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Superior Court Of California
County Of Los Angeles

JUL 23 2018 

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By *Shantal Lopez* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ECOLOGICAL ALLIANCE, LLC,
Plaintiff,

v.

RUBINETTERIE BRESCIANE BONOMI
S.P.A.,
Defendant.

Case No.: BC705316

CONSENT JUDGMENT

07/30/2018

1
2 **1. INTRODUCTION**

3 1.1 **The Parties.** This Consent Judgment is entered into by and between Ecological
4 Alliance, LLC acting on behalf of the public interest ("Ecological") and Rubinetterie Bresciane
5 Bonomi, S.p.A. ("Bonomi") with Ecological and Bonomi collectively referred to as the "Parties"
6 and each of them as a "Party."

7 1.2 **Allegations and Representations.** Ecological alleges that Bonomi has exposed
8 individuals to lead from brass valves without providing clear and reasonable warnings under
9 Proposition 65. Lead is listed under Proposition 65 as a chemical known to the State of California
10 to cause cancer and reproductive toxicity.

11 **1.3 Notices of Violation.**

12 1.3.1 On or about July 31, 2017, Ecological served Bonomi North America, Inc.
13 and various public enforcement agencies with a notice that alleged that Bonomi North America
14 violated Health & Safety Code §25249.6, by failing to warn individuals that check valves
15 manufactured or distributed by Bonomi North America exposed users in California to Lead (the
16 "July 31, 2017 Notice"). No public enforcer has brought and is diligently prosecuting the claims
17 alleged in the Notice.

18 1.3.2 On or about March 5, 2018, Ecological served Rubinetterie Bresciane
19 Bonomi, S.p.A., Bonomi North America, Inc., and various public enforcement agencies with a
20 notice that alleged that Bonomi North America violated Health & Safety Code §25249.6, by failing
21 to warn individuals that brass valves manufactured or distributed by Rubinetterie Bresciane
22 Bonomi, S.p.A. exposed users in California to Lead (the "March 5, 2018 Notice"). The July 31,
23 2017, and March 5, 2018, Notices shall be referred to collectively as the "Notices."

24 1.4 **Complaint.** On May 5, 2018, Ecological filed a complaint in the matter.

25 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Bonomi as to the allegations contained in the Complaint filed in this matter, that
27 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve, enter,
28 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all

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1 claims which were or could have been raised in the Complaint based on the facts alleged therein
2 and/or in the Notice.

3 1.6 Bonomi denies the material allegations contained in Ecological's Notices and
4 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
5 shall be construed as an admission by Bonomi of any fact, finding, issue of law, or violation of law;
6 nor shall compliance with this Consent Judgment constitute or be construed as an admission by
7 Bonomi of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
8 denied by Bonomi. However, this section shall not diminish or otherwise affect the obligations,
9 responsibilities, and duties of Bonomi under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means brass valves that are
12 manufactured or distributed by Bonomi and distributed and/or offered for sale in California.

13 2.2 **Effective Date.** The term "Effective Date" means September 1, 2018.

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 As of the Effective Date, Bonomi shall not manufacture any Covered Products
16 intended for retail sale in California that contains lead in excess of 0.3% (300 ppm), without
17 providing a clear and reasonable warning pursuant to this Section 3.

18 3.2 Bonomi shall affix a warning to each Covered Product or its immediate packaging.
19 One of the following warnings shall be used:

20 **▲ WARNING:** This product can expose you to chemicals
21 including lead, which is known to the State of California to cause
22 [cancer and]birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov.

23 **▲ WARNING:** [Cancer and] Reproductive Harm -
24 www.P65Warnings.ca.gov.

25 The triangle may be printed in black and white if there is no yellow color used on the label. The
26 words in brackets are optional.

27 3.3 The warnings must be prominently displayed with such conspicuousness as
28 compared with other words, statements, designs or devices on the product or its packaging, as to

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1 render the warning likely to be read and understood by an ordinary individual under customary
2 conditions of purchase or use.

3 3.4 Bonomi shall advise those of its customers that sell Covered Products in or to
4 California over the internet that the warnings provided on the Covered Products packaging must be
5 displayed to purchasers at or prior to the time of purchase, as required by California Code of
6 Regulations, title 27, §25602 (effective August 30, 2018).

7 3.5 Existing Inventory Any Covered Products manufactured or distributed by Bonomi
8 prior to the Effective Date may be distributed or sold by Bonomi, Defendant Releasees, and
9 Downstream Defendant Releasees (as defined in Section 5.1), after the Effective Date, even if the
10 Covered Products are not labeled with the warning required by this Section 3.

11 **4. MONETARY TERMS**

12 4.1 Within 10 days of the entry of an order approving this Consent Judgment pursuant
13 to Health & Safety Code § 25249.7(f), Bonomi shall pay the sum of \$32,000, comprising \$7,000
14 in civil penalties and \$25,000 in attorney's fees. The payment shall be made by wire transfer to
15 Custodio & Dubey LLP, which shall be solely responsible for allocation of the payment as specified
16 below. The civil penalty shall be apportioned by Ecological in accordance with California Health
17 & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
18 Environmental Health Hazard Assessment and the remaining 25% of the Civil Penalty remitted to
19 Ecological, as provided by California Health & Safety Code § 25249.12(d).

20 **5. RELEASE OF ALL CLAIMS**

21 5.1 This Consent Judgment is a full, final, and binding resolution between Ecological
22 acting on its own behalf, and on behalf of the public interest, and Bonomi, and its parents,
23 shareholders, members, directors, officers, managers, employees, representatives, agents,
24 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
25 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
26 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
27 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
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retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to lead from Covered Products as set forth in the Notices, with respect to any Covered Products manufactured, distributed, or sold by Defendant Releasees prior to the Effective Date. Defendant Releasees' compliance with the terms of this consent judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

5.2 In addition to the foregoing, Ecological, on behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases Bonomi, Defendant Releasees, and Downstream Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by Bonomi, Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph, Ecological hereby specifically waives any and all rights and benefits which she now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

5.3 Bonomi waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

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6. INTEGRATION

6.1 This Consent Judgment contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

7. GOVERNING LAW

7.1 The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within 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 Covered Products, then Bonomi shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered Products are so affected.

8. NOTICES

8.1 Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party; and email by the other party at the following addresses:

For Bonomi:

Aldo Bonomi
Rubinetterie Bresciane Bonomi, S.p.A.
Via Massimo Bonomi 1
25064 - Gussago (BS) - Italy
aldo@bonomi.it

With a copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 South Flower Street, Forty-First Floor
Los Angeles, California 90071
jeff.margulies@nortonrosefulbright.com

For Ecological:

Vineet Dubey
Custodio & Dubey LLP
448 S. Hill St., Suite 612

07/30/2018

Los Angeles, CA 90013
dubey@cd-lawyers.com

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL

10.1 Ecological agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment. Bonomi agrees it shall support approval of such Motion.

10.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30 days, the case shall proceed on its normal course.

10.3 If the Court approves this Consent Judgment and is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on its normal course on the trial court's calendar.

11. MODIFICATION

11.1 This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12. ATTORNEY'S FEES

12.1 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

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12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

14. AUTHORIZATION

14.1 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 document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: May 5, 2018

Date: May 5, 2018

By: [Signature]
ECOLOGICAL ALLIANCE, LLC

By: [Signature]
RUBINETTERIE BRESCIANE BONOMI
S.P.A.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 7-27-18

[Signature]
Judge of Superior Court

DANIEL S. MURPHY

07/30/2018