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8 *Attorneys for Plaintiff*

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

11 ANTHONY FERREIRO,  
12 Plaintiff,  
13 vs.  
14 DAYTON ELECTRIC  
15 MANUFACTURING CO., and W.W.  
16 GRAINGER, INC.,  
17 Defendant.

Case No.: RG16808821

**[PROPOSED] CONSENT JUDGMENT**

Judge: Patrick Zika

Dept.: 25

Hearing Date: July 28, 2016

Hearing Time: 9:00 AM

Reservation #: R-1749748

1           **1.     Introduction**

2           1.1     On July 29, 2015, Anthony Ferreiro (“Ferreiro”) served Grainger International,  
3 Inc. (“Grainger International”), W.W. Grainger, Inc. (“Grainger”), and various public  
4 enforcement agencies with a document entitled “Notice of Violation of California Health &  
5 Safety Code § 25249.6, *et seq.*” (the “July 29<sup>th</sup> Notice”). The July 29<sup>th</sup> Notice provided Grainger  
6 and such others, including public enforcers, with notice that alleged that Grainger was in violation  
7 of California Health & Safety Code § 25249.6 (“Proposition 65”), for failing to warn consumers  
8 and customers that 5” Overshoe Pull Ons, Model 3XE84A (“Pull On Overshoes”) exposed users  
9 in California to the chemicals Diisononyl phthalate (DINP) and Di-isodecyl phthalate (DIDP).  
10 No public enforcer has diligently prosecuted the allegations set forth in the July 29<sup>th</sup> Notice.

11           1.2     On August 10, 2015, Ferreiro served Grainger International, Grainger, and various  
12 public enforcement agencies with a document entitled “Notice of Violation of California Health  
13 & Safety Code § 25249.6, *et seq.*” (the “August 10<sup>th</sup> Cable Notice”). The August 10<sup>th</sup> Notice  
14 provided Grainger and such others, including public enforcers, with notice that alleged that  
15 Grainger was in violation of Proposition 65 for failing to warn consumers and customers that  
16 Power First Cable Protectors, Item No. 4CEH9 (“Cable Protectors”) exposed users in California  
17 to the chemical DINP. No public enforcer has diligently prosecuted the allegations set forth in  
18 the August 10<sup>th</sup> Cable Notice.

19           1.3     On August 10, 2015, Ferreiro served Grainger, Dayton Electric Manufacturing Co.  
20 (“Dayton Electric”) and various public enforcement agencies with a document entitled “Notice of  
21 Violation of California Health & Safety Code § 25249.6, *et seq.*” (the “August 10<sup>th</sup> Hose  
22 Notice”). The August 10<sup>th</sup> Hose Notice provided Grainger and such others, including public  
23 enforcers, with notice that alleged that Grainger was in violation of Proposition 65 for failing to  
24 warn consumers and customers that Speedaire Snubber Hose, 1AFG9 and 11AFG9 (“Snubber  
25 Hoses”) exposed users in California to the chemical Di(2-ethylhexyl) phthalate (DEHP). No  
26 public enforcer has diligently prosecuted the allegations set forth in the August 10<sup>th</sup> Hose Notice.

27           1.4     Ferreiro is sometimes referred to herein as “Plaintiff.” Grainger and Dayton  
28 Electric are collectively referred to herein as “Defendants.” Together, Plaintiff and Defendants

1 are referred to herein as, the “Parties.”

2 1.5 The July 29<sup>th</sup> Notice, the August 10<sup>th</sup> Cable Notice, and the August 10<sup>th</sup> Hose  
3 Notice are collectively referred to as, the “Notice.”

4 1.6 The Pull On Overshoes, the Cable Protectors, and the Snubber Hoses are  
5 collectively referred to herein as, the “Products.”

6 1.7 On March 23, 2016, Ferreiro filed a Complaint for Civil Penalties and Injunctive  
7 Relief (“Complaint”) in Alameda County Superior Court, Case No. RG16808821, against  
8 Grainger and Dayton Electric alleging violations of Proposition 65 (the “Action”).

9 1.8 Defendants are each a corporation that employs more than ten persons under  
10 California Health and Safety Code §25249.6 and offered the Products for sale within the State of  
11 California.

12 1.9 Ferreiro’s Complaint alleges, among other things, that Grainger sold the Snubber  
13 Hoses in California and/or to California citizens, that the Snubber Hoses contains DEHP, and that  
14 the resulting exposure violated provisions of Proposition 65, by knowingly and intentionally  
15 exposing persons to a chemical known to the State of California to cause both cancer and  
16 reproductive toxicity without first providing a clear and reasonable warning to such individuals.

17 1.10 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
18 has jurisdiction over the allegations of violations contained in the Complaint and personal  
19 jurisdiction over Grainger and Dayton Electric as to the acts alleged in the Complaint, that venue  
20 is proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent  
21 Judgment as a resolution of the allegations contained in the Complaint.

22 1.11 The Parties enter into this Consent Judgment pursuant to a full settlement of  
23 disputed claims between the Parties as alleged in the Complaint and each of the Parties identified  
24 in each of the 60-Day Notices for each of the Pull On Overshoes (SKU Nos. 3XE82-3XE86),  
25 Snubber Hoses (1AFG9 and 11AFG9) and Cable Protectors (SKU Nos. 4CEK1-4CEK9, 4CEJ1-  
26 4CEJ9, 4CEH5-4CEH9) for the purpose of avoiding prolonged litigation. By execution of this  
27 Consent Judgment, Defendants do not admit any violation of Proposition 65 and specifically deny  
28 that they have committed any such violation. Nothing in this Consent Judgment shall be

1 construed as an admission by Defendants of any fact, issue of law or violation of law, nor shall  
2 compliance with the Consent Judgment constitute or be construed as an admission by Defendants  
3 of any fact, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice,  
4 waive, or impair any right, remedy or defense that Defendants may have in any other future legal  
5 proceeding. However, this paragraph shall not diminish or otherwise affect the obligations,  
6 responsibilities and duties of Defendants under this Consent Judgment.

7 1.12 For purposes of this Consent Judgment, the term "Effective Date" shall mean the  
8 date that the Consent Judgment is entered by the Court.

9 **2. Injunctive Relief**

10 2.1 Commencing thirty (30) days after the Effective Date, and continuing thereafter,  
11 Defendants shall only ship, sell, or offer for sale in California, Reformulated Product pursuant to  
12 Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3.  
13 Defendants and their downstream retailers shall have no obligation to label Products that entered  
14 the stream of commerce prior to the Effective Date or within thirty (30) days after the Effective  
15 Date. For purposes of this Settlement Agreement, a "Reformulated Product" is Product that is in  
16 compliance with the standard set forth below in section 2.2.

17 2.2 "Reformulated Product" shall mean Product that contains less than or equal to  
18 1,000 parts per million ("ppm") of DEHP, DINP and/or DIDP when analyzed pursuant to CPSC-  
19 CH-C1001-09.3 Standard Operating Procedure for Determination of Phthalates method.

20 2.3 Commencing thirty (30) days after the Effective Date, Defendants shall, for all  
21 Products it sells or distributes and that is intended for sale in California and that is not a  
22 Reformulated Product, provide clear and reasonable warnings as set forth in subsections 2.3(a)  
23 and (b) below. The warning shall be prominently placed with such conspicuousness as compared  
24 with other words, statements, designs, or devices as to render it likely to be read and understood  
25 by an ordinary individual under customary conditions before purchase or use. Each warning shall  
26 be provided in a manner such that the consumer or user understands to which specific Product the  
27 warning applies, so as to minimize the risk of consumer confusion.

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**(a) Retail Store Sales**

**(i) Product Labeling.** Defendants shall affix a warning to the packaging, labeling or directly on each Product sold in retail outlets in California by Defendants or any person selling the Products that states:

**[PROPOSITION 65 WARNING:]**

WARNING: this product contains a chemical known to the state of California to cause cancer. WARNING: This product contains a chemical known to cause birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used.

**(ii) Point of Sale Warnings.** Alternatively to the Product

Labeling set forth in Section 2.3(a)(i) above, Defendants may provide warning signs in the form below to its customers in California with instructions to post the warning signs in close proximity to the point of display of the Product.

**[PROPOSITION 65 WARNING:]**

WARNING: this product contains a chemical known to the state of California to cause cancer. WARNING: This product contains a chemical known to cause birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used.

**(b) Mail Order Catalog Warning.** In the event that Defendants directly

sells Product via mail order catalog directly to consumers located in California after the Effective Date that is not a Reformulated Product, Defendants shall provide a warning for such Product sold via mail order catalog to such California residents. Given the space limitations in the mail order catalogue, the catalogue warnings may be provided on a separate page in the Catalogue itself. The warnings need not be product specific.

**(c) Internet Sales Warning.** In the event that Defendants sell Products via

the Internet directly to consumers located in California after the Effective Date that is not a Reformulated Product, Defendants shall provide a warning for such Product sold via the Internet to such California residents.

1 The Internet warnings shall consist of “roll-over”/pop-up warnings whereby Grainger  
2 includes a California Proposition 65 symbol and the consumer, when rolling over it will obtain  
3 notification in the form that follows:

4 **[PROPOSITION 65 WARNING:]**

5 WARNING: this product contains a chemical known to the state of California to  
6 cause cancer. WARNING: This product contains a chemical known to cause birth  
defects or other reproductive harm.

7 The bracketed text may, but is not required to, be used.

8 **3. Entry of Consent Judgment**

9 3.1 The Parties hereby request that the Court promptly enter this Consent Judgment.  
10 Upon entry of this Consent Judgment, the Parties waive their respective rights to a hearing or trial  
11 on the allegations of the Complaint and 60-Day Notice.

12 3.2 In the event that the Attorney General objects or otherwise comments on one or  
13 more provisions of this Consent Judgment, the Parties agree to take reasonable steps to satisfy  
14 such concerns or objections.

15 **4. Matters Covered By This Consent Judgment**

16 4.1 **Plaintiff’s Public Release of Proposition 65 Claims.** This Consent  
17 Judgment is a final and binding resolution between Ferreiro, acting on his own behalf, and on  
18 behalf of the public and in the public interest, Defendants, Grainger International, along with their  
19 parent corporations, divisions and subsidiaries, affiliates, agents and professionals working for  
20 them, including but not limited to their counsel, and shall have preclusive effect such that no  
21 other person or entity, whether purporting to act in his, her, or its interests or the public interest  
22 shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65  
23 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against  
24 Defendants, their manufacturers, or their downstream retailers of the Product (“Proposition 65  
25 Claims”). As to alleged exposures to DEHP, DINP and/or DIDP in the Products, compliance  
26 with the terms of this Consent Judgment by Defendants is deemed sufficient to satisfy all  
27 obligations concerning compliance by Defendants and their downstream retailers with the  
28 requirements of Proposition 65 with respect to the Products.

1           **4.2 Plaintiff's Release of Additional Claims.** As to Ferreiro for and in his  
2 individual capacity only, this Consent Judgment shall have preclusive effect such that he shall not  
3 be permitted to pursue and/or take any action with respect to any other statutory or common law  
4 claim, to the fullest extent that any such claim was or could have been asserted by him against  
5 Defendants, Grainger International, along with their parent corporations, divisions and  
6 subsidiaries, affiliates, agents and professionals working for them, including but not limited to  
7 their counsel, or any and all manufacturers, or downstream retailers of the Products based on their  
8 exposure of Ferreiro to DEHP, DINP and/or DIDP in the Products, or their failure to provide a  
9 clear and reasonable warning of exposure to Ferreiro as well as any other claim based in whole  
10 or in part on the facts alleged in the Complaint and the Notice, whether based on actions  
11 committed by Defendants or their downstream retailers of the Products, ("Phthalate Exposure  
12 Claims").

13           **4.3 Waiver of Rights Under Section 1542 of the California Civil Code.** As to  
14 Ferreiro's public release of Proposition 65 Claims set forth in Section 4.1 ("Public Release") and  
15 his individual release of Phthalate Exposure Claims set forth in Section 4.2 ("Individual  
16 Release"), Ferreiro, acting on his own behalf and on behalf of the public with respect to the  
17 Public Release and acting in his individual capacity with respect to the Individual Release, waives  
18 all rights to institute any form of legal action, and releases all claims against Defendants, Grainger  
19 International, along with their parent corporations, divisions and subsidiaries, affiliates, agents  
20 and professionals working for them, including but not limited to their counsel, and their  
21 manufacturers and downstream retailers (including their parents, subsidiaries, affiliates, assigns,  
22 and acquiring entities of any of them, who may use, maintain, distribute or sell the Products) for  
23 the Proposition 65 Claims and the Phthalate Exposure Claims (referred to collectively in this  
24 Section as "Claims"). In furtherance of the foregoing, Ferreiro, acting on his own behalf and on  
25 behalf of the public with respect to the Public Release and acting in his individual capacity with  
26 respect to the Individual Release, waives any and all rights and benefits which he now has, or in  
27 the future may have, conferred upon him with respect to the Claims by virtue of the provisions of  
28 § 1542 of the California Civil Code, which provides as follows:

1           **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
2           **CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER**  
3           **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**  
4           **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**  
5           **HIS SETTLEMENT WITH THE DEBTOR.**

6           **4.4 Defendant's Release of Plaintiff Ferreiro.** Defendants Grainger and Dayton  
7 Electric, each on behalf of itself, its past and current agents, representatives, attorneys, successors  
8 and/or assignees, hereby waives any and all claims against Ferreiro, his attorneys, and other  
9 representatives for any and all actions taken or statements made (or those that could have been  
10 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of  
11 investigating claims or otherwise seeking enforcement of Proposition 65 against Defendants in  
12 this matter.

13           **5.     Enforcement of Judgment**

14           5.1     The terms of this Consent Judgment shall be enforced exclusively by the Parties  
15 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
16 Alameda County, giving the notice required by law, enforce the terms and conditions contained  
17 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party  
18 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation  
19 of Proposition 65 or this Consent Judgment.

20           **6.     Modification of Judgment**

21           6.1     This Consent Judgment may be modified only by written agreement of the Parties  
22 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as  
23 provided by law and upon an entry of a modified Consent Judgment by the Court.

24           6.2     Should any court enter final judgment in a case brought by Ferreiro or the People  
25 involving the Products that sets forth standards defining when Proposition 65 warnings will or  
26 will not be required ("Alternative Standards"), or if the California Attorney General's office  
27 otherwise provides written endorsement (i.e., a writing that is circulated by the Attorney General  
28 that is not intended for the purpose of soliciting further input or comments) of Alternative



1 Standards applicable to products that are of the same general type and function as the Products  
2 and constructed from the same materials, Grainger shall be entitled to seek a modification of this  
3 Consent Judgment on sixty (60) days' notice to Ferreiro so as to be able to utilize and rely on such  
4 Alternative Standards in lieu of those set forth in Section 2 of this Consent Judgment. Ferreiro  
5 shall not unreasonably contest any proposed application to effectuate such a modification  
6 provided that the Products for which such a modification is sought are of the same general type  
7 and function as those to which the Alternative Standards apply.

8 **7. Settlement Payment**

9 7.1 In settlement of all the claims referred to in this Consent Judgment, and without  
10 any admission of liability therefore, Grainger shall make the following monetary payments:

11 7.1.1 **Initial Civil Penalty.** Within seven (7) business days of the Effective Date,  
12 Grainger shall pay a total of \$3,000.00 in civil penalties in accordance with this Section. The  
13 Initial Civil Penalty payment will be allocated in accordance with California Health & Safety  
14 Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of  
15 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil  
16 penalty remitted to Ferreiro. Within seven (7) business days of the Effective Date, Grainger shall  
17 issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of  
18 \$2,250.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$750.00.  
19 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment  
20 address:

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

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

27 For United States Postal Service Delivery:

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

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

3 For Non-United States Postal Service Delivery:

4 Mike Gyurics  
5 Fiscal Operations Branch Chief  
6 Office of Environmental Health Hazard Assessment  
7 1001 I Street  
8 Sacramento, CA 95814

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

11 7.1.2 **Final Civil Penalty.** Sixty (60) days after the Effective Date, Grainger  
12 shall make a final civil penalty payment of \$6,000.00 on the same terms as set forth in Section  
13 7.1.1 pertaining to the Initial Civil Penalty. Pursuant to Title 11 California Code of Regulations,  
14 Section 3203(c), Ferreiro agrees that the Final Civil Penalty payment shall be waived in its  
15 entirety if, on or before the Final Civil Penalty payment is due, an officer of Grainger provides  
16 Ferreiro with a signed declaration certifying that all Products it ships for sale or distributes for  
17 sale in California as of the date of its certification are Reformulated Products or are marked with  
18 the warnings required by this Consent Judgement (hereinafter "Labeled Product") and that  
19 Grainger will continue to offer only Reformulated Products or Labeled Products in California in  
20 the future. The option to provide a declaration certifying its complete early reformulation or  
21 labeling of the Products in lieu of making the Final Civil Penalty payment otherwise required by  
22 this Section is a material term, and time is of the essence.

23 7.1.3 **Attorney Fees and Costs.** In addition to the payment above, Grainger  
24 shall pay \$32,000.00 to Brodsky & Smith, LLC ("Brodsky & Smith") as complete reimbursement  
25 for Ferreiro's attorneys' fees and costs, including any investigation and laboratory costs or expert  
26 fees, incurred in the course of bringing the Complaint and in enforcing Proposition 65, including  
27 without limitation, preparation of the 60-Day Notice letter and discussions with the office of the  
28 Attorney General. Payment shall be made within seven (7) business days of the Effective Date  
and sent to the address for Brodsky & Smith set forth in Section 7.1.1, above.

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**8. Notices**

8.1 Any and all notices between the Parties provided for or permitted under this Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Grainger:

David Gabor, Esq.  
Weintraub Tobin Chediak Coleman Grodin Law Corporation  
9665 Wilshire Blvd, Suite 900  
Beverly Hills, CA 90212

For Ferreiro:

Evan J. Smith  
BRODSKY & SMITH, LLC  
9595 Wilshire Blvd., Suite 900  
Beverly Hills, CA 90212

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

**9. Authority to Stipulate**

9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

**10. Counterparts**

10.1 This Stipulation may be signed in counterparts and shall be binding upon the Parties hereto as if all said Parties executed the original hereof.

**11. Retention of Jurisdiction**

11.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

**12. Service on the Attorney General**

12.1 Ferreiro shall serve a copy of this Consent Judgment, signed by both Parties, on the California Attorney General on behalf of the Parties so that the Attorney general may review this Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five

1 (45) days after the Attorney General has received the aforementioned copy of this Consent  
2 Judgment, and in the absence of any written objection by the Attorney General to the terms of this  
3 Consent Judgment, the Parties may then submit it to the Court for Approval.

4 **13. Entire Agreement**

5 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
6 of the Parties with respect to the entire subject matter hereof, and any and all discussions,  
7 negotiations, commitment and understandings related thereto. No representations, oral or  
8 otherwise, express or implied, other than those contained herein have been made by any party  
9 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
10 to exist or to bind any of the Parties.

11 **14. Governing Law and Construction**

12 14.1 The validity, construction and performance of this Consent Judgment shall be  
13 governed by the laws of the State of California, without reference to any conflicts of law  
14 provisions of California law.

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**15. Court Approval**

15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

**IT IS SO STIPULATED:**

Dated: June 13, 2016

Dated: \_\_\_\_\_

By: Anthony Ferreiro  
Anthony Ferreiro

By: \_\_\_\_\_  
W.W. Grainger, Inc.,  
Grainger International, Inc. &  
Dayton Electric Manufacturing Co.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

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**15. Court Approval**

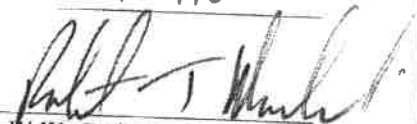
15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

Dated: 6/13/16

By: \_\_\_\_\_  
Anthony Ferreira

By:   
W.W. Grainger, Inc.,  
Grainger International, Inc. &  
Dayton Electric Manufacturing Co.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court