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Attorneys for Plaintiff Ecological Alliance, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

Plaintiff,

v.

ZIBRA, LLC, a North Carolina limited liability
company; and DOES 1 through 10 inclusive.

Defendant.

Case No.:

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

1
2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Zibra LLC (“Defendant”) hereby
3 enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

4 WHEREAS: On or about February 18, 2025, 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 artist brush
13 sets with cases containing Di(2-ethylhexyl)phthalate [“DEHP”], (collectively the “Covered
14 Products”) that were sold or distributed for sale in California and further alleges that those
15 Covered Products expose consumers in the State of California to DEHP, which is listed by the
16 State of California pursuant to California Health and Safety Code § 25249.8; and

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

21 WHEREAS: Defendant denies each and every allegation of the Notice, and denies that it
22 has violated Proposition 65 and expressly denies that it has engaged in any wrongdoing
23 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 18, 2025, 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. Plaintiff alleges that 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.

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 within ninety (90) days of the Effective Date, and continuing thereafter, Defendant shall manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 3.2 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 3.3 below, provided that Current Products (those in the stream of commerce within 90 days of the Effective Date), shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.


- 3.2. “Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

3.3. Warning Language

Where required to meet the criteria set forth in Section 3.2, 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:

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

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3 (2)  **WARNING:** Risk of Cancer and Reproductive Harm from
4 exposure to Di(2-ethylhexyl)phthalate [DEHP], See
5 www.P65warnings.ca.gov.

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7 (3)  **WARNING:** Cancer and Reproductive Harm –
8 www.P65Warnings.ca.gov. (for Products manufactured/labeled
9 prior to January 1, 2028).

10 Where the sign, label or shelf tag for the product is not printed using the color
11 yellow, the symbol may be printed in black and white. The symbol shall be placed
12 to the left of the text of the warning, in a size no smaller than the height of the
13 word “WARNING”.

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

4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total sum of \$25,000 which includes \$6,000 in civil penalties and \$19,000 in payment of Plaintiff's costs and reasonable attorney's fees. The \$6,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$4,500, paid to the State of California's Office of Environmental Health Hazard Assessment and 25%, or \$1,500, payable to Plaintiff.

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

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, including but not limited to Lowe's Home Centers, LLP and all of their officers, directors, members, shareholders, employees, representatives, attorneys, agents, parent companies,

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2 subsidiaries, divisions, affiliates, predecessors, successors, and assigns (collectively, the
3 “Released Parties”), for any alleged violation of Proposition 65, and its implementing
4 regulations, for failure to provide Proposition 65 warnings for the Covered Products with
5 respect to DEHP, and fully resolves all claims that have been brought, or which could
6 have been brought in this action up to and including the Effective Date. Plaintiff on
7 behalf of itself, and in the public interest, hereby discharges the Defendant Releasees and
8 Released Parties from any and all claims, actions, causes of action, suits, demands,
9 liabilities, damages, civil penalties, obligations, debts, losses, fees, costs and expenses
10 asserted with respect to any alleged violation of Proposition 65 arising from the failure to
11 provide Proposition 65 warnings about exposures to DEHP for any or all of the Covered
12 Products sold through ninety (90) days after the Effective Date of the Consent Judgment.
13 Compliance with the terms of this Consent Judgment constitutes compliance with
14 Proposition 65 by Defendant with respect to any alleged failure to warn about DEHP in
15 Covered Products sold or distributed by Defendant after the Effective Date.

16 5.2. Plaintiff, acting in its individual capacity only, and in consideration of the
17 promises and monetary payments contained herein, hereby releases Defendant Releasees
18 and Released Parties from any alleged claim, cause of action, action, suit, demand,
19 liabilities, damages, civil penalties, obligations, debts, losses, fees, costs and expenses for
20 alleged failure to provide Proposition 65 warnings for the Covered Products that
21 Defendant has sold or caused to be sold in California up to and including the Effective
22 Date.

23 5.3. It is possible that other claims not known to the Parties arising out of the facts contained
24 in the Notice, or alleged in the Complaint, relating to the Covered Products, will
25 hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand,
26 and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly
27 intended to cover and include all such claims through and including the Effective Date,
28 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 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

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

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

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

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
555 South Flower Street, 43rd Floor
Los Angeles, CA 90071
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 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

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2 10.2. There are no warranties, representations, or other agreements between the Parties
3 except as expressly set forth herein. No representations, oral or otherwise, express or
4 implied, other than those specifically referred to in this Consent Judgment have been
5 made by any Party hereto.

6 10.3. No other agreements not specifically contained or referenced herein, oral or
7 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
8 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or
9 to bind any of the Parties hereto only to the extent that they are expressly incorporated
10 herein.

11 10.4. No supplementation, modification, waiver, or termination of this Consent
12 Judgment shall be binding unless executed in writing by the Party to be bound thereby,
13 and approved and ordered by the Court.

14 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
15 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
16 shall such waiver constitute a continuing waiver.

17 **11. RETENTION OF JURISDICTION**

18 11.1. This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

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

21 12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any
22 claim against another entity on terms that are different from those contained in this
23 Consent Judgment.

24 **13. EXECUTION IN COUNTERPARTS**

25 13.1. This Consent Judgment may be executed in counterparts, each of which shall be
26 deemed to be an original, and all of which, taken together, shall constitute the same
27 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic
28 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: May 15, 2025


By: 

Harmony Welsh, Managing Member

AGREED TO:

Zibra, LLC

Date: May 15, 2025

By: 

Zia Sherman

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2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &
3 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.
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5 Dated: _____

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7 JUDGE OF THE SUPERIOR COURT
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