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ORIGINAL FILED

MAR 02 2017

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a
California limited liability company,

Plaintiff,

v.

VALTERRA PRODUCTS, LLC, a
Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No. BC644475

~~PROPOSED~~ JUDGMENT

~~PROPOSED~~ JUDGMENT

1
2 Plaintiffs ECOLOGICAL ALLIANCE, LLC ("Plaintiff"), and Defendant VALTERRA
3 PRODUCTS, LLC ("Defendant") have agreed through their respective counsel that judgment be
4 entered in this Proposition 65 action pursuant to the terms of the Stipulated Consent Judgment
5 executed by the parties and attached to this Judgment as **Exhibit 1**. After consideration of the
6 papers submitted and arguments presented, the Court finds that the Stipulated Consent Judgment
7 meets the criteria established by California Health & Safety Code § 25249.7, in that:

- 8 1. Any injunctive relief required by the Stipulated Consent Judgment complies with
9 Proposition 65;
10 2. Any reimbursement of attorneys' fees and costs pursuant to the Stipulated Consent
11 Judgment is reasonable under California law; and
12 3. Based on the criteria set forth in Health & Safety Code § 25249.7(b)(2), any civil
13 penalty required by the Stipulated Consent Judgment is reasonable.

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &
15 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in
16 accordance with the terms of the Consent Judgment attached hereto as Exhibit 1.

17 Dated: MAR 02 2017
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19 STEPHANIE M. BOWICK
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JUDGE OF THE SUPERIOR COURT
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ORIGINAL FILED

MAR 02 2017

**LOS ANGELES
SUPERIOR COURT**

1 MIGUEL A. CUSTODIO, JR., STATE BAR NO. 248744
2 VINEET DUBEY, STATE BAR NO. 243208
3 CUSTODIO & DUBEY LLP
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6 Telephone: (213) 785-2909
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8 Attorneys for Plaintiff Ecological Alliance, LLC

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 (Unlimited Jurisdiction)

13 ECOLOGICAL ALLIANCE, LLC, a California
14 limited liability company,

Case No.:BC644475

15 Plaintiff,

**~~[PROPOSED]~~ STIPULATED
CONSENT JUDGMENT**

16 v.

17 VALTERRA PRODUCTS, LLC, a Delaware
18 limited liability company; and DOES 1 through
19 10, inclusive,

20 Defendants.

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~~[PROPOSED]~~ STIPULATED CONSENT JUDGMENT

1
2 Plaintiff Ecological Alliance, LLC ("Plaintiff"), and Defendant Valterra Products, LLC
3 ("Defendant")(collectively the "Parties") hereby enter into this Stipulated Consent Judgment
4 ("Consent Judgment") as follows:

5 WHEREAS: On or about September 12, 2016, Plaintiff, through Plaintiff's counsel,
6 served a 60 Day Notice to Defendant (the "Notice"), the California Attorney General, the District
7 Attorneys of every County in the State of California, and the City Attorneys for every City in the
8 State of California with a population greater than 750,000 (collectively, "Public Prosecutor(s)")
9 alleging that Defendant violated California Health & Safety Code §§ 25249.6 *et seq.*, entitled
10 Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), and that Plaintiff
11 intended to file an enforcement action in the public interest; and

12 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed faucet
13 products and/or parts containing brass stems and/or other components for sale in California
14 (collectively the "Covered Products") that expose consumers in the State of California to
15 chemicals including lead that are listed by the State of California pursuant to California Health
16 and Safety Code § 25249.8 (Listed Chemicals"); and

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

21 WHEREAS: Defendant denies Plaintiff's claims and allegations and maintains that its
22 products, including the Covered Products, are distributed in full compliance with all applicable
23 laws and are completely safe for their intended use; and

24 WHEREAS: Plaintiff and Defendant acknowledge that this matter involves disputed
25 claims and wish to resolve their differences without incurring the time and expense of litigation,
26 and with no admission of liability or the validity of any claim or defense.

27 NOW THEREFORE PLAINTIFF ACTING IN THE PUBLIC INTEREST AND
28 DEFENDANT STIPULATE TO THE FOLLOWING CONSENT JUDGMENT AS FOLLOWS:

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3 **1. INTRODUCTION**

4 1.1. On September 12, 2016, Plaintiff served the 60-Day Notice upon Defendant and
5 on Public Prosecutors. To the best of the Parties knowledge, no Public Prosecutor is
6 diligently prosecuting the claim, and Plaintiff filed its Complaint against Defendant in the
7 present action.

8 1.2. Plaintiff alleges that Defendant employs ten (10) or more persons.

9 1.3. For purposes of this Consent Judgment only, the Parties stipulate that: (1) this
10 Court has jurisdiction over Defendant as to the alleged violations contained in the
11 Complaint; (2) venue is proper in the County of Los Angeles; and (3) this Court has
12 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims
13 which were or could have been raised in the Notice and Complaint, and of all claims
14 which were or could have been raised by any person or entity based in whole or in part,
15 directly or indirectly, on the facts alleged in the Notice, in the present action, or arising
16 therefrom or related thereto, with respect to Covered Products, including any Proposition
17 65 claim arising out of an exposure to Covered Products (collectively, the "Claims").

18 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
19 Claims, and release of all of Defendants' customers, including but not limited to
20 Amazon.com, Inc. and all other retail outlets who sold the Covered Products, for the
21 purpose of avoiding prolonged and costly litigation and resolving the issues raised
22 therein, both as to past and future conduct. By execution of this Consent Judgment, the
23 Parties do not admit any fact, conclusion of law, issue of law, or violation of law, nor
24 shall Defendant's compliance with the Consent Judgment constitute or be construed as an
25 admission by Defendant of any fact, conclusion of law, issue of law, or violation of law.
26 Defendant denies the material, factual, and legal allegations in the Notice and Complaint,
27 expressly denies any wrongdoing whatsoever, and maintains that all of the products it
28 sells comply with all laws and are completely safe for their intended use.

2. DEFINITIONS

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2 2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date on
3 which the Consent Judgment is approved and entered by the Court.
4

5 3. INJUNCTIVE RELIEF

6 3.1. Defendant agrees to either undertake, or cause to be undertaken on its behalf, the
7 measures identified in 3.2-3.5 below, compliance with which shall constitute compliance
8 by Defendant with all requirements of Proposition 65, California Health and Safety Code
9 § 25249.6, *et seq.*, and its implementing regulations (collectively, "Proposition 65") with
10 respect to the Covered Products sold in California:

11 3.2. Proposition 65 Compliance for the Covered Products

12 Any Covered Product that is distributed sold, or offered for sale in the State of
13 California commencing 90 days after the Effective Date, shall be deemed to comply with
14 Proposition 65 and be exempt from any Proposition 65 warning requirements, with
15 respect to lead, if no Accessible Component Part of such Covered Product contains more
16 than 100 parts per million ("ppm") of lead. For purposes of this Consent Judgment,
17 "Accessible Component Part" shall mean components of the Covered Products to which a
18 person would be exposed to lead by direct contact during reasonably foreseeable use of
19 the Covered Product.

20 3.3. Warning Option

21 Covered Products offered for sale in California that do not meet the 100 ppm lead
22 standard set forth in Section 3.2 above shall be accompanied by a warning as described in
23 Section 3.4 below. This warning shall only be required as to Covered Products that are
24 manufactured for sale in the State of California, commencing 90 days after the Effective
25 Date. No Proposition 65 warning for lead shall be required as to any Covered Products
26 that are already in the stream of commerce as of the Effective Date, and all such Covered
27 Products are hereby deemed to be exempt from Proposition 65 warning requirements
28 with respect to lead.

1
2 3.4. Warning Language

3 Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of
4 the following warning statements on or within the unit packaging or labeling of the Covered
5 Products, or affixed to the Covered Products, displayed in such a manner as to be reasonably
6 calculated to be seen by the ordinary consumer:

7 [California Proposition 65] **WARNING:** This product contains chemicals
8 known to the state of California to cause cancer, and birth defects or other
9 reproductive harm.

10 [California Proposition 65] **WARNING:** This product may expose you to
11 chemicals including lead known to the State of California to cause
12 cancer, and birth defects or other reproductive harm. For more
information go to www.P65warnings.ca.gov

13 Language in brackets may be used at Defendant's option.

14 **4. MONETARY RELIEF**

15 4.1. Within ten (10) days of the date that Defendant receives Notice of Entry of the
16 Consent Judgment, Defendant shall pay to Plaintiff the total all inclusive sum of
17 \$32,000.00, which shall be allocated as \$6,000.00 in civil penalties and \$26,000.00 in
18 payment of all of Plaintiff's costs and reasonable attorney's fees of any kind for all work
19 performed through the Court's entry of this Consent Judgment. The \$6,000.00 civil
20 penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d),
21 with 75% paid to the State of California's Office of Environmental Health Hazard
22 Assessment, and 25% paid to Plaintiff. Plaintiff shall be solely responsible for
23 transmitting to OEHHA its share of the civil penalty.

24 4.2. The \$32,000 payment specified in Section 4.1. shall be made by wire transfer to
25 Plaintiff's counsel Custodio & Dubey LLP:

26 Bank: Bank of America, N.A.
27 Routing Transit No.: 026009593
28 Account No.: 325054144600
Beneficiary: Custodio & Dubey LLP

5. CLAIMS COVERED AND RELEASE

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2 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
3 behalf of itself, and acting in the public interest, and Defendant of any alleged violation
4 of Proposition 65, and its implementing regulations, for failure to provide Proposition 65
5 warnings for the Covered Products with respect to lead, and fully resolves all claims that
6 have been brought, or which could have been brought in this action, or in any other
7 action, for Covered Products manufactured up to 90 days after the Effective Date.
8 Plaintiff on behalf of itself, and in the public interest, hereby releases and discharges
9 Defendant, and its current and former parent companies, subsidiaries, divisions,
10 suppliers, affiliates, importers, distributors, franchisees, and retailers (including, without
11 limitation, Amazon.com, and it's current and former parent companies, subsidiaries,
12 divisions, suppliers, affiliates, importers, distributors and retailers, licensees and related
13 entities), licensees, and related entities, together with their current and former officers,
14 directors, shareholders, employees, representatives, contractors, agents, divisions,
15 insurers, successors, assigns and attorneys, as well as all other upstream and downstream
16 entities in the distribution chain for any of the Covered Products, and the predecessors,
17 successors, and assigns of each of them (all of the foregoing entities and individuals
18 being referred to collectively herein as the "Released Parties"), from any and all claims,
19 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and
20 expenses asserted, or that could have been asserted, with respect to any alleged violation
21 of Proposition 65 arising from the failure to provide Proposition 65 warnings about
22 exposure to lead for any or all of the Covered Products, through and including the
23 Effective Date.

24 5.2. Plaintiff, acting on its own behalf, and in the public interest pursuant to California
25 Health and Safety Code § 25249.7(d), releases, waives, and forever discharges any and
26 all claims against the Released Parties arising from any violation of Proposition 65 that
27 has been or could have been asserted in the public interest regarding the failure to warn
28 under Proposition 65 arising in connection with exposure to lead from the Covered

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2 Products, manufactured, imported, distributed, offered for sale, sold and/or distributed in
3 the State of California by Released Parties up to 90 days after the Effective Date.

4 5.3. It is possible that other claims not known to the Parties arising out of the facts
5 alleged in the Notice and/or in the Complaint, relating to the Covered Products, will
6 hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand,
7 and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly
8 intended to cover and include all such claims through and including Covered Product
9 manufactured up to 90 days after the Effective Date, including all rights of action
10 therefore. Plaintiff and Defendant acknowledge that the claims released herein may
11 include unknown claims, and nevertheless intend to release all such claims, and in doing
12 so waive California Civil Code § 1542 (or any other similar provision of state or federal
13 law) which reads as follows:

14
15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
16 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
17 EXIST IN HIS OR HER FAVOR AT THE TIME OF
18 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
19 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
20 SETTLEMENT WITH THE DEBTOR.

21 5.4. Plaintiff understands and acknowledges that the significance and consequence of
22 this waiver of California Civil Code § 1542 or any similar provision of state or federal
23 law is that even if Plaintiff suffers future damages arising out of or resulting from, or
24 related directly or indirectly to, in whole or in part, the Covered Products, including but
25 not limited to any exposure to, or failure to warn with respect to exposure to, the Covered
26 Products, Plaintiff will not be able to make any claim for those damages against any of
27 the Released Parties.

28 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute
compliance with Proposition 65 with respect to exposure to lead in the Covered Products.

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3 **6. PROVISION OF NOTICE**

4 6.1. When any Party is entitled to receive any notice or writing under this Consent
5 Judgment, the notice or writing shall be sent by first class certified mail with return
6 receipt requested, or other form of verifiable overnight delivery, as follows:

7 To Defendant:

8 Dennis Lunder
9 Valterra Products, LLC
10 15230 San Fernando Mission Blvd
11 Suite 107
12 Mission Hills, CA 91345

13 To Plaintiff:

14 Vineet Dubey
15 Custodio & Dubey LLP
16 448 S. Hill St., Ste 612
17 Los Angeles, CA 90013

18 6.2. Any Party may modify the person and address to whom the notice is to be sent by
19 sending the other Party notice that is transmitted in the manner set forth in section 6.1.

20 **7. COURT APPROVAL**

21 7.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and
22 file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that
23 Defendant shall support. This Consent Judgment shall not become effective until
24 approved and entered by the Court. If this Consent Judgment is not approved and entered
25 by the Court, it shall be of no force or effect, and shall not be introduced into evidence or
26 otherwise used in any proceeding for any purpose.

27 **8. GOVERNING LAW AND CONSTRUCTION**

28 8.1. The terms of this Consent Judgment shall be governed by the laws of the State of
California, and shall apply only to Covered Products offered for sale in the State of
California. In the event that Proposition 65 is repealed or is otherwise rendered
inapplicable by reason of law generally, or as to the Covered Products, then Defendant
may provide written notice to Plaintiff of any asserted change in the law, and shall have

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2 no further obligations pursuant to this Consent Judgment with respect to, and to the
3 extent that, the Covered Products are so affected.
4

5 9. ENTIRE AGREEMENT

6 9.1. This Consent Judgment contains the sole and entire agreement and understanding
7 of the Parties with respect to the entire subject matter herein.

8 9.2. There are no warranties, representations, or other agreements between the Parties
9 except as expressly set forth herein. No representations, oral or otherwise, express or
10 implied, other than those specifically referred to in this Consent Judgment have been
11 made by any Party hereto.

12 9.3. No other agreements not specifically contained or referenced herein, oral or
13 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
14 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or
15 to bind any of the Parties hereto only to the extent that they are expressly incorporated
16 herein.

17 9.4. No amendment, supplementation, modification, waiver, or termination of this
18 Consent Judgment shall be binding unless executed in writing by an authorized
19 representative of each Party and approved by the Court.

20 9.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
21 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
22 shall such waiver constitute a continuing waiver.

23 9.6. The Parties, including their counsel, have participated in the preparation of this
24 Consent Judgment and this Consent Judgment is the result of the joint efforts of the
25 Parties. This Consent Judgment was subject to revision and modification by the Parties
26 and has been accepted and approved as to its final form by all Parties and their counsel.
27 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
28 interpreted against any Party as a result of the manner of the preparation of this Consent
Judgment. Each Party to this Consent Judgment agrees that any statute or rule of

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2 construction providing that ambiguities are to be resolved against the drafting Party
3 should not be employed in the interpretation of this Consent Judgment and, in this regard,
4 the Parties hereby waive California Civil Code § 1654.
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6 **10. RETENTION OF JURISDICTION**

7 10.1. This Court shall retain jurisdiction of this matter to implement, enforce or modify
8 the Consent Judgment. Any Party seeking to modify this Consent Judgment or to allege a
9 violation thereof shall first attempt in good faith to meet and confer with the other Party
10 prior to filing a motion to modify the Consent Judgment.

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

12 11.1. Nothing in this Consent Judgment shall preclude Plaintiffs from resolving any
13 claim against another entity on terms that are different from those contained in this
14 Consent Judgment.

15 **12. EXECUTION IN COUNTERPARTS**

16 12.1. This Consent Judgment may be executed in counterparts, each of which shall be
17 deemed to be an original, and all of which, taken together, shall constitute the same
18 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic
19 means, shall constitute legal and binding execution and delivery. Any photocopy of the
20 fully executed Consent Judgment shall have the same force and effect as the original.

21 **13. AUTHORIZATION**

22 13.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent
23 Judgment on behalf of their respective Party, and have read, understood, and agree to all
24 of the terms and conditions of this Consent Judgment.

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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

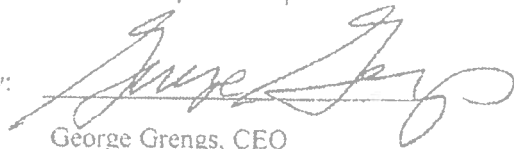
Date: 2/23/17

By: 
Harmony Welsh, Managing Member

AGREED TO:

Valterra Products, LLC

Date: 2/23/2017

By: 
George Grengs, CEO