

08/18/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: R. Navarro Deputy

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5 Attorneys for Plaintiff Ecological Alliance, LLC

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF LOS ANGELES

8 (Unlimited Jurisdiction)

9 ECOLOGICAL ALLIANCE, LLC, a California  
10 limited liability company,

11 Plaintiff,

12 v.

13 KUREHA AMERICA INC., a Delaware  
14 corporation,

15 Defendant.  
16

Case No.: 20STCV14940

~~PROPOSED~~ STIPULATED  
CONSENT JUDGMENT

1 Plaintiff Ecological Alliance, LLC ("Plaintiff"), and Defendant Kureha America Inc.  
2 ("Defendant") hereby enter into this Stipulated Consent Judgment ("Consent Judgment") as  
3 follows:

4 WHEREAS: On or about February 11, 2020, Plaintiff, through Plaintiff's counsel, served  
5 a 60-Day Notice to Defendant, Bass Pro Outdoor World, L.L.C. ("Bass Pro"), the California  
6 Attorney General, the District Attorneys of every County in the State of California, and the City  
7 Attorneys for every City in the State of California with a population greater than 750,000  
8 (collectively, "Public Prosecutor(s)") alleging that Defendant violated California's Safe Drinking  
9 Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq.,  
10 and its implementing regulations (collectively, "Proposition 65") and that Plaintiff intended to file  
11 an enforcement action in the public interest; and

12 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed pouches for  
13 fishing line leaders (collectively the "Covered Products") that were sold or distributed for sale in  
14 California and further alleges that those Covered Products expose consumers in the State of  
15 California to chemicals including Di(2-ethylhexyl)phthalate ("DEHP"), which are listed by the  
16 State of California pursuant to California Health and Safety Code § 25249.8; and

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

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

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

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

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

1                   **INTRODUCTION**

2           1.1.    On February 11, 2020, Plaintiff served the 60-Day Notice upon Defendant, Bass  
3 Pro , and on Public Prosecutors. No Public Prosecutors commenced an enforcement action. No  
4 Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file its  
5 Complaint against Defendant in the present action.

6           1.2.    Defendant employs ten (10) or more persons.

7           1.3.    For purposes of this Consent Judgment only, Plaintiff and Defendant (the  
8 “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation contained  
9 in the Complaint, and personal jurisdiction over Defendant as to the acts alleged in the  
10 Complaint; 2) venue is proper in the County of Los Angeles; and 3) this Court has jurisdiction to  
11 enter this Consent Judgment as a full and final resolution of all claims which were or could have  
12 been raised in the Complaint based on the facts alleged therein with respect to the Covered  
13 Products, and of all claims which were or could have been raised by any person or entity based in  
14 whole or in part, directly or indirectly, on the facts alleged in the 60-Day Notice, in the present  
15 action, or arising therefrom or related thereto, with respect to Covered Products, including any  
16 Proposition 65 claim arising out of an exposure to Covered Products (collectively, “Proposition  
17 65 Claims”).

18          1.4.    The Parties enter into this Consent Judgment as a full and final settlement of the  
19 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of  
20 resolving the issues raised therein both as to past and future conduct. By execution of this  
21 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any fact,  
22 conclusion of law, or violation of law, nor shall Defendant’s compliance with the Consent  
23 Judgment constitute or be construed as an admission by Defendant of any fact, conclusion of law,  
24 or violation of law. Defendant denies the material, factual, and legal allegations in the 60-Day  
25 Notice and the Complaint and expressly denies any wrongdoing whatsoever.

26                   **2. DEFINITIONS**

27          2.1.    “Effective Date” shall mean, with respect to this Consent Judgment, the date the  
28 Consent Judgment has been approved and entered by the Court.

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### 3. INJUNCTIVE RELIEF

3.1. For each Covered Product, Defendant agrees to undertake, or cause to be undertaken on its behalf, either (a) reformulation of the Covered Product to bring it within the Proposition 65 exemption identified in Section 3.2 below, or (b) provide a warning as prescribed in Sections 3.3-3.4 below. Compliance with Sections 3.1-3.4 will constitute compliance by Defendant with all requirements of Proposition 65 relating to DEHP exposure in the Covered Products:

#### 3.2. Proposition 65 Exemption for the Covered Products

Any Covered Product that is sold, or offered for sale, to consumers in the State of California after ninety (90) days after the Effective Date shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DEHP, if no "Accessible Component Part" of such Covered Product contains more than 0.1 percent (1,000 parts per million) of DEHP. For purposes of this Consent Judgment, "Accessible Component Part" shall mean components of the Covered Products to which a person would be exposed to DEHP by direct contact during normal use of the Covered Product.

#### 3.3. Warning Option

Covered Products that do not meet the warning exemption standard set forth in Section 3.2 above, shall be accompanied by a warning as described in Section 3.4 below. This warning requirement shall only be required as to Covered Products that are manufactured, distributed, marketed, sold or shipped for sale to consumers by Defendant in the State of California, after ninety (90) days after the Effective Date. No Proposition 65 warning pursuant to this Section 3.3, and no reformulation pursuant to Section 3.2, shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date, and all such Covered Products are hereby deemed to be exempt from Proposition 65 with respect to DEHP. Likewise, Covered Products that have not yet been reformulated pursuant to Section 3.2, or that do not yet have warnings pursuant to Section 3.3, are hereby deemed to be exempt from Proposition 65 with respect to DEHP, for the time period up to and including 90 days after the Effective Date.

1           3.4.   Warning Language

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

5                   (1)    **WARNING:** This product can expose you to chemicals including DEHP,  
6                            which is known to the State of California to cause cancer and birth defects  
7                            or other reproductive harm. For more information go to  
8                            www.P65Warnings.ca.gov.

9                   (2)    **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

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

15                                   4.   **MONETARY RELIEF**

16           4.1.   Within twenty (20) days of the Effective Date, Defendant shall pay the total sum  
17 of \$46,000, which includes \$10,000 in civil penalties and \$36,000 in payment of Plaintiff's costs  
18 and reasonable attorney's fees, pursuant to Code of Civil Procedure Section 1021.5. The \$10,000  
19 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with  
20 75%, or \$7,500, paid to the State of California's Office of Environmental Health Hazard  
21 Assessment and 25%, or \$2,500, payable to Plaintiff.

22           4.2.   The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's  
23 counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the portions due  
24 to the State of California Office of Environmental Health Hazard Assessment and to Plaintiff.

25           Bank: Bank of America, N.A.

26           Routing Transit No.: 026009593

27           Account No.: 325104702031

28           Beneficiary: Custodio & Dubey LLP

## 5. CLAIMS COVERED AND RELEASE

5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of itself, and acting in the public interest, and Defendant, and all of Defendant's parent companies, as well as all of Defendant's officers, directors, members, shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions, affiliates, manufacturers, suppliers, franchisees, licensees, distributors, and retailers, including, specifically, Bass Pro, their parent and all subsidiaries, and affiliates thereof, their respective officers, directors, members, shareholders, employees, agents and assigns, as well as all other upstream and downstream entities in the distribution chain for any of the Covered Products, and the predecessors, successors, and assigns of any of them (collectively, the "Released Parties"), for any alleged violation of Proposition 65, and its implementing regulations, for failure to provide Proposition 65 warnings for the Covered Products with respect to DEHP, and fully resolves all claims that have been brought, or which could have been brought in this action up to and including the Effective Date. Plaintiff on behalf of itself, and in the public interest, hereby discharges the Released Parties from 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 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. This Consent Judgment shall have preclusive effect such that no other person or entity, whether purporting to act in his, her, or its interests or the public interest, shall be permitted to pursue and/or take any action with respect to the Covered Products, or any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the 60-Day Notice, against Defendant, and/or the Released Parties.

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

1 action thereon. Plaintiff and Defendant acknowledge that the claims released in Sections 5.1 and  
2 5.2 may include unknown claims, and nevertheless intend to release such claims, and in doing so  
3 waive California Civil Code § 1542, which reads as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
5 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
6 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
7 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
8 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
9 DEBTOR OR RELEASED PARTY.

8 5.3. Plaintiff understands and acknowledges that the significance and consequence of  
9 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising  
10 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered  
11 Products, including but not limited to any exposure to, or failure to warn with respect to exposure  
12 to, the Covered Products, Plaintiff will not be able to make any claim for those damages against  
13 any of the Released Parties.

14 5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute  
15 compliance with Proposition 65 with respect to exposure to DEHP in the Covered Products as set  
16 forth in the 60-Day Notice and/or the Complaint.

17 **6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)**

18 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements  
19 referenced in California Health and Safety Code § 25249.7(f).

20 **7. PROVISION OF NOTICE**

21 7.1. When any Party is entitled to receive any notice or writing under this Consent  
22 Judgment, the notice or writing shall be sent by first class certified mail with return receipt  
23 requested, or by electronic mail, as follows:

24 To Defendant:  
25 Sarah Bell, Esq.  
26 Farella Braun + Martel LLP  
27 Russ Building  
28 235 Montgomery Street, 17th Floor  
San Francisco, CA 94104  
[sbell@fbm.com](mailto:sbell@fbm.com)

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)

7.2. 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 7.1.

#### 8. COURT APPROVAL

8.1. Upon execution of this 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.

#### 9. GOVERNING LAW AND CONSTRUCTION

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

#### 10. ENTIRE AGREEMENT

10.1. 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.

10.2. 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.

10.3. 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.



1           10.4. No supplementation, modification, waiver, or termination of this Consent  
2 Judgment shall be binding unless executed in writing by the Party to be bound thereby, and  
3 approved and ordered by the Court.

4           10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
5 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
6 such waiver constitute a continuing waiver.

7                           **11. RETENTION OF JURISDICTION**

8           11.1. This Court shall retain jurisdiction of this matter to implement or modify the  
9 Consent Judgment.

10                          **12. NO EFFECT ON OTHER SETTLEMENTS**

11           12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any  
12 claim against another entity on terms that are different from those contained in this Consent  
13 Judgment.

14                          **13. EXECUTION IN COUNTERPARTS**

15           13.1. This Consent Judgment may be executed in counterparts, each of which shall be  
16 deemed to be an original, and all of which, taken together, shall constitute the same document.  
17 Execution of the Consent Judgment by e-mail, facsimile, or other electronic means, shall  
18 constitute legal and binding execution and delivery. Any photocopy of the executed Consent  
19 Judgment shall have the same force and effect as the original.

20                          **14. AUTHORIZATION**

21           14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent  
22 Judgment on behalf of their respective parties, and have read, understood, and agree to all of the  
23 terms and conditions of this Consent Judgment.

24                          **15. SEVERABILITY**

25           15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is  
26 declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions  
27 shall continue in full force and effect.  
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