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CUSTODIO & DUBEY LLP
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Attorneys for Plaintiff Ecological Alliance, LLC

FILED
Superior Court of California
County of Los Angeles

07/22/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: A. Barton Deputy

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

ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

Plaintiff,

v.

COLART AMERICAS, INC., a Delaware
corporation,

Defendant.

Case No.: 22STCV00694

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

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

5 WHEREAS: On or about August 11, 2021, Plaintiff, through Plaintiff’s counsel, served a
6 60 Day Notice and on or about November 2, ~~2022~~^{GEGF}, Plaintiff, through Plaintiff’s counsel, served an
7 Amended 60 Day Notice (the “Notice”) to Defendant, Dick Blick Holdings, Inc., the California
8 Attorney General, the District Attorneys of every County in the State of California, and the City
9 Attorneys for every City in the State of California with a population greater than 750,000
10 (collectively, “Public Prosecutor(s)”) alleging that Defendant violated California’s Safe Drinking
11 Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq.,
12 and its implementing regulations (collectively, “Proposition 65”) and that Plaintiff intended to file
13 an enforcement action in the public interest; and

14 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed brush
15 keepers, including their sleeves, containing Di(2-ethylhexy)phthalate (“DEHP”), (collectively the
16 “Covered Products”) that were sold or distributed for sale in California and further alleges that
17 those Covered Products expose consumers in the State of California to chemicals including
18 DEHP, which are listed by the State of California pursuant to California Health and Safety Code
19 § 25249.8; and

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

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

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

28 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay

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2 and expense of litigation.

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

5 **INTRODUCTION**

6 1.1. On August 11, 2021, Plaintiff served the Notice upon Defendant, Dick Blick
7 Holdings, Inc., and on Public Prosecutors. On November 2, 2021, Plaintiff served the
8 Amended Notice upon Defendant, Dick Blick Holdings, Inc., and on Public Prosecutors.
9 No Public Prosecutors commenced an enforcement action. No Public Prosecutor having
10 commenced an enforcement action, Plaintiff proceeded to file its Complaint against
11 Defendant in the present action.

12 1.2. Defendant employs ten (10) or more persons.

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

25 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
26 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
27 resolving the issues raised therein both as to past and future conduct. By execution of
28 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit

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2 any fact, conclusion of law, or violation of law, nor shall Defendant's compliance with
3 the Consent Judgment constitute or be construed as an admission by Defendant of any
4 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and
5 legal allegations in the 60-Day Notice and the Complaint and expressly denies any
6 wrongdoing whatsoever.

7 **2. DEFINITIONS**

- 8 2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date the
9 Consent Judgment has been approved and entered by the Court.

10 **3. INJUNCTIVE RELIEF**

- 11 3.1. For each Covered Product, Defendant agrees to undertake, or cause to be
12 undertaken on its behalf, either (a) reformulation of the Covered Product to bring it
13 within the Proposition 65 exemption identified in Section 3.2 below, or (b) provide a
14 warning as prescribed in Sections 3.3-3.4 below. Compliance with this Section 3.1 will
15 constitute compliance by Defendant with all requirements of Proposition 65 relating to
16 DEHP exposure in the Covered Products.

- 17 3.2. Proposition 65 Exemption for the Covered Products

18 ~~HE~~
Subject to Section ~~3.5~~, any Covered Product manufactured after ninety (90) days after the
19 Effective Date shall be deemed to comply with Proposition 65, and be exempt from any
20 Proposition 65 warning requirements with respect to DEHP, if no "Accessible Component
21 Part" of such Covered Product contains more than 0.1 percent (1,000 parts per million) of
22 DEHP. For purposes of this Consent Judgment, "Accessible Component Part" shall mean
23 components of the Covered Products to which a person would be exposed to DEHP by
24 direct contact during normal use of the Covered Product.

- 25 3.3. Warning Option

26 ~~HE~~
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. To the extent any warning is required, the warning requirement shall only be

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

8
9 3.4. Warning Language

10 Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of
11 the following warning statements using a method authorized under Proposition 65's
12 regulations, and displayed in a reasonably conspicuous manner:

13 (1) **WARNING:** This product can expose you to chemicals including
14 di(2-ethylhexyl) phthalate (DEHP), which are known to the State of
15 California to cause cancer and birth defects or other reproductive
16 harm. For more information go to www.P65Warnings.ca.gov.

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

19 The warnings set forth above shall also include a symbol consisting of a black
20 exclamation point in a yellow equilateral triangle with a bold black outline. Where
21 the sign, label or shelf tag for the product is not printed using the color yellow, the
22 symbol may be printed in black and white. The symbol shall be placed to the left
23 of the text of the warning, in a size no smaller than the height of the word
24 "WARNING". If the warning in subsection (2) is used:

- 25 • It shall be located on the product label; and
- 26 • The font size of the warning shall be at least as large as the largest font size
27 used for other consumer information, as defined in 27 Cal.Code Regs.
28 Section 25600.1(c), on the product label, and in no event shall the font size
be smaller than 6 point font.

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4. MONETARY RELIEF

4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total sum of \$26,000 which includes \$6,000 in civil penalties and \$20,000 in payment of Plaintiff's costs and reasonable attorney's fees. The \$6,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$4,500, paid to the State of California's Office of Environmental Health Hazard Assessment and 25%, or \$1,500, payable to Plaintiff.

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

Bank: Bank of America, N.A.

Routing Transit No.: 026009593

Account No.: 325132729125

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 on behalf of the public interest, and Defendant, and all of Defendant's officers, directors, members, shareholders, employees, representatives, attorneys, agents, parent companies, subsidiaries, divisions, affiliates, and the predecessors, successors, and assigns of any of them (collectively the "Defendant Releasees"), as well as all other upstream and downstream entities in the distribution chain for the Covered Products, including but not limited to manufacturers, retailers, suppliers, distributors, marketplace hosts, wholesalers, customers, private label customers, franchisees, licensees, licensors, and cooperative members, including but not limited to Dick Blick Holdings, Inc. (collectively, the "Released Parties"), for any alleged violation of Proposition 65, and its implementing regulations, for failure to provide

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Proposition 65 warnings for any exposure to DEHP from the Covered Products as alleged in the notice and complaint, and fully resolves all such claims. Plaintiff on behalf of itself, and in the public interest, hereby discharges the Defendant Releasees and Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, obligations, debts, losses, fees, costs and expenses asserted with respect to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings for exposure to DEHP as alleged in the notice and complaint from any or all of the Covered Products sold through ninety (90) days after the Effective Date of the Consent Judgment. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect to any alleged failure to warn about DEHP in Covered Products sold or distributed by Defendant after the Effective Date.

5.2. Plaintiff, acting in its individual capacity only, and in consideration of the promises and monetary payments contained herein, hereby releases Defendant Releasees and Released Parties from any alleged claim of failure to provide Proposition 65 warnings for the Covered Products that Defendant has sold or caused to be sold in California up to and including the Effective Date.

5.3. It is possible that other claims not known to the Parties arising out of the facts contained in the 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:

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

5.4. 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, chemicals in or from the Covered Products, Plaintiff will not be able to make any claim for those damages against any of the Defendant Releasees or the Released Parties.

5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with respect to exposure to DEHP in the Covered Products as set forth in the Notice and/or the Complaint. If the California Office of Environmental Health Hazard Assessment promulgates regulations affecting the warning provisions set forth in Section 3 herein, Defendant may comply with those regulations without being deemed in breach of this Consent Judgment.

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

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

7. PROVISION OF NOTICE

7.1. 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 by electronic mail, as follows:

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To Defendant:

Steve Chamberlain
Vice President & General Manager – North America
Colart Americas Inc.
2 Corporate Place South,
Piscataway, NJ 08854

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

To Plaintiff:

Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Ste 2520
Los Angeles, CA 90071
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 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 not oppose. 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

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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.

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

10.5. 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.

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

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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

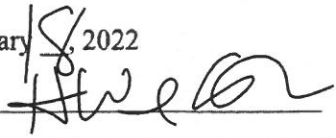
14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

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 to the extent they implement the Parties' intent.

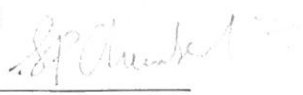
AGREED TO:

Ecological Alliance LLC

Date: January 18, 2022
By: 
Harmony Welsh, Managing Member

AGREED TO:

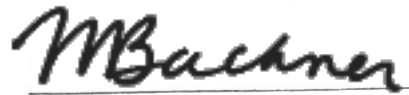
Colart Americas, Inc.

Date: January 14th, 2022
By: 

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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: 07/22/2022



JUDGE OF THE SUPERIOR COURT