

Electronically Received 09/10/2019 04:17 PM

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MIGUEL A. CUSTODIO, JR., STATE BAR NO. 248744  
VINEET DUBEY, STATE BAR NO. 243208  
CUSTODIO & DUBEY LLP  
448 S. Hill St., Suite 615  
Los Angeles, CA 90013  
Telephone: (213) 593-9095  
Facsimile: (213) 785-2899

Attorneys for Plaintiff Ecological Alliance, LLC

**FILED**  
Superior Court of California  
County of Los Angeles  
**11/06/2019**  
Sherri R. Carter, Executive Officer / Clerk of Court  
By:           A. Williams           Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California  
limited liability company,

Plaintiff,

v.

BASIC RESOURCES, INC., a California  
corporation,

Defendant.

Case No.:19STCV30019

**[PROPOSED] STIPULATED  
CONSENT JUDGMENT**

Electronically Received 09/10/2019 04:17 PM

1  
2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Basic Resources, Inc.  
3 (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as  
4 follows:

5 WHEREAS: On or about May 29, 2019, Plaintiff, through Plaintiff’s counsel, served an  
6 Amended 60 Day Notice to Defendant, Burlington Coat Factory Direct Corporation, the  
7 California Attorney General, the District Attorneys of every County in the State of California, and  
8 the City Attorneys for every City in the State of California with a population greater than 750,000  
9 (collectively, “Public Prosecutor(s)”) alleging that Defendant violated California’s Safe Drinking  
10 Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq.,  
11 and its implementing regulations (collectively, “Proposition 65”) and that Plaintiff intended to file  
12 an enforcement action in the public interest; and

13 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed “Covered  
14 Products” (as defined in Section 2.1 below) that were sold or distributed for sale in California and  
15 further alleges that those Covered Products expose consumers in the State of California to  
16 chemicals including Di(2-ethylhexyl)phthalate [DEHP], which are listed by the State of California  
17 pursuant to California Health and Safety Code § 25249.8; and

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

22 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has  
23 violated Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

24 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and  
25 believes that this objective is achieved by the actions described in this Consent Judgment; and

26 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay  
27 and expense of litigation.

28 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN  
PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**1. INTRODUCTION**

1.1. On May 29, 2019, Plaintiff served the 60-Day Notice upon Defendant and on Public Prosecutors. No Public Prosecutors commenced an enforcement action. No Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file its Complaint against Defendant in the present action on August \_\_ 2019 in Los Angeles County Superior Court, Case No. ~~FJ•&CHEEJ~~

1.2. Defendant employs ten (10) or more persons.

1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation contained in the Complaint, and personal jurisdiction over Defendant as to the acts alleged 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 Complaint based on the facts alleged therein with respect to the Covered Products, 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 60-Day 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, “Proposition 65 Claims”).

1.4. The Parties enter into this Consent Judgment as a full and final settlement of the Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of resolving the issues raised therein both as to past and future conduct. By execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any fact, conclusion 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, or violation of law. Defendant denies the material, factual, and legal allegations in the 60-Day Notice and the Complaint and expressly denies any wrongdoing whatsoever.

1  
2 **2. DEFINITIONS**

3 2.1. "Covered Products" shall mean underwear including boxers, briefs, boxer briefs,  
4 undershirts and the plastic packaging in which they are sold under the brand names  
5 including IZOD.

6 2.2. "Effective Date" shall mean, with respect to this Consent Judgment, the date the  
7 Consent Judgment has been approved and entered by the Court.

8 **3. INJUNCTIVE RELIEF**

9 3.1. Commencing on the Effective Date and continuing thereafter, Defendant shall only  
10 manufacture or cause to be manufactured and imported for potential sale in California,  
11 Covered Products that either (a) are reformulated to bring the Covered Product within  
12 the Proposition 65 exemption identified in Section 3.2 below, or (b) provide a warning on  
13 the Covered Product or its packaging as prescribed in Sections 3.3-3.4 below.

14 Compliance with this Section 3.1 will constitute compliance by Defendant with all  
15 requirements of Proposition 65 relating to DEHP exposure in the Covered Products:

16 3.2. Proposition 65 Exemption for the Covered Products

17 Subject to Section 3.5, any Covered Product that is sold, or offered for sale, to consumers  
18 in the State of California after the Effective Date shall be deemed to comply with  
19 Proposition 65, and be exempt from any Proposition 65 warning requirements with respect  
20 to DEHP, if no "Accessible Component Part" of such Covered Product contains more than  
21 0.1 percent (1,000 parts per million) of DEHP. For purposes of this Consent Judgment,  
22 "Accessible Component Part" shall mean components of the Covered Products to which a  
23 person would be exposed to DEHP by direct contact during normal use of the Covered  
24 Product.

25 3.3. Warning Option

26 Subject to section 3.5, Covered Products that do not meet the warning exemption standard  
27 set forth in Section 3.2 above, shall be accompanied by a warning as described in Section  
28 3.4 below. This warning requirement shall only be required as to Covered Products that  
are manufactured, distributed, marketed, sold and shipped for sale to consumers by

1  
2 Defendant in the State of California, after the Effective Date. No Proposition 65 warning  
3 shall be required as to any Covered Products that are already in the stream of commerce as  
4 of the end of the Grace Period as defined in Section 3.5, and all such Covered Products are  
5 hereby deemed to be exempt from Proposition 65 with respect to DEHP.

6 3.4. Warning Language

7 Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of  
8 the following warning statements on or within the unit packaging of the Covered  
9 Products, or affixed to the Covered Products, displayed in a reasonably conspicuous  
10 manner:

11 (1) **WARNING:** This product can expose you to DEHP, which is  
12 known to the State of California to cause cancer, birth defects or  
13 other reproductive harm. For more info go to  
14 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15 (2) **WARNING:** Cancer and Reproductive Harm –  
16 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

17 If Defendant elects to use the warning statements identified in either (1) or (2)  
18 above, it may also include a symbol consisting of a black exclamation point in a  
19 yellow equilateral triangle with a bold black outline. Where the sign, label or shelf  
20 tag for the product is not printed using the color yellow, the symbol may be printed  
21 in black and white. The symbol shall be placed to the left of the text of the  
22 warning, in a size no smaller than the height of the word "WARNING".

23 3.5. 90-Day Grace Period

24 Although Defendant shall be deemed in compliance on the Effective Date, Defendant  
25 shall have a ninety (90)-day grace period after the Effective Date (the "Grace Period") to  
26 complete the reformulation or warning steps provided in Sections 3.1 – 3.4.

27 **4. MONETARY RELIEF**

28 4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total sum of  
\$31,000 which includes \$8,000 in civil penalties and \$23,000 in payment of Plaintiff's

1  
2 costs and reasonable attorney's fees. The \$8,000 civil penalty shall be apportioned  
3 pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$6,000, paid to  
4 the State of California's Office of Environmental Health Hazard Assessment and 25%, or  
5 \$2,000, payable to Plaintiff.

6 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's  
7 counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the  
8 portions due to the State of California Office of Environmental Health Hazard  
9 Assessment and to Plaintiff.

10 Bank: Bank of America, N.A.

11 Routing Transit No.: 026009593

12 Account No.: 325054144600

13 Beneficiary: Custodio & Dubey LLP

#### 14 5. CLAIMS COVERED AND RELEASE

15 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on  
16 behalf of itself, and acting in the public interest, and Defendant, and all of Defendant's  
17 parent companies, as well as all of Defendant's officers, directors, members,  
18 shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions,  
19 affiliates, suppliers, franchisees, licensees, and retailers, their parent and all subsidiaries,  
20 and affiliates, thereof, their respective employees, agents and assigns, as well as all other  
21 upstream and downstream entities in the distribution chain for any of the Covered  
22 Products, and the predecessors, successors, and assigns of any of them (collectively, the  
23 "Released Parties"), for any alleged violation of Proposition 65, and its implementing  
24 regulations, for failure to provide Proposition 65 warnings for the Covered Products with  
25 respect to DEHP, and fully resolves all claims that have been brought, or which could  
26 have been brought in this action up to and including the Effective Date. Plaintiff on  
27 behalf of itself, and in the public interest, hereby discharges the Released Parties from  
28 any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
penalties, fees, costs and expenses asserted, or that could have been asserted, with respect

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings about exposures to DEHP for any or all of the Covered Products, through and including the Effective Date. Plaintiff further covenants not sue Released Parties for any alleged violation of Proposition 65 with respect to DEHP in Covered Products put into the stream of commerce in California by Defendant prior to the expiration of the Grace Period.

5.2. It is possible that other claims not known to the Parties arising out of the facts contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims through and including the Effective Date, including all rights of action thereon. Plaintiff and Defendant acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown claims, and nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542 which reads 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 OR HER SETTLEMENT WITH THE DEBTOR.

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



1  
2 5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute  
3 compliance with Proposition 65 with respect to exposure to DEHP in the Covered  
4 Products as set forth in the 60 Day Notice and/or the Complaint.

5 **6. ENFORCEMENT**

6 6.1. The terms of this Consent Judgment shall be enforced exclusively by the Parties  
7 hereto. The Parties may, by noticed motion or order to show cause before the Superior  
8 Court of Los Angeles County, giving the notice required by law, enforce the terms and  
9 conditions contained herein. In any proceeding brought by either party to enforce this  
10 Consent Judgment, such party may seek whatever fines, costs, penalties or remedies as  
11 may be provided by law for any violation of Proposition 65 or this Consent Judgment.

12 6.2. Within thirty (30) days after the Effective Date, Defendant shall notify Plaintiff of  
13 a means sufficient to allow Plaintiff to identify Covered Products supplied or offered by  
14 Defendant or its affiliates on or before that date, for example, a unique brand name or  
15 characteristic system of product numbering or labeling. Information provided to Plaintiff  
16 pursuant to this Section 6.2 may be designated by Defendant as competitively sensitive  
17 confidential business information and, if so designated, shall not be disclosed by Plaintiff  
18 to any person without the written permission of Defendant.

19 **7. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)**

20 7.1. Plaintiff and its attorneys agree to comply with the reporting form requirements  
21 referenced in California Health and Safety Code § 25249.7(f).

22 **8. PROVISION OF NOTICE**

23 8.1. When any Party is entitled to receive any notice or writing under this Consent  
24 Judgment, the notice or writing shall be sent by first class certified mail with return  
25 receipt requested, or by electronic mail, as follows:

26 To Defendant:  
27 John J. Allen, Esq.  
28 Allen Matkins Leck Gamble Mallory & Natsis LLP  
865 South Figueroa St., Suite 2800  
Los Angeles, CA 90017  
[jallen@allenmatkins.com](mailto:jallen@allenmatkins.com)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

To Plaintiff:  
Vineet Dubey, Esq.  
Custodio & Dubey LLP  
448 S. Hill St., Ste 615  
Los Angeles, CA 90013  
[dubey@cd-lawyers.com](mailto:dubey@cd-lawyers.com)

8.2. 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

**9. COURT APPROVAL**

9.1. 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 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.

**10. GOVERNING LAW AND CONSTRUCTION**

10.1. The terms of this Consent Judgment shall be governed by the laws of the State of California.

**11. ENTIRE AGREEMENT**

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

11.2. 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.

11.3. 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

1  
2 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or  
3 to bind any of the Parties hereto only to the extent that they are expressly incorporated  
4 herein.

5 11.4. No supplementation, modification, waiver, or termination of this Consent  
6 Judgment shall be binding unless executed in writing by the Party to be bound thereby,  
7 and approved and ordered by the Court.

8 11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
9 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor  
10 shall such waiver constitute a continuing waiver.

11 **12. RETENTION OF JURISDICTION**

12 12.1. This Court shall retain jurisdiction of this matter to implement or modify the  
13 Consent Judgment.

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

15 13.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any  
16 claim against another entity on terms that are different from those contained in this  
17 Consent Judgment.

18 **14. EXECUTION IN COUNTERPARTS**

19 14.1. This Consent Judgment may be executed in counterparts, each of which shall be  
20 deemed to be an original, and all of which, taken together, shall constitute the same  
21 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic  
22 means, shall constitute legal and binding execution and delivery. Any photocopy of the  
23 executed Consent Judgment shall have the same force and effect as the original.

24 **15. AUTHORIZATION**

25 15.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent  
26 Judgment on behalf of their respective parties, and have read, understood, and agree to all  
27 of the terms and conditions of this Consent Judgment.

28 **16. SEVERABILITY**

16.1. If subsequent to Court approval of this Consent Judgment, any part or provision is

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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: 8/20/19

By: [Signature]  
Harmony Welsh, Managing Member

**AGREED TO:**

**Basic Resources, Inc.**

Date: 8.13.2019

By: [Signature]  
Salvatore Haasler, CEO

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: 11/06/2019



**Mark V. Mooney**

JUDGE OF THE SUPERIOR COURT  
Mark V. Mooney / Judge