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7 Attorneys for Plaintiff
8 Michael DiPirro

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
12
13

14 MICHAEL DIPIRRO,
15 Plaintiff,

16 v.

17
18 NIXALITE OF AMERICA INC.; and DOES 1-
19 150,
20 Defendants.

Case No. 25CV147521

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

Action Filed: September 3, 2025

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff,
4 Michael DiPirro (“DiPirro”), and Nixalite of America Inc. (“Defendant”).

5 DiPirro and Defendant are individually referred to as a “Party” and collectively as the
6 “Parties.”

7 **1.2 Plaintiff**

8 DiPirro is an individual residing in California who seeks to promote awareness of exposures
9 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
10 contained in consumer products.

11 **1.3 Defendant**

12 Defendant employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
14 section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 DiPirro alleges that Defendant manufactures or sells, Machine Screw Anchors in the State of
17 California, which expose consumers to lead and lead compounds (“Lead”), a toxic chemical, without
18 first providing the clear and reasonable exposure warnings required by Proposition 65. Lead was
19 listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause
20 reproductive toxicity on February 27, 1987, and has been subject to the warning requirements for
21 reproductive harm since February 27, 1988. On October 1, 1992, California identified and listed
22 Lead and lead compounds as a chemical known to cause cancer. Lead and lead compounds became
23 subject to the “clear and reasonable warning” requirements of the act for cancer one year later on
24 October 1, 1993, for cancer.

25 **1.5 Product Description**

26 The products covered by this Consent Judgment are Machine Screw Anchors that are sold, or
27 distributed for sale in California by Defendant, including, but not limited to the Machine Screw
28 Anchors (the “Products”).

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2 **1.6 Notices of Violation**

3 On or about September 3, 2025, DiPirro served Defendant and certain requisite public
4 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the
5 recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its
6 customers and consumers in California that the Products expose users to Lead and lead compounds.
7 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
8 prosecuting the allegations set forth in the Notice.

9 **1.7 Complaint**

10 On or about October 6, 2025, DiPirro filed the instant action against Defendant for the alleged
11 violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

12 **1.8 No Admission**

13 Defendant denies the material, factual, and legal allegations contained in the Notices and
14 contends that it sells Products to California residents in accordance with applicable state laws and
15 requirements. Nothing in this Consent Judgment shall be construed as an admission by Defendant of
16 any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this
17 Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,
18 conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendant.
19 This section shall not, however, diminish or otherwise affect Defendant’s obligations,
20 responsibilities, and duties under this Consent Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in Alameda
24 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
25 Judgment.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the
28 Court grants approval of the Motion to Confirm the agreement between the parties reflected herein.

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2 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS**

3 **2.1** Within 30 (thirty) days of the Effective Date (a.k.a. the “Warning Date”), as to all
4 Products that contain Lead (referred to herein as “Listed Chemical”) and are sold by and shipped to a
5 California address for sale by Defendant, Defendant shall provide a clear and reasonable warning on
6 the label of each Product as set forth below in Section 2.3. Each warning shall be prominently placed
7 with such conspicuousness as compared with other words, statements, designs, or devices as to render
8 it likely to be read and understood by an ordinary individual under customary conditions before
9 purchase or use. Each warning shall be provided in a manner such that the consumer or user
10 understands to which specific Product the warning applies, so as to minimize the risk of consumer
11 confusion. Compliance with the warning requirements set forth in Sections 2.1 through 2.3 or the
12 warning requirements of Proposition 65 and related regulations, as may be amended from time to
13 time, shall be deemed compliance with this Consent Judgment.

14 **2.2 Internet Warnings.** In addition to the warning specified in Section 2.1 above, for all
15 Products that Defendant offers for sale directly to consumers in California via the internet on or after
16 the Warning Date, Defendant shall within 60 (sixty) days provide a warning for such Products by
17 including the warning set forth below in Section 2.3 on one or more of the following: (a) on the same
18 web page on which a Product is displayed; (b) on the same web page as the order form for a Product;
19 (c) on the same web page as the price for any Product; or (d) on one or more web pages displayed to
20 a purchaser during the checkout process. The internet warning described above can also be delivered
21 through a hyperlink using the word “[California Prop 65] WARNING” (language in brackets optional).

22 **2.3 Text of the Warning.** The text of the warning shall be printed in black ink on a light
23 background, in a font that is easy to read and legible, but in no case less than a size 6 font. Defendant
24 shall use the warning language as set forth below in 2.3(a) or 2.3(b) for Products containing Lead and
25 lead compounds, which shall include a symbol consisting of a black exclamation point in a yellow
26 equilateral triangle with a bold black outline as shown below (the symbol may be black or white if
27 the color yellow is otherwise not used on the Product’s packaging).

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a. Full Warning.



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

b. Short-Form Warning.



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

In the event that Defendant continues to distribute the Products on or after January 1, 2028, Defendant agrees to comply with 27 C.C.R. § 25603 on and after that date, and will utilize the following Short-Form Warning:



WARNING: Risk of cancer and reproductive harm from exposure to lead. See www.P65Warnings.ca.gov.

Foreign Language Requirement. Where a product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the Warning must also be provided in that language in addition to English.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b). The Defendant shall make a civil penalty payment of \$4000 as a component of this settlement. The penalty payment will be allocated by DiPirro’s counsel in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro.

1 **4. REIMBURSEMENT OF FEES AND COSTS**

2 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. The Defendant then
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
6 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
7 DiPirro and his counsel under general contract principles and the private attorney general doctrine
8 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
9 execution of this agreement. The Defendant shall pay a total of \$ 52,000 for fees and costs incurred
10 as a result of investigating, working with toxicology experts, bringing this matter to the Defendant’s
11 attention, document preparation, negotiating a settlement in the public interest, and post-settlement
12 audit and compliance work.

13 **5. PAYMENT AND FORM 1099**

14 **5.1 Payment.** The complete settlement payment in the amount of \$56,000 shall be made in
15 two payments made over sixty days. The first payment of \$28,000 (\$4,000 penalty and \$24,000
16 toward fees and costs) shall be made within 30 days of the Effective Date, to the bank account of
17 Jeremy Fietz, Attorney at Law (via wire transfer, or ACH payment; number provided upon request)
18 or by physical check to the office of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123,
19 Santa Rosa CA, 95405, and for the latter option shall be in the form of a check made payable to:
20 “Jeremy Fietz, Attorney at Law.” The second payment for \$28,000 (for remaining fees and costs)
21 shall be made within 60 days of the Effective Date. For any payment that is returned for any reason,
22 including insufficient funds, a payment must be made in form of a cashier’s check within three (3)
23 calendar days of notification of insufficient funds, plus a 10% service fee paid to DiPirro’s attorneys.
24 Any payment that is not actually received by the due date will also be subject to a 10% late fee.

25 **5.2 Issuance of 1099 Form.** The Defendant shall provide DiPirro’s counsel, Jeremy
26 Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall be
27 made on the Form 1099 MISC with the amount reported in box 10 (“Gross proceeds paid to an
28 attorney”). The Defendant acknowledges that 1099 shall NOT be issued under form 1099 NEC. A

1 W9 shall be provided by Jeremy Fietz, Attorney-at-Law after this Agreement has been fully
2 executed by the Parties to this agreement.

3 **6. CLAIMS COVERED AND RELEASED**

4 **6.1 DiPirro's Public Release of Proposition 65 Claims**

5 DiPirro, acting on his own behalf and in the public interest, releases Defendant, any persons
6 or entities identified on any of the Notices as an alleged violator, retailer, manufacturer, or
7 distributor (collectively, "Noticed Parties"), and each of the respective officers, directors,
8 shareholders, employees, attorneys, representatives, shareholders, subsidiaries, affiliates, parents,
9 divisions, successors, assigns, insurers, dealers, distributors, retailers, and customers of Defendant
10 (collectively, "Affiliates"), and any other person or entity to whom Defendant directly or indirectly
11 distributes or sells the Products collectively with Defendant, and Affiliates, (the "Releasees"), from
12 all claims for violations of Proposition 65 up through the Effective Date based on exposures to the
13 Listed Chemical from the use of any Products, as set forth in the Notices and the Complaint.
14 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
15 with respect to exposures to the Listed Chemical from the use of the Products sold by Defendant
16 after the Effective Date, as set forth in the Notices.

17 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
18 65 with respect to exposures to Listed Chemical from the use of the Products sold by Defendant after
19 the Effective Date, as set forth in the Notices.

20 **6.2 DiPirro's Individual Release of Claims**

21 In further consideration of the promises and agreements herein contained, DiPirro, *not* in his
22 representative capacity, but on behalf of himself and his past and current agents, representatives,
23 attorneys, successors, and assigns, hereby waives all rights to institute or participate in, directly or
24 indirectly, any form of legal action, and releases any and all actions, causes of action, obligations,
25 costs, expenses, fees, attorneys' fees, fines, penalties, damages, losses, claims, suits, liabilities, and
26 demands that he has or may have against Defendant and/or any other Releasee, of any nature,
27 character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
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1 actual exposures to the Listed Chemical from the use of any of the Products sold or distributed for
2 sale by Defendant in the State of California before the Warning Date.

3 DiPirro, in his individual capacity and not in his representative capacity, waives and
4 relinquishes all rights and benefits of California Civil Code section 1542 with respect to any and
5 claims relating to the Products and/or the Notices, and does so understanding and acknowledging the
6 significance and consequence of specifically waiving section 1542. California Civil Code § 1542
7 states as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
11 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

12 Thus, notwithstanding the provisions of section 1542, DiPirro expressly acknowledges this
13 Consent Judgment is intended to include in its effect, without limitation, all claims relating to the
14 Products and/or the Notices that DiPirro does not know or suspect to exist in his favor at the time of
15 signing this Consent Judgment, and that this Consent Judgment contemplates the extinguishment of
16 any such claims.

17 **6.3 Defendant's Release of DiPirro**

18 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
19 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
20 DiPirro and his attorneys and other representatives, for any and all actions taken or statements made
21 (or those that could have been taken or made) by DiPirro and his attorneys and other
22 representatives, whether in the course of investigating claims, otherwise seeking to enforce
23 Proposition 65 against it in this matter, or with respect to the Products.

24 **7. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and shall
26 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
27 has been fully executed by all Parties.
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1 **8. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
3 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be
4 adversely affected.

5 **9. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
8 rendered inapplicable by reason of law generally, or as to the Products, then Defendant may provide
9 written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant
10 to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.
11 Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to
12 comply with any pertinent state or federal toxics control laws.

13 **10. NOTICES**

14 Unless specified herein, all correspondence and notices required to be provided pursuant to
15 this Consent Judgment shall be both by email and in writing and sent by: (i) personal delivery; (ii)
16 first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier
17 on any party by the other party at the following addresses:

18 For Nixalite of America Inc.:

19 Dennis Raglin
20 Carlton Fields
21 2029 Century Park East, Suite 1200
22 Los Angeles, CA, 90067-2913

23 For Plaintiff DiPirro:

24 Jeremy Fietz, Attorney-at-Law
25 4241 Montgomery Drive, #123
26 Santa Rosa CA 95405

27 Any party may, from time to time, specify in writing to the other party a change of address to
28 which all notices and other communications shall be sent.

11. ENTIRE AGREEMENT; COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment contains the entire and only agreement between the Parties and any

1 and all prior negotiations and understandings related hereto shall be deemed to have been merged
2 within it. There are no representations or terms of agreement made by any Party with respect to the
3 subject matter hereof or the other Party except for those contained in this Consent Judgment. This
4 Consent Judgment may be executed in counterparts, and by facsimile or portable document format
5 (PDF) signature, each of which shall be deemed an original, and all of which, when taken together,
6 shall constitute one and the same document.

7 **12. POST EXECUTION ACTIVITIES**

8 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
9 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
10 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
11 of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and
12 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain
13 judicial approval of the settlement in a timely manner.

14 **13. MODIFICATION**

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

18 **14. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
20 Parties and have read, understood and agree to all of the terms and conditions of this Consent
21 Judgment.

22 **15. RETENTION OF JURISDICTION AND ENFORCEMENT**

23 This Court shall retain jurisdiction of this matter to implement and enforce the terms of this
24 Consent Judgment under Code of Civil Procedure § 664.6. Public agency prosecutors may enforce
25 the settlement under H&S §25249.7(c) and private party enforcers acting "in the public interest" may
26 enforce the settlement under H&S §25249.7(d).

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1 DiPirro represents and warrants neither he nor his agents or attorneys have assigned or
2 otherwise transferred, or attempted to assign, or transfer, any claim or claims against Defendant.
3 DiPirro further warrants that neither he nor his agents or attorneys are aware of any other potential
4 private enforcer or attorney who intends to bring litigation based on the 60-Day Notice.

5 AGREED TO:

6 Date: April 3, 2026

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8 By: 

9 MICHAEL DIPIRRO

AGREED TO:

Date: March 24, 2026

By: 

Nixalite of America, Inc.

Print Name: Cory A. Gellerstedt

Title: President

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13 **SO ORDERED:**

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15 **DATED:**

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17 **ALAMEDA COUNTY SUPERIOR COURT**

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19 _____