

MAY 25 2016

Sherri R. Carter, Executive Officer/Clerk
By Neli M. Raya, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
(Unlimited Jurisdiction)

D28

ECOLOGICAL ALLIANCE, LLC, a
California limited liability company,

Plaintiff,

v.

MASTERBUILT MANUFACTURING,
INC., a Georgia corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. BC615913

~~PROPOSED~~ ORDER APPROVING
~~PROPOSED~~ STIPULATED
CONSENT JUDGMENT

Complaint Filed: April 4, 2016

Trial Date: Not Set

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Plaintiffs ECOLOGICAL ALLIANCE, LLC (“Plaintiff”), and Defendant
MASTERBUILT MANUFACTURING, 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 and attached to this Judgment as **Exhibit 1**.
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.

Accordingly, the Motion to Approve Proposition 65 Settlement is GRANTED.

IT IS SO ORDERED.

YVETTE M. PALAZUELOS

MAY 25 2018

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 MIGUEL A. CUSTODIO, JR., STATE BAR NO. 248744
2 VINEET DUBEY, STATE BAR NO. 243208
3 CUSTODIO & DUBEY LLP
4 448 S. Hill St., Suite 612
5 Los Angeles, CA 90013
6 Telephone: (213) 785-2909
7 Facsimile: (213) 785-2899

8 Attorneys for Plaintiff Ecological Alliance, LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 (Unlimited Jurisdiction)

12 ECOLOGICAL ALLIANCE, LLC, a California
13 limited liability company,

14 Plaintiff,

15 v.

16 MASTERBUILT MANUFACTURING, INC., a
17 Georgia corporation; and DOES 1 through 10,
18 inclusive,

19 Defendants.

Case No.:

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

1
2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Masterbuilt
3 Manufacturing, Inc. (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent
4 Judgment”) as follows:

5 WHEREAS: On or about February 2, 2016, Plaintiff, through Plaintiff’s counsel, served a
6 60 Day Notice to Defendant, the California Attorney General, the District Attorneys of every
7 County in the State of California, and the City Attorneys for every City in the State of California
8 with a population greater than 750,000 (collectively, “Public Prosecutor(s)”) alleging that
9 Defendant violated California’s Safe Drinking Water and Toxic Enforcement Act of 1986
10 (“Proposition 65”) and that Plaintiff intended to file an enforcement action in the public interest;
11 and

12 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed Stabilizing
13 Receiver Pins sold or distributed for sale in California. (“Covered Products”) that expose
14 consumers in the State of California to lead, a chemical listed by the State of California pursuant
15 to California Health and Safety Code §25249.8; and

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

20 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
21 and expense of litigation.

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

24 **1. INTRODUCTION**

25 1.1. On February 2, 2016, Plaintiff served a 60-Day Notice upon Defendant and on
26 Public Prosecutors. No Public Prosecutors commenced an enforcement action. No
27 Public Prosecutor having commenced an enforcement action, Plaintiff filed its Complaint
28 against Defendant in the present action.

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

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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 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 Notice, 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 Defendants of any fact, conclusion of law, or violation of law. Defendant denies the material, factual, and legal allegations in the 60-Day Notices 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 on which this Court enters the Consent Judgment.

3. INJUNCTIVE RELIEF

3.1. Defendant agrees to either undertake, or cause to be undertaken on its behalf, the measures identified in 3.2 or 3.3 and 3.4 below, compliance with which will constitute compliance by Defendant with the Proposition 65 Warning requirements of California Health and Safety Code § 25249.6, arising from exposure to Covered Products:

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3.2. Reformulation Option

The Covered Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the Covered Products do not exceed the following limits for lead: 100 ppm by weight for any accessible component part. 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 Alternative

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. The warning requirements set forth in Section 3.4 below shall apply only to Covered Products that Defendant manufactures after the Effective Date that are distributed, marketed, sold or shipped for sale in the State of California. The warning requirement shall not apply to Covered Products that are already in the stream of commerce as of the Effective Date.

3.4. Warning Language

Where required, Defendant shall provide the following warning statement:

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

3.5. Where utilized to meet the criteria set forth in Section 3.3 and 3.4, Defendant shall provide the language set forth in Section 3.4 with or within the unit package of the Covered Products or affixed to the Covered Products. Such warning shall be prominently affixed to or printed on the label, the warning shall be contained in the same section that states other safety warnings, if any, concerning use of the Covered Products.

4. MONETARY RELIEF

4.1. Within ten (10) days of the Effective Date, Defendant shall pay to Plaintiff the total sum of \$26,000, of which \$4,000 shall constitute penalties and \$22,000 shall constitute reimbursement of Plaintiffs' reasonable attorneys' fees and costs. Of the \$4,000 constituting penalties, 75% shall go to the State of California's Office of

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2 Environmental Health Hazard Assessment and the remaining 25% shall go to Plaintiff, as
3 provided by California Health and Safety Code § 25249.12(d).

4 4.2. The payment specified in Section 4.1. shall be made by wire transfer to Plaintiff's
5 counsel Custodio & Dubey LLP:

6 Bank: Bank of America, N.A.

7 Routing Transit No.: 026009593

8 Account No.: 325054144600

9 Beneficiary: Custodio & Dubey LLP

10 **5. CLAIMS COVERED AND RELEASE**

11 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff
12 acting in the public interest, on the one hand, and on the other hand, Defendant and its
13 parent companies, shareholders, members, divisions, subdivisions, subsidiaries, partners,
14 related companies, affiliated companies, distributors, wholesalers, marketplace retailers
15 and retailers, including but not limited to Wal-Mart Stores, Inc. and its affiliates and
16 subsidiaries, and their respective officers, directors, representatives, shareholders, agents,
17 and employees, and each of their successors and assigns, (collectively, "Releasees") of
18 any violation of Proposition 65 that has been or could have been asserted in the public
19 interest against the Releasees arising out of exposure to the Covered Products prior to the
20 Effective Date.

21 5.2. Plaintiff, acting on itsr own behalf and in the public interest pursuant to California
22 Health and Safety Code § 25249.7(d), releases, waives, and forever discharges any and
23 all claims against the Releasees arising from any violation of Proposition 65 that has been
24 or could have been asserted in the public interest regarding the failure to warn under
25 Proposition 65 arising in connection with exposure to the Covered Products
26 manufactured, distributed, offered for sale, sold, and/or served in the State of California
27 by Releasees prior to the Effective Date.

28 5.3. To the extent that the foregoing release is one to which California Civil Code §
1542 (or similar provisions of law) applies, it is the intention of the Parties that the

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release shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities, and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected specified herein. In furtherance of this intention, Plaintiff expressly waives any and all rights and benefits conferred upon it by the provisions of California Civil Code § 1542 (or similar provisions of law), 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. Compliance by Defendant with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with respect to exposure to the Covered Products.

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 mail with return receipt requested or by electronic mail as follows:

To Defendant:

Sandra Edwards
Farella Braun & Martel LLP
Russ Building
235 Montgomery Street
17th Floor
San Francisco, CA 94104

To Plaintiff:

Vineet Dubey
Custodio & Dubey LLP
448 S. Hill St., Ste 612
Los Angeles, CA 90013

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6.2. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class mail with return receipt requested or by electronic mail.

7. COURT APPROVAL

7.1. This Consent Judgment shall become effective on the Effective Date, provided however, that Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Defendant shall support approval of such Motion for Approval.

7.2. 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

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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. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

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.

AGREED TO :

AGREED TO:

Ecological Alliance, LLC

Masterbuilt Manufacturing, Inc.

Date: 4/2/16
By: [Signature]

Date: 4/1/16
By: [Signature]