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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.

GRISI HNOS., S.A. de C.V.,

Defendant.

Case No.:

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**



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Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Grisi Hnos., S.A. de C.V. (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

WHEREAS: On or about May 18, 2023, Plaintiff, through Plaintiff’s counsel, served a 60 Day Notice to Sally Beauty Supply LLC, 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 Sally Beauty Supply LLC 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; and

WHEREAS: On or about August 8, 2023, Plaintiff, through Plaintiff’s counsel, served an Amended 60 Day Notice to Defendant, Sally Beauty Supply LLC, 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 and Sally Beauty Supply LLC 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; and

WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed transparent gift/travel kit bags containing Di(2-ethylhexyl)phthalate (“DEHP”) (collectively the “Covered Products,” and singularly a “Covered Product”) that were sold or distributed for sale in California and further alleges that those Covered Products expose consumers in the State of California to DEHP, 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 DEHP in Covered Products without being provided the Proposition 65 warning set out at

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California Health and Safety Code § 25249.6 and its implementing regulations (“Proposition 65 Warning”);

WHEREAS: Defendant denies the allegations of the Notice, 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: Plaintiff and Defendant wish to resolve their differences without the delay and expense of litigation.

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

INTRODUCTION

1.1. On May 18, 2023, Plaintiff served a 60 Day Notice of Violation upon Sally Beauty Supply LLC and on Public Prosecutors, and on August 8, 2023, Plaintiff served an Amended 60 Day Notice of Violation upon Defendant, upon Sally Beauty Supply LLC, and on Public Prosecutors. No Public Prosecutors commenced an enforcement action. No Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file its Complaint against Defendant in the present action.

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

1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (collectively, the “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation contained in the Complaint and personal jurisdiction over Defendant as to the acts alleged in the 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 and final 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 on behalf of the public interest based in whole or in part, directly or indirectly, on the facts alleged in the Notice, in the present action, or arising

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therefrom or related thereto, with respect to Covered Products, including any Proposition 65 claim arising out of an exposure to Covered Products (collectively, "Proposition 65 Claims").

1.4. The Parties enter into this Consent Judgment as a full and final 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 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 ninety (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 when


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2 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
3 and 8270C or any other methodology utilized by federal or state agencies for the purpose
4 of determining the DEHP content in a solid substance.


5 3.3. Warning Option

6 Covered Products that do not meet the warning exemption standard set forth in
7 Section 3.2 above, shall be accompanied by a warning as described in Section 3.4 below.

8 3.4. Warning Language

9 Where required to meet the criteria set forth in Section 3.3, Defendant shall
10 provide one of the following warning statements on or within the unit packaging of the
11 Covered Products, or affixed to the Covered Products, displayed in a reasonably
12 conspicuous manner:

13 (1)  **WARNING:** This product can expose you to chemicals, including
14 Di(2-ethylhexyl)phthalate [DEHP], which are known to the State of
15 California to cause cancer and birth defects or other reproductive harm. For
16 more info go to www.P65Warnings.ca.gov.

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18 (2)  **WARNING:** Cancer and Reproductive Harm –
19 www.P65Warnings.ca.gov.

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

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27 If Defendant sells Products via an internet website to customers located in
28 California, the warning requirements of Section 3.3. shall be satisfied if the foregoing
warning appears either: (a) on the same web page on which a Product is displayed and/or

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2 described; (b) on the same page as the price for the Product; (c) on one or more web pages
3 displayed to a purchaser prior to purchase during the checkout process; or (d) via the
4 “product details” section of the Product page. Alternatively, a symbol consisting of a
5 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or
6 immediately following the display, description, price, or checkout listing of the Product, if
7 the warning statement appears elsewhere on the same web page in a manner that clearly
8 associates it with the product(s) to which the warning applies.

9 **3.5. Sell-Through Period for Products in the Stream of Commerce**

10 None of the injunctive relief requirements of this Section 3 shall apply to Covered
11 Products that are already in the stream of commerce through ninety (90) days after the
12 Effective Date, which Covered Products are expressly subject to the releases provided in
13 Section 5. For the avoidance of doubt, “Covered Products that are already in the stream of
14 commerce through ninety (90) days after the Effective Date” specifically include, but are
15 not limited to, Covered Products in the process of manufacture as of that date. Defendant
16 may demonstrate that a Covered Product was “in the stream of commerce through ninety
17 (90) days after the Effective Date” with information including, but not limited to, the
18 Covered Product’s lot number.

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20 **4. MONETARY RELIEF**

21 4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total sum of
22 \$27,000, which includes \$7,000 in civil penalties and \$20,000 in payment of Plaintiff’s
23 costs and reasonable attorney’s fees. The \$7,000 civil penalty shall be apportioned
24 pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$5,250, paid to
25 the State of California’s Office of Environmental Health Hazard Assessment and 25%, or
26 \$1,750, payable to Plaintiff.

27 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff’s
28 counsel Custodio & Dubey LLP as set forth below. Plaintiffs’ counsel will remit the

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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.: 325149324377

Swift Code: BOFAUS3N

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 (including, but not limited to, Sally Beauty LLC, CVS Pharmacy, Inc., and Amazon.com Services LLC), suppliers, distributors (including Healthtex Distributors, Inc.), 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 (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 connection with alleged exposures to DEHP in the Covered Products under Proposition 65 up to and including the Effective Date. Plaintiff, on behalf of itself, and in the public interest, hereby discharges the Defendant Releasees and



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Released Parties 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 about exposures to DEHP for any or all of the Covered Products sold or distributed for sale to consumers in California, or sold directly to consumers in California through ninety (90) days after the Effective Date of the Consent Judgment. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect to any alleged failure to warn about DEHP in Covered Products sold or distributed by Defendant after the Effective Date.

5.2. Plaintiff, acting in its individual capacity only, and in consideration of the promises and monetary payments contained herein, hereby releases Defendant Releasees and Released Parties from any alleged claim of failure to provide Proposition 65 warnings for the Covered Products that Defendant has sold or caused to be sold in California up to and including the Effective Date.

5.3. It is possible that other claims not known to the Parties arising out of the facts contained in the 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 through the Effective Date and ninety (90) days thereafter, 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

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2 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
3 DEBTOR OR RELEASED PARTY.

4 5.4. Plaintiff understands and acknowledges that the significance and consequence of
5 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
6 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
7 Covered Products, including but not limited to any exposure to, or failure to warn with
8 respect to exposure to, chemicals in or from the Covered Products, Plaintiff will not be
9 able to make any claim for those damages against any of the Defendant Releasees or the
10 Released Parties.

11 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute
12 compliance with Proposition 65 with respect to exposure to DEHP in the Covered
13 Products as set forth in the Notice and/or the Complaint. If the California Office of
14 Environmental Health Hazard Assessment promulgates regulations affecting the warning
15 provisions set forth in Section 3 herein, or if Proposition 65 is repealed or otherwise
16 rendered inapplicable by reason of law generally, then Defendant may provide written
17 notice to Plaintiff of any asserted change in the law and shall have no further injunctive
18 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
19 Covered Products are so affected.


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

21 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
22 referenced in California Health and Safety Code § 25249.7(f).

23 **7. PROVISION OF NOTICE**

24 7.1. When any Party is entitled to receive any notice or writing under this Consent
25 Judgment, the notice or writing shall be sent by first class certified mail with return
26 receipt requested, or by electronic mail, as follows:

27 To Defendant:
28 Trenton H. Norris, Esq.
Hogan Lovells US LLP



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4 Embarcadero Center, Suite 3500
San Francisco, CA 94111
trent.norris@hoganlovells.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 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.

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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 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



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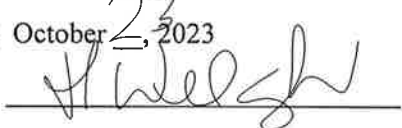
of the terms and conditions of this Consent Judgment.

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 to the extent they implement the Parties' intent.

AGREED TO:


Ecological Alliance LLC

Date: October 23, 2023
By: 

Harmony Welsh, Managing Member

AGREED TO:

Grisi Hnos., S.A. de C.V.

Date: October 23rd, 2023
By: 

José Luis Muñoz, Legal Representative

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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

