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8 Attorneys for Plaintiff Ecological Alliance, LLC

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 TITLEFLEX CORPORATION, a Connecticut  
17 corporation; and DOES 1 through 10, inclusive,

18 Defendants.

19 Case No.:

20 **[PROPOSED] STIPULATED  
21 CONSENT JUDGMENT**

22 Complaint Filed:

23 Trial Date: Not Set

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Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Titleflex Corporation (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

WHEREAS: On or about July 29, 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, California Health and Safety Code § 25249.6, et seq., and its implementing regulations (collectively, “Proposition 65”) and that Plaintiff intended to file an enforcement action in the public interest; and

WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed Brass Fittings (collectively the “Covered Products”) that were sold or distributed for sale in California and further alleges that those Covered Products expose consumers in the State of California to lead, listed by the State of California pursuant to California Health and Safety Code § 25249.8; and

WHEREAS: Plaintiff further alleges that persons in the State of California were exposed to lead 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 seek to provide the public with Proposition 65 warnings and believe that this objective is achieved by the actions described in this Consent Judgment; 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:

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**1. INTRODUCTION**

1.1. On July 29, 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 proceeded to file 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 based on the facts alleged therein with respect to the Covered Products, 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 Notice, 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 and agreeing to comply with its terms, 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 denies any wrongdoing whatsoever.

**2. DEFINITIONS**

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2.1. “Effective Date” shall mean the date the Consent Judgment has been approved and entered by the Court.

**3. INJUNCTIVE RELIEF**

3.1. Defendant agrees to either undertake, or cause to be undertaken on its behalf, the measures identified in 3.2-3.5 below, compliance with which shall constitute compliance by Defendant with all requirements of Proposition 65 relating to the Covered Products:

3.2. Proposition 65 Exemption for the Covered Products

Any Covered Product that is sold, or offered for sale, to consumers in the State of California after the Effective Date shall be deemed to comply with Proposition 65, with regard to lead, and be exempt from any Proposition 65 warning requirements, if no “Accessible Component Part” of such Covered Product contains more than 100 ppm of lead. For purposes of this Consent Judgment, “Accessible Component Part” shall mean components of the Covered Products to which a person would be exposed to lead by direct contact during normal use of the Covered Product.

3.3. Warning Option

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 3.4 below. This warning requirement shall only be required as to Covered Products that are manufactured, distributed, marketed, sold or shipped for sale to consumers by Defendant in the State of California, after the Effective Date. No Proposition 65 warning shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date, and all such Covered Products are hereby deemed to be exempt from Proposition 65.

3.4. Warning Language

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

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

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

#### 8 **4. MONETARY RELIEF**

9 4.1. Within ten (10) days of the Effective Date, or December 5, whichever is later,  
10 Defendant shall pay to Plaintiff the total sum of \$52,000 which includes \$10,000 in civil  
11 penalties and \$42,000 in payment of Plaintiff's costs and reasonable attorney's fees. The  
12 \$10,000 civil penalty shall be apportioned by Plaintiff pursuant to Health and Safety  
13 Code section 25249.12 (d), with 75%, or \$7,500, paid by Plaintiff to the State of  
14 California's Office of Environmental Health Hazard Assessment and 25%, or \$2,500,  
15 payable to Plaintiff.

16 4.2. The payment specified in Section 4.1. shall be made by wire transfer to Plaintiff's  
17 counsel Custodio & Dubey LLP:

18 Bank: Bank of America, N.A.

19 Routing Transit No.: 026009593

20 Account No.: 325054144600

21 Beneficiary: Custodio & Dubey LLP

#### 22 **5. CLAIMS COVERED AND RELEASE**

23 5.1. Plaintiff, acting on its own behalf and in the public interest, releases Defendant,  
24 and any of its current and former parent companies, subsidiaries, divisions, suppliers,  
25 affiliates and retailers, licensees and related entities together with their current and former  
26 officers, directors, shareholders, employees, representatives, contractors, agents,  
27 divisions, insurers, successors, assigns, and attorneys, as well as all other upstream and  
28 downstream entities in the distribution chain for any of the Covered Products, and the  
predecessors, successors, and assigns of any of them (all of the foregoing entities and

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individuals being referred to herein as the “Released Parties”) from all claims for violations of Proposition 65 based on exposure to lead from Covered Products as set forth in the Notice of Violation up through and including the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead form Covered Products as set forth in the Notice of Violation.

5.2. Plaintiff, in its own individual capacity and not in a representative capacity, also hereby releases Defendant and the Released Parties, in a full and final accord and satisfaction, which release bars all actions, causes of action, obligations, costs, attorneys’ fees, damages, losses, claims, liabilities and demands by Plaintiff, in any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposure to lead from the Covered Products manufactured for distribution or sale by Defendant up through and including the Effective Date.

5.3. It is possible that other claims not known to the Parties arising out of the facts contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims through and including the Effective Date, including all rights of action therefore. Plaintiff and Defendant acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown claims, and nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542 which reads as follows:

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

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5.4. Plaintiff, on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits that it may have under, or which may have been conferred on it by the provisions of Civil Code § 1542. Plaintiff, on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees, understands and acknowledges that the significance and consequence of this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising 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 to, the Covered Products, Plaintiff will not be able to make any claim for those damages against any of the Released Parties.

5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with respect 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 certified mail with return receipt requested, or by electronic mail, as follows:

To Defendant:  
Sarah Bell Esq.  
Farella Braun & Martel, LLP  
Russ Building  
235 Montgomery St  
San Francisco CA 94104  
Telephone: (415) 954-4400  
[sbell@fbm.com](mailto:sbell@fbm.com)

To Plaintiff:  
Vineet Dubey  
Custodio & Dubey LLP  
448 S. Hill St., Ste 612  
Los Angeles, CA 90013  
[dubey@cd-lawyers.com](mailto: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 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 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

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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 Plaintiff 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 parties, 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.

**AGREED TO :**

**Ecological Alliance LLC**

Date: 10/25/14  
By: [Signature]

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**AGREED TO :**

**Titleflex Corporation**

Date: 11-1-16

By: William G Smith