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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, Plaintiff, v. DANCO, INC., a Delaware corporation; and DOES 1 through 10, inclusive, Defendants.	Case No.: **[PROPOSED] STIPULATED CONSENT JUDGMENT**

Plaintiff Ecological Alliance, LLC ("Plaintiff"), and Defendant Danco, Inc. ("Defendant") hereby enter into this Stipulated Consent Judgment ("Consent Judgment") as follows:

WHEREAS: On or about February 3, 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

WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed Gas Test Gauges including but not limited to UPC #037155617005 sold or distributed for sale in California. ("Covered Products") that expose consumers in the State of California to lead, a chemical listed by the State of California pursuant to California Health and Safety Code §25249.8; and

WHEREAS: Plaintiffs further allege 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

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

1.1. On February 3, 2016, Plaintiff served a 60-Day Notice upon Defendant and on Public Prosecutors. No Public Prosecutors commenced 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 Notices 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 on which this Court enters the Consent Judgment.

3. INJUNCTIVE RELIEF

3.1. Defendant agrees to either undertake, or cause to be undertaken on its behalf, the measures identified in 3.2 or 3.3 and 3.4 below, compliance with which will constitute compliance by Defendant with the Proposition 65 Warning requirements of California Health and Safety Code § 25249.6, arising from exposure to Covered Products within 180 days of the effective date:

3.2. Reformulation Option

Commencing six months after the effective date, and continuing thereafter, defendants agree to only manufacture, distribute, or purchase for sale in California: (a) "reformulated products", or (b) products that bear a clear and reasonable health hazard warning pursuant to section 3.4 below. For purposes of this consent judgment the Covered Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the Covered Products do not exceed the following limits for lead: 100 ppm by weight for any accessible component. For the purposes of this consent judgment, accessible component parts shall mean component of covered products to which a person would be exposed to lead by direct contact during normal use of the covered product.

3.3. Covered Products in the Stream of Commerce

Covered Products that have already been manufactured, distributed, shipped, or sold, or that are otherwise in the stream of commerce, prior to 180 days after the Effective Date shall be released from any and all claims that were brought or that could have been brought by Plaintiff in this action, as though they were covered claims within the meaning of this Consent Judgment.

3.4. Warning Alternative

Covered Products that do not meet the warning exemption standard set forth in Section 3.2 above shall be accompanied by a warning as described in Section 3.5 below. The warning requirements set forth in Section 3.5 below shall apply only to Covered Products that Defendant manufactures after 180 days after the Effective Date that are distributed, marketed, sold or shipped for sale in the State of California. The warning requirement shall not apply to Covered Products that are already in the stream of commerce prior to such date.

3.5. Warning Language

Where required, Defendant shall provide the following warning statement:

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

3.6. Where utilized to meet the criteria set forth in Section 3.4 and 3.5, Defendant shall provide the language set forth in Section 3.5 with or within the unit package of the Covered Products or affixed to the Covered Products. Defendants further agree that the warning will be prominently placed with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use including with or within the unit package of the Covered Products or affixed to the Covered Products. Such warning shall be prominently affixed to or printed on each Covered Product's label or package or the Covered Product itself. If printed on the label, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the Covered Products; Defendants may continue to utilize, on an ongoing basis, unit packaging containing substantively the same Proposition 65 warnings as those set forth below, but only to the extent such packaging materials have already been printed within ninety days of the Effective Date, or in the owner's manual if the product in which the Covered Product is a component, but only if the product has one or more features a consumer must read about in order to know how to program or use the Covered Product.

If the warning is given in the owner's manual pursuant to this subsection, it shall be located in one of the following places in the manual: the outside of front cover; the inside of the front cover; the first page other than the cover; or the outside of the back cover. The warning shall be printed or stamped in the manual or contained in a durable label or sticker affixed to the manual in a font no smaller than the font used for other chemically related safety warnings in the manual. Alternatively, the warning may be included in a safety warning section of the owner's manual. Owner's manual warning may only be allowed if the owner's manual is sold in the same package and at the same

time as the other product and not for Covered Products sold separately. The warning may be inside the product packaging where it is reasonably calculated to make the warning available to the individual prior to exposure, if any.

4. MONETARY RELIEF

4.1. Within ten (10) days of the Effective Date, Defendants shall pay to Plaintiff the total sum of $28,000, of which $4,000 shall constitute penalties and $24,000 shall constitute reimbursement of Plaintiffs' reasonable attorneys' fees and costs. Of the $4,000 constituting penalties, 75%, $3,000, shall go to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25%, $1,000, shall go to Plaintiff, as provided by California Health and Safety Code § 25249.12(d).

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

Bank: Bank of America, N.A.

Routing Transit No.: 026009593

Account No.: 325054144600

Beneficiary: Custodio & Dubey LLP

5. CLAIMS COVERED AND RELEASE

5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff acting in the public interest, on the one hand, and on the other hand, Defendant and its parent companies, shareholders, members, divisions, subdivisions, subsidiaries, partners, related companies, affiliated companies, distributors, wholesalers, and retailers, and their respective officers, directors, representatives, shareholders, agents, and employees, and each of their successors and assigns, including but not limited to Orchard Supply Hardware Stores Corporation. (collectively, "Releasees") of any violation of Proposition 65 that has been or could have been asserted in the public interest against the Releasees arising out of exposure to the Covered Products prior to the Effective Date.

5.2. Plaintiffs, acting on their own behalf and in the public interest pursuant to California Health and Safety Code § 25249.7(d), release, waive, and forever discharge

any and all claims against the Releasees arising from any violation of Proposition 65 that has been or could have been asserted in the public interest regarding the failure to warn under Proposition 65 arising in connection with exposure to the Covered Products manufactured, distributed, offered for sale, sold, and/or served in the State of California by Releasees prior to 180 days after the Effective Date.

5.3. To the extent that the foregoing release is one to which California Civil Code § 1542 (or similar provisions of law) applies, it is the intention of the Parties that the release shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities, and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected specified herein. In furtherance of this intention, Plaintiff expressly waives any and all rights and benefits conferred upon them by the provisions of California Civil Code § 1542 (or similar provisions of law), which reads as follows:

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

5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with respect to exposure to the Covered Products.

6. PROVISION OF NOTICE

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

<u>To Defendant</u>:

Lee N. Smith

Perkins Mann & Everett

7815 N. Palm Ave, Suite200

Fresno, CA 93711

To Plaintiff:

Vineet Dubey

Custodio & Dubey LLP

448 S. Hill St., Ste 612

Los Angeles, CA 90013

6.2. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class mail with return receipt requested or by electronic mail.

7. COURT APPROVAL

7.1. This Consent Judgment shall become effective on the Effective Date, provided however, that Plaintiffs shall prepare and file a Motion for Approval of this Consent Judgment and Defendants shall support approval of such Motion for Approval.

7.2. 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.

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.

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. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

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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.

AGREED TO:	**AGREED TO:**
Ecological Alliance, LLC	**Danco, Inc.**
Date: 4/4/16	Date: 4/7/16
By:	By: