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County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California limited liability company, Plaintiff, v. IRWIN INDUSTRIAL TOOL COMPANY, INC., a Delaware corporation; and DOES 1 through 10, inclusive, Defendants.	Case No. BC621070 [~~PROPOSED~~] JUDGMENT Complaint Filed: May 19, 2016 Trial Date: Not Set

Plaintiffs ECOLOGICAL ALLIANCE, LLC ("Plaintiff"), and Defendant IRWIN INDUSTRIAL TOOL COMPANY, INC. ("Defendant") have agreed through their respective counsel that judgment be entered in this Proposition 65 action pursuant to the terms of the Stipulated Consent Judgment executed by the parties. After consideration of the papers submitted and arguments presented, the Court finds that the Stipulated Consent Judgment meets the criteria established by California Health & Safety Code § 25249.7, in that:

1. Any injunctive relief required by the Stipulated Consent Judgment complies with Proposition 65;
2. Any reimbursement of attorneys' fees and costs pursuant to the Stipulated Consent Judgment is reasonable under California law; and
3. Based on the criteria set forth in Health & Safety Code § 25249.7(b)(2), any civil penalty required by the Stipulated Consent Judgment is reasonable.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1.

Dated: JUL 2 1 2016

ELIZABETH R. FEFFER

JUDGE OF THE SUPERIOR COURT

MIGUEL A. CUSTODIO, JR., STATE BAR NO. 248744
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Attorneys for Plaintiff Ecological Alliance, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California limited liability company, Plaintiff, v. IRWIN INDUSTRIAL TOOL COMPANY, a Delaware corporation; and DOES 1 through 10, inclusive, Defendants.	Case No.: **[PROPOSED] STIPULATED CONSENT JUDGMENT** Complaint Filed: Trial Date: Not Set

Plaintiff Ecological Alliance, LLC ("Plaintiff"), and Defendant Irwin Industrial Tool Company ("Defendant") hereby enter into this Stipulated Consent Judgment ("Consent Judgment") as follows:

WHEREAS: On or about December 23, 2015, Plaintiff, through Plaintiff's counsel, served a 60 Day Notice to Defendant, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000 (collectively, "Public Prosecutor(s)") alleging that Defendant violated California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") and that Plaintiff intended to file an enforcement action in the public interest; and

(A) WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed Brass Stair Gauges that were sold or distributed for sale in California (collectively the "Covered Products") that expose consumers in the State of California to chemicals including lead, that are listed by the State of California pursuant to California Health and Safety Code § 25249.8; and

(B) WHEREAS: Plaintiff further alleges that persons in the State of California were exposed to listed chemicals in Covered Products without being provided the Proposition 65 warning set out at California Health and Safety Code § 25249.6 and its implementing regulations ("Proposition 65 Warning"); and

(C) WHEREAS: Plaintiff and Defendant jointly seek to provide the public with Proposition 65 warnings and believe that this objective is achieved by the actions described in this Consent Judgment; and

(D) WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay and expense of litigation.

NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

1. INTRODUCTION

1.1. On December 23, 2015, Plaintiff served the 60-Day Notice upon Defendant and on Public Prosecutors. No Public Prosecutors commenced an enforcement action. No Public Prosecutor having commenced an enforcement action, Plaintiff filed its Complaint against Defendant in the present action.

1.2. Defendant employs ten (10) or more persons.

1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the "Parties") stipulate that: 1) this Court has jurisdiction over the allegations of violation contained in the Complaint, and personal jurisdiction over Defendant as to the acts alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims relating to the Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent, which were or could have been raised in the Complaint and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged in the 60-Day Notices, in the present action, or arising therefrom or related thereto, with respect to Covered Products, including any Proposition 65 claim arising out of an exposure to Covered Products (collectively, "Proposition 65 Claims").

1.4. The Parties enter into this Consent Judgment as a full and final settlement of the Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of resolving the issues raised therein both as to past and future conduct. By execution of this Consent Judgment, the Parties do not admit any fact, conclusion of law, or violation of law, nor shall Defendant's compliance with the Consent Judgment constitute or be construed as an admission by Defendant of any fact, conclusion of law, or violation of law. Defendant denies the material, factual, and legal allegations in the 60-Day Notice and the Complaint, and expressly denies any wrongdoing whatsoever.

2. DEFINITIONS

2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date the Consent Judgment has been approved and entered by the Court.

3. INJUNCTIVE RELIEF

3.1. Defendant agrees to either undertake, or cause to be undertaken on its behalf, the measures identified in 3.2-3.5 below, compliance with which will constitute compliance by Defendant with all requirements of Proposition 65, California Health and Safety Code § 25249.6, et seq., and its implementing regulations (collectively, "Proposition 65") relating to the Covered Products:

3.2. Proposition 65 Exemption for the Covered Products

Any Covered Product that is sold, or offered for sale, in the State of California after the Effective Date shall be deemed to comply with Proposition 65, with regard to lead, and be exempt from any Proposition 65 warning requirements, if no Accessible Component Part of such Covered Product contains more than 100 ppm of lead. For purposes of this Consent Judgment, "Accessible Component Part" shall mean components of the Covered Products to which a person would be exposed to lead by direct contact during normal use of the Covered Product.

3.3. Warning Option

Covered Products that do not meet the warning exemption standard set forth in Section 3.2 above, shall be accompanied by a warning as described in Section 3.4 below. This warning requirement shall only be required as to Covered Products that are manufactured, distributed, marketed, sold or shipped for sale in the State of California 9 months after the Effective Date. No Proposition 65 warning shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date, and all such Covered Products are hereby deemed to be exempt from Proposition 65.

3.4. Warning Language

Where required to meet the criteria set forth in Section 3.3, Defendant shall provide the following, or a substantially similar, warning statement on or within the unit packaging of

the Covered Products, or affixed to the Covered Products, displayed in such a manner as to be reasonably calculated to be seen by the ordinary consumer:

WARNING: This product contains chemicals known to the state of California to cause cancer and birth defects or other reproductive harm.

4. MONETARY RELIEF

4.1. Within ten (10) days of the Effective Date, Defendant shall pay to Plaintiff the total sum of $25,000, which includes $4,000 in civil penalties and $21,000 in payment of Plaintiff's costs and reasonable attorney's fees. The $4,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or $3,000, paid to the State of California's Office of Environmental Health Hazard Assessment and 25%, or $1,000, payable to Plaintiff.

4.2. The payment specified in Section 4.1. shall be made by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing Transit No.: 026009593

Account No.: 325054144600

Beneficiary: Custodio & Dubey LLP

5. CLAIMS COVERED AND RELEASE

5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of itself, and acting in the public interest, and Defendant for any alleged violation of Proposition 65, and its implementing regulations, for failure to provide Proposition 65 warnings for the Covered Products, and fully resolves all Claims that have been brought, or which could have been brought in this action, or in any other action, up to and including the Effective Date. Plaintiff on behalf of itself, and in the public interest, hereby discharges Defendant, and any of its current and former parent or sister companies, corporate affiliates, subsidiaries, divisions, suppliers, affiliates and retailers, licensees and related entities (including but not limited to Orgill, Inc., Builder's First Source Inc. and its wholly owned subsidiary, Probuild Holdings, and Dixieline Lumber

Company, together with their owners, purchasers, users, current and former officers, directors, shareholders, employees, representatives, contractors, agents, divisions, insurers, successors, assigns, and attorneys, as well as all other upstream and downstream entities in the distribution chain for any of the Covered Products, and the predecessors, successors, and assigns of any of them (all of the foregoing entities and individuals being referred to herein as the "Released Parties"), from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been asserted, with respect to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings for any or all of the Covered Products, or any other claim alleged in this action, or which could have been alleged in this action, through and including the Effective Date.

5.2. Plaintiff, acting on its own behalf, and in the public interest pursuant to California Health and Safety Code § 25249.7(d), release, waive, and forever discharge any and all claims against the Released Parties arising from any violation of Proposition 65 that has been or could have been asserted in the public interest regarding the failure to warn under Proposition 65 arising in connection with exposure to the Covered Products, manufactured, distributed, offered for sale, sold, and/or served in the State of California by Released Parties prior to the Effective Date.

5.3. It is possible that other claims not known to the Parties arising out of the facts contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims through and including the Effective Date, including all rights of action therefore. Plaintiff and Defendant acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown claims, and nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542 which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE

CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with respect to exposure to the Covered Products as set forth in the 60 Day Notice and/or the Complaint.

6. PROVISION OF NOTICE

6.1. When any Party is entitled to receive any notice or writing under this Consent Judgment, the notice or writing shall be sent by first class certified mail with return receipt requested, or by electronic mail, as follows:

To Defendant:
Michelle Gillette
Crowell & Moring LLP
275 Battery St., 23rd Floor
San Francisco, CA 94111
(415) 365-7445
mgillette@crowell.com

To Plaintiff:
Vineet Dubey
Custodio & Dubey LLP
448 S. Hill St., Ste 612
Los Angeles, CA 90013
(213) 785-2909
dubey@cd-lawyers.com

6.2. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice that is transmitted in the manner set forth in section 6.1.

7. COURT APPROVAL

7.1. Upon execution of this Consent Judgment by all parties, Plaintiff shall prepare and file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant shall support. This Consent Judgment shall not become effective until approved and entered by the Court. If this Consent Judgment is not entered by the Court, it shall be of no force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

8. GOVERNING LAW AND CONSTRUCTION

8.1. The terms of this Consent Judgment shall be governed by the laws of the State of California.

9. ENTIRE AGREEMENT

9.1. This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

9.2. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment, have been made by any Party hereto.

9.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein.

9.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

9.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

10. Retention Of Jurisdiction

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

11. No Effect On Other Settlements

11.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

12. Execution In Counterparts

12.1. This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute the same document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic means, shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the same force and effect as the original.

13. Authorization

13.1. The undersigned are authorized to stipulate to, enter into, and 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 Consent Judgment.

14. Severability

14.1. If subsequent to Court approval of this Consent Judgment, any part or provision is declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions shall continue in full force and effect.

AGREED TO:	**AGREED TO:**
Ecological Alliance LLC	**Irwin Industrial Tool Company**
Date: 4/26/16	Date: 5/18/16
By:	By: