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David W. Slayton, Executive Officer / Clerk of Court

By: O. Chavez Deputy

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

13 ECOLOGICAL ALLIANCE, LLC, a California
14 limited liability company,

15 Plaintiff,

16 v.

17 LIZARD SKINS, LLC, a Delaware limited
18 liability company

19 Defendant.

Case No.: 23STCV12263

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

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2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Lizard Skins, LLC (“Defendant”)
3 hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

4 WHEREAS: On or about September 7, 2022, Plaintiff, through Plaintiff’s counsel, served
5 a 60 Day Notice (the “Notice”) to Defendant, Dick’s Sporting Goods, Inc., 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 molded
13 carrying cases containing Di-n-butyl Phthalate (“DBP”), (collectively the “Covered Products”)
14 that were sold or distributed for sale in California and further alleges that those Covered Products
15 expose consumers in the State of California to DBP, which is listed by the State of California
16 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 DBP 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 Notice, and denies that it has violated
22 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:

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INTRODUCTION

1.1. On September 7, 2022, Plaintiff served the Notice upon Defendant, upon Dick’s Sporting Goods, Inc., 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.

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 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 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. Commencing 90 days after the Effective Date, Defendant shall not sell or distribute for sale to consumers in California, or sell directly to consumers in California any Covered Product unless, either (a) the Covered Product complies with the Proposition 65 exemption identified in Section 3.2 below, or (b) the Covered Product is labeled with a warning as prescribed in Sections 3.3-3.4 below. Compliance with this Section 3.1 will constitute compliance by Defendant with all requirements of Proposition 65 relating to DBP exposure in the Covered Products.


3.2. Covered Products that are manufactured prior to the Effective Date may continue to be sold through and are exempt from the Warning requirements in Section 3 of this Consent Judgment.


3.3. Proposition 65 Exemption for the Covered Products
Covered Products shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DBP, if such Covered Product contains no more than 0.1 percent (1,000 parts per million) of DBP.

3.4. 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.

3.5. Warning Language
Where required to meet the criteria set forth in Section 3.3, 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:

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

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

The warnings set forth in (1) or (2) above 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 placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”. The Warning shall be securely affixed to or printed upon the label of each Covered Product. The Warning must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, the Warning may be provided by including either the Warning or a clearly marked hyperlink using the word “Warning” in all capital and bold letters on the Covered Product’s primary display page, or by otherwise prominently displaying the Warning to the purchaser prior to completing the purchase. The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning.

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4. MONETARY RELIEF

4.1. Within fourteen (14) days of the Effective Date, Defendant shall pay the total sum of \$25,000 which includes \$7,000 in civil penalties and \$18,000 in payment of Plaintiff's costs and reasonable attorney's fees. The \$7,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$5,250, paid to the State of California's Office of Environmental Health Hazard Assessment and 25%, or \$1,750, 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.: 325149324377

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, and all of their officers, directors, members, shareholders, employees, representatives, attorneys, agents, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, and assigns

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2 (collectively, the “Released Parties”), for any alleged violation of Proposition 65, and its
3 implementing regulations, for failure to provide Proposition 65 warnings for the Covered
4 Products with respect to DBP, and fully resolves all claims that have been brought, or
5 which could have been brought in this action up to and including the Effective Date.
6 Plaintiff on behalf of itself, and in the public interest, hereby discharges the Defendant
7 Releasees and Released Parties from any and all claims, actions, causes of action, suits,
8 demands, liabilities, damages, penalties, obligations, debts, losses, fees, costs and
9 expenses asserted with respect to any alleged violation of Proposition 65 arising from the
10 failure to provide Proposition 65 warnings about exposures to DBP for any or all of the
11 Covered Products sold through ninety (90) days after the Effective Date of the Consent
12 Judgment. Compliance with the terms of this Consent Judgment constitutes compliance
13 with Proposition 65 by Defendant with respect to any alleged failure to warn about DBP
14 in Covered Products sold or distributed by Defendant after the Effective Date.

15 5.2. Plaintiff, acting in its individual capacity only, and in consideration of the
16 promises and monetary payments contained herein, hereby releases Defendant Releasees
17 and Released Parties from any alleged claim of failure to provide Proposition 65
18 warnings for the Covered Products that Defendant has sold or caused to be sold in
19 California up to and including the Effective Date.

20 5.3. It is possible that other claims not known to the Parties arising out of the facts contained
21 in the Notice, or alleged in the Complaint, relating to the Covered Products, will
22 hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand,
23 and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly
24 intended to cover and include all such claims through and including the Effective Date,
25 including all rights of action thereon. Plaintiff and Defendant acknowledge that the
26 claims released in Sections 5.1 and 5.2 may include unknown claims, and nevertheless
27 intend to release such claims, and in doing so waive California Civil Code § 1542 which
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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 DBP 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:
Hazel Ocampo, Esq.
Greenberg Traurig, LLP
400 Capitol Mall, Suite 2400
Sacramento, CA 95814
ocampoh@gtlaw.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, and shall apply only to Covered Products sold in California.

9.2. In the event that Proposition 65, either as a whole or as specifically applicable to the Covered Products, is repealed by means of any California statute or regulation, or is federally preempted, or is otherwise specifically rendered inapplicable to the Covered Products by a decision of the California Supreme Court, or if any of the provisions of this Consent Judgment are specifically rendered inapplicable or no longer required as to the Covered Products as a result of any such repeal or preemption or decision of the

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2 California Supreme Court, or due to federal regulations, then Lizard Skins may provide
3 written notice to Ecological Alliance of any asserted change in the law, and it shall have
4 no further obligations pursuant to this Consent Judgment with respect to the Covered
5 Products, to the extent that the Covered Products are so affected.

6 **1. ENTIRE AGREEMENT**

7 1.1. This Consent Judgment contains the sole and entire agreement and understanding of the
8 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
9 negotiations, commitments, or understandings related thereto, if any, are hereby merged
10 herein and therein.

11 1.2. There are no warranties, representations, or other agreements between the Parties except
12 as expressly set forth herein. No representations, oral or otherwise, express or implied,
13 other than those specifically referred to in this Consent Judgment have been made by any
14 Party hereto.

15 1.3. No other agreements not specifically contained or referenced herein, oral or otherwise,
16 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
17 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any
18 of the Parties hereto only to the extent that they are expressly incorporated herein.

19 1.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall
20 be binding unless executed in writing by the Party to be bound thereby, and approved and
21 ordered by the Court.

22 1.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall
23 constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
24 such waiver constitute a continuing waiver.

25 **2. RETENTION OF JURISDICTION**

26 2.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent
27 Judgment.

28 **3. NO EFFECT ON OTHER SETTLEMENTS**

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3.1. 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.

4. EXECUTION IN COUNTERPARTS

4.1. 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.

5. AUTHORIZATION

5.1. 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.


6. SEVERABILITY

6.1. 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: June 27, 2023

By: 

Harmony Welsh, Managing Member

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AGREED TO:

Lizard Skins, LLC

Date: June 20, 2023

By: Brad Barker

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.

10/12/2023

Dated: _____



Holly J. Fujie

Holly J. Fujie / Judge

JUDGE OF THE SUPERIOR COURT