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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.:

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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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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## 1. INTRODUCTION

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

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

1.3. For purposes of this Consent Judgment only, the Parties stipulate that: (1) this Court has jurisdiction over Defendant as to the alleged violations contained 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 and final resolution of all claims which were or could have been raised in the Notice and Complaint, 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 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, the "Claims").

1.4. The Parties enter into this Consent Judgment as a full and final settlement of the Claims, and release of all of Defendants' customers, including but not limited to Amazon.com, Inc. and all other retail outlets who sold the Covered Products, for the purpose of avoiding prolonged and costly litigation and resolving the issues raised therein, both as to past and future conduct. By execution of this Consent Judgment, the Parties do not admit any fact, conclusion of law, issue 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, issue of law, or violation of law. Defendant denies the material, factual, and legal allegations in the Notice and Complaint, expressly denies any wrongdoing whatsoever, and maintains that all of the products it 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.  
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### 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.

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

19 5.4. Plaintiff understands and acknowledges that the significance and consequence of  
20 this waiver of California Civil Code § 1542 or any similar provision of state or federal  
21 law is that even if Plaintiff suffers future damages arising out of or resulting from, or  
22 related directly or indirectly to, in whole or in part, the Covered Products, including but  
23 not limited to any exposure to, or failure to warn with respect to exposure to, the Covered  
24 Products, Plaintiff will not be able to make any claim for those damages against any of  
25 the Released Parties.

26 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute  
27 compliance with Proposition 65 with respect to exposure to lead in the Covered Products.  
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## 6. PROVISION OF NOTICE

6.1. 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 other form of verifiable overnight delivery, as follows:

To Defendant:

Dennis Lunder  
Valterra Products, LLC  
15230 San Fernando Mission Blvd  
Suite 107  
Mission Hills, CA 91345

To Plaintiff:

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

6.2. 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 6.1.

## 7. COURT APPROVAL

7.1. Upon execution of his 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 approved and entered by the Court. If this Consent Judgment is not approved and 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.

## 8. GOVERNING LAW AND CONSTRUCTION

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



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

#### 9. ENTIRE AGREEMENT

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

9.2. 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.

9.3. 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.

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

9.5. 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.

9.6. The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be 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: 12/19/16

By: [Signature]

**AGREED TO:**

**Valterra Products, LLC**

Date: 12/19/2016

By: [Signature]  
CEO