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FILED
ALAMEDA COUNTY

JUL - 5 2017

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 MONSTER, INC. and VANCO
15 INTERNATIONAL, LLC,

16 Defendants.
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Case No.: RG17849566

CONSENT JUDGMENT

Judge: Julia Spain

Dept.: 19

Hearing Date: July 12, 2017

Hearing Time: 2:00 PM

Reservation #: R-1853374

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CONSENT JUDGMENT

BY FAX

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro acting on behalf of the public interest (hereinafter "Ferreiro"), and Vanco International
4 LLC ("Vanco" or "Defendant") with Ferreiro and Defendant collectively referred to as the "Parties"
5 and each of them as a "Party." Ferreiro is an individual residing in California who seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products." Vanco is a person in the course of doing
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Ferreiro alleges that Vanco has exposed
10 individuals to Diisononyl phthalate (DINP) from Monster Ethernet cables without providing clear
11 and reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a chemical
12 known to the State of California to cause cancer.

13 1.3 **Notices of Violation/Complaint.** On or about June 23, 2016, Ferreiro served
14 Monster, Inc. ("Monster"), Gardena Ace Hardware, Ace Hardware Corporation (collectively, "Ace
15 Hardware"), and various public enforcement agencies with a document entitled "60-Day Notice of
16 Violation" pursuant to Health & Safety Code § 25249.7(d) (the "Notice"), alleging that Monster
17 and Ace were in violation of Proposition 65 for failing to warn consumers and customers that
18 Monster Ethernet cables exposed users in California to DINP. On May 5, 2017, the Notice was
19 amended (the "Amended Notice") (collectively, the "Notices") and sent to Vanco, Monster and
20 Ace in order to provide Vanco with notice of alleged violation of Health and Safety Code § 25249.6
21 concerning the exposure of California citizens to DINP contained in the Product without proper
22 warning. No public enforcer has brought and is diligently prosecuting the claims alleged in the
23 Notices. On February 15, 2017, Ferreiro filed a complaint (the "Complaint") in the matter against
24 Monster. On May 19, 2017, the Complaint was amended (the "Amended Complaint") to name
25 Vanco as a defendant.

26 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Defendant as to the allegations contained in the Amended Complaint filed in this
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1 matter, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
2 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
3 resolution of all claims which were or could have been raised in the Amended Complaint based on
4 the facts alleged therein and/or in the Notice.

5 1.5 Defendant deny the material allegations contained in Ferreiro's Notices and the
6 Amended Complaint, and maintain that they have not violated Proposition 65. Nothing in this
7 Consent Judgment shall be construed as an admission by Vanco of any fact, finding, issue of law,
8 or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
9 an admission by Vanco of any fact, finding, conclusion, issue of law, or violation of law, such being
10 specifically denied by Vanco. However, this section shall not diminish or otherwise affect the
11 obligations, responsibilities, and duties of Vanco under this Consent Judgment.

12 **2. DEFINITIONS**

13 2.1 **Covered Products.** The term "Covered Products" means Ethernet cables, including
14 but not limited to, Monster 25 ft. CAT SE Network Cables, UPC No. 050644623691 that are
15 manufactured, distributed and/or offered for sale in California by Vanco.

16 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
17 entered as a Judgment of the Court.

18 **3. INJUNCTIVE RELIEF: WARNINGS**

19 3.1 Commencing ninety (90) days after the Effective Date, Vanco shall not
20 manufacture, import, or purchase for sale in California any Covered Product that contains more
21 than 1,000 parts per million DINP, Di(2-ethylhexyl) phthalate, Dibutyl phthalate, Benzyl butyl
22 phthalate, Diisodecyl phthalate, Di-n-octyl phthalate, and/or Di-n-hexyl phthalate unless the
23 Covered Product is accompanied by either of the following warning(s):

24 **WARNING:** This product contains a chemical known to the State of California to cause
25 cancer, birth defects and other reproductive harm.

26 Or
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1 **WARNING:** This product can expose you to chemicals including Diisononyl phthalate,
2 which is known to the State of California to cause cancer. For more information go to
3 www.P65Warnings.ca.gov.

4 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
5 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
6 on the packaging or labeling and displayed with such conspicuousness, as compared with other
7 words, statements, or designs as to render it likely to be read and understood by an ordinary
8 individual under customary conditions of purchase or use. A warning may be contained in the same
9 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
10 concerning the use of the product and shall be at least the same size as those other safety warnings.

11 4. **MONETARY TERMS**

12 4.1 **Initial Civil Penalty.** Vanco shall pay an Initial Civil Penalty of \$3,000.00 pursuant
13 to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California
14 Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office
15 of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
16 Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

17 4.1.1 Within fourteen (14) business days of the Effective Date, Vanco shall issue
18 two separate checks for the Initial Civil Penalty payment to (a) "OEHHA" in the amount of
19 \$2,250.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$750.00.
20 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
21 address:

22 Evan J. Smith, Esquire
23 Brodsky & Smith, LLC
24 Two Bala Plaza, Suite 510
25 Bala Cynwyd, PA 19004

26 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
27 to OEHHA (Memo Line: "Prop 65 Penalties") at one of the following address(es):

28 For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address set forth above as proof of payment to OEHHA.

4.2 **Final Civil Penalty.** Sixty (60) days after the Effective Date, Vanco shall make a Final Civil Penalty payment of \$3,000.00 on the same terms as set forth in Section 4.1.1 pertaining to the Initial Civil Penalty. Pursuant to Title 11 California Code of Regulations, Section 3203(c), Ferreiro agrees that the Final Civil Penalty payment shall be waived in its entirety if, on or before the Final Civil Penalty payment is due, an officer of Vanco provides Ferreiro with a signed declaration certifying that all Products it ships for sale or distributes for sale in California as of the date of its certification are Reformulated Products or are marked with the warnings required by this Consent Decree (hereinafter "Labeled Product") and that Vanco will continue to offer only Reformulated Products or Labeled Products in California in the future. The option to provide a declaration certifying its complete early reformulation or labeling of the Products in lieu of making the Final Civil Penalty payment otherwise required by this Section is a material term, and time is of the essence.

4.3 **Attorney Fees.** Defendant shall pay \$27,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to Vanco's attention, litigating and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section 1021.5. Payment shall be made within fourteen (14) business days of the Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

4.4 Vanco shall pay the Initial Civil Penalty and attorney fees identified in Sections 4.1 and 4.3 within fourteen (14) days of the Effective Date.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
3 acting on his own behalf, and on behalf of the public interest, and Vanco, its parents, shareholders,
4 directors, officers, employees, representatives, agents, attorneys, divisions, subdivisions,
5 subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and
6 assigns ("Defendant's Releasees"), and all entities from whom they obtain and to whom they
7 directly or indirectly distribute or sell Covered Products, including but not limited to Monster, Ace
8 Hardware, manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
9 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
10 violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the
11 Notice, with respect to any Covered Products manufactured, distributed, or sold by Vanco prior to
12 the Effective Date. This Consent Judgment shall have preclusive effect such that no other person
13 or entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted
14 to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in
15 the Amended Complaint, or that could have been brought pursuant to the Notices against Vanco or
16 its Downstream Releasees of the Product including but not limited to Monster, Ace Hardware
17 ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment constitutes
18 compliance with Proposition 65 with regard to the Covered Products.

19 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
20 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
21 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
22 legal action and releases Vanco, Defendant's Releasees, and Downstream Releasees from any and
23 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
24 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
25 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
26 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
27 Products manufactured distributed or sold by Vanco, Defendant's Releasees or Downstream
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1 Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby
2 specifically waives any and all rights and benefits which he or she now has, or in the future may
3 have, 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 FAVOR
8 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
9 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
10 THE DEBTOR.

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12 5.3 Vanco waives any and all claims against Ferreiro, his attorneys and other
13 representatives, for any and all actions taken or statements made (or those that could have been
14 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
15 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
16 and/or with respect to Covered Products.

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18 6. INTEGRATION

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20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
21 any and all prior negotiations and understandings related hereto shall be deemed to have been
22 merged within it. No representations or terms of agreement other than those contained herein exist
23 or have been made by any Party with respect to the other Party or the subject matter hereof.

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25 7. GOVERNING LAW

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27 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California and apply within the State of California. In the event that Proposition 65 is repealed or
is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
Vanco shall have no further obligations pursuant to this Consent Judgment with respect to, and to
the extent that, Covered Products are so affected.

8. NOTICES

8.1 Unless specified herein, all correspondence and notices required to be provided
pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

1 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
2 by the other party at the following addresses:

3 For Vanco:

4 George Dowell
5 Dowell LLP
6 1153 Lincoln Ave, Suite C
San Jose, CA 95125

7 And

8 For Ferreiro:

9 Evan Smith
10 Brodsky & Smith, LLC
11 9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and
17 the same document.

18 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
19 **APPROVAL**

20 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
21 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
22 and Defendant agrees it shall support approval of such Motion.

23 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
24 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
25 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
26 30 days, the case shall proceed on its normal course.

27 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
28 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent

1 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
2 its normal course on the trial court's calendar.

3 **11. MODIFICATION**

4 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
5 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

6 **12. ATTORNEY'S FEES**

7 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
8 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
9 the unsuccessful party has acted with substantial justification. For purposes of this Consent
10 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
11 Discovery Act of 1986, Code of Civil Procedure Section 2016, *et seq.*

12 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
13 pursuant to law.

14 **13. RETENTION OF JURISDICTION**

15 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
16 Consent Judgment.

17 **14. AUTHORIZATION**

18 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
19 respective Parties and have read, understood and agree to all of the terms and conditions of this
20 document and certifies that he or she is fully authorized by the Party he or she represents to execute
21 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
22 explicitly provided herein each Party is to bear its own fees and costs.
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AGREED TO:

AGREED TO:

Date: 5/23/17

Date: _____

By: *Anthony Ferreiro*
ANTHONY FERREIRO

By: _____
VANCO INTERNATIONAL, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: _____

Date: 5-23-17

By: _____

By: 

ANTHONY FERREIRO

MANCO INTERNATIONAL, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: JUL - 5 2017


Judge of Superior Court