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7 Attorney for Plaintiff, Isabel Ruggeri

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 ISABEL RUGGERI, an individual,)
11)
12 Plaintiff,)
13 v.)
14 DIAL MANUFACTURING, INC., a)
15 corporation, LOWE'S HOME CENTERS,)
16 LLC, a corporation, LOWE'S COMPANIES,)
17 INC., a corporation, LOWE'S HIW, INC., a)
18 corporation, and DOES 1 through 100,)
19 inclusive,)
20 Defendants.)

CASE NO. BC572803

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Suzanne G. Bruguera
Dept.: 71
Compl. Filed: February 18, 2015

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff, Isabel Ruggeri
4 (“Plaintiff”) and Defendant, Dial Manufacturing, Inc. (“Defendant”), with Plaintiff and
5 Defendant each individually referred to as a “Party” and collectively as the “Parties.”

6 Plaintiff is a citizen of the state of California with an interest in protecting the
7 environment, improving human health and the health of ecosystems, and supporting
8 environmentally sound practices, which includes promoting awareness of exposure to toxic
9 chemicals and reducing exposure to hazardous substances found in consumer products.

10 Defendant employs ten (10) or more employees and is a “person in the course of doing business”
11 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, *California Health*
12 *& Safety Code* section 25249.6 *et seq.* (“Proposition 65”).

13 **1.2 Allegations**

14 Plaintiff alleges that Defendant sells brass valves and fittings, including for example only,
15 but not limited to, Nos. 9436, 9438, 9439, 94395, and 9440 (hereinafter, the “Covered Products”)
16 in the State of California causing users in California to be exposed to lead and lead compounds
17 without providing a clear and reasonable warning required by Proposition 65. Lead and lead
18 compounds are listed pursuant to Proposition 65 as chemicals known to the State of California to
19 cause cancer and birth defects or other reproductive harm.

20 A sixty-day notice of violation dated December 8, 2014 (“60-Day Notice”), along with a
21 Certificate of Merit, was provided by Plaintiff to Defendant and various public enforcement
22 agencies regarding the alleged violation of Proposition 65. On February 18, 2015, in the public
23 interest, Plaintiff filed the instant action in the Superior Court for the County of Los Angeles,
24 alleging violations of Proposition 65.

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1 **1.3 No Admissions**

2 Defendant denies all factual and legal allegations in the 60-Day Notice and Complaint
3 and maintains that the Covered Products have been, and are, in compliance with all laws, and
4 that Defendant has not violated Proposition 65. This Consent Judgment shall not constitute or be
5 construed as an admission of any fact, finding, conclusion of law, issue of law, violation of law,
6 or liability by Defendant, but is a compromise of claims that are expressly contested and denied.
7 However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities
8 under this Consent Judgment.

9 **1.4 Jurisdiction And Venue**

10 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
11 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
12 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
13 this Consent Judgment pursuant to California Code of Civil Procedure (“CCP”) § 664.6 and
14 Proposition 65.

15 **1.5 Effective Date**

16 The “Effective Date” shall be five (5) days after Plaintiff’s counsel provides written
17 notice to Defendant’s counsel that this Consent Judgment has been approved and entered by the
18 Court.

19 **2. INJUNCTIVE RELIEF AND REFORMULATION**

20 **2.1 Reformulation**

21 Commencing on the Effective Date, and continuing thereafter, as to the Covered
22 Products, Defendant shall not sell in California any Covered Products containing more than 100
23 parts per million (0.01%) of lead when analyzed pursuant to Environmental Protection Agency
24 testing methodologies 3050B or equivalent without providing a clear and reasonable warning as
25 described in section 2.2 below.

26 **2.2 Clear And Reasonable Warnings**

27 Should new Proposition 65 warning regulations be adopted by the State of California
28 after the Effective Date, Defendant shall be deemed to be in compliance with the new

1 requirements by either: adhering to the requirements in section 2.2 of this Consent Judgment or
2 by complying with the newly adopted requirements to the extent that the newly adopted
3 requirements apply to the Covered Products.

4 **(a) Retail Store Sales.** Within 90 days after the Effective Date, Defendant’s
5 Covered Products sold to users in retail stores open to the general public located in California
6 that do not meet the reformulation standard described in section 2.1 above shall be accompanied,
7 in a manner reasonably calculated to be seen by the ordinary consumer, by a compliant
8 Proposition 65 warning, containing language consistent with the following statement:

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

12 Defendant herein has agreed to provide compliant Proposition 65 warnings on its
13 Covered Products. Therefore, in any future Proposition 65 action, it shall be plaintiff’s burden to
14 prove a specific Covered Product was sold to users in a retail store 90 days after the Effective
15 Date should a compliant Proposition 65 warning not accompany the Covered Product.

16 **(b) Internet Website Warning.** Commencing on the Effective Date, and
17 continuing thereafter, Covered Products sold by Defendant into California via the internet that do
18 not meet the reformulation standard described in section 2.1 shall be accompanied by a
19 compliant Proposition 65 warning, either: (a) on the same web page on which a Covered Product
20 is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same
21 web page as the price for a Covered Product prior to sales completion; (d) on one or more web
22 pages displayed to a purchaser during the checkout process prior to sales completion; or (e) on a
23 web page with a conspicuous link from the product display page. The warning shall contain
24 language consistent with the following statement and shall appear in any of the above instances,
25 in the same type size as the Covered Product description text, in a sufficiently conspicuous
26 manner reasonably calculated to be seen by the ordinary consumer:

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

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1 Further, Defendant shall use reasonable efforts to notify and instruct its downstream
2 retailers, distributors, and wholesalers that sell or offer for sale Covered Products via the internet,
3 to comply with the warning requirements of section 2.2(b). Plaintiff understands that Defendant
4 does not control third party websites. Therefore, so long as Defendant notifies and instructs its
5 known downstream retailers, distributors, and wholesalers to comply with this provision, and
6 instructs them to instruct all entities in the stream of commerce to comply with this provision,
7 Defendant shall be deemed in compliance with the warning requirements of Proposition 65 with
8 respect to internet sales of its Covered Products.

9 **3. PAYMENTS**

10 **3.1 Civil Penalty Pursuant To Proposition 65**

11 In settlement of all causes of action in Plaintiff's Complaint, Defendant shall pay a total
12 civil penalty of seven thousand dollars (\$7,000.00) to be apportioned in accordance with *Health*
13 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$5,250.00) paid to State of California
14 Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25%
15 (\$1,750.00) paid to Plaintiff.

16 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
17 made payable to "OEHHA" in the amount of \$5,250.00; and (2) a check or money order made
18 payable to "Law Offices of Lucas T. Novak in Trust for Isabel Ruggeri" in the amount of
19 \$1,750.00. Defendant shall remit the payments within five (5) business days of the Effective
20 Date, to:

21 Lucas T. Novak, Esq.
22 LAW OFFICES OF LUCAS T. NOVAK
23 8335 W Sunset Blvd., Suite 217
24 Los Angeles, CA 90069

25 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

26 Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs
27 incurred as a result of, among other things, investigating, bringing this matter to the attention of
28 Defendant's management, negotiating a settlement in the public interest, complying with all
reporting obligations, and securing the approval of this Consent Judgment in court. Accordingly,

1 Defendant shall issue a check or money order made payable to “Law Offices of Lucas T. Novak”
2 in the amount of twenty one thousand dollars (\$21,000.00). Defendant shall remit the payment
3 within five (5) business days of the Effective Date, to:

4 Lucas T. Novak, Esq.
5 LAW OFFICES OF LUCAS T. NOVAK
6 8335 W Sunset Blvd., Suite 217
7 Los Angeles, CA 90069

7 **4. RELEASES**

8 **4.1 Plaintiff’s Public Release Of Proposition 65 Claims Against Defendant**

9 Plaintiff, acting on her own behalf, her past and current agents, representatives, attorneys,
10 successors and assignees, and in the public interest hereby releases Defendant, its parents,
11 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
12 assignees, as well as all downstream retailers, downstream distributors, and downstream
13 wholesalers, including, but not limited to, Lowe's Home Centers, LLC, Lowe's Companies, Inc.,
14 and Lowe's HIW, Inc. (“Releasees”) from the claims asserted in Plaintiff’s 60-Day Notice and/or
15 Complaint regarding alleged violations of Proposition 65 with respect to the Covered Products
16 sold by Defendant prior to the Effective Date.

17 **4.2 Defendant’s Release Of Plaintiff**

18 Defendant, its parents, subsidiaries, shareholders, directors, members, officers,
19 employees, attorneys, successors and assignees waive all rights to institute any form of legal
20 action against Plaintiff, her past and current agents, representatives, attorneys, experts,
21 successors and assignees, for actions or statements made or undertaken, whether in the course of
22 investigating claims or seeking enforcement of Proposition 65 against Defendant in this matter.

23 **4.3 Waiver Of Unknown Claims**

24 Each of the Parties acknowledges that it is familiar with California Civil Code § 1542
25 which provides:

26 “A general release does not extend to claims which the creditor
27 does not know or suspect to exist in his or her favor at the time of
28 executing the release, which if known by him or her must have
materially affected his or her settlement with the debtor.”

1 Each of the Parties waives and relinquishes any right or benefit it has or may have under
2 California Civil Code § 1542 or any similar provision under the statutory or non-statutory law of
3 any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits.

4 The Parties acknowledge that each may subsequently discover facts in addition to, or different
5 from, those that it believes to be true with respect to the claims released herein. The Parties
6 agree that this Consent Judgment and the releases contained herein shall be and remain effective
7 in all respects notwithstanding the discovery of such additional or different facts.

8 **5. COURT APPROVAL**

9 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
10 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
11 Judgment is not effective until it is approved and entered by the Court and shall be null and void
12 if, for any reason, it is not approved and entered by the Court within one (1) year after its full
13 execution by all Parties. It is the intention of the Parties that the Court approve this Consent
14 Judgment.

15 **6. SEVERABILITY**

16 Subsequent to Court approval of this Consent Judgment, should any part or provision of
17 this Consent Judgment, for any reason, be declared by a Court to be invalid, void or
18 unenforceable, the remaining portions and provisions shall continue in full force and effect.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the state of California. In the event that Proposition 65 is repealed,
22 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
23 Products, then Defendant may provide written notice to Plaintiff of any asserted change in the
24 law and shall have no further obligations pursuant to this Consent Judgment with respect to, and
25 to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall
26 be interpreted to relieve Defendant from any obligation to comply with any pertinent state or
27 federal toxics control laws. Should the warning requirements of Proposition 65 be modified,
28 changed, or amended, Defendant's compliance with the warning provisions in section 2.2 of this

1 Consent Judgment or compliance with the modified, changed, or amended rules and regulations
2 shall be deemed compliance with Proposition 65.

3 **8. NOTICES**

4 All correspondence and notices required to be provided under this Consent Judgment
5 shall be in writing and delivered personally or sent by first class or certified mail addressed as
6 follows:

7 TO DEFENDANT: 8 Malcolm C. Weiss, Esq. 9 Stephanie Chen, Esq. 10 HUNTON & WILLIAMS LLP 11 550 South Hope Street 12 Suite 2000 Los Angeles, CA 90071	7 TO PLAINTIFF: 8 Lucas T. Novak, Esq. 9 LAW OFFICES OF LUCAS T. NOVAK 10 8335 W Sunset Blvd., Suite 217 11 Los Angeles, CA 90069
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14 **9. INTEGRATION**

15 This Consent Judgment constitutes the entire agreement between the parties with respect
16 to the subject matter hereof and may not be amended or modified except in writing.

17 **10. COUNTERPARTS**

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

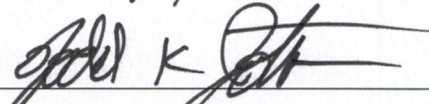
23 **11. AUTHORIZATION**

24 The undersigned are authorized to execute this Consent Judgment on behalf of their
25 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
26 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
27 Consent Judgment and not subject to any conflicting obligation which will or might prevent or
28 interfere with the execution or performance of this Consent Judgment by said party.

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AGREED TO:

Date: 5/4/2015

By: 

Authorized Officer of Defendant, Dial Manufacturing, Inc.

AGREED TO:

Date: _____

By: _____

Plaintiff, Isabel Ruggeri

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 **AGREED TO:**

2 Date: 5/4/2015

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4 By: [Signature]

5 Authorized Officer of Defendant, Dial Manufacturing, Inc.

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7 **AGREED TO:**

8 Date: 5/6/15

9
10 By: Isabel Ruggieri

11 Plaintiff, Isabel Ruggieri

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13 **IT IS SO ORDERED.**

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15 Dated: _____

16 JUDGE OF THE SUPERIOR COURT

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