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**FILED**  
Superior Court of California  
County of Los Angeles

JUN 12 2017

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Sherri R. Carter, Executive Officer/Clerk  
By *R. Castle* Deputy  
R. Castle

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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,

Case No. BC653836

~~PROPOSED~~ JUDGMENT

Plaintiff,

v.

REXNORD CORPORATION; RBS  
GLOBAL, INC.; and ZURN INDUSTRIES,  
LLC; and DOES 1 through 10, inclusive,

Defendants.

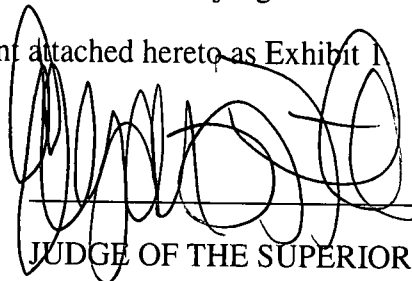
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2 Plaintiffs ECOLOGICAL ALLIANCE, LLC ("Plaintiff"), and Defendants REXNORD  
3 CORPORATION; RBS GLOBAL, INC., and ZURN INDUSTRIES, LLC ("Defendants") have  
4 agreed through their respective counsel that judgment be entered in this Proposition 65 action  
5 pursuant to the terms of the Stipulated Consent Judgment executed by the parties and attached to  
6 this Judgment as **Exhibit 1**. After consideration of the papers submitted and arguments presented,  
7 the Court finds that the Stipulated Consent Judgment meets the criteria established by California  
8 Health & Safety Code § 25249.7, in that:

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

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

18  
19 Dated: 6/12/17

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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

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  
12 Plaintiff,  
13  
14 v.  
15 REXNORD CORPORATION; RBS GLOBAL,  
INC.; and ZURN INDUSTRIES, LLC,  
16 Defendants.

Case No.:  
**[PROPOSED] STIPULATED  
CONSENT JUDGMENT**  
Complaint Filed:  
Trial Date: Not Set

17 Plaintiff Ecological Alliance, LLC (“Plaintiff”) and Defendants Rexnord Corporation,  
18 RBS Global, Inc., and Zurn Industries (collectively, “Defendants”) (Plaintiff and each defendant  
19 is a “Party,” and collectively with Plaintiff, “Parties”), hereby enter into this Stipulated Consent  
20 Judgment (“Consent Judgment”) as follows:

21 WHEREAS: On or about August 30, 2016, Plaintiff, through Plaintiff’s counsel, served a  
22 60-Day Notice to Ace Hardware Corporation, the California Attorney General, the District  
23 Attorneys of every County in the State of California, and the City Attorneys for every City in the  
24 State of California with a population greater than 750,000 (collectively, “Public Prosecutor(s)”)  
25 alleging that Ace Hardware Corporation violated California’s Safe Drinking Water and Toxic  
26 Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq., and its  
27 implementing regulations (collectively, “Proposition 65”) and that Plaintiff intended to file an  
28 enforcement action in the public interest; and

06/15/2013

EX 1





1                   3.1(a) Proposition 65 Exemption for the Covered Products

2                   Any Covered Product that is manufactured (which includes placing the Covered  
3 Product in its final retail packaging) by Defendants for sale to consumers in the State of  
4 California after the Effective Date shall be deemed to comply with Proposition 65, and be  
5 exempt from any Proposition 65 warning requirements with respect to lead, if no  
6 “Accessible Component Part” of such Covered Product contains more than 100 ppm of  
7 lead. For purposes of this Consent Judgment, “Accessible Component Part” shall mean  
8 components of the Covered Products to which a person would be exposed to lead by direct  
9 contact during normal use of the Covered Product.

10                   3.1(b) Warning Option

11                   Covered Products that do not meet the exemption standard set forth in  
12 Section 3.1(a) above shall be accompanied by a warning as described in Section 3.1(c)  
13 below. This warning requirement shall only be required as to Covered Products that are  
14 manufactured (which includes placing the Covered Product in its final retail packaging)  
15 by Defendants for sale to consumers in the State of California after the Effective Date. No  
16 Proposition 65 warning shall be required as to any Covered Products that are  
17 manufactured and packaged prior to the Effective Date, which includes Covered Products  
18 in the stream of commerce that are being sold, distributed for sale or purchased, and all  
19 such Covered Products are hereby deemed to be exempt from Proposition 65 with respect  
20 to lead.


21                   3.1(c) Warning Language

22                   Where required to meet the criteria set forth in Section 3.1(b), Defendants shall  
23 provide the following warning statement on or within the unit packaging of the Covered  
24 Products, or affixed to the Covered Products, displayed in a reasonably conspicuous  
25 manner:<sup>1</sup>  
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<sup>1</sup> Use of color in the triangular symbol to be governed by the provisions of 27 CCR § 25603(a)(1).

1  
2  **WARNING:** This product can expose you to chemicals including lead,  
3 which are known to the State of California to cause cancer and birth defects or  
4 other reproductive harm. For more information, go to  
5 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

6 or

7  **WARNING:** Cancer and Reproductive Harm -  
8 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

#### 9 4. MONETARY RELIEF

10 4.1. Within ten (10) days of the date the Consent Judgment is entered by the Court, but  
11 not earlier than April 1, 2017, Defendants shall pay to Plaintiff the total sum of \$26,000,  
12 which includes \$4,000 in civil penalties and \$22,000 in payment of Plaintiff's costs and  
13 reasonable attorney's fees. The \$4,000 civil penalty shall be apportioned pursuant to  
14 Health and Safety Code section 25249.12(d), with 75%, or \$3,000, paid to the State of  
15 California's Office of Environmental Health Hazard Assessment and 25%, or \$1,000,  
16 payable to Plaintiff.

17 4.2. The payment specified in Section 4.1. shall be made by wire transfer to Plaintiff's  
18 counsel Custodio & Dubey LLP:

19 Bank: Bank of America, N.A.

20 Routing Transit No.: 026009593

21 Account No.: 325054144600

22 Beneficiary: Custodio & Dubey LLP

#### 23 5. CLAIMS COVERED AND RELEASE

24 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on  
25 behalf of itself, and acting in the public interest, and Defendants, and all of Defendants'  
26 parent companies, as well as all of Defendants' officers, directors, members,  
27 shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions,  
28 affiliates, suppliers, and parents, subsidiaries, and affiliates thereof, their respective  
employees, agents and assigns, as well as all other upstream entities, and each



1 downstream entity to whom they directly or indirectly distribute or sell the Covered  
2 Products, including, but not limited to, their franchisees, licensees, distributors,  
3 wholesalers, sales representatives, customers and retailers, including but not limited to  
4 Ace Hardware Corporation, and the predecessors, successors, and assigns of any of them  
5 (collectively, the "Released Parties"), for any actual or alleged violation of Proposition  
6 65, and its implementing regulations, for failure to provide Proposition 65 warnings for  
7 the Covered Products with respect to lead, and fully resolves all claims that have been  
8 brought, or which could have been brought in this action, or in any other action, up to and  
9 including the Effective Date. Plaintiff on behalf of itself, and in the public interest,  
10 hereby discharges the Released Parties from any and all claims, actions, causes of action,  
11 suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that  
12 could have been asserted, with respect to any alleged violation of Proposition 65 arising  
13 from the failure to provide Proposition 65 warnings about exposures to lead for any or all  
14 of the Covered Products manufactured prior to the Effective Date.

15 5.2. It is possible that other claims not known to the Parties arising out of the facts  
16 contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered  
17 Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on  
18 the one hand, and Defendants, on the other hand, acknowledge that this Consent  
19 Judgment is expressly intended to cover and include all such claims through and  
20 including the Effective Date, including all rights of action therefor. Plaintiff and  
21 Defendants acknowledge that the claims released in Sections 5.1 and 5.2 may include  
22 unknown claims, and nevertheless intend to release such claims, and in doing so waive  
23 California Civil Code § 1542 which reads as follows:

24 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
25 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**  
26 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
27 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**  
28 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**  
**HER SETTLEMENT WITH THE DEBTOR.**

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1 5.3. Plaintiff understands and acknowledges that the significance and consequence of  
2 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages  
3 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the  
4 Covered Products, including but not limited to any exposure to, or failure to warn with  
5 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim  
6 for those damages against any of the Released Parties.

7 5.4. Compliance by Defendants with the terms of this Consent Judgment shall  
8 constitute compliance with Proposition 65 with respect to exposure to lead in the Covered  
9 Products as set forth in the 60-Day Notice and/or the Complaint.

10 **6. PROVISION OF NOTICE**

11 6.1. When any Party is entitled to receive any notice or writing under this Consent  
12 Judgment, the notice or writing shall be sent by first class certified mail with return  
13 receipt requested, or by electronic mail, as follows:

14 To Defendants:

15 Patricia Waley  
16 General Counsel  
17 Rexnord Corporation  
18 RBS Global, Inc.  
19 Zurn Industries, LLC  
20 247 Freshwater Way, Suite 300  
21 Milwaukee, WI 53204  
22 Patty.whaley@rexnord.com

23 Bob Nicksin, Esq.  
24 O'Melveny & Myers LLP  
25 400 South Hope Street  
26 Los Angeles, CA 90071-2899  
27 BNicksin@omm.com

28 To Plaintiff:

29 Vineet Dubey, Esq.  
30 Custodio & Dubey LLP  
31 448 S. Hill St., Ste 612  
32 Los Angeles, CA 90013  
33 dubey@cd-lawyers.com

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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 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 Defendants shall support, except where material changes are made to the Consent Judgment after its initial filing. This Consent Judgment shall not become effective until approved and entered by the Court. If this Consent Judgment is not entered by the Court with 180 days of its being filed with 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, Defendants may provide written notice to Plaintiff of any asserted change in the law, and shall have no further injunctive 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.



1 invalid, void, or unenforceable, the remaining portions or provisions shall continue in full  
2 force and effect, so long as the Parties' original intent remains intact.

3 **15. MODIFICATION**

4 15.1. This Consent Judgment may be modified only by: (i) a written agreement of the  
5 Parties and entry of a modified consent judgment by the Court; or (ii) a successful motion  
6 or application of any Party, and the entry of a modified Consent Judgment by the Court.

7 **16. ENFORCEMENT**

8 16.1. Any Party may, after meeting and conferring, for a period no longer than sixty (60)  
9 days, by motion or application for an order to show cause before this Court, enforce the  
10 terms and conditions contained in this Consent Judgment.

11  
12 **AGREED TO :**

13 **Ecological Alliance, LLC**

14  
15 Date: 3/13/17

16 By: [Signature]

17 **AGREED TO :**

18 **Rexnord Corporation**

19  
20 Date: 3-10-17

21 By: Pat Whaley

22  
23 **AGREED TO :**

24 **RBS Global, Inc.**

25  
26 Date: 3-10-17

27 By: Pat Whaley

28 **AGREED TO :**

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**Zurn Industries, LLC**

Date: 3-10-17

By: *Robert Whaley*

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