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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF LOS ANGELES

8 (Unlimited Jurisdiction)

9
10 ECOLOGICAL ALLIANCE, LLC, a California
11 limited liability company,

12 Plaintiff,

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14 v.

15 M. JACOB & SONS, a Michigan corporation,

16 Defendant.
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Case No.: 23STCV12826

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

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2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and M. Jacob & Sons (“Defendant”)
3 hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

4 WHEREAS: On or about February 16, 2023, Plaintiff, through Plaintiff’s counsel, served
5 a 60 Day Notice (the “Notice”) on Defendant, the California Attorney General, the District
6 Attorneys of every County in the State of California, and the City Attorneys for every City in the
7 State of California with a population greater than 750,000 (collectively, “Public Prosecutor(s)”)
8 alleging that Defendant violated California’s Safe Drinking Water and Toxic Enforcement Act of
9 1986, California Health and Safety Code § 25249.6, et seq., and its implementing regulations
10 (collectively, “Proposition 65”) and that Plaintiff intended to file an enforcement action in the
11 public interest; and

12 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed travel
13 related products, the full list of which are attached to this Stipulated Consent Judgment as
14 Appendix A, containing Di(2-ethylhexyl)phthalate (“DEHP”), (collectively the “Covered
15 Products”) that were sold or distributed for sale in California and further alleges that those
16 Covered Products expose consumers in the State of California to DEHP, which is 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 Notice, and denies that it has violated
23 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.

28 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN

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2 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

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4 **1. INTRODUCTION**

5 1.1. On February 16, 2023, Plaintiff served the Notice upon Defendant and on Public
6 Prosecutors. No Public Prosecutors commenced an enforcement action. No Public
7 Prosecutor having commenced an enforcement action, Plaintiff proceeded to file its
8 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 Notice, in the present action, or arising therefrom or related thereto,
19 with respect to Covered Products, including any Proposition 65 claim arising out of an
20 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
28 legal allegations in the Notice and the Complaint and expressly denies any wrongdoing
whatsoever.

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 DEHP exposure in the Covered Products.

3.2. 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 DEHP, if such Covered Product contains no more than 0.1 percent (1,000 parts per million) of DEHP.


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. The warning described in Section 3.4 below shall only be required as to Covered Products that are sold or shipped out to consumers, retailers, or distributors in California after the Effective Date. No Proposition 65 warning for DEHP shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

3.4. 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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3 (1)  **WARNING:** This product can expose you to DEHP, which
4 is known to the State of California to cause cancer and birth defects
5 or other reproductive harm. For more info go to
6 www.P65Warnings.ca.gov.

7
8 (2)  **WARNING:** Cancer and Reproductive Harm –
9 www.P65Warnings.ca.gov.

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11 The warnings set forth in (1) or (2) above shall also include a symbol consisting of
12 a black exclamation point in a yellow equilateral triangle with a bold black outline.
13 Where the sign, label or shelf tag for the product is not printed using the color
14 yellow, the symbol may be printed in black and white. The symbol shall be placed
15 to the left of the text of the warning, in a size no smaller than the height of the
16 word “WARNING”.

17 **4. MONETARY RELIEF**

18 4.1. Within fifteen (15) days of the Effective Date, Defendant shall pay the total sum of
19 \$52,000 which includes \$14,000 in civil penalties and \$38,000 in payment of Plaintiff’s
20 costs and reasonable attorney’s fees. The \$14,000 civil penalty shall be apportioned
21 pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$10,500, paid to
22 the State of California’s Office of Environmental Health Hazard Assessment and 25%, or
23 \$3,500, payable to Plaintiff.

24 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff’s
25 counsel Custodio & Dubey LLP as set forth below. Plaintiffs’ counsel will remit the
26 portions due to the State of California Office of Environmental Health Hazard
27 Assessment and to Plaintiff.
28

Bank: Bank of America, N.A.

Routing Transit No.: 026009593

Account No.: 325149324377

Beneficiary: Custodio & Dubey LLP

5. CLAIMS COVERED AND RELEASED

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, including but not limited to The TJX Companies, Inc. (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 Defendant Releasees and Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, civil 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 about exposures to DEHP for any or all of the Covered Products sold through ninety (90) days after the Effective Date of the Consent Judgment.

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2 Compliance with the terms of this Consent Judgment constitutes compliance with
3 Proposition 65 by Defendant with respect to any alleged failure to warn about DEHP in
4 Covered Products sold or distributed by Defendant after the Effective Date.

5 5.2. Plaintiff, acting in its individual capacity only, and in consideration of the
6 promises and monetary payments contained herein, hereby releases Defendant Releasees
7 and Released Parties from any alleged claim, cause of action, action, suit, demand,
8 liabilities, damages, civil penalties, obligations, debts, losses, fees, costs and expenses for
9 alleged failure to provide Proposition 65 warnings for the Covered Products that
10 Defendant has sold or caused to be sold in California up to and including the Effective
11 Date.

12 5.3. It is possible that other claims not known to the Parties arising out of the facts contained
13 in the Notice, or alleged in the Complaint, relating to the Covered Products, will
14 hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand,
15 and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly
16 intended to cover and include all such claims through and including the Effective Date,
17 including all rights of action thereon. Plaintiff and Defendant acknowledge that the
18 claims released in Sections 5.1 and 5.2 may include unknown claims, and nevertheless
19 intend to release such claims, and in doing so waive California Civil Code § 1542 which
20 reads as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
22 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
23 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
24 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
25 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
26 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
27 OR RELEASED PARTY.
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2 5.4. Plaintiff understands and acknowledges that the significance and consequence of
3 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
4 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
5 Covered Products, including but not limited to any exposure to, or failure to warn with
6 respect to exposure to, chemicals in or from the Covered Products, Plaintiff will not be
7 able to make any claim for those damages against any of the Defendant Releasees or the
8 Released Parties.

9 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute
10 compliance with Proposition 65 with respect to exposure to DEHP in the Covered
11 Products as set forth in the Notice and/or the Complaint. If, after the Effective Date, the
12 California Office of Environmental Health Hazard Assessment promulgates regulations
13 affecting the warning provisions set forth in Section 3 herein, Defendant may comply
14 with those regulations without being deemed in breach of this Consent Judgment.

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

16 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
17 referenced in California Health and Safety Code § 25249.7(f).

18 **7. PROVISION OF NOTICE**

19 7.1. When any Party is entitled to receive any notice or writing under this Consent
20 Judgment, the notice or writing shall be sent by first class certified mail with return
21 receipt requested, or by electronic mail, as follows:

22 To Defendant:

23 Lynn R. Fiorentino, Esq.
24 ARENTFOX SCHIFF LLP
24 44 Montgomery Street, 38th Floor
25 San Francisco, CA 94104
25 lynn.fiorentino@afslaw.com

26 To Plaintiff:

27 Vineet Dubey, Esq.
28 Custodio & Dubey LLP
445 S. Figueroa St., Ste 2520
Los Angeles, CA 90071

- 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.

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.

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2 10.4. No supplementation, modification, waiver, or termination of this Consent
3 Judgment shall be binding unless executed in writing by the Party to be bound thereby,
4 and approved and ordered by the Court.

5 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
6 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
7 shall such waiver constitute a continuing waiver.

8 **11. RETENTION OF JURISDICTION**

9 11.1. This Court shall retain jurisdiction of this matter to implement or modify the
10 Consent Judgment.

11 **12. NO EFFECT ON OTHER SETTLEMENTS**

12 12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any
13 claim against another entity on terms that are different from those contained in this
14 Consent Judgment.

15 **13. EXECUTION IN COUNTERPARTS**

16 13.1. This Consent Judgment may be executed in counterparts, each of which shall be
17 deemed to be an original, and all of which, taken together, shall constitute the same
18 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic
19 means, shall constitute legal and binding execution and delivery. Any photocopy of the
20 executed Consent Judgment shall have the same force and effect as the original.

21 **14. AUTHORIZATION**

22 14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent
23 Judgment on behalf of their respective parties, and have read, understood, and agree to all
24 of the terms and conditions of this Consent Judgment.

25 **15. SEVERABILITY**

26 15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is
27 declared by a Court to be invalid, void, or unenforceable, the remaining portions or
28 provisions shall continue in full force and effect to the extent they implement the Parties'

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2 intent.

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4 **AGREED TO:**

5 **Ecological Alliance LLC**

6
7 Date: August 30, 2023

8
9 By: 

10 Harmony Welsh, Managing Member

11
12 **AGREED TO:**

13 **M. Jacob & Sons**

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15 Date: August 25, 2023

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17 By: _____

18 Nick Haratsaris, President

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APPENDIX A

Travel Pouches and Resealable Bags
Travel Blankets
Cosmetic Cases
Techie Cases
Eye Masks
Jewelry Rolls
Laundry Bags
Luggage Tags
Packing Cubes
Passport/Document Organizers
Pill Cases
Shoe Storage Bag
Coin Purses
Travel Hair Iron Cases
Spray and Travel Bottles and Kits

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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: _____

JUDGE OF THE SUPERIOR COURT