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15 Attorneys for Defendants
NCH CORPORATION and DANCO, INC.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF ALAMEDA

18 JOHN MOORE,
19 Plaintiff,

20 v.

21 NCH CORPORATION, *et al.*,
22 Defendants.

23 GABRIEL ESPINOSA,
24 Plaintiff,

25 v.

26 DANCO, INC., *et al.*,
27 Defendants.
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For Entry in Case Nos. RG15780151 and
RG15789612

**[PROPOSED] CONSENT
JUDGMENT**

(HEALTH & SAFETY CODE §
25249.6 ET SEQ. AND CODE OF
CIVIL PROCEDURE § 664.6)

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1. INTRODUCTION

1.1 This Consent Judgment is entered into by plaintiffs John Moore (“Moore”) and Gabriel Espinosa (“Espinosa”), and defendants NCH Corporation, Danco, Inc (collectively, “Defendants”) to settle claims asserted by Moore and Espinosa against Defendants as set forth in their respective complaints filed in *John Moore v. NCH Corporation, et al.* (Alameda County Superior Court Case No. RG15780151), and *Gabriel Espinosa v. Danco Inc., et al.* (Alameda County Superior Court Case No. RG15789612) (collectively, the “Actions”). Espinosa, Moore, and Defendants are each referred to individually as a “Party” and collectively as the “Parties.”

1.2 On May 21, 2015, Moore served a “Notice of Violation” of the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) (the “Moore Notice”) to Defendants NCH Corporation, Inc. and Danco, Inc., 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. The Moore Notice alleges violations of Proposition 65 with respect to the presence of di(2-ethylhexyl)phthalate (“DEHP”) in vinyl/PVC hoses that are manufactured, sold, and/or distributed for sale in California by Defendants.

1.3 On June 3, 2015, Espinosa served a “Notice of Violation” of Proposition 65 (the DEHP “Espinosa Notice”) to Defendants Danco, Inc., and Orchard Supply Hardware Stores Corporation, and Orchard Supply Company, LLC, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in State of California with a population greater than 750,000. The Espinosa Notice alleges violations of Proposition 65 with respect to the presence of DEHP in Danco’s kitchen sink spray heads and hoses that are manufactured, distributed, and/or sold by Defendants. The Moore Notice and Espinosa Notice are referred to collectively as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting any of the alleged violations that are the subject of the Notices.

1 **1.4** Each Defendant is a corporation that employs ten (10) or more persons and that
2 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of
3 California.

4 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
5 Court has jurisdiction over the claims alleged in the Notices and Complaints and personal
6 jurisdiction over Defendants as to the acts alleged in the Complaints; (ii) venue is proper in
7 Alameda County; and (iii) this Court has jurisdiction to enter and enforce this Consent Judgment
8 pursuant to Proposition 65 and Code of Civil Procedure section 664.6 as a full and final
9 resolution of all claims which were or could have been raised in the Complaints, based on the
10 facts alleged in the Notices and Complaints with respect to Covered Products manufactured,
11 distributed, and/or sold by Defendants.

12 **1.6** The Parties enter into this Consent Judgment as a full and final settlement of all
13 claims that were or could have been raised in the Complaints arising out of the facts or conduct
14 related to Defendants alleged therein. By executing this Consent Judgment and agreeing to
15 comply with its terms, the Parties do not admit any fact, conclusion of law, or violation of law,
16 nor shall compliance with the Consent Judgment constitute or be construed as an admission by
17 the Parties of any fact, conclusion of law, or violation of law. Defendants deny the material,
18 factual, and legal allegations in the Notices and Complaints and expressly deny any wrongdoing
19 whatsoever. Except as specifically provided herein, nothing in this Consent Judgment shall
20 prejudice, waive, or impair any right, remedy, argument, or defense any Party may have in this
21 or any other pending or future legal proceedings. This Consent Judgment is the product of
22 negotiation and compromise and is accepted by the Parties solely for purposes of settling,
23 compromising, and resolving issues disputed in these Actions.

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1 **2. DEFINITIONS**

2 **2.1** “Covered Products” means products with vinyl/PVC hoses, tubing and/or spray
3 heads, and faucet connectors containing DEHP that are sold or distributed by Defendants
4 including, but not limited to, the Danco Kitchen Sink Spray Hose & Head Assembly, #80762,
5 UPC #037155003976, and the Danco Kitchen Sink Spray Hose & Head Assembly, #80762, UPC
6 0371555807628.

7 **2.2** “Effective Date” means the date that the Court grants the motion for approval of
8 this Consent Judgment contemplated by Section 6.

9 **2.3** “Reformulated Products” are Covered Products that comply with the DEHP
10 Limit established by this Consent Judgment.

11 **3. INJUNCTIVE RELIEF**

12 **3.1 Commitment to Reformulate or Warn**

13 Commencing within 60 days of the Effective Date and continuing thereafter, Defendants
14 agree to only manufacture, distribute or purchase for sale in California: (a) “Reformulated
15 Products”, or (b) products that bear a clear and reasonable health hazard warning, pursuant to
16 section 3.3 below. For purposes of this consent judgment, “Reformulated Products” are defined
17 as Covered Products with a maximum DEHP concentration of 0.1 percent (1,000 parts per
18 million) when analyzed pursuant to U.S. environmental protection agency testing methodologies
19 3580a and 8270c, or other methodologies utilized by state or federal agencies for the purpose of
20 determining DEHP content in a solid substance.

21 **3.2 Covered Products in the Stream of Commerce**

22 Covered Products that have already been manufactured, distributed, shipped or sold, or
23 that are otherwise in the stream of commerce prior to the Effective Date shall be released from
24 any and all claims that were brought or that could have been brought by Plaintiffs in this action,
25 as Covered Products within the meaning of this Consent Judgment.

26 **3.3 Clear and Reasonable Warnings**

27 Defendants agree that all Covered Products they sell and/or distribute for sale in
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1 California after the Effective Date which are not released in Section 3.2 above, or do not qualify
2 as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section.

3 Defendants further agree that the warning will be prominently placed with such
4 conspicuousness when compared with other words, statements, designs, or devices as to render it
5 likely to be read and understood by an ordinary individual under customary conditions before
6 purchase or use, and shall be included with or within the unit package of the Covered Products or
7 affixed to the Covered Products. Such warning shall be prominently affixed to or printed on each
8 Covered Product's label or package, or on the Covered Product itself. If printed on the label, the
9 warning shall be contained in the same section that states other safety warnings, if any,
10 concerning the use of the Covered Product; Defendants may continue to utilize, on an ongoing
11 basis, unit packaging containing substantively the same Proposition 65 warnings as those set forth
12 below, but only to the extent such packaging materials have already been printed within ninety
13 days of the Effective Date. The warning shall contain the following statement:

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

16 **4. PENALTIES AND PAYMENTS**

17 **4.1 Payments to Espinosa**

18 Defendants shall make payments to Espinosa in the total sum of ten thousand dollars
19 (\$10,000), which shall be allocated as follows:

20 **4.1.2** \$1,000 shall constitute a penalty pursuant to Cal. Health & Safety Code §
21 25249.7(b), such money to be apportioned by Espinosa in accordance with Cal. Health & Safety
22 Code § 25249.12.

23 **4.1.3** \$9,000 shall constitute reimbursement of Espinosa's reasonable attorneys'
24 fees and costs.

25 **4.1.4** The payments required under this Section shall be made in two separate
26 checks. All of the payments shall be sent within two days following the Effective Date. The
27 payments required pursuant to Section 4.1.1 shall be made payable to "Gabriel Espinosa, Client
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1 Trust Account” and mailed to the address set forth in Section 9 below. Espinosa’s counsel shall
2 be responsible for remitting Defendant’s penalty payment under this Consent Judgment to the
3 California Office of Environmental Health Hazard Assessment (“OEHHA”). The payment
4 required pursuant to Section 4.1.2 shall be made payable to “Brodsky & Smith, LLC” and mailed
5 to address set forth in Section 4.4.2 below.

6 **4.2 Payments to Moore**

7 Defendants shall pay to Moore the total sum of thirty thousand five hundred dollars
8 (\$30,500), which shall be allocated as follows:

9 **4.2.1** \$3,000 shall constitute a penalty pursuant to Cal. Health & Safety Code §
10 25249.7(b), such money to be apportioned by Moore in accordance with Cal. Health & Safety
11 Code § 25249.12.

12 **4.2.2** \$27,500 shall constitute reimbursement of Moore’s reasonable attorneys’
13 fees and costs.

14 **4.2.3** The payments required under this Section shall be made in three separate
15 checks. All of the payments shall be sent within two days following the Effective Date. The
16 payments required pursuant to Section 4.2.1 will be allocated in accordance with California
17 Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted
18 to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
19 remaining 25% of the penalty amount paid to Plaintiff. Defendants will provide payments
20 required pursuant to Section 4.2.1 in two checks for the following amounts made payable to: (a)
21 “OEHHA” in the amount of \$2,250; and (b) “John Moore, Client Trust Account” in the amount
22 of \$750. Moore’s counsel shall be responsible for remitting Defendants’ penalty payment under
23 this Consent Judgment to OEHHA. The payment required pursuant to Section 4.2.2 shall be
24 made payable to “The Chanler Group.” All settlement payments to Moore and his counsel under
25 this Consent Judgment shall be mailed to address set forth in Section 4.4.1, below.

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1 **4.3 Payment Timing; Payments Held In Trust**

2 Defendants shall deliver all settlement payments due under this Consent Judgment to their
3 counsel within one month of the date that this agreement is fully executed by the Parties.
4 Defendants’ counsel shall confirm receipt of settlement funds in writing to Plaintiffs’ counsel and,
5 thereafter, hold the amounts paid in trust until such time as the Court grants the motion for approval
6 of the Parties’ settlement contemplated by Section 6. Within two days of the Effective Date,
7 Defendants’ counsel shall deliver all settlement payments they have held in trust to Moore’s and
8 Espinosa’s counsel at the addresses provided in Section 4.4, below.

9 **4.4 Payment Addresses**

10 **4.4.1** All payments to Moore and his counsel shall be delivered to:

11 The Chanler Group
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

16 **4.4.2** All payments to Espinosa and his counsel shall be delivered to:

17 Brodsky & Smith, LLC
18 Attn: Proposition 65 Controller
19 9595 Wilshire Blvd., Ste. 900
20 Beverly Hills, CA 90212

21 **5. CLAIMS COVERED AND RELEASED**

22 **5.1 Plaintiffs’ Release of Proposition 65 Claims**

23 Moore and Espinosa, each acting on his own behalf and in the public interest, hereby
24 release Defendants and their parents, subsidiaries, affiliated entities under common ownership,
25 directors, officers, employees, and attorneys (“Releasees”) and each entity to whom they directly
26 or indirectly distribute or sell the Covered Products including, but not limited to, their
27 downstream distributors, wholesalers, customers retailers (including, without limitation, HD
28 Supply, Inc., Orchard Supply Hardware Stores Corporation and Orchard Supply Company, LLC),
and related entities, franchisers, cooperative members, licensors and licensees (“Downstream
Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DEHP
from the Covered Products manufactured, imported, distributed or sold by Defendants prior to the

1 Effective Date, as set forth in the Notices. Compliance with the terms of this Consent Judgment
2 constitutes compliance with Proposition 65 by Defendants with respect to the alleged or actual
3 failure to warn about exposures to DEHP from Products manufactured, sold, or distributed for
4 sale by Defendants after the Effective Date.

5 **5.2 Plaintiffs' Individual Release of Claims**

6 Moore and Espinosa, each in his individual capacity only and *not* in any representative
7 capacity, also provide releases to Defendants, Releasees, and Downstream Releasees which shall
8 be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
9 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
10 Moore and Espinosa of any nature, character, or kind, whether known or unknown, suspected or
11 unsuspected, arising out of alleged or actual exposures to DEHP in Products manufactured,
12 imported, distributed or sold by Defendants before the Effective Date.

13 **5.3 Defendants' Release of Moore and Espinosa**

14 Defendants, each on its own behalf and on behalf of its past and current agents,
15 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against
16 Moore and Espinosa and their attorneys and other representatives, for any and all actions taken or
17 statements made by Moore and Espinosa and their attorneys and other representatives in the
18 course of investigating claims, seeking to enforce Proposition 65 against them in this matter, or
19 with respect to the Covered Products.

20 **5.4 Mutual Waiver of California Civil Code Section 1542**

21 The Parties each acknowledge that he/it is familiar with Section 1542 of the Civil Code,
22 which provides as follows:

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

1 The Parties, each on his/its own behalf, and on behalf of his/its past and current agents,
2 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and
3 all rights and benefits which they may have under, or which may be conferred upon them by the
4 provisions of Civil Code section 1542 as well as under any other state or federal statute or
5 common law principle of similar effect, to the fullest extent he/it may lawfully waive such rights
6 or benefits pertaining to the released matters, as specifically defined by Sections 5.1 through 5.3,
7 above.

8 **6. COURT APPROVAL**

9 **6.1** This Consent Judgment shall take effect on the Effective Date. The Parties
10 acknowledge that pursuant to Health and Safety Code section 25249.7(f), they must obtain court
11 approval of their settlements upon a noticed motion. Espinosa and Moore shall cooperate on the
12 preparation and filing of the papers necessary to obtain court approval of this Consent Judgment,
13 and Defendants shall support the motion, and the approval and entry of this Consent Judgment as
14 a judgment in each Plaintiff's respective action, by replying to any opposition or objection to the
15 settlement which may be made, if any, and by appearing at the hearing on the motion if so
16 requested.

17 **6.2** If this Consent Judgment is not entered by the Court, it shall be of no force or
18 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
19 purpose.

20 **7. SEVERABILITY**

21 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
22 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
23 remaining provisions shall not be adversely affected.

24 **8. ENFORCEMENT OF CONSENT JUDGMENT**

25 Any party may, by motion, application for an order to show cause, or any other procedure
26 available at law, enforce the terms and conditions of this Consent Judgment. Prior to bringing a
27 motion or application to enforce the requirements of Sections 3, above, Espinosa and/or Moore
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1 shall provide Defendant(s) with a notice of violation and a copy of any test result, purchase
2 receipt, or any other documentation which purportedly supports Plaintiff(s) claimed breach or
3 violation. The Parties shall then meet and confer for a period of not less than thirty (30) days in
4 an attempt to resolve the alleged breach or violation informally, including providing Defendants
5 a reasonable opportunity of at least thirty (30) days to cure any alleged violation to the plaintiff
6 or plaintiffs' reasonable satisfaction. Should such attempts at informal resolution fail, Espinosa
7 and/or Moore may file his motion or application to enforce. The prevailing party on any motion
8 to enforce this Consent Judgment shall be entitled to recover his/its reasonable attorneys' fees
9 and costs incurred as a result of such motion or application. This Consent Judgment may only be
10 enforced by the Parties.

11 **9. GOVERNING LAW AND CONSTRUCTION**

12 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. In the event that Proposition 65 is repealed,
14 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
15 Products, then Defendant(s) may provide Plaintiff(s) with written notice of any asserted change
16 in the law, and shall have no further injunctive obligations pursuant to this Consent Judgment,
17 with respect to, and to the extent that, the Products are so affected.

18 **10. ENTIRE AGREEMENT**

19 **10.1** This Consent Judgment contains the sole and entire agreement and understanding
20 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.

22 **10.2** There are no warranties, representations, or other agreements between any Party or
23 Parties except as expressly set forth herein. No representations, oral or otherwise, express or
24 implied, other than those specifically referred to in this Consent Judgment have been made by any
25 Party.

26 **10.3** No other agreement not specifically contained or referenced herein, oral or
27 otherwise, shall be deemed to exist or to bind any of Party hereto. No agreement specifically
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1 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any Party
2 hereto except to the extent such agreement is expressly incorporated herein.

3 **10.4** No supplementation, modification, waiver, or termination of this Consent
4 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

5 **10.5** No waiver of any provision of this Consent Judgment shall constitute or be
6 construed to constitute a waiver of any of the other provision of this Consent Judgment, whether
7 or not similar, nor shall any such waiver constitute a continuing waiver.

8 **11. RETENTION OF JURISDICTION**

9 This Court shall retain jurisdiction of this matter to enforce, implement or modify the
10 Consent Judgment, pursuant to California Code of Civil Procedure §664.6 and Proposition 65.

11 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

12 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
13 Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
14 Consent Judgment on behalf of the Party represented, and to legally bind that Party.

15 **13. NO EFFECT ON OTHER SETTLEMENTS**

16 Nothing in this Consent Judgment shall preclude Espinosa and/or Moore from resolving
17 any claim against another entity on terms that are different than those contained in this Consent
18 Judgment.

19 **14. NOTICE**

20 Unless specified herein, all correspondence and notice required by this Consent Judgment
21 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
22 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
23 following addresses:

1 For NCH:

2 Michael J. Near, Regulatory Affairs Counsel
3 NCH Corporation
4 2727 Chemsearch Boulevard
5 Irving, TX 75062

For Moore:

Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

6 For Danco:

7 Michael J. Near
8 Danco Inc.
9 2727 Chemsearch, Boulevard
10 Irving, TX 75062

For Espinosa:

Attn: Proposition 65 Coordinator
Brodsky & Smith, LLC
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

11 With a copy to:

12 Lee Norman Smith, Esq.
13 Perkins, Mann & Everett
14 7815 North Palm Ave., Suite 200
15 Fresno CA 93711

16 **15. EXECUTION IN COUNTERPARTS**

17 This Consent Judgment may be executed in counterparts and by means of facsimile,
18 which taken together shall be deemed to constitute one document.

19 **16. COMPLIANCE WITH REPORTING REQUIREMENTS**

20 Plaintiffs and their counsel agree to comply with the reporting form requirements
21 referenced in California Health and Safety Code section 25249.7(f).

22 **17. MODIFICATION OF CONSENT JUDGMENT**

23 This Consent Judgment may only be modified by a written agreement of the Parties and
24 the subsequent entry of an order by the Court approving such modification, or upon motion
25 brought by Espinosa, Moore, or Defendants, as provided by law, and the subsequent entry of a
26 modified judgment by the Court thereon. The Parties agree and understand that the Office of the
27 Attorney General of the State of California shall receive notice of any effort by any Party or the
28 Parties to seek any modification of the terms of this Consent Judgment.

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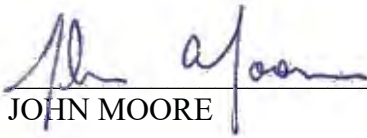
18. AUTHORIZATION

The undersigned are authorized to 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.

[*Signatures of Parties Attached on Following Page(s)*]

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AGREED TO:



JOHN MOORE

Dated: 9/2/2016

AGREED TO:

NCH CORPORATION

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

GABRIEL ESPINOSA

Dated: _____

DANCO, INC.

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

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AGREED TO:

JOHN MOORE

Dated: _____

GABRIEL ESPINOSA

Dated: _____

AGREED TO:

Ester Zylow
NCH CORPORATION

By: *EDITH MOORE*
(Print Name)

Its: *Assistant Secretary*
(Title)

Dated: _____

Craig Cain
DANCO, INC.

By: *CRAIG CAIN*
(Print Name)

Its: *COO*
(Title)

Dated: *9/7/16*

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AGREED TO:

JOHN MOORE

Dated: _____



GABRIEL ESPINOSA

Dated: 9/2/2016

AGREED TO:

NCH CORPORATION

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

DANCO, INC.

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____