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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10 (Unlimited Jurisdiction)

11 ECOLOGICAL ALLIANCE, LLC, a California
12 limited liability company,

13 Plaintiff,

14 v.

15 WORLD AND MAIN (CRANBURY), LLC, a
16 Delaware limited liability company; and DOES
17 1 through 10, inclusive,

17 Defendants.

Case No.:

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

Action Filed:
Trial Date: Not Set

19 **1. INTRODUCTION**

20 **1.1 Parties**

21 This Stipulated Consent Judgment is entered into between Plaintiff Ecological Alliance,
22 LLC ("Plaintiff" or "Ecological Alliance"), and Defendant World and Main (Cranbury), LLC
23 ("Defendant" or "World and Main").

24 **1.2 Plaintiff**

25 Ecological Alliance is a California limited liability company with its main office in Los
26 Angeles, California, acting in this matter in the public interest.

27 **1.3 Defendant**

28 World and Main is a Delaware corporation that employs ten or more individuals and is a

1 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).
3 Howard Berger Co. is predecessor to, and Jones Stephens Corporation an affiliate of and under
4 common ownership with, World and Main, and collectively they are referred to as “World and
5 Main” or “Defendant.”

6 **1.4 General Allegations**

7 Ecological Alliance alleges that World and Main manufactures, imports, sells, or
8 distributes for sale in California the following categories and product types that expose consumers
9 to Lead: Plumbing Hardware and Plumbing Accessories, Household and Decorative Hardware and
10 Hardware Accessories, and Locks and Lock Accessories.

11 **1.5 Product Description**

12 The products covered under this Consent Judgment are Plumbing Hardware and Plumbing
13 Accessories containing Lead, including Shower Rebuild Kits, UPC # 753274850184, and Aqua
14 Plumb Solid Brass Pencil Torch, MPI, UPC #730007213904; Household and Decorative
15 Hardware and Hardware Accessories containing Lead, including Ultra Hardware Products Door
16 Stop Hinge Pin, 70058, UPC #749694700581; and Locks and Lock Accessories containing Lead,
17 including Mortise Cylinders, UPC #075877963031, Brass Padlocks, UPC #075877624000, and
18 Log Lighter Keys (all such products collectively referred to as the “Covered Products”).

19 **1.6 Notices of Violation**

20 On or about March 9, 2016, Plaintiff, through Plaintiff’s counsel, served Defendant and the
21 California Attorney General, the District Attorneys of every County in the State of California, and
22 the City Attorneys for every City in the State of California with a population greater than 750,000
23 (collectively, “Public Prosecutor(s)”) with a 60-Day Notice of Violation alleging that World and
24 Main and other entities violated Proposition 65 by failing to warn consumers in California that
25 Locks and Lock Accessories expose users to Lead. On or about March 23, 2016, Plaintiff, through
26 Plaintiff’s counsel, served Defendant (Howard Berger Co.) and Public Prosecutors with a 60-Day
27 Notice of Violation alleging that World and Main and other entities violated Proposition 65 by
28 failing to warn consumers in California that Locks and Lock Accessories expose users to Lead. On

1 or about April 8, 2016, Plaintiff, through Plaintiff's counsel, served Defendant (Howard Berger
2 Co.) and Public Prosecutors with a 60-Day Notice of Violation alleging that World and Main and
3 other entities violated Proposition 65 by failing to warn consumers in California that Plumbing
4 Hardware and Plumbing Accessories expose users to Lead. On or about May 27, 2016, Plaintiff,
5 through Plaintiff's counsel, served Defendant (Jones Stephens Corp.) and Public Prosecutors with
6 a 60-Day Notice of Violation alleging that World and Main and other entities violated Proposition
7 65 by failing to warn consumers in California that Locks and Lock Accessories expose users to
8 Lead. On or about March 1, 2017, Plaintiff, through Plaintiff's counsel served Defendant and
9 Public Prosecutors with a Supplemental 60-Day Notice alleging that Defendant violated
10 Proposition 65 by failing to warn consumers in California that Household and Decorative
11 Hardware and Hardware Accessories, Locks and Lock Accessories, and Plumbing Hardware and
12 Plumbing Accessories expose users to Lead. The aforementioned 60-Day notices and
13 Supplemental Notice are collectively referred to as the "Notices."

14 **1.7 Complaint**

15 On or about May 1, 2017, Ecological Alliance filed the instant action naming World and
16 Main as a Defendant for the alleged violations of Proposition 65 that are the subject of this
17 Consent Judgment ("Complaint").

18 **1.8 No Admission**

19 Plaintiff and Defendant acknowledge that this matter involves disputed claims and wish to
20 resolve their differences without incurring the time and expense of litigation, and with no
21 admission of liability or the validity of any claim or defense. Specifically, World and Main denies
22 the material, factual, and legal allegations in the Notices and Complaint, and maintains that
23 products World and Main has sold and distributed for sale in California, including the Covered
24 Products, have been, and are, in compliance with all applicable laws. Nothing in this Consent
25 Judgment shall be construed as any admission of any fact, finding, conclusion of law, issue of law,
26 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
27 an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section
28

1 1.8 shall not, however, diminish or otherwise affect World and Main's obligations under this
2 Consent Judgment.

3 **1.9 Jurisdiction and Venue**

4 For purposes of this Consent Judgment only, Plaintiff and Defendant (the "Parties")
5 stipulate that: (1) this Court has jurisdiction over Defendant as to the allegations of violation
6 contained in the Complaint; (2) venue is proper in the County of Los Angeles; and (3) this Court
7 has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which
8 were or could have been raised in the Complaint and of all claims which were or could have been
9 raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged
10 in the Notices, in the present action, or arising therefrom or related thereto, with respect to
11 Covered Products, including any Proposition 65 claim arising out of an exposure to Covered
12 Products (collectively, "Proposition 65 Claims").

13 **1.10** "Effective Date" shall mean, with respect to this Consent Judgment, the date on
14 which the Consent Judgment is approved and entered by the Court.

15 **2. INJUNCTIVE RELIEF**

16 **2.1 Reformulated Products/Clear and Reasonable Warnings**

17 Commencing no later than twelve (12) months from the Effective Date (the "Compliance
18 Date"), and continuing thereafter, World and Main shall only purchase for sale, manufacture, sell,
19 or distribute for sale, in California, Covered Products that (a) are "Reformulated Products,"
20 defined below in Section 2.2, or (b) bear a clear and reasonable warning in accordance with
21 Section 2.3 below. The requirements set forth in this Section 2 shall not apply to any Covered
22 Product that as of the Compliance Date is in the stream of commerce or is otherwise in World and
23 Main's inventory stock as of such Date.

24 **2.2 Reformulated Products**

25 For purposes of this Consent Judgment, "Reformulated Products" are those products for
26 which no Accessible Component Part of such Covered Product contains more than 100 parts per
27 million ("ppm") of lead. For purposes of this Consent Judgment, "Accessible Component Part"
28 shall mean any component of a Covered Product to which a person would be exposed to lead by

1 direct contact during normal use of the Covered Product.

2 **2.3 Warning Option**

3 Covered Products that are not Reformulated Products as set forth above in Section 2.2 shall
4 be accompanied by a clear and reasonable warning in accordance with Section 2.1 above. Such
5 warning shall be prominently placed in relation to the Covered Product with such conspicuousness
6 when compared to other words, statements, designs, or devices as to render it likely to be read and
7 understood by an ordinary individual under customary conditions of purchase or use. Defendant
8 shall provide the following warning statement (or other warning consistent with applicable
9 regulations governing such warnings) on or within the unit packaging of such Covered Products,
10 or affixed to the Covered Products, displayed in such a manner as to be reasonably calculated to be
11 seen by the ordinary consumer:

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

14 For Covered Products sold or distributed by Defendant in bulk for sale or distribution in
15 California, in lieu of warning statements on individual Covered Product units, Defendant may
16 provide notice to downstream distributor/retailer customers of the Proposition 65 warning
17 requirements set forth in this Sections 2.3. Such notice shall be included in the purchase/sale
18 agreement, purchase orders, packaging material and/or other written or electronic transmittals as
19 applicable for such customers.

20 **3. MONETARY RELIEF**

21 **3.1** Within ten (10) business days after the Effective Date, Defendant shall pay to
22 Plaintiff the total sum of \$48,000.00, which includes \$18,000.00 in civil penalties and \$30,000.00
23 in payment of Plaintiff's costs and reasonable attorney's fees. The \$18,000.00 civil penalty shall
24 be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75% (\$13,500.00)
25 paid to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA"),
26 and 25% (\$4,500.00) payable to Plaintiff. Plaintiff shall provide the payment due to OEHHA
27 within ten (10) business days of Plaintiff's receipt of Defendant's payment. Plaintiff shall provide
28 to Defendant proof of such payment to OEHHA within five (5) business days of making such

1 payment.

2 **3.2** The payment of Plaintiff's costs and reasonable attorney's fees was agreed to under
3 general contract principles and the private attorney general doctrine codified at California Code of
4 Civil Procedure section 1021.5, and provided as compensation for the fees and costs incurred by
5 Plaintiff in investigating, bringing this matter to World and Main's attention, litigating, negotiating
6 a settlement in the public interest, and all actions necessary to result in the Court's approval and
7 entry of this stipulated Consent Judgment.

8 **3.3** The payment of \$48,000.00 specified in Section 3.1 shall be made by wire transfer
9 to Plaintiff's counsel Custodio & Dubey LLP as follows, provided that no later than the Effective
10 Date, Plaintiff shall provide to World and Main W-9 forms for each payee:

11 Bank: Bank of America, N.A.
12 Routing Transit No.: 026009593
13 Account No.: 325054144600
14 Beneficiary: Custodio & Dubey LLP

14 **4. CLAIMS COVERED AND RELEASE**

15 **4.1** This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
16 behalf of itself, and acting in the public interest, and Defendant for any alleged violation of
17 Proposition 65, and its implementing regulations, for failure to provide Proposition 65 warnings
18 for the Covered Products, and fully resolves all claims that have been brought, or which could
19 have been brought in this action, or in any other action, up to and including the Effective Date.
20 Plaintiff on behalf of itself, and in the public interest, hereby releases and discharges Defendant,
21 including Howard Berger Co. and Jones Stephens Corp., and their current and former parent
22 companies, subsidiaries, divisions, suppliers, affiliates, importers, distributors and retailers
23 (including, without limitation, Amazon.com and Do It Best), licensees and related entities,
24 together with their respective current and former officers, directors, shareholders, employees,
25 representatives, contractors, agents, divisions, insurers, successors, assigns and attorneys, as well
26 as all other upstream and downstream entities in the distribution chain for any of the Covered
27 Products, and the predecessors, successors, and assigns of each of them (all of the foregoing
28 entities and individuals being referred to collectively herein as the "Released Parties"), from any

1 and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs
2 and expenses asserted, or that could have been asserted, with respect to any alleged violation of
3 Proposition 65 arising from the failure to provide Proposition 65 warnings for any or all of the
4 Covered Products, and/or any other claim alleged in this action, or which could have been alleged
5 in this action, through and including the Effective Date.

6 **4.2** Plaintiff, acting on its own behalf, and in the public interest pursuant to California
7 Health and Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims
8 against the Released Parties arising from any violation of Proposition 65 that has been or could
9 have been asserted in the public interest regarding the failure to warn under Proposition 65 arising
10 in connection with exposure to the Covered Products, manufactured, imported, distributed, offered
11 for sale, sold and/or distributed in the State of California by Released Parties prior to the Effective
12 Date.

13 **4.3** It is possible that other claims not known to the Parties arising out of the facts
14 alleged in the 60-Day Notice and/or in the Complaint, relating to the Covered Products, will
15 hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand, and
16 Defendant, on the other hand, acknowledge that this Consent Judgment is expressly intended to
17 cover and include all such claims through and including the Effective Date, including all rights of
18 action therefore. Plaintiff and Defendant acknowledge that the claims released in Sections 4.1 and
19 4.2 may include unknown claims, and nevertheless intend to release such claims, and in doing so
20 waive California Civil Code § 1542 which reads as follows:

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

26 **4.4** Plaintiff understands and acknowledges that the significance and consequence of
27 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising
28 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
Products, including but not limited to any exposure to, or failure to warn with respect to exposure

1 to, the Covered Products, Plaintiff will not be able to make any claim for those damages against
2 any of the Released Parties.

3 4.5 Material compliance by Defendant with the terms of this Consent Judgment shall
4 constitute compliance with Proposition 65 with respect to the Covered Products.

5 **5. PROVISION OF NOTICE**

6 5.1 When any Party is entitled to receive any notice or writing under this Consent
7 Judgment, the notice or writing shall be sent by first class certified mail with return receipt
8 requested, or by electronic mail, as follows:

9 To Defendant:

10 Diane Garrity
11 General Counsel
12 World and Main
13 624A Half Acre Road
14 Cranbury, NJ 08512
15 email: dianegarrity@worldandmain.com

with a copy to
Joshua A. Bloom, Esq.
Meyers Nave
555 12th Street, Suite 1500
Oakland, California 94607
email: jbloom@meyersnave.com

14 To Plaintiff:

15 Vineet Dubey
16 Custodio & Dubey LLP
17 448 S. Hill St., Ste 612
18 Los Angeles, CA 90013
19 email: dubey@cd-lawyers.com

20 5.2 Any Party may modify the person and address to whom the notice is to be sent by
21 sending the other Party notice that is transmitted in the manner set forth in section 5.1.

22 **6. COURT APPROVAL**

23 6.1 Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and
24 file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant
25 shall reasonably support. This Consent Judgment shall not become effective until approved and
26 entered by the Court. If this Consent Judgment is not approved and entered by the Court within
27 one year of the last date the Consent Judgment is executed by the Parties or such other date as may
28 be mutually agreed to in writing by the Parties, it shall be of no force or effect, and shall not be
introduced into evidence or otherwise used in any proceeding for any purpose.

1 **7. GOVERNING LAW AND CONSTRUCTION**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **8. ENTIRE AGREEMENT**

5 8.1 This Consent Judgment contains the sole and entire agreement and understanding
6 of the Parties with respect to the entire subject matter herein.

7 8.2 There are no warranties, representations, or other agreements between the Parties
8 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
9 other than those specifically referred to in this Consent Judgment have been made by any Party
10 hereto.

11 8.3 No other agreements not specifically contained or referenced herein, oral or
12 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
13 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
14 any of the Parties hereto only to the extent that they are expressly incorporated herein.

15 8.4 No amendment, supplementation, modification, waiver, or termination of this
16 Consent Judgment shall be binding unless executed in writing by an authorized representative of
17 each Party and approved by the Court.

18 8.5 No waiver of any of the provisions of this Consent Judgment shall be deemed or
19 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
20 such waiver constitute a continuing waiver.

21 **9. RETENTION OF JURISDICTION**

22 9.1 This Court shall retain jurisdiction of this matter to implement, enforce or modify
23 the Consent Judgment.

24 **10. NO EFFECT ON OTHER SETTLEMENTS**

25 10.1 Nothing in this Consent Judgment shall preclude Plaintiffs from resolving any
26 claim against another entity on terms that are different from those contained in this Consent
27 Judgment.

28

1 **11. EXECUTION IN COUNTERPARTS**

2 11.1 This Consent Judgment may be executed in counterparts, each of which shall be
3 deemed to be an original, and all of which, taken together, shall constitute the same document.
4 Execution of the Consent Judgment by e-mail, facsimile, or other electronic means, shall
5 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
6 Judgment shall have the same force and effect as the original.

7 **12. AUTHORIZATION**

8 12.1 The undersigned are authorized to stipulate to, enter into, and execute this Consent
9 Judgment on behalf of their respective Party, and have read, understood, and agree to all of the
10 terms and conditions of this Consent Judgment.

11 **13. SEVERABILITY**

12 13.1 If subsequent to Court approval of this Consent Judgment, any part or provision is
13 declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions
14 shall continue in full force and effect, but only to the extent the deletion of the provision deemed
15 unenforceable does not materially affect or otherwise result in the effect of this Consent Judgment
16 being contrary to the Parties' intent in entering into this Consent Judgment.

17 **14. ATTORNEYS' FEES AND COSTS**

18 14.1 Except as provided under Sections 3.1 and 6.1 above, each Party shall bear its own
19 attorneys' fees and costs in this matter.

20 **15. FULL AND FINAL SETTLEMENT**

21 15.1 The Parties intend this to constitute a full and final settlement and will request that
22 it be entered as a final judgment.

23 AGREED TO:

AGREED TO:

24 ECOLOGICAL ALLIANCE LLC

WORLD AND MAIN, LLC

25 Date: May 15th, 2017

Date: May 1, 2017

26
27 By: [Signature]

By: [Signature]

28