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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 (Unlimited Jurisdiction)

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

14 Plaintiff,

15 v.

16 MERIT BRASS COMPANY, INC., an Ohio
17 corporation; and DOES 1 through 10, inclusive,

18 Defendants.

Case No.:

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

Complaint Filed:

Trial Date: Not Set

1
2 Plaintiff Ecological Alliance, LLC ("Plaintiff"), and Defendant Merit Brass Company,
3 Inc. ("Defendant") hereby enter into this Stipulated Consent Judgment ("Consent Judgment") as
4 follows:

5 WHEREAS: On or about March 11, 2016, Plaintiff, through Plaintiff's counsel, served a
6 60 Day Notice to Defendant, the California Attorney General, the District Attorneys of every
7 County in the State of California, and the City Attorneys for every City in the State of California
8 with a population greater than 750,000 (collectively, "Public Prosecutor(s)") alleging that
9 Defendant violated California Health & Safety Code §§ 25249.6 *et seq.*, entitled Safe Drinking
10 Water and Toxic Enforcement Act of 1986 ("Proposition 65"), and that Plaintiff intended to file
11 an enforcement action in the public interest; and

12 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed brass
13 flanges and fittings (including, without limitation, UPC# 10671404070752) sold or distributed for
14 sale in California (collectively the "Covered Products") that expose consumers in the State of
15 California to chemicals including lead, chemicals that are listed by the State of California
16 pursuant to California Health and Safety Code § 25249.8; and

17 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
18 to listed chemicals, including lead, in Covered Products without being provided the Proposition
19 65 warning set out at California Health and Safety Code § 25249.6 and its implementing
20 regulations ("Proposition 65 Warning"); and

21 WHEREAS: Defendant denies Plaintiff's claims and allegations and maintains that its
22 products, including the Covered Products, are distributed in full compliance with applicable laws;
23 and

24 WHEREAS: Plaintiff and Defendant acknowledge that this matter involves disputed
25 claims and wish to resolve their differences without incurring the time and expense of litigation,
26 and with no admission of liability or the validity of any claim or defense.

27 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
28 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

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1. INTRODUCTION

1.1. On March 11, 2016, Plaintiff served the 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 Defendant as to the allegations of violation contained 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 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 Defendant of any fact, conclusion of law or violation of law. Defendant denies the material, factual, and legal allegations in the 60-Day Notice 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 the Consent Judgment is approved and entered by the Court.

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2 **3. INJUNCTIVE RELIEF**

3 3.1. Defendant agrees to either undertake, or cause to be undertaken on its behalf, the
4 measures identified in 3.2-3.5 below, compliance with which will constitute compliance
5 by Defendant with all requirements of Proposition 65, California Health and Safety Code
6 § 25249.6, *et seq.*, and its implementing regulations (collectively, "Proposition 65")
7 relating to the Covered Products:

8 3.2. Proposition 65 Exemption for the Covered Products

9 Any Covered Product that is distributed sold, or offered for sale in the State of
10 California commencing 90 days after the Effective Date, shall be deemed to comply with
11 Proposition 65 with regard to lead, and shall be exempt from any Proposition 65 warning
12 requirements, if no Accessible Component Part of such Covered Product contains more
13 than 100 parts per million ("ppm") of lead. For purposes of this Consent Judgment,
14 "Accessible Component Part" shall mean components of the Covered Products to which a
15 person would be exposed to lead by direct contact during normal use of the Covered
16 Product.

17 3.3. Warning Option

18 Covered Products that do not meet the warning exemption standard set forth in
19 Section 3.2 above shall be accompanied by a warning as described in Section 3.4 below.
20 This warning requirement shall only be required as to Covered Products that are
21 manufactured, imported, distributed, sold and/or shipped for sale in the State of
22 California, commencing 90 days after the Effective Date. No Proposition 65 warning
23 shall be required as to any Covered Products that are already in the stream of commerce
24 as of the Effective Date, and all such Covered Products are hereby deemed to be exempt
25 from Proposition 65 warning requirements.

26 3.4. Warning Language

27 Where required to meet the criteria set forth in Section 3.3, Defendant shall provide the
28 following warning statement on or within the unit packaging of the Covered Products, or
affixed to the Covered Products, displayed in such a manner as to be reasonably

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2 calculated to be seen by the ordinary consumer:

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

5 For Covered Products sold or distributed by Defendant in bulk for sale or distribution in
6 California, in lieu of warning statements on individual Covered Product units, Defendant
7 may provide notice to downstream distributor/retailer customers of the Proposition 65
8 warning requirements set forth in Sections 3.3-3.4 above. Such notice shall be included in
9 the purchase/sale agreement, purchase orders, packaging material and/or other written or
10 electronic transmittals as applicable for such customers.

11 **4. MONETARY RELIEF**

12 4.1. Within ten (10) days of the Effective Date, Defendants shall pay to Plaintiff the
13 total sum of \$43,000.00, which includes \$8,000.00 in civil penalties and \$35,000.00 in
14 payment of Plaintiff's costs and reasonable attorney's fees. The \$8,000.00 civil penalty
15 shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%
16 (or \$6,000.00), paid to the State of California's Office of Environmental Health Hazard
17 Assessment, and 25% (or \$2,000.00) payable to Plaintiff.

18 4.2. The payment specified in Section 4.1. shall be made by wire transfer to Plaintiff's
19 counsel Custodio & Dubey LLP:

20 Bank: Bank of America, N.A.
21 Routing Transit No.: 026009593
22 Account No.: 325054144600
23 Beneficiary: Custodio & Dubey LLP

24 **5. CLAIMS COVERED AND RELEASE**

25 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
26 behalf of itself, and acting in the public interest, and Defendant for any alleged violation
27 of Proposition 65, and its implementing regulations, for failure to provide Proposition 65
28 warnings for the Covered Products, and fully resolves all claims that have been brought,
or which could have been brought in this action, or in any other action, up to and

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2 including the Effective Date. Plaintiff on behalf of itself, and in the public interest,
3 hereby releases and discharges Defendant, and its current and former parent companies,
4 subsidiaries, divisions, suppliers, affiliates, importers, distributors and retailers
5 (including, without limitation, Amazon.com), licensees and related entities, together with
6 their current and former officers, directors, shareholders, employees, representatives,
7 contractors, agents, divisions, insurers, successors, assigns and attorneys, as well as all
8 other upstream and downstream entities in the distribution chain for any of the Covered
9 Products, and the predecessors, successors, and assigns of each of them (all of the
10 foregoing entities and individuals being referred to collectively herein as the “Released
11 Parties”), from any and all claims, actions, causes of action, suits, demands, liabilities,
12 damages, penalties, fees, costs and expenses asserted, or that could have been asserted,
13 with respect to any alleged violation of Proposition 65 arising from the failure to provide
14 Proposition 65 warnings for any or all of the Covered Products, and/or any other claim
15 alleged in this action, or which could have been alleged in this action, through and
16 including the Effective Date.

17 5.2. Plaintiff, acting on its own behalf, and in the public interest pursuant to California
18 Health and Safety Code § 25249.7(d), releases, waives, and forever discharges any and
19 all claims against the Released Parties arising from any violation of Proposition 65 that
20 has been or could have been asserted in the public interest regarding the failure to warn
21 under Proposition 65 arising in connection with exposure to the Covered Products,
22 manufactured, imported, distributed, offered for sale, sold and/or distributed in the State
23 of California by Released Parties prior to the Effective Date.

24 5.3. It is possible that other claims not known to the Parties arising out of the facts
25 alleged in the 60-Day Notice and/or in the Complaint, relating to the Covered Products,
26 will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one
27 hand, and Defendant, on the other hand, acknowledge that this Consent Judgment is
28 expressly intended to cover and include all such claims through and including the
Effective Date, including all rights of action therefore. Plaintiff and Defendant

1
2 acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown
3 claims, and nevertheless intend to release such claims, and in doing so waive California
4 Civil Code § 1542 which reads as follows:

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

11 5.4. Plaintiff understands and acknowledges that the significance and consequence of
12 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
13 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
14 Covered Products, including but not limited to any exposure to, or failure to warn with
15 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim
16 for those damages against any of the Released Parties.

17 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute
18 compliance with Proposition 65 with respect to the Covered Products.

19 6. PROVISION OF NOTICE

20 6.1. When any Party is entitled to receive any notice or writing under this Consent
21 Judgment, the notice or writing shall be sent by first class certified mail with return
22 receipt requested, or by electronic mail, as follows:

23 To Defendant:

24 Chris Locke, Esq.
25 Farella Braun & Martell LLP
26 Russ Building
27 235 Montgomery St.
28 San Francisco, CA 94104
Email: clocke@fbm.com

To Plaintiff:

Vineet Dubey
Custodio & Dubey LLP
448 S. Hill St., Ste 612
Los Angeles, CA 90013
Email: dubey@cd-lawyers.com

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6.2. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice that is transmitted in the manner set forth in section 6.1.

7. COURT APPROVAL

7.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant shall support. This Consent Judgment shall not become effective until approved and entered by the Court. If this Consent Judgment is not approved and 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 herein.

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 amendment, supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by an authorized representative of each Party and approved by the Court.

9.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or

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

13. AUTHORIZATION

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

14. SEVERABILITY

14.1. If subsequent to Court approval of this Consent Judgment, any part or provision is declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions shall continue in full force and effect.

15. ATTORNEYS FEES AND COSTS

15.1 Except as provided under Sections 4.1 and 7.1 above, each Party shall bear its own attorneys fees and costs in this matter.

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16. FULL AND FINAL SETTLEMENT

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

AGREED TO :

AGREED TO:

Ecological Alliance LLC

Merit Brass Company, Inc.

Date: 6/13/14

Date: 6/16/14

By: [Signature]

By: [Signature] UP/CFO
MERIT BRASS CO