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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
03/04/2021

Sherri R. Carter, Executive Officer / Clerk of Court
By: _____ K. Lappin _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

Plaintiff,

v.

ENCHANTE ACCESSORIES, INC., a New
York corporation,

Defendant.

Case No.: 20STCV49679

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

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

4 WHEREAS: On or about August 13, 2020, Plaintiff, through Plaintiff's counsel, served a
5 60-Day Notice to Defendant, Burlington Coat Factory Direct Corporation, T.J. Maxx of CA,
6 LLC, the California Attorney General, the District Attorneys of every County in the State of
7 California, and the City Attorneys for every City in the State of California with a population
8 greater than 750,000 (collectively, "Public Prosecutor(s)") alleging that Defendant violated
9 California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
10 Safety Code § 25249.6, et seq., and its implementing regulations (collectively, "Proposition 65")
11 and that Plaintiff intended to file an enforcement action in the public interest; and

12 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed necessity
13 kits, style # GB8MNBD3, skin care kits, Item # 384693, and car seat covers, UPC #
14 192598215246, all with cases containing Di(2-ethylhexy)phthalate ("DEHP"), (collectively the
15 "Covered Products" exemplar photographs of which are attached as Exhibits A-C hereto) that
16 were sold or distributed for sale in California and further alleges that those Covered Products
17 expose consumers in the State of California to chemicals including DEHP, which are listed by
18 the State of California pursuant to California Health and Safety Code § 25249.8; and

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

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

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

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

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

3 **1.0 INTRODUCTION**

4 1.1. On August 13, 2020, Plaintiff served the 60-Day Notice upon Defendant,
5 Burlington Coat Factory Direct Corporation, T.J. Maxx of CA, LLC, and on Public Prosecutors.
6 No Public Prosecutors commenced an enforcement action. No Public Prosecutor having
7 commenced an enforcement action, Plaintiff proceeded to file its Complaint against Defendant in
8 the present action.

9 1.2. Defendant employs ten (10) or more persons.

10 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
11 "Parties") stipulate that: 1) this Court has jurisdiction over the allegations of violation contained
12 in the Complaint, and personal jurisdiction over Defendant as to the acts alleged in the
13 Complaint; 2) venue is proper in the County of Los Angeles; and 3) this Court has jurisdiction to
14 enter this Consent Judgment as a full and final resolution of all claims which were or could have
15 been raised in the Complaint based on the facts alleged therein with respect to the Covered
16 Products, and of all claims which were or could have been raised by any person or entity based
17 in whole or in part, directly or indirectly, on the facts alleged in the 60-Day Notice, in the present
18 action, or arising therefrom or related thereto, with respect to Covered Products, including any
19 Proposition 65 claim arising out of an exposure to Covered Products (collectively, "Proposition
20 65 Claims").

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

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2. DEFINITIONS

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

3. INJUNCTIVE RELIEF


3.1. For each Covered Product, Defendant agrees to undertake, or cause to be undertaken on its behalf, to provide a warning as prescribed in Sections 3.2-3.3, below. Compliance with this Section 3.1 will constitute compliance by Defendant with all requirements of Proposition 65 relating to DEHP exposure in the Covered Products:


3.2. Warning Option

Subject to section 3.4, Covered Products shall be accompanied by a warning as described in Section 3.3, 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 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.

3.3. Warning Language

Where required to meet the criteria set forth in Section 3.2, Defendant shall provide one of the following warning statements on or within the unit packaging of the Covered Products, or affixed to the Covered Products, displayed in a reasonably conspicuous manner:

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

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

If Defendant elects to use the warning statements identified in either (1) or (2) above, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be

1 placed to the left of the text of the warning, in a size no smaller than the height of the word
2 "WARNING".

3 4. MONETARY RELIEF

4 4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total
5 sum of \$25,000 which includes \$5,000 in civil penalties and \$20,000 in payment of Plaintiff's
6 costs and reasonable attorney's fees. The \$5,000 civil penalty shall be apportioned pursuant to
7 Health and Safety Code section 25249.12 (d), with 75%, or \$3,750, paid to the State of
8 California's Office of Environmental Health Hazard Assessment and 25%, or \$1,250, payable to
9 Plaintiff.

10 4.2. The payments specified in Section 4.1. shall be made by wire transfer to
11 Plaintiff's counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the
12 portions due to the State of California Office of Environmental Health Hazard Assessment and to
13 Plaintiff.

14 Bank: Bank of America, N.A.

15 Routing Transit No.: 026009593

16 Account No.: 325104702031

17 Beneficiary: Custodio & Dubey LLP

18 5. CLAIMS COVERED AND RELEASE

19 5.1. This Consent Judgment is a full, final, and binding resolution between
20 Plaintiff, on behalf of itself, and acting in the public interest, and Defendant, and all of
21 Defendant's parent companies, as well as all of Defendant's officers, directors, members,
22 shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions, affiliates,
23 suppliers, franchisees, licensees, and retailers, their parent and all subsidiaries, and affiliates,
24 thereof, their respective employees, agents and assigns, as well as all other upstream and
25 downstream entities in the distribution chain for any of the Covered Products, and the
26 predecessors, successors, and assigns of any of them, including T.J. Maxx of CA, LLC and
27 Burlington Coat Factory Direct Corporation (collectively, the "Released Parties"), for any
28 alleged violation of Proposition 65, and its implementing regulations, for failure to provide

1 Proposition 65 warnings for the Covered Products with respect to DEHP, and fully resolves all
2 claims that have been brought, or which could have been brought in this action up to and
3 including the Effective Date. Plaintiff on behalf of itself, and in the public interest, hereby
4 discharges the Released Parties from any and all claims, actions, causes of action, suits,
5 demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have
6 been asserted, with respect to any alleged violation of Proposition 65 arising from the failure to
7 provide Proposition 65 warnings about exposures to DEHP for any or all of the Covered
8 Products, through and including the Effective Date.

9 5.2. It is possible that other claims not known to the Parties arising out of the
10 facts contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered
11 Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one
12 hand, and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly
13 intended to cover and include all such claims through and including the Effective Date, including
14 all rights of action thereon. Plaintiff and Defendant acknowledge that the claims released in
15 Sections 5.1 and 5.2 may include unknown claims, and nevertheless intend to release such
16 claims, and in doing so waive California Civil Code § 1542 which reads as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
18 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
19 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM
20 OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
21 THE DEBTOR OR RELEASED PARTY.

22 5.3. Plaintiff understands and acknowledges that the significance and
23 consequence of this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future
24 damages arising out of or resulting from, or related directly or indirectly to, in whole or in part,
25 the Covered Products, including but not limited to any exposure to, or failure to warn with
26 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim for
27 those damages against any of the Released Parties.

28

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

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

5 6.1. Plaintiff and its attorneys agree to comply with the reporting form
6 requirements referenced in California Health and Safety Code § 25249.7(f).

7 **7. PROVISION OF NOTICE**

8 7.1. When any Party is entitled to receive any notice or writing under this
9 Consent Judgment, the notice or writing shall be sent by first class certified mail with return
10 receipt requested, or by electronic mail, as follows:

11 To Defendant:

12 Carol R. Brophy, Esq.
13 Steptoe & Johnson LLP
14 1 Market Street
15 Spear Tower, Suite 3900
16 cbrophy@steptoe.com

17
18 To Plaintiff:

19 Vineet Dubey, Esq.
20 Custodio & Dubey LLP
21 448 S. Hill St., Ste 615
22 Los Angeles, CA 90013
23 dubey@cd-lawyers.com

24 7.2. Any party may modify the person and address to whom the notice is to be
25 sent by sending the other Party notice that is transmitted in the manner set forth in section 7.1.

26 **8. COURT APPROVAL**

27 8.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall
28 prepare and file, at its sole cost and expense, a Motion for Approval of this Consent Judgment

1 that Defendant shall support. This Consent Judgment shall not become effective until approved
2 and entered by the Court. If this Consent Judgment is not entered by the Court, it shall be of no
3 force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for
4 any purpose.

5 **9. GOVERNING LAW AND CONSTRUCTION**

6 9.1. The terms of this Consent Judgment shall be governed by the laws of the
7 State of California.

8 **10. ENTIRE AGREEMENT**

9 10.1. This Consent Judgment contains the sole and entire agreement and understanding
10 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
12 and therein.

13 10.2. There are no warranties, representations, or other agreements between the Parties
14 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
15 other than those specifically referred to in this Consent Judgment have been made by any Party
16 hereto.

17 10.3. No other agreements not specifically contained or referenced herein, oral or
18 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
19 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
20 any of the Parties hereto only to the extent that they are expressly incorporated herein.

21 10.4. No supplementation, modification, waiver, or termination of this Consent
22 Judgment shall be binding unless executed in writing by the Party to be bound thereby, and
23 approved and ordered by the Court.

24 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
25 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
26 such waiver constitute a continuing waiver.

11. RETENTION OF JURISDICTION

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

12. NO EFFECT ON OTHER SETTLEMENTS

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

13. EXECUTION IN COUNTERPARTS

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

14. AUTHORIZATION

14.1. The undersigned are authorized to stipulate to, enter into, and 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 Consent Judgment.

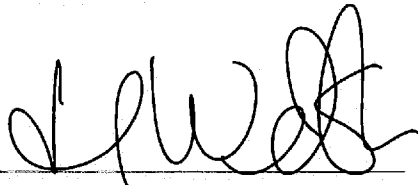
15. SEVERABILITY

15.1. 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

By:



Harmony Welsh, Managing Member

Date: December 29 2020

1
2 **AGREED TO:**

3 **Enchante Accessories, Inc.**
4

5
6 By: 

Date: December 28, 2020

7 Abraham Weinberger, CEO
8

9 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that, pursuant to Health
10 & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby
11 entered.
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15 Dated: 03/04/2021





16 JUDGE OF THE SUPERIOR COURT
17 Laura A. Seigle / Judge
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EXHIBIT A



EXHIBIT B



EXHIBIT C

