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Attorneys for Defendant  
Kenney Manufacturing Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a  
California limited liability company,

Plaintiff,

v.

KENNEY MANUFACTURING CO., a  
corporation,

Defendant.

Case No. 24STCV24813

**[PROPOSED] STIPULATED CONSENT  
JUDGMENT**

1 Plaintiff Ecological Alliance, LLC, a California limited liability company, ("Plaintiff"),  
2 and defendant Kenney Manufacturing Company, a Rhode Island corporation, ("Defendant")  
3 hereby enter into this Stipulated Consent Judgment ("Consent Judgment") as follows:

4 WHEREAS: On or about July 11, 2024, Plaintiff, through Plaintiff's counsel, served a 60  
5 Day Notice (the "Notice") on Defendant, the California Attorney General, the District Attorneys  
6 of every County in the State of California, and the City Attorneys for every City in the State of  
7 California with a population greater than 750,000 (collectively, "Public Prosecutor(s)") alleging  
8 that Defendant violated California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
9 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 in the Notice that Defendant manufactured and/or  
13 distributed shower liners containing Perfluorooctanoic Acid ["PFOA"], (collectively the  
14 "Covered Products") that were sold or distributed for sale in California and further alleges that  
15 those Covered Products expose consumers in the State of California to PFOA, which is listed by  
16 the State of California pursuant to California Health and Safety Code § 25249.8 as known by the  
17 State of California to cause cancer and birth defects or other reproductive harm; and

18 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed  
19 to PFOA 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

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

3 **1. INTRODUCTION**

4 1.1. On July 11, 2024, Plaintiff served the Notice upon Defendant and on Public  
5 Prosecutors. No Public Prosecutors commenced an enforcement action. No Public Prosecutor  
6 having commenced an enforcement action, Plaintiff proceeded to file its Complaint against  
7 Defendant in the present action.

8 1.2. Plaintiff alleges that Defendant is a person in the course of doing business for  
9 purposes of Proposition 65.

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 contained  
12 in the Complaint, and personal jurisdiction over Defendant as to the acts alleged in the  
13 Complaint; 2) venue is proper in the County of Los Angeles; and 3) this Court has jurisdiction to  
14 enter this Consent Judgment as a full and final resolution of all claims which were or could have  
15 been raised in the Complaint based on the facts alleged therein with respect to the Covered  
16 Products, and of all claims which were or could have been raised by any person or entity based in  
17 whole or in part, directly or indirectly, on the facts alleged in the Notice, in the present action, or  
18 arising therefrom or related thereto, with respect to Covered Products, including any Proposition  
19 65 claim arising out of an 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 this  
23 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any fact,  
24 conclusion of law, or violation of law, nor shall Defendant's compliance with the Consent  
25 Judgment constitute or be construed as an admission by Defendant of any fact, conclusion of law,  
26 or violation of law. Defendant denies the material, factual, and legal allegations in the Notice and  
27 the Complaint and expressly denies any wrongdoing 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. Within 30 days of the Effective Date, Defendant shall not manufacture or cause to be manufactured any Product that will be sold or offered for sale to California consumers (the "Compliance Date") that contains (1) any intentionally added PFOA, or (2) any intentionally added fluorinated ingredient that causes PFOA to be in a Product, including but not limited to C9-15 fluoroalcohol phosphate, unless the Product has a Proposition 65 warning. Additionally, if Defendant were to determine, or be advised by a supplier or other credible person, that PFOA is present in a Product, even if not intentionally added, Defendant shall not knowingly sell such Products without a Proposition 65 warning. No warnings shall be required for Products that were manufactured prior to the Compliance Date or that were already in the stream of commerce prior to the Compliance Date, regardless of the date such Products are sold or used in California. Defendant shall retain in its files attestations from its manufacturers that PFOA and PFOA precursors are not intentionally used in the Covered Product. Compliance with this Section 3.1 or by complying with any reformulation or warning requirements adopted by OEHHA after the Effective Date which are applicable to the Covered Products will constitute compliance by Defendant with all requirements of Proposition 65 relating to PFOA exposure in the Covered Products.

### 3.2. Warning Option

Covered Products, to the extent they require a Proposition 65 Warning pursuant to section 3.1 above, shall be accompanied by a warning as described in Section 3.3 below. The warning described in Section 3.3 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 PFOA shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

1           3.3.    Warning Language

2           Where required to meet the criteria set forth in Section 3.2, Defendant shall provide one of  
3 the following warning statements on or within the unit packaging of the Covered Products, or  
4 affixed to the Covered Products, displayed in a reasonably conspicuous manner:

- 5                   (1)     **WARNING:** This product can expose you to chemicals including  
6                   Perfluorooctanoic Acid [PFOA], which is known to the State of California  
7                   to cause cancer and birth defects or other reproductive harm. For more  
8                   information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).  
9  
10                  (2)     **WARNING:** Risk of Cancer and Reproductive Harm from exposure  
11                  to Perfluorooctanoic Acid [PFOA]. See [www.P65warnings.ca.gov](http://www.P65warnings.ca.gov).  
12

13           Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol  
14 may be printed in black and white. The symbol shall be placed to the left of the text of the  
15 warning, in a size no smaller than the height of the word “WARNING”. If the consumer  
16 information on the product is in languages other than English, the required Warning Label will  
17 also be provided in those languages in addition to English.

18           3.3.1.   Internet Warning

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

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1 of them (collectively the “Defendant Releasees”), as well as all other upstream and downstream  
2 entities in the distribution chain for the Covered Products, including but not limited to  
3 manufacturers, retailers, suppliers, distributors, marketplace hosts, wholesalers, customers,  
4 private label customers, franchisees, licensees, licensors, and cooperative members, and all of  
5 their officers, directors, members, shareholders, employees, representatives, attorneys, agents,  
6 parent companies, subsidiaries, divisions, affiliates, predecessors, successors, and assigns  
7 (collectively, the “Released Parties”), for any alleged violation of Proposition 65, and its  
8 implementing regulations, for failure to provide Proposition 65 warnings for the Covered  
9 Products with respect to PFOA, and fully resolves all claims that have been brought, or which  
10 could have been brought in this action up to and including the Effective Date. Plaintiff on behalf  
11 of itself, and in the public interest, hereby discharges the Defendant Releasees and Released  
12 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
13 civil penalties, obligations, debts, losses, fees, costs and expenses asserted with respect to any  
14 alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings  
15 about exposures to PFOA for any or all of the Covered Products sold through ninety (90) days  
16 after the Effective Date of the Consent Judgment. Compliance with the terms of this Consent  
17 Judgment constitutes compliance with Proposition 65 by Defendant with respect to any alleged  
18 failure to warn about PFOA in Covered Products sold or distributed by Defendant after the  
19 Effective Date.

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

27 5.3. It is possible that other claims not known to the Parties arising out of the facts  
28 contained in the Notice, or alleged in the Complaint, relating to the Covered Products, will

1 hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand, and  
2 Defendant, on the other hand, acknowledge that this Consent Judgment is expressly intended to  
3 cover and include all such claims through and including the Effective Date, including all rights of  
4 action thereon. Plaintiff and Defendant acknowledge that the claims released in Sections 5.1 and  
5 5.2 may include unknown claims, and nevertheless intend to release such claims, and in doing so  
6 waive California Civil Code § 1542 which 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 arising  
15 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered  
16 Products, including but not limited to any exposure to, or failure to warn with respect to exposure  
17 to, chemicals in or from the Covered Products, Plaintiff will not be able to make any claim for  
18 those damages against any of the Defendant Releasees or the Released Parties.

19 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute  
20 compliance with Proposition 65 with respect to exposure to PFOA in the Covered Products as set  
21 forth in the Notice and/or the Complaint. If, after the Effective Date, the California Office of  
22 Environmental Health Hazard Assessment promulgates regulations affecting the warning  
23 provisions set forth in Section 3 herein, Defendant may comply with those regulations without  
24 being deemed in breach of this Consent Judgment.

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

26 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements  
27 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:

Erik K. Swanholt, Esq.  
Alexandra R. Jernigan, Esq.  
Foley & Lardner LLP  
555 S Flower St, Suite 3300,  
Los Angeles, CA 90071-2411  
[eswanholt@foley.com](mailto:eswanholt@foley.com)  
[alexandra.jernigan@foley.com](mailto:alexandra.jernigan@foley.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.

## 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. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Defendant may seek to a modification pursuant to

1 Section 10.4.

2 **10. ENTIRE AGREEMENT**

3 10.1. This Consent Judgment contains the sole and entire agreement and understanding  
4 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
5 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
6 and therein.

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

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

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

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

21 **11. RETENTION OF JURISDICTION**

22 11.1. This Court shall retain jurisdiction of this matter to implement or modify the  
23 Consent Judgment.

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

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

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**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**

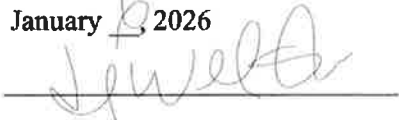
14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

**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.

**AGREED TO:**

**Ecological Alliance LLC**

Date: January 6, 2026  
By:   
Harmony Welsh, Managing Member


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**AGREED TO:**

**Kenney Manufacturing Company**

Date: January 6, 2026

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

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