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8 Attorneys for Plaintiff Ecological Alliance, LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 (Unlimited Jurisdiction)

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

14 Plaintiff,

15 v.

16 ZEBRA PEN CORPORATION, a New Jersey  
17 corporation,

18 Defendant.

19 Case No.: 21STCV38018

20 **[PROPOSED] STIPULATED**  
21 **CONSENT JUDGMENT**

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2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Zebra Pen Corporation  
3 (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as  
4 follows:

5 WHEREAS: On or about November 18, 2020, Plaintiff, through Plaintiff’s counsel,  
6 served a 60 Day Notice to Defendant, Amazon.com, 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; and

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

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

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

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

26 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay  
27 and expense of 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 **INTRODUCTION**

- 5 1.1. On November 18, 2020, Plaintiff served the 60-Day Notice upon Defendant,  
6 Amazon.com, Inc., and on Public Prosecutors. No Public Prosecutors commenced an  
7 enforcement action. No Public Prosecutor having commenced an enforcement action,  
8 Plaintiff proceeded to file its Complaint against Defendant in the present action.
- 9 1.2. Defendant employs ten (10) or more persons.
- 10 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the  
11 “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation  
12 contained in the Complaint, and personal jurisdiction over Defendant as to the acts  
13 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this  
14 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all  
15 claims which were or could have been raised in the Complaint based on the facts alleged  
16 therein with respect to the Covered Products, and of all claims which were or could have  
17 been raised by any person or entity based in whole or in part, directly or indirectly, on the  
18 facts alleged in the 60-Day Notice, in the present action, or arising therefrom or related  
19 thereto, with respect to Covered Products, including any Proposition 65 claim arising out  
20 of an exposure to Covered Products (collectively, “Proposition 65 Claims”).
- 21 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the  
22 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of  
23 resolving the issues raised therein both as to past and future conduct. By execution of  
24 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit  
25 any fact, conclusion of law, or violation of law, nor shall Defendant’s compliance with  
26 the Consent Judgment constitute or be construed as an admission by Defendant of any  
27 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and  
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2 legal allegations in the 60-Day Notice and the Complaint and expressly denies any  
3 wrongdoing whatsoever.

4 **2. DEFINITIONS**

5 2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date the  
6 Consent Judgment has been approved and entered by the Court.

7 **3. INJUNCTIVE RELIEF**

8 3.1. For each Covered Product, Defendant agrees to undertake, or cause to be  
9 undertaken on its behalf, either (a) reformulation of the Covered Product to bring it  
10 within the Proposition 65 exemption identified in Section 3.2 below, or (b) provide a  
11 warning as prescribed in Sections 3.3-3.4 below. Compliance with this Section 3.1 will  
12 constitute compliance by Defendant with all requirements of Proposition 65 relating to  
13 DEHP exposure in the Covered Products:

14 3.2. Proposition 65 Exemption for the Covered Products

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

22 3.3. Warning Option

23 Subject to section 3.5, Covered Products that do not meet the warning exemption standard  
24 set forth in Section 3.2 above, shall be accompanied by a warning as described in Section  
25 3.4 below. To the extent any warning is required, the warning requirement shall only be  
26 as to Covered Products that are manufactured, distributed, marketed, sold or shipped for  
27 sale to consumers by Defendant in the State of California, after ninety (90) days after the  
28 Effective Date. No Proposition 65 warning shall be required as to any Covered Products

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2 that are already in the stream of commerce as of the date that is ninety (90) days after the  
3 Effective Date, and all such Covered Products are hereby deemed to be exempt from  
4 Proposition 65 with respect to DEHP.  
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6 3.4. Warning Language

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

10 (1) **WARNING:** This product can expose you to DEHP, which is  
11 known to the State of California to cause cancer and birth defects or  
12 other reproductive harm. For more information go to  
13 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

16 If Defendant elects to use the warning statements identified in either (1) or (2)  
17 above, it shall also include a symbol consisting of a black exclamation point in a  
18 yellow equilateral triangle with a bold black outline. Where the sign, label or shelf  
19 tag for the product is not printed using the color yellow, the symbol may be printed  
20 in black and white. The symbol shall be placed to the left of the text of the  
21 warning, in a size no smaller than the height of the word "WARNING".

22 **4. MONETARY RELIEF**

23 4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total sum of  
24 \$25,000 which includes \$5,000 in civil penalties and \$20,000 in payment of Plaintiff's  
25 costs and reasonable attorney's fees. The \$5,000 civil penalty shall be apportioned  
26 pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$3,750, paid to  
27 the State of California's Office of Environmental Health Hazard Assessment and 25%, or  
28 \$1,250, payable to Plaintiff.

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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 in the public interest, and Defendant of any violation of Proposition 65 that was or could have been asserted by Plaintiff or on behalf of its past or current agents, representatives, attorneys, predecessors, successors, and/or assigns (collectively, the "Releasers") with respect to the Covered Products. Releasers hereby release any such claims against Defendant and all of Defendant's officers, directors, members, shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions, subdivisions, affiliates, suppliers, franchisees, licensees, and retailers, their parent and all subsidiaries, and affiliates, thereof, their respective employees, agents and assigns, as well as all other upstream and downstream entities in the distribution chain for any of the Covered Products, and the predecessors, successors, and assigns of any of them, including Amazon.com (collectively, the "Released Parties"), for any alleged violation of Proposition 65, and its implementing regulations, for failure to provide Proposition 65 warnings for the Covered Products with respect to DEHP, and fully resolves all claims that have been brought, or which could have been brought in this action up to and including the Effective Date. Plaintiff on behalf of itself, and in the public interest, hereby discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses

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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 about exposures to DEHP for any or all of the Covered Products, through and including 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 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 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.

5.3. 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 Released Parties.

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5.4. 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 60 Day Notice and/or 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:  
George Gigounas, Esq.  
Sean Newland, Esq.  
DLA Piper LLP  
555 Mission Street, Suite 2400  
San Francisco, CA 94105-2933  
[george.gigounas@us.dlapiper.com](mailto:george.gigounas@us.dlapiper.com)  
[sean.newland@us.dlapiper.com](mailto:sean.newland@us.dlapiper.com)

To Plaintiff:  
Vineet Dubey, Esq.  
Custodio & Dubey LLP  
445 S. Figueroa St., Ste 2520  
Los Angeles, CA 90071  
[dubey@cd-lawyers.com](mailto: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.



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**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 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.

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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 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

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provisions shall continue in full force and effect.

**AGREED TO:**

**Ecological Alliance LLC**

Date: June 17 2021

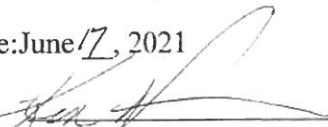
By:  \_\_\_\_\_

Harmony Welsh, Managing Member

**AGREED TO:**

**Zebra Pen Corporation**

Date: June 17, 2021

By:  \_\_\_\_\_

*KEN NEWMAN  
DIRECTOR OF MARKETING*

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