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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.

REXNORD CORPORATION; RBS GLOBAL,
INC.; and ZURN INDUSTRIES, LLC,

Defendants.

Case No.:

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

Complaint Filed:
Trial Date: Not Set

Plaintiff Ecological Alliance, LLC (“Plaintiff”) and Defendants Rexnord Corporation, RBS Global, Inc., and Zurn Industries (collectively, “Defendants”) (Plaintiff and each defendant is a “Party,” and collectively with Plaintiff, “Parties”), hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

WHEREAS: On or about August 30, 2016, Plaintiff, through Plaintiff’s counsel, served a 60-Day Notice to Ace Hardware Corporation, 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 Ace Hardware Corporation 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

1 WHEREAS: Plaintiff alleges that the above-described 60-Day Notice included plumbing
2 products and/or parts including coupling adapters made of brass containing lead that are
3 manufactured, imported, sold, offered for sale, distributed for sale or purchased for resale in
4 California by Defendants, including, but not limited to, coupling adaptor UPC #082901024293
5 (collectively, the “Covered Products”) and further alleges that the Covered Products expose
6 consumers in the State of California to chemicals including lead and lead compounds, which are
7 listed by the State of California pursuant to California Health and Safety Code § 25249.8; and

8 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
9 to lead and lead compounds in Covered Products without being provided the Proposition 65
10 warning set out at California Health and Safety Code § 25249.6 and its implementing regulations
11 (“Proposition 65 Warning”); and

12 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and
13 believes that this objective is achieved by the actions described in this Consent Judgment; and

14 WHEREAS: Plaintiff and Defendants wish to resolve their differences without the delay
15 and expense of litigation.

16 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
17 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANTS AS FOLLOWS:

18 **1. INTRODUCTION**

19 1.1. On August 30, 2016, Plaintiff served the 60-Day Notice upon Ace Hardware
20 Corporation and on Public Prosecutors. No Public Prosecutors commenced an
21 enforcement action. No Public Prosecutor having commenced an enforcement action,
22 Plaintiff proceeded to file its Complaint against Defendants in the present action.

23 1.2. Defendants employ ten (10) or more persons.

24 1.3. For purposes of this Consent Judgment only, the Parties stipulate that: 1) this
25 Court has jurisdiction over the allegations of violation contained in the Complaint, and
26 personal jurisdiction over Defendants as to the acts alleged in the Complaint; 2) venue is
27 proper in the County of Los Angeles; and 3) this Court has jurisdiction to enter this
28 Consent Judgment as a full and final resolution of all claims which were or could have

1 been raised in the Complaint based on the facts alleged therein with respect to the
2 Covered Products, and of all claims which were or could have been raised by any person
3 or entity based in whole or in part, directly or indirectly, on the facts alleged in the 60-
4 Day Notice, in the present action, or arising therefrom or related thereto, with respect to
5 Covered Products, including any Proposition 65 claim arising out of an exposure to
6 Covered Products (collectively, "Proposition 65 Claims").

7 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
8 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
9 resolving the issues raised therein both as to past and future conduct. By execution of
10 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit
11 any fact, conclusion of law, or violation of law, nor shall Defendants' compliance with
12 the Consent Judgment constitute or be construed as an admission by Defendants of any
13 fact, conclusion of law, or violation of law. Defendants deny the material, factual, and
14 legal allegations in the 60-Day Notice and the Complaint and expressly deny any
15 wrongdoing whatsoever.

16 2. DEFINITIONS

17 2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date that is
18 one hundred and eighty (180) days after the Consent Judgment has been approved and
19 entered by the Court.

20 3. INJUNCTIVE RELIEF

21 3.1. For each Covered Product, Defendants agree to either undertake, or cause to be
22 undertaken on its behalf, either (a) reformulation of the Covered Products to bring them
23 within the Proposition 65 exemption identified in Section 3.1(a) below, or (b) provide a
24 warning as prescribed in Sections 3.1(b) and 3.1(c) below. Compliance with this Section
25 3.1 will constitute compliance by Defendants with all requirements of Proposition 65
26 relating to the Covered Products:
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3.1(a) Proposition 65 Exemption for the Covered Products

Any Covered Product that is manufactured (which includes placing the Covered Product in its final retail packaging) by Defendants for sale to consumers in the State of California after the Effective Date shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to lead, 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.


3.1(b) Warning Option

Covered Products that do not meet the exemption standard set forth in Section 3.1(a) above shall be accompanied by a warning as described in Section 3.1(c) below. This warning requirement shall only be required as to Covered Products that are manufactured (which includes placing the Covered Product in its final retail packaging) by Defendants for sale to consumers in the State of California after the Effective Date. No Proposition 65 warning shall be required as to any Covered Products that are manufactured and packaged prior to the Effective Date, which includes Covered Products in the stream of commerce that are being sold, distributed for sale or purchased, and all such Covered Products are hereby deemed to be exempt from Proposition 65 with respect to lead.


3.1(c) Warning Language

Where required to meet the criteria set forth in Section 3.1(b), Defendants 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:¹

¹ Use of color in the triangular symbol to be governed by the provisions of 27 CCR § 25603(a)(1).

1
2  **WARNING:** This product can expose you to chemicals including lead,
3 which are known to the State of California to cause cancer and birth defects or
4 other reproductive harm. For more information, go to
5 www.P65Warnings.ca.gov.

6 or

7  **WARNING:** Cancer and Reproductive Harm -
8 www.P65Warnings.ca.gov.

9 **4. MONETARY RELIEF**

10 4.1. Within ten (10) days of the date the Consent Judgment is entered by the Court, but
11 not earlier than April 1, 2017, Defendants shall pay to Plaintiff the total sum of \$26,000,
12 which includes \$4,000 in civil penalties and \$22,000 in payment of Plaintiff's costs and
13 reasonable attorney's fees. The \$4,000 civil penalty shall be apportioned pursuant to
14 Health and Safety Code section 25249.12(d), with 75%, or \$3,000, paid to the State of
15 California's Office of Environmental Health Hazard Assessment and 25%, or \$1,000,
16 payable to Plaintiff.

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

19 Bank: Bank of America, N.A.

20 Routing Transit No.: 026009593

21 Account No.: 325054144600

22 Beneficiary: Custodio & Dubey LLP

23 **5. CLAIMS COVERED AND RELEASE**

24 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
25 behalf of itself, and acting in the public interest, and Defendants, and all of Defendants'
26 parent companies, as well as all of Defendants' officers, directors, members,
27 shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions,
28 affiliates, suppliers, and parents, subsidiaries, and affiliates thereof, their respective
employees, agents and assigns, as well as all other upstream entities, and each

1 downstream entity to whom they directly or indirectly distribute or sell the Covered
2 Products, including, but not limited to, their franchisees, licensees, distributors,
3 wholesalers, sales representatives, customers and retailers, including but not limited to
4 Ace Hardware Corporation, and the predecessors, successors, and assigns of any of them
5 (collectively, the “Released Parties”), for any actual or alleged violation of Proposition
6 65, and its implementing regulations, for failure to provide Proposition 65 warnings for
7 the Covered Products with respect to lead, and fully resolves all claims that have been
8 brought, or which could have been brought in this action, or in any other action, up to and
9 including the Effective Date. Plaintiff on behalf of itself, and in the public interest,
10 hereby discharges the Released Parties from any and all claims, actions, causes of action,
11 suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that
12 could have been asserted, with respect to any alleged violation of Proposition 65 arising
13 from the failure to provide Proposition 65 warnings about exposures to lead for any or all
14 of the Covered Products manufactured prior to the Effective Date.

15 5.2. It is possible that other claims not known to the Parties arising out of the facts
16 contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered
17 Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on
18 the one hand, and Defendants, on the other hand, acknowledge that this Consent
19 Judgment is expressly intended to cover and include all such claims through and
20 including the Effective Date, including all rights of action therefor. Plaintiff and
21 Defendants acknowledge that the claims released in Sections 5.1 and 5.2 may include
22 unknown claims, and nevertheless intend to release such claims, and in doing so waive
23 California Civil Code § 1542 which reads as follows:

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

1 5.3. Plaintiff understands and acknowledges that the significance and consequence of
2 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
3 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
4 Covered Products, including but not limited to any exposure to, or failure to warn with
5 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim
6 for those damages against any of the Released Parties.

7 5.4. Compliance by Defendants with the terms of this Consent Judgment shall
8 constitute compliance with Proposition 65 with respect to exposure to lead in the Covered
9 Products as set forth in the 60-Day Notice and/or the Complaint.

10 **6. PROVISION OF NOTICE**

11 6.1. When any Party is entitled to receive any notice or writing under this Consent
12 Judgment, the notice or writing shall be sent by first class certified mail with return
13 receipt requested, or by electronic mail, as follows:

14 To Defendants:

15 Patricia Waley
16 General Counsel
17 Rexnord Corporation
18 RBS Global, Inc.
19 Zurn Industries, LLC
20 247 Freshwater Way, Suite 300
21 Milwaukee, WI 53204
22 Patty.whaley@rexnord.com

23 Bob Nicksin, Esq.
24 O'Melveny & Myers LLP
25 400 South Hope Street
26 Los Angeles, CA 90071-2899
27 BNicksin@omm.com

28 To Plaintiff:

Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Ste 612
Los Angeles, CA 90013
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 this 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 Defendants shall support, except where material changes are made to the Consent Judgment after its initial filing. This Consent Judgment shall not become effective until approved and entered by the Court. If this Consent Judgment is not entered by the Court with 180 days of its being filed with 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. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, Defendants may provide written notice to Plaintiff of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

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.

1 9.3. No other agreements not specifically contained or referenced herein, oral or
2 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
3 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or
4 to bind any of the Parties hereto only to the extent that they are expressly incorporated
5 herein.

6 9.4. No waiver of any of the provisions of this Consent Judgment shall be deemed or
7 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
8 shall such waiver constitute a continuing waiver.

9 **10. RETENTION OF JURISDICTION**

10 10.1. This Court shall retain jurisdiction of this matter to implement or modify the
11 Consent Judgment.

12 **11. NO EFFECT ON OTHER SETTLEMENTS**

13 11.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any
14 claim against another entity on terms that are different from those contained in this
15 Consent Judgment.

16 **12. EXECUTION IN COUNTERPARTS**

17 12.1. This Consent Judgment may be executed in counterparts, each of which shall be
18 deemed to be an original, and all of which, taken together, shall constitute the same
19 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic
20 means shall constitute legal and binding execution and delivery. Any photocopy of the
21 executed Consent Judgment shall have the same force and effect as the original.

22 **13. AUTHORIZATION**

23 13.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent
24 Judgment on behalf of their respective parties, and have read, understood, and agree to all
25 of the terms and conditions of this Consent Judgment.

26 **14. SEVERABILITY**

27 14.1. If any part or provision of this Consent Judgment is declared by a Court to be
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invalid, void, or unenforceable, the remaining portions or provisions shall continue in full force and effect, so long as the Parties' original intent remains intact.

15. MODIFICATION

15.1. This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any Party, and the entry of a modified Consent Judgment by the Court.

16. ENFORCEMENT

16.1. Any Party may, after meeting and conferring, for a period no longer than sixty (60) days, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment.

AGREED TO :
Ecological Alliance, LLC

Date: 3/13/17
By: [Signature]

AGREED TO :
Rexnord Corporation

Date: 3-10-17
By: Pat Whaley

AGREED TO :
RBS Global, Inc.

Date: 3-10-17
By: Pat Whaley

AGREED TO :

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Zurn Industries, LLC

Date: 3-10-17

By: *John Whaley*