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6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES
9 (Unlimited Jurisdiction)

10 ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

11 Plaintiff,

12 v.

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14 3M COMPANY, a Delaware corporation; and
DOES 1 through 10, inclusive,

15 Defendants.
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Case No.: BC700086

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

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2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant 3M Company
3 (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as
4 follows:

5 WHEREAS: On or about November 6, 2017, Plaintiff, through Plaintiff’s counsel, served
6 a 60 Day Notice to 3M Company, 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’s Safe Drinking Water and Toxic Enforcement Act of 1986,
10 California Health and Safety Code § 25249.6, et seq., and its implementing regulations
11 (collectively, “Proposition 65”) and that Plaintiff intended to file an enforcement action in the
12 public interest; and

13 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed corrosion
14 protection tapes containing Di(2-ethylhexyl)phthalate (DEHP) that were sold or distributed for sale
15 in California (collectively the “Covered Products”) and further alleges that those Covered
16 Products expose consumers in the State of California to DEHP which is listed by the State of
17 California pursuant to California Health and Safety Code § 25249.8; and

18 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
19 to DEHP in Covered Products without being provided the Proposition 65 warning set out at
20 California Health and Safety Code § 25249.6 and its implementing regulations (“Proposition 65
21 Warning”);

22 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it is
23 has violated Proposition 65 and expressly denies that it has engaged in any wrongdoing
24 whatsoever;

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

27 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
28 and expense of litigation.

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

1. INTRODUCTION

- 1.1. On November 6, 2017, Plaintiff served the 60-Day Notice upon 3M Company, 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, final and binding 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, final and binding 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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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.

3. INJUNCTIVE RELIEF

3.1. For each Covered Product, Defendant agrees to either undertake, or cause to be undertaken on its behalf, either (a) reformulation of the Covered Product to bring it within the Proposition 65 exemption identified in Section 3.2 below, or (b) provide a warning as prescribed in Sections 3.3-3.4 below. Compliance with this Section 3.1 shall constitute compliance by Defendant with all requirements of Proposition 65 relating to DEHP exposure in the Covered Products:

3.2. Proposition 65 Exemption for the Covered Products

Subject to Section 3.5, any Covered Product that is manufactured and sold after the Effective Date, or manufactured and offered for sale after the Effective Date, to consumers (directly or indirectly) who are located in the State of California shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DEHP, if no “Accessible Component Part” of such Covered Product contains more than 0.1 percent (1,000 parts per million) of DEHP. For purposes of this Consent Judgment, “Accessible Component Part” shall mean components of the Covered Products to which a person would be exposed to DEHP by direct contact during normal use of the Covered Product.

3.3. Warning Option

Subject to section 3.5, 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 Defendant’s Covered Products that, after the Effective Date, are manufactured and distributed, marketed, sold or shipped for sale, to consumers (directly or indirectly) who are located in the State of California. No Proposition 65 warning shall be required as to any Covered Products that

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2 are already in the stream of commerce as of the Effective Date, and all such Covered
3 Products are hereby deemed to be exempt from Proposition 65 with respect to DEHP.

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5 3.4. Warning Language

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

10 (1) **WARNING:** This product can expose you to chemicals including
11 di(2-ethylhexyl) phthalate (DEHP), which are known to the State of
12 California to cause cancer and birth defects or other reproductive
13 harm. For more information go to www.P65Warnings.ca.gov.

14 (2) **WARNING:** Cancer and Reproductive Harm –
15 www.P65Warnings.ca.gov.

16 If Defendant elects to use the warning statements identified in either (1) or (2)
17 above, it may also include a symbol consisting of a black exclamation point in a
18 yellow equilateral triangle with a bold black outline. Where the sign, label or shelf
19 tag for the warning is not printed using the color yellow, the symbol may be
20 printed in black and white. The symbol shall be placed to the left of the text of the
21 warning, in a size no smaller than the height of the word “WARNING”.

22 3.5. 90-Day Grace Period

23 Although Defendant shall be deemed in compliance on the Effective Date, Defendant
24 shall have a ninety (90)-day grace period from the Effective Date to complete the
25 reformulation or warning steps provided in Sections 3.1 – 3.4.

26 **4. MONETARY RELIEF**

27 4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total sum of
28 \$28,000 which includes \$5,000 in civil penalties and \$23,000 in payment of Plaintiff’s
costs and reasonable attorney’s fees. The \$5,000 civil penalty shall be apportioned

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2 pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$3,750, paid to
3 the State of California's Office of Environmental Health Hazard Assessment and 25%, or
4 \$1,250, payable to Plaintiff.

5 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's
6 counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the
7 portions due to the State of California Office of Environmental Health Hazard
8 Assessment and to Plaintiff.

9 Bank: Bank of America, N.A.

10 Routing Transit No.: 026009593

11 Account No.: 325054144600

12 Beneficiary: Custodio & Dubey LLP

13 **5. CLAIMS COVERED AND RELEASE**

14 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
15 behalf of itself, and acting in the public interest, and Defendant, and all of Defendant's
16 parent companies, as well as all of Defendant's officers, directors, members,
17 shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions,
18 affiliates, suppliers, franchisees, licensees, customers, marketplace hosts, retailers, and all
19 entities to whom Covered Products were sold or distributed directly or indirectly, and all
20 of their respective parents, subsidiaries, and affiliates, thereof, their respective
21 employees, agents and assigns, as well as all other upstream and downstream entities in
22 the distribution chain for any of the Covered Products (including Lowe's Home Centers,
23 LLC), and the predecessors, successors, and assigns of any of them (collectively, the
24 "Released Parties"), for any alleged violation of Proposition 65, and its implementing
25 regulations, for failure to provide Proposition 65 warnings for the Covered Products with
26 respect to DEHP, and fully resolves all claims that have been brought, or which could
27 have been brought in this action, up to and including the Effective Date. Plaintiff on
28 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,

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2 penalties, fees, costs and expenses asserted, or that could have been asserted, with respect
3 to any alleged violation of Proposition 65 arising from the failure to provide Proposition
4 65 warnings about exposures to DEHP for any or all of the Covered Products, through
5 and including the Effective Date and the 90-day grace period described in Section 3.5.

6 5.2. It is possible that other claims not known to the Parties arising out of the facts
7 contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered
8 Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on
9 the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment
10 is expressly intended to cover and include all such claims through and including the
11 Effective Date, including all rights of action therefor. Plaintiff and Defendant
12 acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown
13 claims, and nevertheless intend to release such claims, and in doing so waive California
14 Civil Code § 1542 which reads as follows:

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

20 5.3. Plaintiff understands and acknowledges that the significance and consequence of
21 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
22 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
23 Covered Products, including but not limited to any exposure to, or failure to warn with
24 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim
25 for those damages against any of the Released Parties.

26 5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute
27 compliance with Proposition 65 for all Released Parties with respect to exposure to
28 DEHP in the Covered Products as set forth in the 60 Day Notice and/or the Complaint.

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6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)

6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

7. PROVISION OF NOTICE

7.1. 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:

Gary Epperley, Environment, Health and Safety Counsel
3M Legal Affairs
3M Center, 220-9E-02
St. Paul, MN 55144-1000
gepperley@mmm.com

With a copy to:

Ann Grimaldi, Esq.
Grimaldi Law Offices
50 California St., Suite 1500
San Francisco, CA 94111
ann.grimaldi@grimaldilawoffices.com

To Plaintiff:

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

7.2. 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 7.1.

8. COURT APPROVAL

8.1. 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 Defendant shall support. This Consent Judgment shall not become effective until

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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.

9. GOVERNING LAW AND CONSTRUCTION

9.1. The terms of this Consent Judgment shall be governed by the laws of the State of California.

10. ENTIRE AGREEMENT

10.1. 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.

10.2. 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.

10.3. 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.

10.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

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10.5. 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.

11. RETENTION OF JURISDICTION

11.1. This Court shall retain jurisdiction of this matter to implement or modify the 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.

(signatures on next page)

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AGREED TO:

Ecological Alliance LLC

Date: 3/29/18
By: [Signature]

AGREED TO:

3M Company

Date: 3/26/18
By: [Signature]

Netha N. Johnson, Vice President and General Manager
Electrical Markets Division

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT