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Attorneys for Plaintiff Ecological Alliance, LLC

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

ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

Plaintiff,

v.

KONEX-TIVA,

Defendant.

Case No.: 21STCV11191

**~~PROPOSED~~ STIPULATED
CONSENT JUDGMENT**

FILED
Superior Court of California
County of Los Angeles
04/29/2021

Sherri R. Carter, Executive Officer / Clerk of Court
By: R. Mendoza Deputy

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2 Plaintiff Ecological Alliance, LLC ("Plaintiff"), and Defendant Konex-Tiva
3 ("Defendant"), collectively referred to as the "Parties" and each of them as a "Party," hereby
4 enter into this Stipulated Consent Judgment ("Consent Judgment") as follows:

5 WHEREAS: On or about November 17, 2020, Plaintiff, through Plaintiff's counsel,
6 served a 60 Day Notice to Defendant, Big Lots Stores, Inc., the California Attorney General, the
7 District Attorneys of every County in the State of California, and the City Attorneys for every
8 City in the State of California with a population greater than 750,000 (collectively, "Public
9 Prosecutor(s)") alleging that Defendant violated California's Safe Drinking Water and Toxic
10 Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq., and its
11 implementing regulations (collectively, "Proposition 65") and that Plaintiff intended to file an
12 enforcement action in the public interest ("60 Day Notice"); and

13 WHEREAS: Plaintiff alleges that Defendant manufactured, imported, distributed, sold
14 and/or offered for sale grape leaves stuffed with rice in California that allegedly exposed
15 consumers in the State of California to Lead, which is listed by the State of California pursuant to
16 California Health and Safety Code § 25249.8; and

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

20 WHEREAS: Defendant denies the material factual and legal allegations contained in the
21 60 Day Notice and Complaint, denies that it has violated Proposition 65, and expressly denies that
22 it has engaged in any wrongdoing whatsoever; and

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: The Parties wish to resolve their differences without the delay and expense
26 of protracted litigation.
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2 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
3 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:
4

5 **1. DEFINITIONS**

6 1.1. "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 1.2. "Covered Product(s)" shall mean, with respect to this Consent Judgment, grape
9 leaves stuffed with rice that are manufactured, imported, distributed, sold and/or offered
10 for sale by Defendant and/or its customers in the State of California.

11 **2. INTRODUCTION**

12 2.1. On November 17, 2020, Plaintiff served the 60-Day Notice upon Defendant, Big
13 Lots Stores, Inc., and on Public Prosecutors. To the best of the Parties' knowledge, no
14 Public Prosecutor commenced an enforcement action arising out of the 60 Day Notice.
15 Plaintiff filed its Complaint on March 23, 2021 against Defendant in the present action.

16 2.2. For purposes of this Consent Judgment, the Parties stipulate that the Defendant
17 employs ten (10) or more persons.

18 2.3. For purposes of this Consent Judgment only, the Parties stipulate that: 1) this
19 Court has jurisdiction over the allegations of violations contained in the 60 Day Notice
20 and Complaint, and personal jurisdiction over Defendant as to the acts alleged in the 60
21 Day Notice and Complaint; 2) venue is proper in the County of Los Angeles; and 3) this
22 Court has jurisdiction to enter this Consent Judgment as a full, final and binding
23 resolution of all claims which were or could have been raised in the Complaint based on
24 the facts alleged therein with respect to the Covered Products, and of all claims which
25 were or could have been raised by any person or entity based in whole or in part, directly
26 or indirectly, on the facts alleged in the 60-Day Notice, or arising therefrom or related
27 thereto, including but not limited to any Proposition 65 claim arising out of an exposure
28 to Covered Products (collectively, "Proposition 65 Claims").

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2 2.4. The Parties enter into this Consent Judgment as a full, final and binding settlement
3 of the Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation
4 and of resolving the issues raised therein both as to past and future conduct. By
5 execution of this Consent Judgment and agreeing to comply with its terms, the Parties do
6 not admit any fact, conclusion of law, or violation of law, nor shall Defendant's
7 compliance with the Consent Judgment constitute or be construed as an admission by
8 Defendant of any fact, conclusion of law, or violation of law. Defendant denies the
9 material, factual, and legal allegations in the 60-Day Notice and the Complaint and
10 expressly denies any wrongdoing whatsoever.

11 3. INJUNCTIVE RELIEF

12 3.1. For the Covered Products, Defendant agrees to undertake, or cause to be
13 undertaken on its behalf, either: (a) reformulation of the Covered Product to bring it
14 within the Proposition 65 exemption identified in Section 3.2 below, or (b) provide a
15 warning as prescribed in Sections 3.3-3.4 below. Compliance with this Section 3.1 shall
16 constitute compliance by Defendant with all requirements of Proposition 65 in the
17 Covered Products.

18 3.2. Proposition 65 Exemption for the Covered Products

19 Subject to Section 3.5, any Covered Product that is manufactured, imported, distributed,
20 sold, or offered for sale to consumers in the State of California commencing ninety (90)
21 days after the Effective Date, and continuing thereafter, shall be deemed to comply with
22 Proposition 65, and be exempt from any Proposition 65 warning requirements with respect
23 to Lead, if the Covered Product contains one hundred (100) parts per billion or less of
24 Lead.

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

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2 are manufactured, distributed, marketed, imported, sold, shipped for sale or offered for
3 sale to consumers by Defendant in the State of California, commencing ninety (90) days
4 after the Effective Date, and continuing thereafter. No Proposition 65 warning shall be
5 required as to any Covered Products that are already in the stream of commerce as of and
6 through ninety (90) days after the Effective Date, and all such Covered Products are
7 hereby deemed to be exempt from Proposition 65 enforcement.
8

9 3.4. Warning Language

10 Where required to meet the criteria set forth in Section 3.3, Defendant shall display one of
11 the following warning statements on the packaging or label of the Covered Products, that
12 do not meet the warning exemption standard set forth in Section 3.2 above, displayed with
13 such conspicuousness, as compared with other words, statements or designs on the label
14 or container to render the warning likely to be read and understood by an ordinary
15 individual under customary conditions of purchase or use of the Covered Product:

16 (1) **WARNING:** Consuming this product can expose you to chemicals
17 including Lead, which [is] are known to the State of California to
18 cause [cancer and] birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov/food

19 (2) **WARNING:** [Cancer and] Reproductive Harm –
20 www.P65Warnings.ca.gov/food

21 Defendant may use “cancer and” in the warning at its option. Defendant may
22 include the names of additional chemicals in the warning if they are present in the
23 Covered Product at a level that Defendant reasonably believes would require a Proposition
24 65 warning.

25 Defendant shall be deemed to be in compliance with the warning requirements of
26 this Consent Judgment by either adhering to Sections 3.3. and 3.4 of this Consent
27 Judgment or by complying with the Proposition 65 warning requirements adopted by the
28 State of California’s Office of Environmental Health Hazard Assessment (“OEHHHA”) as

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2 of or after the Effective Date.

3 3.5. Retailer Warnings

4 For those Covered Products requiring a warning as set forth above in Sections 3.3 and
5 3.4, Plaintiff acknowledges that retailers of the Covered Products may also provide
6 warnings for the Covered Products as follows:
7

8 (1) In-Store Sales. Pursuant to Title 27, California Code of
9 Regulations, Section 25602(a)(2), retailers may provide
10 California customers purchasing Covered Products the warnings
11 set forth in Section 3.4 above via register purchase display
12 and/or on customers' printed receipts.

13 (2) Internet Sales. Pursuant to Title 27, California Code of
14 Regulations, Section 25602(b), retailers may provide California
15 customers purchasing the Covered Products via such retailers'
16 internet websites the Proposition 65 warnings set forth in
17 Section 3.4 above (1) by providing the warning or a clearly
18 marked hyperlink using the word "WARNING" on the product
19 display page (including, e.g., the "Product Details" section of
20 the product page), or (2) by otherwise prominently displaying
21 the warning to the purchaser prior to completing the purchase
22 (including, e.g., on the same webpage as the order form for the
23 Covered Product).
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26 While acknowledging that Defendant is not a retailer of Covered Products and thus the
27 terms of this Section do not directly apply to Defendant, Plaintiff agrees that the retailer
28 warning methods described in this Section comply with Proposition 65.

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3 **4. MONETARY RELIEF**

4 4.1. Within thirty (30) days of the Effective Date, Defendant shall pay the total sum of
5 \$45,000 which includes \$10,000 in civil penalties and \$35,000 in payment of Plaintiff's
6 costs and reasonable attorney's fees. The \$10,000 civil penalty shall be apportioned
7 pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$7,500, paid to
8 the State of California's Office of Environmental Health Hazard Assessment and 25%, or
9 \$2,500, payable to Plaintiff.

10 4.2. The payments specified in Section 4.1, shall be made by wire transfer to Plaintiff's
11 counsel Custodio & Dubey LLP as set forth below. Plaintiff's counsel will remit the
12 portions due to the State of California Office of Environmental Health Hazard
13 Assessment and to 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 Plaintiff, on
20 behalf of itself, and acting on behalf of the public interest, and Defendant, and all of
21 Defendant's officers, directors, members, shareholders, employees, representatives,
22 attorneys, agents, parent companies, subsidiaries, divisions, affiliates, and the
23 predecessors, successors, and assigns of any of them (collectively the "Defendant
24 Releasees"), as well as all other upstream and downstream entities in the distribution
25 chain for the Covered Products, including but not limited to manufacturers, retailers,
26 suppliers, distributors, marketplace hosts, wholesalers, customers, private label
27 customers, franchisees, licensees, licensors, and cooperative members, including but not
28 limited to Big Lots Stores, Inc. (collectively, the "Downstream Releasees"), for any
alleged violation of Proposition 65, and its implementing regulations, for failure to

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2 provide Proposition 65 warnings for the Covered Products, and fully resolves all claims
3 that have been brought, or which could have been brought in this action up to and
4 including ninety (90) days after the Effective Date. Plaintiff on behalf of itself, and in the
5 public interest, hereby discharges the Defendant Releasees and Downstream Releasees
6 from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
7 penalties, obligations, debts, losses, fees, costs and expenses asserted, or that could have
8 been asserted, with respect to any alleged violation of Proposition 65 arising from the
9 failure to provide Proposition 65 warnings for any or all of the Covered Products, through
10 and including ninety (90) days after the Effective Date.

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

20
21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
22 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
23 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
24 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
25 OR HER SETTLEMENT WITH THE DEBTOR.

26 5.3. Plaintiff understands and acknowledges that the significance and consequence of
27 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
28 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

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2 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim
3 for those damages against any of the Defendant Releasees and Downstream Releasees.

4 5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute
5 compliance with Proposition 65 with respect to the Covered Products as set forth in the
6 60 Day Notice and the Complaint.

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

8 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
9 referenced in California Health and Safety Code § 25249.7(f).

10 **7. PROVISION OF NOTICE**

11 7.1. When any Party is entitled to receive any notice or writing under this Consent
12 Judgment, the notice or writing shall be sent by first class certified mail with return
13 receipt requested, or by electronic mail, as follows:

14 To Defendant:

15 Konstantin Lambrev
16 Konex-Tiva JSC
17 9 Bulgaria Boulevard, Entrance 1, Suite 1
18 Sofia 1408
19 Bulgaria
20 k.lambrev@konex-tiva.com

21 With copy to:

22 Ann Grimaldi, Esq.
23 Grimaldi Law Offices
24 75 Broadway Street, Suite 202
25 San Francisco, CA 94111
26 ann.grimaldi@grimaldilawoffices.com

27 To Plaintiff:
28 Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Ste 615
Los Angeles, CA 90013
dubey@cd-lawyers.com

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2 7.2. Any party may modify the person and address to whom the notice is to be sent by
3 sending the other Party notice that is transmitted in the manner set forth in section 7.1.
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5 **8. COURT APPROVAL**

6 8.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and
7 file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that
8 Defendant shall support. This Consent Judgment shall not become effective until
9 approved and entered by the Court. If this Consent Judgment is not entered by the Court,
10 it shall be of no force or effect, and shall not be introduced into evidence or otherwise
11 used in any proceeding for any purpose.

12 **9. GOVERNING LAW AND CONSTRUCTION**

13 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
14 California.

15 **10. ENTIRE AGREEMENT**

16 10.1. This Consent Judgment contains the sole and entire agreement and understanding
17 of the Parties with respect to the entire subject matter hereof, and any and all prior
18 discussions, negotiations, commitments, or understandings related thereto, if any, are
19 hereby merged herein and therein.

20 10.2. There are no warranties, representations, or other agreements between the Parties
21 except as expressly set forth herein. No representations, oral or otherwise, express or
22 implied, other than those specifically referred to in this Consent Judgment have been
23 made by any Party hereto.

24 10.3. No other agreements not specifically contained or referenced herein, oral or
25 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
26 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or
27 to bind any of the Parties hereto only to the extent that they are expressly incorporated
28 herein.

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

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

8 **11. RETENTION OF JURISDICTION**

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

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

12 12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any
13 claim against an entity that is not a Defendant Releasee and/or Downstream Releasee on
14 terms that are different from those contained in this Consent Judgment.

15 **13. EXECUTION IN COUNTERPARTS**

16 13.1. 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 executed Consent Judgment shall have the same force and effect as the original.

21 **14. AUTHORIZATION**

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

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3 **15. SEVERABILITY**

4 15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is
5 declared by a Court to be invalid, void, or unenforceable, the remaining portions or
6 provisions shall continue in full force and effect.

7 **AGREED TO:**

8 **Ecological Alliance LLC**

9
10 Date: March 25 2021

11
12 By: 

13 Harmony Welsh, Managing Member
14

15 **AGREED TO:**

16 **Konex-Tiva**

17 Date: March 25 2021


18
19 By: 

20 Konstantin Lambrev, CEO

21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &
22 Safety Code § 25249.7(1)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.
23

24
25 Dated: 04/29/2021





26 Stephen I. Goorvitch / Judge
27 JUDGE OF THE SUPERIOR COURT
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