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8 Attorneys for Plaintiff
9 Ecological Alliance, LLC

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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.

BLACK & DECKER (U.S.), INC., a
Maryland corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Black & Decker (U.S.) Inc., on behalf of itself and all related companies, parents, subsidiaries and divisions (collectively, “Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

WHEREAS: On or about November 3, 2016, Plaintiff, through Plaintiff’s counsel, served a 60 Day Notice to Defendant, Amazon.com, Inc. (“Amazon”), 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

1 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety
2 Code § 25249.6, et seq., and its implementing regulations (collectively, “Proposition 65”)
3 and that Plaintiff intended to file an enforcement action in the public interest; and

4 (A) WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed
5 Covered Products that were sold or distributed for sale in California and
6 further alleges that those Covered Products expose consumers in the State of
7 California to chemicals including lead, that are listed by the State of
8 California pursuant to California Health and Safety Code § 25249.8; and

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

14 (C) WHEREAS: Plaintiff seeks to provide the public with Proposition 65
15 warnings and believe that this objective is achieved by the actions described
16 in this Consent Judgment; and

17 (D) WHEREAS: Plaintiff and Defendant wish to resolve their differences
18 without the delay and expense of litigation.

19 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
20 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS
21 FOLLOWS:

22 1.

23 **INTRODUCTION**

24 1.1. On November 3, 2016, Plaintiff served the 60-Day Notices upon Defendant,
25 Amazon, and on Public Prosecutors. No Public Prosecutors commenced an
26 enforcement action. No Public Prosecutor having commenced an
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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.

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1.5. It is the intent of the parties through this settlement to ensure that sale and distribution of Covered Product conforms with the California Code of Regulations, Sections 25600.1 et seq, as effective August 30, 2018, and the acts required of the parties pursuant to this agreement are deemed compliance with Sections 25600.1 et seq of the California Code of Regulations, as effective August 30, 2018.

2.

DEFINITIONS

2.1. “Effective Date” shall mean, with respect to this Consent Judgment, the date the Consent Judgment has been approved and entered by the Court.

2.2. “Covered Products” shall be defined as accessories and replacement parts with lead-containing brass connectors and couplings for uses associated with power tools such as air compressors, pressure washers, paint sprayers and other such tools (excluding any construction power tools subject to the terms of the People v. Ace Hardware, et al Consent Judgment (San Francisco No. 995893) to the extent such products are distributed and sold within the State of California and that are distributed, marketed and/or sold by Black & Decker (U.S.) Inc. and/or its related companies, parents, subsidiaries and divisions, regardless of whether such products bear Black & Decker labels.

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 will constitute compliance by Defendant with all requirements of Proposition 65 relating to the Covered Products:

3.2. Proposition 65 Exemption for the Covered Products

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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, 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 300 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 physical 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 sold or shipped directly to end user consumers by Defendant in the State of California, after the Effective Date. No Proposition 65 warning for lead 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 with respect to lead.

3.4. Warning Language

Where required to meet the criteria set forth in Section 3.3, Defendant shall provide the following warning statements in the following circumstances:
A. When sold or distributed directly to a California end user consumer, Defendant shall provide the following warning statement with the unit package either on the product itself or conspicuously placed on or within its packaging:

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WARNING: This product contains one or more chemicals known to the State of California to cause cancer and birth defects or reproductive harm. *Wash hands after handling.*

In addition to the above statement, Defendant must also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the statement is not printed using the color yellow, the symbol may be printed in black and white, or alternatively, the word “WARNING” may be preceded and followed by four same-sized exclamation points. [!!!!]

With respect to the warning described in this section of this agreement, Defendant may substitute words in all capital letters where printing in a bold or italicized font is impossible or impractical.

- B. When Defendant distributes or sells Covered Product to an intermediary that it reasonably believes might sell or distribute that Covered Product to California end user consumers, Defendant will provide that intermediary with the following warning statement with the unit package either on the product itself or conspicuously placed on or within its packaging:

WARNING: This product contains one or more chemicals known to the State of California to cause cancer and birth defects or reproductive harm. *Wash hands after handling.*

Note for Resellers of this product: You MUST include this warning on, or accompanying, this product when it is offered for resale by you or on websites pertaining to this product. This applies whether you are the entity that sells it in California or whether you sell it someone else who then sells and ships it into California.

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In addition to the above statement. Defendant must also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the statement is not printed using the color yellow, the symbol may be printed in black and white, or alternatively, the word "WARNING" may be preceded and followed by four same-sized exclamation points. [!!!!]

With respect to the warning described in this section of this agreement, Defendant may substitute words in all capital letters where printing in a bold or italicized font is impossible or impractical.

3.5. If Proposition 65 warnings for lead or lead compounds should no longer be required by the State of California, Defendant shall have no further warning obligations pursuant to this Consent Judgment. In the event Defendant ceases to implement or modifies the warnings required under this Consent Judgment (because of a change in the law or otherwise) Defendant shall provide written notice to Plaintiff through its counsel of its intent to do so, and the basis for that intent, no less than thirty (30) days in advance. Plaintiff shall notify Defendant through its counsel of any objections within thirty (30) days of its receipt of such notice, or such objection by Plaintiff shall be deemed waived.

4.

MONETARY RELIEF

4.1. Within ten (10) days of the Effective Date, Defendant shall pay to Plaintiff the total sum of \$43,000 which includes \$8,000 in civil penalties and \$35,000 in payment of Plaintiff's costs and reasonable attorney's fees. The \$8,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$6,000, paid to the State of California's

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Office of Environmental Health Hazard Assessment and 25%, or \$2,000, payable to Plaintiff.

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

With respect to the payment above, Plaintiff's counsel will provide Defendant with its federal employer identification number so that Defendant can issue a 1099 to Plaintiff's counsel in the full amount of the payment.

5.

CLAIMS COVERED AND RELEASE

5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of itself, and acting in the public interest, and Defendant, and all of Defendant's parent companies, as well as all of Defendant's officers, directors, members, shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, and retailers, including but not limited to Amazon.com, Inc., their parent and all subsidiaries, and affiliates, thereof, their respective employees, agents and assigns, as well as all other upstream and downstream entities in the distribution chain for any of the Covered Products, and the predecessors, successors, and assigns of any of them (collectively, the "Released Parties"), for any alleged violation of Proposition 65, and its implementing regulations, for failure to provide Proposition 65 warnings for the Covered Products with respect to lead, 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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including the Effective Date. Plaintiff on behalf of itself, and in the public interest, hereby discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been asserted, with respect to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings about exposure to lead for any or all of the Covered Products through and including the Effective Date.

5.2. Plaintiff, acting on its 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 Released Parties arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted in the public interest regarding the failure to warn under Proposition 65 arising in connection with exposure to lead Covered Products, manufactured, distributed, offered for sale, sold, and/or served in the State of California by Released Parties prior to 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:

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

6 5.4. Plaintiff understands and acknowledges that the significance and
7 consequence of this waiver of California Civil Code § 1542 is that even if
8 Plaintiff suffers future damages arising out of or resulting from, or related
9 directly or indirectly to, in whole or in part, the Covered Products, including
10 but not limited to any exposure to, or failure to warn with respect to exposure
11 to, the Covered Products, Plaintiff will not be able to make any claim for
12 those damages against any of the Released Parties.

13 5.5. Compliance by Defendant with the terms of this Consent Judgment shall
14 constitute compliance with Proposition 65 with respect to exposure to lead in
15 the Covered Products as set forth in the 60 Day Notice and/or the Complaint.

16 6.

17 **PROVISION OF NOTICE**

18 6.1. When any Party is entitled to receive any notice or writing under this
19 Consent Judgment, the notice or writing shall be sent by first class certified
20 mail with return receipt requested, or by electronic mail, as follows:

21 To Defendant:

22 Kevin R. Crisp, Esq.
23 Haight Brown & Bonesteel LLP
24 555 South Flower Street
Forty-Fifth Floor
Los Angeles, CA 90071
KRCrisp2@aol.com

25 To Plaintiff:

26 Vineet Dubey, Esq.
27 Custodio & Dubey LLP
28 448 S. Hill St., Ste 612
Los Angeles, CA 90013

dubey@cd-lawyers.com

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3 6.2. Any Party may modify the person and address to whom the notice is to be
4 sent by sending the other Party notice that is transmitted in the manner set
5 forth in section 6.1.

6 7.

7 **COURT APPROVAL**

8 7.1. Upon execution of his Consent Judgment by all parties, Plaintiff shall
9 prepare and file, at its sole cost and expense, a Motion for Approval of this
10 Consent Judgment that Defendant shall support. This Consent Judgment
11 shall not become effective until approved and entered by the Court. If this
12 Consent Judgment is not entered by the Court, it shall be of no force or
13 effect, and shall not be introduced into evidence or otherwise used in any
14 proceeding for any purpose.

15 8.

16 **GOVERNING LAW AND CONSTRUCTION**

17 8.1. The terms of this Consent Judgment shall be governed by the laws of the
18 State of California.

19 9.

20 **ENTIRE AGREEMENT**

21 9.1. This Consent Judgment contains the sole and entire agreement and
22 understanding of the Parties with respect to the entire subject matter hereof,
23 and any and all prior discussions, negotiations, commitments, or
24 understandings related thereto, if any, are hereby merged herein and therein.
25 9.2. There are no warranties, representations, or other agreements between the
26 Parties except as expressly set forth herein. No representations, oral or
27 otherwise, express or implied, other than those specifically referred to in this
28 Consent Judgment have been made by any Party hereto.

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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 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

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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: 2/7/17

By: 
Harmony Welsh, Managing Member

AGREED TO :

Black & Decker (U.S.) Inc.

Date: March 7, 2017

By: 
Theodore C. Morris, Assistant Secretary