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

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**

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

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

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

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

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

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

WHEREAS: The Parties wish to resolve their differences without the delay and expense of protracted litigation.

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

1. DEFINITIONS

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

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

2. INTRODUCTION

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

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

2.3. For purposes of this Consent Judgment only, the Parties stipulate that: 1) this Court has jurisdiction over the allegations of violations contained in the 60 Day Notice and Complaint, and personal jurisdiction over Defendant as to the acts alleged in the 60 Day Notice and 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, final and binding 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 60-Day Notice, or arising therefrom or related thereto, including but not limited to any Proposition 65 claim arising out of an exposure to Covered Products (collectively, "Proposition 65 Claims").

2.4. The Parties enter into this Consent Judgment as a full, final and binding 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 60-Day Notice and the Complaint and expressly denies any wrongdoing whatsoever.

3. INJUNCTIVE RELIEF

3.1. For the Covered Products, 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 this Section 3.1 shall constitute compliance by Defendant with all requirements of Proposition 65 in the Covered Products.

3.2. Proposition 65 Exemption for the Covered Products

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

3.3. Warning Option

Subject to section 3.5, 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, imported, sold, shipped for sale or offered for sale to consumers by Defendant in the State of California, commencing ninety (90) days after the Effective Date, and continuing thereafter. No Proposition 65 warning shall be required as to any Covered Products that are already in the stream of commerce as of and through ninety (90) days after the Effective Date, and all such Covered Products are hereby deemed to be exempt from Proposition 65 enforcement.

3.4. Warning Language

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

(1) **WARNING**: Consuming this product can expose you to chemicals including Lead, which [is] are 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/food

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

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

Defendant shall be deemed to be in compliance with the warning requirements of this Consent Judgment by either adhering to Sections 3.3. and 3.4 of this Consent Judgment or by complying with the Proposition 65 warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") as

of or after the Effective Date.

3.5. Retailer Warnings

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

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

(2) Internet Sales. Pursuant to Title 27, California Code of Regulations, Section 25602(b), retailers may provide California customers purchasing the Covered Products via such retailers' internet websites the Proposition 65 warnings set forth in Section 3.4 above (1) by providing the warning or a clearly marked hyperlink using the word "WARNING" on the product display page (including, e.g., the "Product Details" section of the product page), or (2) by otherwise prominently displaying the warning to the purchaser prior to completing the purchase (including, e.g., on the same webpage as the order form for the Covered Product).

While acknowledging that Defendant is not a retailer of Covered Products and thus the terms of this Section do not directly apply to Defendant, Plaintiff agrees that the retailer warning methods described in this Section comply with Proposition 65.

4. MONETARY RELIEF

4.1. Within thirty (30) days of the Effective Date, Defendant shall pay the total sum of $45,000 which includes $10,000 in civil penalties and $35,000 in payment of Plaintiff's costs and reasonable attorney's fees. The $10,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or $7,500, paid to the State of California's Office of Environmental Health Hazard Assessment and 25%, or $2,500, 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. Plaintiff's 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.: 325104702031

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 Big Lots Stores, Inc. (collectively, the "Downstream Releasees"), for any alleged violation of Proposition 65, and its implementing regulations, for failure to

provide Proposition 65 warnings for the Covered Products, and fully resolves all claims that have been brought, or which could have been brought in this action up to and including ninety (90) days after the Effective Date. Plaintiff on behalf of itself, and in the public interest, hereby discharges the Defendant Releasees and Downstream Releasees from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, obligations, debts, losses, 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 for any or all of the Covered Products, through and including ninety (90) days after the Effective Date.

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 ninety (90) days after 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:

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

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

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

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:

To Defendant:

Konstantin Lambrev
Konex-Tiva JSC
9 Bulgaria Boulevard, Entrance 1, Suite 1
Sofia 1408
Bulgaria
k.lambrev@konex-tiva.com

With copy to:

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
448 S. Hill St., Ste 615
Los Angeles, CA 90013
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 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.

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 an entity that is not a Defendant Releasee and/or Downstream Releasee 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

Date: March 25 2021

By: _____

Harmony Welsh, Managing Member

AGREED TO:

Konex-Tiva

Date: March 25 2021

By: _____

Konstantin Lambrev, CEO

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: _____

JUDGE OF THE SUPERIOR COURT