

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Ecological Alliance, LLC and Glenoit LLC

This Settlement and Release Agreement (the "Settlement Agreement") is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Glenoit LLC ("Glenoit") and Ex-Cell Home Fashions, Inc. ("Ex-Cell"), on the other hand. Glenoit and Ex-Cell are collectively referred to hereinafter as "Ex-Cell/Glenoit." Ecological and Ex-Cell/Glenoit are collectively referred to hereinafter as the "Parties" and individually as a "Party." Ecological is a California limited liability company seeking to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Ecological contends that Ex-Cell/Glenoit is a company in the course of doing business for purposes of Proposition 65.

1.2 General Allegations

Ecological alleges that Ex-Cell/Glenoit distributed and/or sold in the State of California Napkin Rings containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as Napkin Rings, including, but not limited to, UPC #0239671131, manufactured, imported, stored, distributed,

shipped, sold and/or offered for sale in California by Ex-Cell/Glenoit containing lead. All such items shall be collectively referred to hereinafter as the "Products."

1.4 Notice of Violation

On December 4, 2015 Ecological served Ex-Cell/Glenoit, Bed Bath & Beyond, Inc. ("BB&B"), and all public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "Notice of Violation Against Ex-Cell Home Fashions, Inc., Glenoit LLC, and Bed Bath & Beyond, Inc. of California Health and Safety Code Section 25249.6" (the "Notice") that provided Ex-Cell/Glenoit, BB&B and such public enforcers with notice that alleged that Ex-Cell/Glenoit and BB&B were in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.5 No Admission

Ex-Cell/Glenoit deny the material factual and legal allegations contained in the Notice and maintain that all products that Ex-Cell/Glenoit are alleged to have manufactured, imported, stored, distributed, shipped, sold and/or offered for sale in California, including the Products, have been and are in compliance with Proposition 65 and all other applicable laws. Nothing in this Settlement Agreement shall constitute or be construed as an admission by Ex-Cell/Glenoit of any allegation, fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Ex-Cell/Glenoit of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Ex-Cell/Glenoit. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Ex-Cell/Glenoit under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean 90 days after the date this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Warning

Within thirty (30) days of the Effective Date, Ex-Cell/Glenoit shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless the Products are accompanied by a warning as described in Section 2.2. below. The warning requirements set forth in Section 2.2. below shall apply only to Products that Ex-Cell/Glenoit manufactures after the Effective Date that are imported, distributed, marketed, sold or shipped for sale in the State of California. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date.

2.2 Warning Language

Where required, Ex-Cell/Glenoit shall provide Proposition 65 warnings on the Products as follows:

- (a) Ex-Cell/Glenoit may use the following warning statement:
 - (1) **WARNING:** This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.
- (b) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.
- (c) If Proposition 65 warnings for lead should no longer be required, Ex-Cell/Glenoit shall have no further obligations pursuant to this Settlement Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Ex-Cell/Glenoit shall pay a total of Four Thousand Dollars (\$4,000) in civil penalties in accordance with this Section and Section 5. herein. Each penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Ecological.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Ex-Cell/Glenoit shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Ex-Cell/Glenoit's attention. Ex-Cell/Glenoit shall pay Ecological's counsel, Custodio & Dubey, LLP, Twenty-One Thousand Dollars (\$21,000) for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice in accordance with this Section and Section 5. herein.

5. PAYMENT INFORMATION

On or before May 10, 2016, Glenoit shall make a total payment of Twenty-Five Thousand Dollars (\$25,000) for the civil penalties and attorney's fees/costs referenced in Sections 3. and 4. herein by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325054144600

Beneficiary: Custodio & Dubey LLP

Other than this payment, each Party is to bear its own respective attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1 Release of Ex-Cell/Glenoit and Downstream Customers including BB&B

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3., 4. and 5. above, Ecological, on behalf of itself, its parents, subsidiaries, affiliates, its past and current principals, agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases, waives, and relinquishes any and all claims relating to the Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Ex-Cell/Glenoit, BB&B, and each of their downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parents, affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, members, partners, shareholders, principals, agents, and employees, and sister entities (collectively "Releasees").

Ecological also, in its capacity, on behalf of itself, its parents, subsidiaries, affiliates, and its past and current principals, agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a release and bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of

any nature, character or kind, known or unknown, suspected or unsuspected, against the Releasees, including Ex-Cell/Glenoit and BB&B. Ecological acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Ecological, in its capacity only, and on behalf of itself, its parents, subsidiaries, affiliates, and its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights, claims or benefits pertaining to the released matters.

6.2 Ex-Cell/Glenoit's Release of Ecological

Ex-Cell/Glenoit waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Ex-

Cell/Glenoit shall have no further obligations pursuant to this Settlement Agreement.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

For Ex-Cell/Glenoit:

Robert J. Parks
Buchanan Ingersoll & Rooney LLP
One America Plaza
600 West Broadway, Suite 1100
San Diego, CA 92101

For Ecological:

Vineet Dubey
Custodio & Dubey LLP
448 S. Hill St., Suite 612
Los Angeles, CA 90013

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)




Ecological agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

12. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p>AGREED TO: Date : <u>May 5</u>, 2016 By: <u></u> On Behalf of Ecological Alliance, LLC</p>	<p>AGREED TO: Date: April ^{May} <u>5</u>, 2016 By: <u></u> On Behalf of Glenoit LLC</p>
	<p>AGREED TO: Date: April ^{May} <u>5</u>, 2016 By: <u></u> On Behalf of Ex-Cell Home Fashions, Inc.</p>