65 STIPULATION AND
CONSENT JUDGMENT

(Cal. Health & Safety Code § 25249.6 et seq.)

Date: May 23, 2014

Time: 9:00am

Dept. C-75

Hon. Richard E.L. Strauss

Action Filed: May 14, 2013

"IMAGED FILE"

{1746397.DOC;2}

JUDGMENT APPROVING PROP 65 STIPULATION AND CONSENT JUDGMENT

1 In the above entitled action, Plaintiff, Maureen Parker and Defendants, Ace
2 Hardware Corporation and Danco Products, Inc., (including LSP Products Group Inc.) having
3 agreed through their respective counsel that judgment be entered pursuant to the terms of the
4 Proposition 65 settlement agreement in the form of a [Proposed] Consent Judgment entered into
5 by the parties, and following issuance of an order approving this Proposition 65 settlement
6 agreement and entering this Consent Judgment on MAY 23 2014, ~~2014~~.

7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to
8 Code of Civil Procedure §664.6, judgment is entered in accordance with the Consent Judgment
9 attached hereto as Exhibit 1.

10
11 **IT IS SO ORDERED.**

12
13 Dated: MAY 23 2014



14 _____
15 RICHARD E.L. STRAUSS
16 JUDGE OF THE SUPERIOR COURT
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Exhibit 1

weintraub tobin chediak coleman grodin
LAW CORPORATION

1 Lee N. Smith, State Bar No. 138071
James L. Brannen, State Bar No. 279367
2 **weintraub tobin chediak coleman grodin**
LAW CORPORATION
3 400 Capitol Mall, 11th Floor
Sacramento, CA 95814
4 Telephone: (916) 558-6000
Facsimile: (916) 446-1611

5 Attorneys for Defendants
6 Ace Hardware Corporation, Danco Products, Inc.,

7 Stephen Ure, State Bar No. 188244
Law Offices of Stephen Ure, PC
8 1518 Sixth Avenue, Suite 1
San Diego, CA 92101
9 Telephone: (619) 235-5400
Facsimile: (619) 235-5403

10 Attorneys for Plaintiff
11 Maureen Parker

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO
14 UNLIMITED CIVIL JURISDICTION

15 MAUREEN PARKER,
16 Plaintiff,

17 v.

18 ACE HARDWARE CORPORATION AND
19 DOES 1-25 INCLUSIVE, including DANCO
20 PRODUCTS INC.

21 Defendants.

) Case No. 37-2013-00048582-CU-NP-CTL
)
) **STIPULATION AND [PROPOSED] ORDER**
) **REGARDING ENTRY OF CONSENT**
) **JUDGMENT AS TO ACE HARDWARE**
) **CORPORATION, DANCO PRODUCTS,**
) **INC.,**
) Complaint Filed: May 14, 2013
)
) Case Assignment: Hon. Richard E. L.
) Strauss
)

22
23 **1. INTRODUCTION**

24 **1.1 The Parties**

25 This Stipulation and [Proposed] Order Regarding Entry of Consent Judgment
26 ("Consent Judgment") is hereby entered into by and between Plaintiff Maureen Parker
27 acting on her own and on behalf of the public interest ("Parker" or "Plaintiff"), and
28 Defendants Ace Hardware Corporation ("Ace"), Danco Products, Inc. ("Danco"), collectively

1 referred to as "Defendants," with all of the parties collectively referred to as the "Parties"
2 and each of them as a "Party." Parker is an individual residing in California who seeks to
3 promote awareness of exposures to toxic chemicals and improve human health by
4 reducing or eliminating hazardous substances contained in consumer products. Parker
5 served a Sixty Day Notice ("60 Day Notice") dated December 28, 2012, January 4, 2013.
6 An Amended Notice ("Amended Notice") that will more particularly describe the noticed
7 products will be filed within sixty (60) days of the parties' signatures herein. Each
8 Defendant employs ten or more persons and each is a person in the course of doing
9 business for purposes of Proposition 65, Health and Safety Code § 25249.6 *et seq.*

10 **1.2 Allegations and Representations**

11 Plaintiff alleges that Defendants have offered for sale in the State of California
12 plumbing products bearing Danco's or Danco's affiliates' proprietary labels or any
13 proprietary label of a customer to whom Danco or Danco's affiliates supply plumbing
14 products containing brass and/or lead with lead levels above the Prop 65 safe threshold
15 levels and that such sales have not been accompanied by Proposition 65 warnings. These
16 products consist of toilet and faucet repair and accessories ("Category A"); tub/shower
17 repair and accessories ("Category B"); sink repair and accessories ("Category C"); water
18 supply line and valve systems and drains ("Category D"), (collectively, the "Plumbing
19 Products"). Lead is listed under Proposition 65 as a chemical known to the State of
20 California to cause cancer and birth defects or other reproductive harm. Parker
21 specifically identified in her initial 60 Day Notice the ACE Faucet Stem
22 (UPC 082901 402046) (Category C) (see attached Exhibit A); the ACE Faucet Spray Hose
23 (UPC 082901 1256802) (Category D) (see attached Exhibit B), as specific examples of the
24 categories of Danco products that are plumbing products containing brass and/or lead
25 and are the subject of their allegations. The Amended Notice will identify products in
26 Categories A(ACE Faucet Stem UPC 082901 454441) and B (Danco Hot & Cold Stem UPC
27 037155 016136)

28 For purposes of this Consent Judgment only, Danco represents that the above-

1 listed products are manufactured for and distributed to ACE, OSH, and others by Danco,
2 and that Defendants had no reason to believe that the items contained lead in excess of
3 safe harbor levels until receiving the 60 Day Notices on or about December 28, 2012 and
4 January 4, 2013.

5 **1.3 Product Description**

6 Plaintiffs allege that various Plumbing Products containing brass and/or lead and
7 bearing any of Danco's or Danco's affiliates' (including LSP Products Group, Inc. ("LSP"))
8 proprietary labels or any proprietary label of a customer to whom Danco or Danco's
9 affiliates supply brass and/or lead containing plumbing products, including ACE, Orchard
10 Supply Hardware, and other downstream retail establishments, or for whom they package
11 brass or lead containing plumbing products that may require Proposition 65 warnings if
12 those products are marketed or distributed by Danco or Danco's affiliates for use in
13 California and may contain lead or lead compounds at levels that will create exposures
14 above the Safe Harbor levels. For purposes of this Consent Judgment only, and without
15 admitting liability, the Parties agree that any brass or lead containing Plumbing Products
16 or Plumbing Products sold and distributed now and in the future by Danco or Danco's
17 affiliates, including LSP, Ace, OSH and other downstream retail establishments, within the
18 State of California are subject to this Consent Judgment whether they were identified in
19 the 60 Day Notice or Amended Notice or not, hereinafter the "Covered Products."

20 **1.4 Notices of Violation/Complaint**

21 a. Parker (on December 28, 2012 and January 4, 2013) served ACE and
22 various public enforcement agencies with a document entitled "60-Day Notice of
23 Violation" pursuant to Health and Safety Code § 25249.7(d) (the "Notice") alleging that
24 ACE was in violation of Proposition 65 for failing to warn consumers and customers that
25 their Plumbing Products exposed users in California to lead. No public enforcer diligently
26 prosecuted the claims threatened in the Notice within sixty days plus service time relative
27 to the provision of the Notice to them by Plaintiffs.

28 b. On or before September 15, 2013, Plaintiffs shall serve ACE, and

1 Danco, and various public enforcement agencies, with a document entitled
2 "Supplemental 60-Day Notice of Violation" pursuant to Health and Safety Code
3 § 25249.7(d) (the "Supplemental Notice"), clarifying the scope of products (as being more
4 broad than was described in the original Notice) and further alleging that Defendants
5 were in violation of Proposition 65 for failing to warn consumers and customers that the
6 Covered Products exposed users in California to lead.

7 c. On a date that is at least forty-five (45) days after the issuance of the
8 Supplemental Notice, Plaintiffs, acting in the interest of the general public in the State of
9 California, shall amend their complaint ("Complaint") in the Superior Court of San Diego
10 County alleging violations of Health and Safety Code § 25249.6 based on the alleged
11 exposures to lead contained in the Covered Products manufactured, distributed or sold
12 by Danco through ACE, OSH, other downstream retail establishments and/or Danco, as
13 set forth in the 60 Day Notice. In the event that no public enforcer undertakes the
14 diligent enforcement of the allegations set forth for the Covered Products as specified in
15 the Supplemental Notice prior to the expiration of the 60 Day Notice period. The
16 Complaint shall be amended to include said allegations and Danco as defendants.

17 d. The Parties shall stipulate to an extension pursuant to California law
18 for Defendants to file and serve their responsive pleadings, if any, and in no event shall
19 Plaintiff seek a default judgment against Defendants Ace, and/or Danco for any failure to
20 file and serve their responsive pleadings.

21 **1.5 Stipulation as to Jurisdiction/No Admission**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court
23 has jurisdiction over Defendants as to the allegations contained in the complaints filed in
24 this matter, that venue is proper in the County of San Diego, and that this Court has
25 jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as
26 a full and final binding resolution of all claims which were or could have been raised in
27 the Complaint based on the facts alleged therein and/or in the 60 Day Notice or
28 Supplemental Notice.

1 Plaintiff and Defendants enter into this Consent Judgment as a full and final
2 settlement of all claims that will be raised in the Amended Complaint, or which could
3 have been raised in the Amended Complaint, arising out of the facts or conduct related
4 to Defendants alleged therein. Defendants deny the material allegations contained in
5 Parker's 60 Day Notice, Complaint, and Amended Complaint, and maintain that they have
6 not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an
7 admission by Defendants of any fact, finding, issue of law, or violation of law; nor shall
8 compliance with this Consent Judgment constitute or be construed as an admission by
9 Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being
10 specifically denied by Defendants. However, this section shall not diminish or otherwise
11 affect the obligations, responsibilities, and duties of Defendants under this Consent
12 Judgment. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
13 remedy, argument or defense the Parties may have in this or any other pending or future
14 legal proceedings. This Consent Judgment is the product of negotiation and compromise
15 and is accepted by the Parties solely for purposes of settling, compromising, and
16 resolving issues disputed in the Complaint. This Consent Judgment shall not be used for
17 any other purpose or in any other manner.

18 **1.6 Effective Date**

19 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
20 date this Consent Judgment is entered as a judgment of the Court. For purposes of this
21 Consent Judgment, the term "Execution Date" shall mean the date this Consent Judgment
22 is signed by all Parties in Clause 16 below.

23 **2. INJUNCTIVE RELIEF; WARNINGS**

24 Commencing 180 days after the Effective Date, and except as set forth in Section
25 2.1 or 2.6, Danco shall not manufacture or cause to be manufactured for sale in California
26 any Covered Product that does not include a warning as provided in Section 2.1.

27 **2.1 Warnings**

28 Covered Products manufactured by or on behalf of Danco after the date set

1 forth in the immediately preceding paragraph containing more than .01 percent lead
2 by weight (100 ppm) using a method of sufficient sensitivity to establish a limit of
3 quantification (as distinguished from detection) of more than 100 ppm, shall be
4 accompanied by a warning as described in Section 2.2 below.

5 **2.2 Warnings to be Utilized**

6 Where required under Section 2.1 above, Danco shall provide Proposition 65
7 warnings as follows:

8 **California Prop. 65 WARNING: This product contains one or more**
9 **chemicals**
10 **known to the State of California to cause cancer and birth defects or**
11 **other reproductive harm.**

12 **2.3 Placement of Product Warnings**

13 Where utilized to meet the criteria set forth in Section 2.1, Danco shall provide the
14 warning language set forth in Section 2.2 either.

15 a. With or within the unit package of the Covered Products or affixed to
16 the Covered Products. Such warning shall be prominently affixed to or printed on each
17 Covered Product's label or package or the Covered Product itself. If printed on the label,
18 the warning shall be contained in the same section that states other safety warnings, if
19 any, concerning the use of the Covered Product; Defendants may continue to utilize, on
20 an ongoing basis, unit packaging containing substantively the same Proposition 65
21 warnings as those set forth in Section 2.2 above, but only to the extent such packaging
22 materials have already been printed within ninety days of the Effective Date, or

23 b. In the owner's manual the product in which the Covered Product is a
24 component, but only if the product has one or more features a consumer must read
25 about in order to know how to program or use the Covered Product. If the warning is
26 given in the owner's manual pursuant to this subsection, it shall be located in one of the
27 following places in the manual: the outside of the front cover; the inside of the front
28 cover; the first page other than the cover; or the outside of the back cover. The warning
shall be printed or stamped in the manual or contained in a durable label or sticker

1 affixed to the manual in a font no smaller than the font used for other chemically related
2 safety warnings in the manual. Alternatively, the warning may be included in a safety
3 warning section of the owner's manual. Owner's manual warnings may only be allowed if
4 the owner's manual is sold in the same package and at the same time as the other
5 product and not for Covered Products sold separately, or

6 c. Inside the product packaging where it is reasonably calculated to
7 make the warning available to the individual prior to exposure, if any.

8 **2.4 Listed Warning Are Not Exclusive**

9 The requirements for warnings, set forth in Sections 2.2 and 2.3 above, are
10 imposed pursuant to the terms of this Consent Judgment. The Parties recognize that
11 these are not the exclusive methods of providing a warning under Proposition 65 and its
12 implementing regulations, and that they may or may not be appropriate in other
13 circumstances.

14 **2.5 Warnings No Longer Required**

15 If Proposition 65 warnings for lead or lead compounds or other specified
16 chemicals should no longer be required, Defendants shall have no further warning
17 obligations pursuant to this Consent Judgment. Except in the event that a change in the
18 law requires modification or ceases to require such warnings, should Defendants cease to
19 implement or modify the warnings required under this Settlement Agreement,
20 Defendants shall provide written notice to Parker (through counsel) of their intent to do
21 so, and of the basis for its intent, no fewer than thirty (30) days in advance.

22 **2.6 Covered Products in the Stream of Commerce**

23 Covered Products that have already been manufactured, distributed, shipped or
24 sold, or that are otherwise in the stream of commerce, prior to 180 days after the Effective
25 Date shall be released from any and all claims that were brought or that could have been
26 brought by Plaintiff in this action, as though they were covered claims within the meaning
27 of Section 5 of this Consent Judgment.

28 **3. PAYMENTS PURSUANT TO HEALTH AND SAFETY CODE 25249.7(b)**

1 With regard to all claims that have been raised or which could be raised with
2 respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered
3 Products, Defendant(s) shall pay a civil penalty of \$1,000 pursuant to Health and Safety
4 Code § 25249.7(b), to be apportioned in accordance with California Health and Safety
5 Code § 25192, with 75% of these funds remitted to the State of California's Office of
6 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted
7 to Parker, as provided by California Health and Safety Code § 25249.12(d) and the
8 instructions directly below.

9 Defendants shall issue two separate checks for the penalty payment: (a) one check
10 made payable to "OEHHA" (Tax Identification Number: 68-0284486) in an amount
11 representing 75% of the total penalty (i.e., \$750.00); and (b) one check in an amount
12 representing 25% of the total penalty (i.e., \$250.00) made payable directly to Parker.
13 Defendants shall mail these payments within two weeks following the Execution Date, to
14 be held in trust by Parker's counsel, until the Effective Date, at which time such payments
15 shall be mailed to the following addresses respectively:

16 Proposition 65 Settlement Coordinator
17 California Department of Justice
18 1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

19 Ms. Maureen Parker
20 c/o Law Offices of Stephen Ure, PC
21 1518 Sixth Ave.
San Diego, CA 92101

22 **4. REIMBURSEMENT OF FEES AND COSTS**

23 The Parties reached an accord on the compensation due to Parker and her counsel,
24 under the private attorney general doctrine and principles of contract law. Under these
25 legal principles, Defendants shall pay Parker's counsel, Stephen Ure, Esq., \$39,000 for all
26 attorneys' fees, expert and investigation fees, and related costs associated with this
27 matter. Defendants shall wire said monies to the "Law Offices of Stephen Ure, PC" (Tax
28 Identification Number 42-1641673) within one week following the Execution Date of this

1 Agreement. The Law Offices of Stephen Ure, PC will provide Defendants with their
2 respective wire instructions and tax identification information on or before the Execution
3 Date. Other than the payment required hereunder, each side is to bear its own attorneys'
4 fees and costs.

5 **5. RELEASE OF ALL CLAIMS**

6 **5.1 Release of Defendant(s) and Downstream Customers**

7 Plaintiff, on behalf of herself and in the public interest pursuant to Health and
8 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims
9 against Defendants and each of their downstream distributors, wholesalers, licensors,
10 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users,
11 parent companies, corporate affiliates (including LSP), subsidiaries, and their respective
12 officers, directors, attorneys, representatives, shareholders, agents, and employees, and
13 sister and parent entities (collectively "Releasees") from all claims that have been or could
14 have been asserted in the public interest against Defendants for violations of Proposition
15 65 in connection with Covered Products manufactured, distributed, or sold by Defendants
16 prior to the Effective Date. Compliance with the terms of this Consent Judgment
17 constitutes compliance with Proposition 65 with respect to exposures to lead from the
18 Covered Products.

19 The Parties further understand and agree that this release shall extend upstream to
20 any entities that manufactured the Covered Products for Danco or any component parts
21 thereof or to any distributors or suppliers who sold Covered Products or any component
22 parts thereof to Danco ("Upstream Entities").

23 In addition to the foregoing, Plaintiff, on behalf of herself, her past and current
24 agents, representatives, attorneys, and successors and/or assignees, and not in her
25 representative capacity, hereby waives all rights to institute or participate in, directly or
26 indirectly, any form of legal action and releases any other claims that she could make
27 against Defendants or their Releasees arising up to the Effective Date with respect to
28 violations of Proposition 65 based upon the Covered Products. With respect to the

1 foregoing waivers and releases in this paragraph, Parker **individually** hereby specifically
2 waives any and all rights and benefits which she now has, or in the future may have,
3 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
4 provides as follows:

5
6 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
7 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
8 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
9 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
10 **SETTLEMENT WITH THE DEBTOR.**

11 Parker understands and acknowledges that the significance and consequences of this
12 waiver of California Civil Code Section 1542 is that even if Parker, suffer future damages
13 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
14 Covered Products, or any exposure to, or failure to warn with respect to exposure to, the
15 Covered Products, Parker will not be able to make any claim for those damages against
16 any Releasee, its successors or assigns, or any of their respective parents, subsidiaries or
17 affiliates, sister companies, or any of their customers, distributors, wholesalers, retailers or
18 any other person in the course of doing business who may use, maintain, distribute or sell
19 the Covered Products. Furthermore, Parker acknowledges that she intends these
20 consequences and this Release for any such claims which may exist as of the date of this
21 Release, but which Parker does not know exist, and which, if known, would materially
22 affect her decision to enter into this Consent Judgment, regardless of whether her lack of
23 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

24 In further consideration of the promises and agreements herein contained, Parker,
25 on her own behalf and on behalf of her past and current agents, representatives,
26 attorneys, successors, and/or assignees, hereby waives all rights to institute or participate
27 in, directly or indirectly, any form of legal action, and releases all claims that she may have
28 against Defendants and Releasees, including, without limitation, all actions and causes of

1 action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
2 expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees
3 arising under Proposition 65 for unwarned exposures Covered Products manufactured,
4 sold, or distributed for sale in California by Releasees prior to the Effective Date.

5 **5.2 Defendants' Release of Parker**

6 Defendants waive any and all claims against Parker, her attorneys and other
7 representatives, for any and all actions taken or statements made (or those that could
8 have been taken or made) by Parker and her attorneys and other representatives, whether
9 in the course of investigating claims or otherwise seeking enforcement of Proposition 65
10 against them in this matter, and/or with respect to the Covered Products.

11 **6. SEVERABILITY AND MERGER**

12 If, subsequent to the execution of this Consent Judgment, any of the provisions of
13 this document are held by a court to be unenforceable, the validity of the enforceable
14 provisions remaining shall not be adversely affected.

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

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of
22 California and apply within the State of California. Compliance with the terms of this
23 Consent Judgment resolves any issue, now or in the future, with the requirements of
24 Proposition 65 with respect to alleged exposures to lead arising from the Covered
25 Products. In the event that Proposition 65 is repealed or is otherwise rendered
26 inapplicable by reason of law generally, or as to the Covered Products, then Defendants
27 shall provide written notice to Parker of any asserted change in the law, and shall have no
28 further obligation pursuant to this Consent Judgment with respect to the Covered

1 Products and to the extent that the Covered Products are so affected.

2 **8. NOTICES**

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

6 For Danco:

7 Michael J. Near, Esq.
8 Regulatory Affairs Counsel
9 NCH Corporation
10 2727 Chemsearch Boulevard
11 Irving, Texas 75062

11 For Ace and Danco:

12 Lee N. Smith, Esq.
13 Weintraub Tobin Chediak Coleman Grodin
14 400 Capitol Mall, 11th Floor
15 Sacramento, California 95814

15 For Parker:

16 Stephen Ure, Esq.
17 Law Offices of Stephen Ure, PC
18 1518 Sixth Avenue
19 San Diego, California 92101

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

26 **10. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(f); COURT**
27 **APPROVAL**

28 Parker agrees to comply with the requirements set forth in California Health and
Safety Code § 25249.7(f) and to bring a Motion for Approval of this Consent Judgment no

1 later than seventy (70) days after issuance of the Supplemental Notice, and Defendants
2 shall support approval of such Motion.

3 This Consent Judgment shall not be effective until it is approved and entered by
4 the Court and shall be null and void if, for any reason, it is not approved and entered by
5 the Court within twelve months after it has been submitted to the Court for approval by
6 the Parties, in which case all penalties and attorneys' fees paid by each Defendant shall be
7 returned to each Defendant immediately. If this Consent Judgment is not entered by the
8 Court, it shall be not be introduced into evidence or otherwise used in any proceeding for
9 any purpose.

10 **11. MODIFICATION**

11 This Consent Judgment may be modified only by further stipulation of the Parties
12 and the approval of the Court or upon the granting of a motion brought to the Court by
13 any Party. Any Party seeking to modify this Consent Judgment shall attempt in good
14 faith to meet and confer with the other Party prior to filing a motion to modify the
15 Consent Judgment.

16 **12. ATTORNEY'S FEES**

17 12.1 A party who unsuccessfully brings or contests an action arising out of this
18 Consent Judgment shall be required to pay the prevailing party's reasonable attorney's
19 fees and costs unless the unsuccessful party has acted with substantial justification. For
20 purposes of this Consent Judgment, the term substantial justification shall carry the same
21 meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016,
22 *et seq.*

23 13.1 Any party that files a 60-day notice or other claim alleging that a Covered
24 Product is in violation of Prop 65 despite this Stipulation and Order shall be responsible
25 for the fees and cost of a respondents successful enforcement of this Order.

26 13.2 Nothing in this Section shall preclude a Party from seeking an award of
27 sanctions pursuant to law.

28 **13. RETENTION OF JURISDICTION**

1 This Court shall retain jurisdiction of this matter to implement or modify the
2 Consent Judgment including paragraph 14

3 **14. ENFORCEMENT AND CURE PROCEDURES**

4 Prior to bringing any motion or order to show cause to enforce the terms of this
5 Consent Judgment, a Party seeking to enforce shall provide the non-complying party
6 forty-five (45) days' advance written notice of the alleged noncompliance. The Parties
7 shall meet and confer during such forty-five (45) day period in an effort to try to reach
8 agreement on an appropriate cure for the alleged noncompliance. After such forty-five
9 (45) day period, the Party seeking to enforce may, by new action, motion or order to
10 show cause before the Superior Court of San Diego County, seek to enforce the terms
11 and conditions contained in this Consent Judgment. Any enforcement by Parker of the
12 terms of this Consent Judgment will be limited to the Covered Products.

13 ///

14 **15. AUTHORIZATION**

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

21 **APPROVED AS TO FORM:**

22 Dated: August _____, 2013 LAW OFFICES OF STEPHEN URE, PC

23
24 By: _____
25 Stephen Ure, Esq.
26 Attorneys for Plaintiff
27 MAUREEN PARKER
28

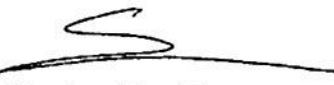
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LAW CORPORATION

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fees and costs.

APPROVED AS TO FORM:

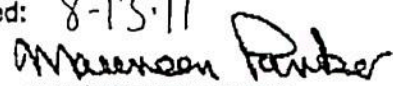
Dated: August 15, 2013 LAW OFFICES OF STEPHEN URE, PC

By: 
Stephen Ure, Esq.
Attorneys for Plaintiff
MAUREEN PARKER

Dated: August _____, 2013 WEINTRAUB TOBIN CHEDIAK COLEMAN GRODIN
LAW CORPORATION

By:
Lee N. Smith, Esq.
Attorneys for Defendants
ACE HARDWARE CORPORATION, DANCO
PRODUCTS, INC.,

AGREED TO:

Dated: 8-13-11
By: 
MAUREEN PARKER

AGREED TO:

Dated:
By:
On Behalf of:
DANCO PRODUCTS, INC.

AGREED TO:

Dated:
By:
On Behalf of:
ACE HARDWARE CORPORATION

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Dated: August _____, 2013 WEINTRAUB TOBIN CHEDIAK COLEMAN GRODIN
LAW CORPORATION

By: _____
Lee N. Smith, Esq.
Attorneys for Defendants
ACE HARDWARE CORPORATION, DANCO PRODUCTS,
INC.,

AGREED TO:

Dated: _____

By: _____
MAUREEN PARKER

AGREED TO:

Dated: 8/14/2013

By: S88tapple
On Behalf of:
DANCO PRODUCTS, INC.

AGREED TO:

Dated: _____

By: _____
On Behalf of:
ACE HARDWARE CORPORATION

weintraub tobin chediak coleman grodin
LAW CORPORATION

1 this Consent Judgment. Any enforcement by Parker of the terms of this Consent Judgment will
2 be limited to the Covered Products.

3 1. AUTHORIZATION

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

9 APPROVED AS TO FORM:

10 Dated: August _____, 2013 LAW OFFICES OF STEPHEN URE, PC

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12 By: _____
13 Stephen Ure, Esq.
14 Attorneys for Plaintiff
MAUREEN PARKER

15 Dated: August 22, 2013 WEINTRAUB TOBIN CHEDIAK COLEMAN GRODIN
16 LAW CORPORATION

17 By: _____
18 Lee N. Smith, Esq.
19 Attorneys for Defendants
20 ACE HARDWARE CORPORATION, DANCO
PRODUCTS, INC.,

21 AGREED TO:

AGREED TO:

22 Dated: _____

Dated: _____

23 By: _____
24 MAUREEN PARKER

By: _____
25 On Behalf of:
26 DANCO PRODUCTS, INC.

27 AGREED TO: 8-22-13
28 Dated: _____
By: _____
On Behalf of:
ACE HARDWARE CORPORATION