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8 Attorneys for Plaintiff Ecological Alliance, LLC

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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.

M. JACOB & SONS, a Michigan corporation,

Defendant.

Case No.: 23STCV12826

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

1
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:

3 INTRODUCTION

4 1.1. On February 16, 2023, Plaintiff served the Notice upon Defendant and on Public
5 Prosecutors. No Public Prosecutors commenced an enforcement action. No Public
6 Prosecutor having commenced an enforcement action, Plaintiff proceeded to file its
7 Complaint against Defendant in the present action.

8 1.2. Defendant employs ten (10) or more persons.

9 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
10 “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation
11 contained in the Complaint, and personal jurisdiction over Defendant as to the acts
12 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this
13 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
14 claims which were or could have been raised in the Complaint based on the facts alleged
15 therein with respect to the Covered Products, and of all claims which were or could have
16 been raised by any person or entity based in whole or in part, directly or indirectly, on the
17 facts alleged in the Notice, in the present action, or arising therefrom or related thereto,
18 with respect to Covered Products, including any Proposition 65 claim arising out of an
19 exposure to Covered Products (collectively, “Proposition 65 Claims”).

20 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
21 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
22 resolving the issues raised therein both as to past and future conduct. By execution of
23 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit
24 any fact, conclusion of law, or violation of law, nor shall Defendant’s compliance with
25 the Consent Judgment constitute or be construed as an admission by Defendant of any
26 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and
27 legal allegations in the Notice and the Complaint and expressly denies any wrongdoing
28 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 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 Di(2-
4 ethylhexyl)phthalate [DEHP], which is known to the State of
5 California to cause cancer and birth defects or other reproductive
6 harm. For more info go to www.P65Warnings.ca.gov.

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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 In addition, for any Covered Product sold over the internet by Defendant, the
18 Warning shall appear prior to checkout on the primary product page, or as a pop-
19 up when a California address is input into the shipping instructions, or on the
20 checkout page when a California delivery address is indicated for any purchase of
21 any Covered Product. The Warning may be provided with a conspicuous
22 hyperlink stating “WARNING” in all capital and bold letters so long as the
23 hyperlink goes directly to a page prominently displaying the Warning without
24 content that detracts from the Warning. Given Defendant’s lack of control over
25 third-party websites, the online warning requirements expressed in this Section
26 apply only to Covered Products sold through Defendant’s website. However,
27 Defendant will instruct any third-party website sellers to provide Warnings as a
28 condition of selling the Covered Product. If the consumer information on the

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2 product is in a foreign language, the required Warning Label will also be included
3 in that same foreign language.
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5 **4. MONETARY RELIEF**

6 4.1. Within fifteen (15) days of the Effective Date, Defendant shall pay the total sum of
7 \$52,000 which includes \$14,000 in civil penalties and \$38,000 in payment of Plaintiff's
8 costs and reasonable attorney's fees. The \$14,000 civil penalty shall be apportioned
9 pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$10,500, paid to
10 the State of California's Office of Environmental Health Hazard Assessment and 25%, or
11 \$3,500, payable to Plaintiff.

12 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's
13 counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the
14 portions due to the State of California Office of Environmental Health Hazard
15 Assessment and to Plaintiff.

16 Bank: Bank of America, N.A.

17 Routing Transit No.: 026009593

18 Account No.: 325149324377

19 Beneficiary: Custodio & Dubey LLP

20 **5. CLAIMS COVERED AND RELEASED**

21 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
22 behalf of itself, and acting on behalf of the public interest, and Defendant, and all of
23 Defendant's officers, directors, members, shareholders, employees, representatives,
24 attorneys, agents, parent companies, subsidiaries, divisions, affiliates, and the
25 predecessors, successors, and assigns of any of them (collectively the "Defendant
26 Releasees"), as well as all other upstream and downstream entities in the distribution
27 chain for the Covered Products, including but not limited to manufacturers, retailers,
28 suppliers, distributors, marketplace hosts, wholesalers, customers, private label
customers, franchisees, licensees, licensors, and cooperative members, and all of their

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2 officers, directors, members, shareholders, employees, representatives, attorneys, agents,
3 parent companies, subsidiaries, divisions, affiliates, predecessors, successors, and
4 assigns, including but not limited to The TJX Companies, Inc. (collectively, the
5 “Released Parties”), for any alleged violation of Proposition 65, and its implementing
6 regulations, for failure to provide Proposition 65 warnings for the Covered Products with
7 respect to DEHP, and fully resolves all claims that have been brought, or which could
8 have been brought in this action up to and including the Effective Date. Plaintiff on
9 behalf of itself, and in the public interest, hereby discharges the Defendant Releasees and
10 Released Parties from any and all claims, actions, causes of action, suits, demands,
11 liabilities, damages, civil penalties, obligations, debts, losses, fees, costs and expenses
12 asserted with respect to any alleged violation of Proposition 65 arising from the failure to
13 provide Proposition 65 warnings about exposures to DEHP for any or all of the Covered
14 Products sold through ninety (90) days after the Effective Date of the Consent Judgment.
15 Compliance with the terms of this Consent Judgment constitutes compliance with
16 Proposition 65 by Defendant with respect to any alleged failure to warn about DEHP in
17 Covered Products sold or distributed by Defendant after the Effective Date.

18 5.2. Plaintiff, acting in its individual capacity only, and in consideration of the
19 promises and monetary payments contained herein, hereby releases Defendant Releasees
20 and Released Parties from any alleged claim, cause of action, action, suit, demand,
21 liabilities, damages, civil penalties, obligations, debts, losses, fees, costs and expenses for
22 alleged failure to provide Proposition 65 warnings for the Covered Products that
23 Defendant has sold or caused to be sold in California up to and including the Effective
24 Date.

25 5.3. It is possible that other claims not known to the Parties arising out of the facts contained
26 in the Notice, or alleged in the Complaint, relating to the Covered Products, will
27 hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand,
28 and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly

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2 intended to cover and include all such claims through and including the Effective Date,
3 including all rights of action thereon. Plaintiff and Defendant acknowledge that the
4 claims released in Sections 5.1 and 5.2 may include unknown claims, and nevertheless
5 intend to release such claims, and in doing so waive California Civil Code § 1542 which
6 reads as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
8 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
9 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
10 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
11 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
12 DEBTOR OR RELEASED PARTY.

13 5.4. Plaintiff understands and acknowledges that the significance and consequence of
14 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
15 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
16 Covered Products, including but not limited to any exposure to, or failure to warn with
17 respect to exposure to, chemicals in or from the Covered Products, Plaintiff will not be
18 able to make any claim for those damages against any of the Defendant Releasees or the
19 Released Parties.

20 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute
21 compliance with Proposition 65 with respect to exposure to DEHP in the Covered
22 Products as set forth in the Notice and/or the Complaint. If, after the Effective Date, the
23 California Office of Environmental Health Hazard Assessment promulgates regulations
24 affecting the warning provisions set forth in Section 3 herein, Defendant may comply
25 with those regulations without being deemed in breach of this Consent Judgment.

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

27 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
28 referenced in California Health and Safety Code § 25249.7(f).

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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:

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

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

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2 discussions, negotiations, commitments, or understandings related thereto, if any, are
3 hereby merged herein and therein.

4 10.2. There are no warranties, representations, or other agreements between the Parties
5 except as expressly set forth herein. No representations, oral or otherwise, express or
6 implied, other than those specifically referred to in this Consent Judgment have been
7 made by any Party hereto.

8 10.3. No other agreements not specifically contained or referenced herein, oral or
9 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
10 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or
11 to bind any of the Parties hereto only to the extent that they are expressly incorporated
12 herein.

13 10.4. No supplementation, modification, waiver, or termination of this Consent
14 Judgment shall be binding unless executed in writing by the Party to be bound thereby,
15 and approved and ordered by the Court.

16 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
17 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
18 shall such waiver constitute a continuing waiver.

19 **11. RETENTION OF JURISDICTION**

20 11.1. This Court shall retain jurisdiction of this matter to implement or modify the
21 Consent Judgment.

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

24 12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any
25 claim against another entity on terms that are different from those contained in this
26 Consent Judgment.

27 **13. EXECUTION IN COUNTERPARTS**

28 13.1. This Consent Judgment may be executed in counterparts, each of which shall be

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2 deemed to be an original, and all of which, taken together, shall constitute the same
3 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic
4 means, shall constitute legal and binding execution and delivery. Any photocopy of the
5 executed Consent Judgment shall have the same force and effect as the original.

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7 **14. AUTHORIZATION**

8 14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent
9 Judgment on behalf of their respective parties, and have read, understood, and agree to all
10 of the terms and conditions of this Consent Judgment.

11 **15. SEVERABILITY**

12 15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is
13 declared by a Court to be invalid, void, or unenforceable, the remaining portions or
14 provisions shall continue in full force and effect to the extent they implement the Parties'
15 intent.

16 **AGREED TO:**

17 **Ecological Alliance LLC**

18
19 Date: Dec 21, 2023

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21 By: 
22 Harmony Welsh, Managing Member

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24 **AGREED TO:**

25 **M. Jacob & Sons**

26 Date: December 20, 2023

27 By: 
28 Nick Haratsafis, President

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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

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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