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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF LOS ANGELES

8 (Unlimited Jurisdiction)

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

11 Plaintiff,

12 v.

13 GUNTERSVILLE BREATHABLES, INC., an
14 Alabama corporation,

15 Defendant.
16

Case No.:24STCV07119

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

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2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Guntersville Breathables, Inc.
3 (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as
4 follows:

5 WHEREAS: On or about September 1, 2023, Plaintiff, through Plaintiff’s counsel, served
6 a 60 Day Notice (the “Notice”) on Defendant, Wal-Mart Stores East, L.P., the California Attorney
7 General, the District Attorneys of every County in the State of California, and the City Attorneys
8 for every City in the State of California with a population greater than 750,000 (collectively,
9 “Public Prosecutor(s)”) alleging that Defendant violated California’s Safe Drinking Water and
10 Toxic 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 pack
14 jackets, including but not limited to UPC #647484082896, containing Perfluorooctanoic Acid
15 (“PFOA”) (collectively the “Covered Products”) that were sold or distributed for sale in
16 California and further alleges that those Covered Products expose consumers in the State of
17 California to PFOA, which is listed by the State of California pursuant to California Health and
18 Safety Code § 25249.8; and

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

23 WHEREAS: On March 21, 2024, Plaintiff filed a Complaint against Defendant for the
24 alleged violations of Proposition 65 that are the subject of the Notice (the “Complaint”); and

25 WHEREAS: Defendant denies the allegations of the Notice and the Complaint, and denies
26 that it has violated Proposition 65 and expressly denies that it has engaged in any wrongdoing
27 whatsoever; and

28 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 Warnings and

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2 believes that this objective is achieved by the actions described in this Consent Judgment; and
3 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
4 and expense of litigation.

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

7 **1. INTRODUCTION**

- 8 1.1. On September 1, 2023, Plaintiff served the Notice upon Defendant, Wal-Mart
9 Stores East, L.P. and on Public Prosecutors. No Public Prosecutors commenced an
10 enforcement action. No Public Prosecutor having commenced an enforcement action,
11 Plaintiff proceeded to file its Complaint against Defendant in the present action.
- 12 1.2. Defendant employs ten (10) or more persons.
- 13 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
14 “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation
15 contained in the Complaint and personal jurisdiction over Defendant as to the acts alleged
16 in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this Court has
17 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims
18 which were or could have been raised in the Complaint based on the facts alleged therein
19 with respect to the Covered Products, and of all claims which were or could have been
20 raised by any person or entity based in whole or in part, directly or indirectly, on the facts
21 alleged in the Notice, in the present action, or arising therefrom or related thereto, with
22 respect to Covered Products, including any Proposition 65 claim arising out of an
23 exposure to Covered Products (collectively, “Proposition 65 Claims”).
- 24 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
25 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
26 resolving the issues raised therein both as to past and future conduct. By execution of
27 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit
28 any fact, conclusion of law, or violation of law, nor shall Defendant’s compliance with

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2 the Consent Judgment constitute or be construed as an admission by Defendant of any
3 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and
4 legal allegations in the Notice and the Complaint, expressly denies any wrongdoing
5 whatsoever, and maintains that all products it has sold or distributed for sale in
6 California, including the Covered Products, have been, and are, in compliance with all
7 laws.

8 **2. DEFINITIONS**

9 2.1. “Effective Date” shall mean, with respect to this Consent Judgment, the date the
10 Consent Judgment has been approved and entered by the Court.

11 **3. INJUNCTIVE RELIEF**

12 3.1. Commencing ninety (90) days after the Effective Date, Defendant shall not sell or
13 distribute for sale to consumers in California, or sell directly to consumers in California
14 any Covered Product unless, either (a) the Covered Product complies with the
15 Proposition 65 exemption identified in Section 3.2 below, or (b) the Covered Product is
16 labeled with a warning as prescribed in Sections 3.3-3.4 below. Compliance with this
17 Section 3.1 will constitute compliance by Defendant with all requirements of Proposition
18 65 relating to PFOA exposure in the Covered Products.

19 3.2. Proposition 65 Exemption for the Covered Products

20 (a) Covered Products shall be deemed to comply with Proposition 65, and be exempt from
21 any Proposition 65 Warning requirements with respect to PFOA, if such Covered Products
22 contain no intentionally added PFOA and less than 100 parts per million (ppm) total
23 organic fluorine. The warning requirements set forth in Section 3.3 below shall apply
24 only to Covered Products that are distributed, marketed, sold or shipped for sale in the
25 State of California. The warning requirement shall not apply to Covered Products that are
26 already in the stream of commerce as of the Effective Date or that Defendant places into
27 the stream of commerce within ninety (90) days of the Effective Date.
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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 in California or to retailers or distributors for sale in California commencing ninety (90) days after the Effective Date. No Proposition 65 Warning for PFOA shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date or that Defendant places into the stream of commerce within ninety (90) days 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 (each, a “Warning”) on or within the unit packaging of the Covered Products, or affixed to the Covered Products, displayed in a reasonably conspicuous manner:

(1)  **WARNING:** This product can expose you to chemicals including Perfluorooctanoic acid (PFOA), which is 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.

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

Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the Warning, in a size no smaller than the height of the word “WARNING”. If the consumer information on the product is in a foreign

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2 language, the required Warning label will also be included in that same foreign
3 language.

4 In addition, for any Covered Products sold over the internet by Defendant, a
5 Warning that complies with the content requirements of Section 3.4(1) shall be
6 provided by including either the Warning or a clearly marked hyperlink using the
7 word “WARNING” or “Prop65 WARNING” on the product display page, or by
8 otherwise prominently displaying the Warning to the purchaser prior to completing
9 the purchase. If the Warning is provided using the short-form warning label
10 pursuant to Section 3.4(2), the Warning provided on the website may use the same
11 content. A Warning pursuant to this Section is not prominently displayed if the
12 purchaser must search for it in the general content of the website. Given
13 Defendant’s lack of control over third-party websites, the online warning
14 requirements expressed in this Section apply only to Covered Products sold
15 through Defendant’s website. Defendant shall also comply with 27 California
16 Code of Regulations § 25600.2, as applicable.

17 **4. MONETARY RELIEF**

18 4.1. Within fifteen (15) days of the Effective Date, pursuant to Health and Safety Code
19 § 25249.7(b), Defendant shall pay the total sum of \$34,000, which includes \$10,000 in
20 civil penalties and \$24,000 in payment of Plaintiff’s costs and reasonable attorney’s fees.
21 The \$10,000 civil penalty shall be apportioned pursuant to Health and Safety Code
22 sections 25249.12(c)–(d), with 75%, or \$7,500, paid to the State of California’s Office of
23 Environmental Health Hazard Assessment and 25%, or \$2,500, 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. Plaintiff’s 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.

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2 Routing Transit No.: 026009593

3 Account No.: 325149324377

4 Beneficiary: Custodio & Dubey LLP

5 **5. CLAIMS COVERED AND RELEASED**

6 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
7 behalf of itself, and acting on behalf of the public interest, and Defendant, and all of
8 Defendant’s officers, directors, members, shareholders, employees, representatives,
9 attorneys, agents, parent companies, subsidiaries, divisions, affiliates, and the
10 predecessors, successors, and assigns of any of them (collectively the “Defendant
11 Releasees”), as well as all other upstream and downstream entities in the distribution
12 chain for the Covered Products, including but not limited to Wal-Mart Stores East, L.P.,
13 Wal-Mart Stores East, Inc., Walmart Inc., Wal-Mart Stores Inc., Wal-Mart.com USA
14 LLC, manufacturers, retailers, suppliers, distributors, marketplace hosts, internet
15 marketplaces, wholesalers, customers, private label customers, franchisees, licensees,
16 licensors, and cooperative members, and all of their respective officers, directors,
17 members, shareholders, employees, representatives, attorneys, agents, direct or indirect
18 parent companies, subsidiaries, divisions, affiliates, predecessors, successors, and assigns
19 (collectively, the “Released Parties”), for any alleged violation of Proposition 65, and its
20 implementing regulations, based on alleged exposures to PFOA from the Covered
21 Products as set forth in the Notice and Complaint, and fully resolves all claims that have
22 been brought, or which could have been brought in this action up to and including the
23 Effective Date. Plaintiff on behalf of itself, and in the public interest, hereby discharges
24 the Defendant Releasees and Released Parties from any and all claims, actions, causes of
25 action, suits, demands, liabilities, damages, civil penalties, obligations, debts, losses, fees,
26 costs and expenses asserted with respect to any alleged violation of Proposition 65 arising
27 from or related to alleged exposures to PFOA from any or all of the Covered Products
28 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 exposures
4 to PFOA from the Covered Products sold or distributed by Defendant after the Effective
5 Date.

6 5.2. Plaintiff, acting in its individual capacity only, and in consideration of the
7 promises and monetary payments contained herein, hereby releases Defendant Releasees
8 and Released Parties from any alleged claim, cause of action, action, suit, demand,
9 liabilities, damages, civil penalties, obligations, debts, losses, fees, costs and expenses for
10 alleged failure to provide Proposition 65 Warnings for the Covered Products that
11 Defendant has sold or caused to be sold in California through ninety (90) days after the
12 Effective Date.

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

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
24 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
25 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
26 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
27 DEBTOR OR RELEASED PARTY.

26 5.4. Plaintiff understands and acknowledges that the significance and consequence of
27 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
28 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the

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2 Covered Products, including but not limited to any exposure to, or failure to warn with
3 respect to exposure to, chemicals in or from the Covered Products, Plaintiff will not be
4 able to make any claim for those damages against any of the Defendant Releasees or the
5 Released Parties.

6 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute
7 compliance with Proposition 65 with respect to exposure to PFOA in the Covered
8 Products as set forth in the Notice and/or the Complaint. If, after the Effective Date, the
9 California Office of Environmental Health Hazard Assessment promulgates regulations
10 that differ from the warning provisions set forth in Section 3.4 herein, Defendant may
11 comply with those regulations without being deemed in breach of this Consent Judgment.

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

13 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
14 referenced in California Health and Safety Code § 25249.7(f).

15 **7. PROVISION OF NOTICE**

16 7.1. When any Party is entitled to receive any notice or writing under this Consent
17 Judgment, the notice or writing shall be sent by first class certified mail with return
18 receipt requested, or by electronic mail, as follows:

19 To Defendant:
20 Zach Mardis, Esq.
21 Maynard Nexsen PC
22 655 Gallatin Street SW
23 Huntsville, AL 35801
24 zmardis@maynardnexsen.com

25 To Plaintiff:
26 Vineet Dubey, Esq.
27 Custodio & Dubey LLP
28 445 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.

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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, 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.

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 provisions shall continue in full force and effect to the extent they implement the Parties' intent.

16. ENFORCEMENT

16.1. Plaintiff may, by motion or application for an order to show cause, attempt to

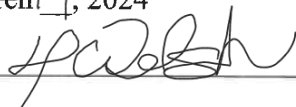
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enforce the terms and conditions contained in this Consent Judgment. This Consent Judgment may only be enforced by the Parties or by an appropriate public enforcer. Prior to bringing any motion or application to enforce, Plaintiff shall meet and confer regarding the basis for its anticipated motion or application in an attempt to resolve it informally, including providing Defendant a reasonable opportunity of at least thirty (30) days to cure any alleged violation. The prevailing party on any motion to enforce this Consent Judgment shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application.

AGREED TO:

Ecological Alliance LLC

Date: ~~March~~ ^{April} 19, 2024

By: 
Harmony Welsh, Managing Member

AGREED TO:

Guntersville Breathables, Inc.

Date: March 31, 2024

By: 
William Fowler, President

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