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ORIGINAL FILED

JUL 25 2016



**LOS ANGELES
SUPERIOR COURT**

REC'D

MAY 27 2016

FILING WINDOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

(Unlimited Jurisdiction)

**ECOLOGICAL ALLIANCE, LLC, a
California limited liability company,**

Plaintiff,

v.

**DAS COMPANIES, INC., a Pennsylvania
corporation; and DOES 1 through 10,
inclusive,**

Defendants.

Case No. BC620612

~~PROPOSED~~ JUDGMENT

Complaint Filed: May 16, 2016

Trial Date: Not Set

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5 Attorneys for Plaintiff Ecological Alliance, LLC

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

10 ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

11 Plaintiff,

12 v.

13
14 DAS COMPANIES, INC., a Pennsylvania
corporation; and DOES 1 through 10, inclusive,

15 Defendants.
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Case No.:

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

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Complaint Filed:
Trial Date: Not Set

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Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant DAS Companies, Inc. (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

WHEREAS: On or about March 11, 2016, 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 Plaintiffs intended to file an enforcement action in the public interest; and

(A) WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed padlocks and locks containing brass “Brass Padlocks” 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

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1.1. On March 11, 2016, Plaintiff served the 60-Day Notice upon Defendant and on Public Prosecutors. To the best of the Parties' knowledge, no Public Prosecutors commenced and is diligently prosecuting 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 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 Defendants 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 deny 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.

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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

DAS may ship, sell or offer to shipped for sale in California Covered Products that do not meet the warning exemption standard set forth in Section 3.2 above, provided that such Covered Products 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 future Covered Product runs that begin no later than July 10, 2016. No Proposition 65 warning shall be required as to any Covered Products that are already in the stream of commerce or already ordered and in process prior to a product run beginning July 10, 2016, 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, for all Covered Product runs beginning after July 10, 2016, Defendant shall provide the following warning statement on or within the unit packaging of the Covered Products, or affixed to the Covered

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2 Products, displayed in such a manner as to be reasonably calculated to be seen by the
3 ordinary consumer:

4 **CALIFORNIA PROPOSITION 65 WARNING: This product contains**
5 **chemicals known to the state of California to cause cancer and birth**
6 **defects or other reproductive harm.**

7 **4. MONETARY RELIEF**

8 4.1. Within ten (10) days of the Effective Date, Defendants shall pay to Plaintiff the
9 total sum of \$30,000, which includes \$5,000 in civil penalties and \$25,000 in payment of
10 Plaintiff's costs and reasonable attorney's fees. The \$5,000 civil penalty shall be
11 apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or
12 \$3,750, paid to the State of California's Office of Environmental Health Hazard
13 Assessment and 25%, or \$1,250, payable to Plaintiff.

14 4.2. The payment specified in Section 4.1. shall be made by wire transfer to Plaintiff's
15 counsel Custodio & Dubey LLP:

16 Bank: Bank of America, N.A.

17 Routing Transit No.: 026009593

18 Account No.: 325054144600

19 Beneficiary: Custodio & Dubey LLP

20 **5. CLAIMS COVERED AND RELEASE**

21 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
22 behalf of itself, and acting in the public interest, and Defendant for any alleged violation
23 of Proposition 65, and its implementing regulations, for failure to provide Proposition 65
24 warnings for the Covered Products, and fully resolves all claims that have been brought,
25 or which could have been brought in this action, or in any other action, up to and
26 including the Effective Date. Plaintiff on behalf of itself, and in the public interest,
27 hereby discharges Defendant, and any of its current and former parent companies,
28 subsidiaries, divisions, suppliers, affiliates and retailers, licensees and related entities
(including but not limited to Amazon.com, Inc.), together with their current and former

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

12 5.2. Plaintiffs, acting on their own behalf, and in the public interest pursuant to
13 California Health and Safety Code § 25249.7(d), release, waive, and forever discharge
14 any and all claims against the Released Parties arising from any violation of Proposition
15 65 that has been or could have been asserted in the public interest regarding the failure to
16 warn under Proposition 65 arising in connection with exposure to the Covered Products,
17 manufactured, distributed, offered for sale, sold, and/or served in the State of California
18 by Released Parties prior to the Effective Date.

19 5.3. It is possible that other claims not known to the Parties arising out of the facts
20 contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered
21 Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on
22 the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment
23 is expressly intended to cover and include all such claims through and including the
24 Effective Date, including all rights of action therefore. Plaintiff and Defendant
25 acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown
26 claims, and nevertheless intend to release such claims, and in doing so waive California
27 Civil Code § 1542 which reads as follows:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER

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2 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
3 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
4 OR HER SETTLEMENT WITH THE DEBTOR.

5 5.4. Plaintiff understands and acknowledges that the significance and consequence of
6 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
7 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
8 Covered Products, including but not limited to any exposure to, or failure to warn with
9 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim
10 for those damages against any of the Released Parties.

11 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute
12 compliance with Proposition 65 with respect to exposure to the Covered Products as set
13 forth in the 60 Day Notice and/or the Complaint.

14 **6. PROVISION OF NOTICE**

15 6.1. When any Party is entitled to receive any notice or writing under this Consent
16 Judgment, the notice or writing shall be sent by first class certified mail with return
17 receipt requested, or by electronic mail, as follows:

18 To Defendant:

19 Anthony Scicchitano

20 DAS Companies, Inc.

21 724 Lawn Road

22 Palmyra, PA 17078

23 To Plaintiff:

24 Vineet Dubey

25 Custodio & Dubey LLP

26 448 S. Hill St., Ste 612

27 Los Angeles, CA 90013

28 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.

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7. COURT APPROVAL

7.1. Upon execution of his 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. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Defendant may provide written notice to Plaintiff of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

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.

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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 Plaintiffs 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.

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15. POST EXECUTION ACTIVITIES

15.1 Plaintiff agrees to comply with the reporting form requirements referenced in the Health and Safety Code section 25249.7 (f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7 (f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of this agreement as a judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the motion, and appearing at the hearing before the Court, if required.

AGREED TO :

AGREED TO:

Ecological Alliance LLC

DAS Companies, Inc.

Date: May 11, 2016

Date: _____

By: 

By: _____

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AGREED TO :
Ecological Alliance LLC

AGREED TO:
DAS Companies, Inc.

Date: _____

Date: 5/12/16

By: _____

By: 