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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.: **[PROPOSED] STIPULATED AMENDED CONSENT JUDGMENT**

Upon entry, this Amended Consent Judgment supersedes in its entirety the Consent Judgment entered in this case on April 29, 2021. This Amended Consent Judgment is entered by the Court pursuant to the Joint Motion to Modify Consent Judgment of Ecological Alliance and Konex-Tiva, JSC. The Amended Consent Judgment reflects, among other things, Defendant's agreement to modify and phase its reformulation of Covered Product as set forth in Section 3.2 of this Amended 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 Amended 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 Amended Consent Judgment; and

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

WHEREAS: The original Consent Judgment became effective on entry by the Court on April 29, 2021; and

WHEREAS: The Attorney General was not given an opportunity to object to the entry of the original consent judgment and, after the court's entry of the original consent judgment, the California Attorney General's office informed the settling parties of certain concerns about the injunctive relief and other terms of the settlement. This Amended Consent Judgment has been modified to address those concerns; and

WHEREAS: All Covered Products already shipped before and through ninety (90) days after April 29, 2021 are deemed to be covered by the waiver and release provisions of Section 5 of the original Consent Judgment and shall not be subject to any enforcement action. Until this Amended Consent Judgment is entered by the Court, the original consent judgment entered on April 29, 2021 shall remain in effect.

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 Amended Consent Judgment, the date the Amended Consent Judgment has been approved and entered by the Court.

1.2. "Covered Product(s)" shall mean, with respect to this Amended 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 Amended Consent Judgment, the Parties stipulate that the Defendant employs ten (10) or more persons.

2.3. For purposes of this Amended 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 Amended 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 Amended 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 Amended 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 Amended 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

Defendant shall test three (3) samples from each manufacturing lot of Covered Product that is manufactured, imported, distributed, sold, or offered for sale to consumers in the State of California, commencing on the Effective Date and continuing for six (6) months thereafter, and no sample shall exceed one hundred (100) parts per billion (ppb) of Lead. Such lot shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to Lead. Commencing six (6) months after the Effective Date, and continuing thereafter, Defendant shall test three (3) samples from each manufacturing lot of Covered Product that is manufactured, imported, distributed, sold, and offered for sale to consumers in the State of California and no sample shall exceed eighteen (18) ppb of Lead. [1] Such lot shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to Lead.

3.3. 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. No Proposition 65 warning shall be required as to any Covered Products that are already in the stream of commerce as of and through July 28, 2021, and all such Covered Products are hereby deemed to be exempt from Proposition 65 enforcement.

[1] Should the laboratory used by Defendant be unable to establish a limit of detection of 18 ppb or less for this purpose, then a "non-detect" result with a limit of detection of 20 ppb shall be deemed to comply with this section.

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 if it reasonably believes that such phrase would comply with Proposition 65. 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. If using the "short form" version of the warning set out in subsection (2) above, the entire warning must be in a type size no smaller than the largest type size used for other "consumer information," as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c), on the product. In no case shall the warning appear in a type size smaller than 6-point type.

Defendant shall be deemed to be in compliance with the warning requirements of this Amended Consent Judgment by either adhering to Sections 3.3. and 3.4 of this Amended 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 pursuant to Title 27, California Code of Regulations, Section 25602(a)(2) and Section 25602(b). 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 would comply with Proposition 65.

4. MONETARY RELIEF

4.1. Nothing in this Amended Consent Judgment, as amended, shall require payments to be made in addition to payments already made pursuant to the original Consent Judgment. In settlement of all of the claims referred to in this Amended Consent Judgment, settling Defendant has collectively paid an aggregate of $45,000 in total monetary relief. Of the foregoing, a total of $10,000 is allocated as civil penalties. The $10,000 civil penalty is 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, paid to Plaintiff. A total of $35,000 is allocated to Plaintiff's counsel, Custodio & Dubey LLP, for Plaintiff's costs and reasonable attorneys' fees.

4.2. The aforementioned total payment of $45,000 was made by Defendant by wire transfer to Plaintiff's counsel, Custodio & Dubey LLP. The payment remains in the trust account of Custodio & Dubey LLP. Upon approval and entry of this Amended Consent Judgment, those funds will be made available to Plaintiff for distribution, apportioned as set forth above, to the State of California Office of Environmental Health Hazard Assessment, Plaintiff, and Plaintiff's counsel.

5. CLAIMS COVERED AND RELEASED

5.1. This Amended 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 any exposure to lead 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 Downstream Releasees 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 lead as alleged in the notice and complaint from any or all of the Covered Products sold through the Effective Date of the Amended Consent Judgment. Compliance with the terms of this Amended Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect to any alleged failure to warn about Lead in Covered Products sold or distributed by Defendant 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 Amended Consent Judgment is expressly intended to cover and include all such claims, 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 Amended 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 Amended 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 this Amended Consent Judgment by all Parties, the settling Parties shall jointly file a Motion for Amendment and Approval of this Amended Consent Judgment. This Amended Consent Judgment shall not become effective until approved and entered by the Court. If this Amended 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 Amended Consent Judgment shall be governed by the laws of the State of California.

10. ENTIRE AGREEMENT

10.1. This Amended 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 Amended 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 Amended 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 Amended 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 Amended Consent Judgment.

12. NO EFFECT ON OTHER SETTLEMENTS

12.1. Nothing in this Amended 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 Amended Consent

Judgment.

13. EXECUTION IN COUNTERPARTS

13.1. This Amended 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 Amended Consent Judgment by e-mail, facsimile, or other electronic means, shall constitute legal and binding execution and delivery. Any photocopy of the executed Amended 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 Amended Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Amended Consent Judgment.

15. SEVERABILITY

15.1. If subsequent to Court approval of this Amended 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: October 6, 2021

By: _____

Harmony Welsh, Managing Member

AGREED TO:

Konex-Tiva, JSC

Date: October 05, 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