

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Ecological Alliance, LLC and Fashion Accessory Bazaar, LLC

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological") and Fashion Accessory Bazaar, LLC ("FAB"). Together, Ecological and FAB are collectively referred to as the "Parties."

#### 1.2. General Allegations

Ecological alleges that FAB manufactured, imported, distributed, offered for sale, and/or sold in the State of California badge holders containing di(2-ethylhexyl)phthalate ("DEHP") without a clear and reasonable warning pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has listed DEHP under Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

#### 1.3. Product Description

The products that are covered by this Settlement Agreement are defined as badge holders that FAB manufactured, imported, distributed, offered for sale, and/or sold in California and that contain DEHP, including, but not limited to UPC #688955732773 (the "Products").

#### 1.4. Notice of Violation

On March 15, 2018, Ecological served FAB, Five Below, Inc., and the requisite 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 Fashion Accessory Bazaar LLC and Five Below, Inc. of California Health & Safety Code Section 25249.6" ("Notice"). The Notice provided FAB and such others, including public enforcers, with notice

that FAB was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers in California that the Products exposed users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.5. No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning FAB 's compliance with Proposition 65. Specifically, FAB denies the material, factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that it has manufactured, imported, distributed, offered for sale, and/or sold in California, including the Products, have been and are in compliance with Proposition 65 and any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by FAB of any 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 FAB of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by FAB. However, nothing in this Section shall diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Settlement Agreement.

**1.6. Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

## **2. INJUNCTIVE RELIEF: WARNING**

### **2.1. Warning**

Products that contain DEHP in excess of 0.1% (1,000 parts per million) shall be accompanied by a warning, as described in Section 2.2 below, no later than ninety (90) days after the Effective Date. The warning requirements set forth in Section 2.2 below shall apply only to Products that are distributed, marketed, sold or shipped for sale in the State of California by FAB. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that FAB places into the stream of commerce within ninety (90) days after the Effective Date.

### **2.2. Warning Language**

Where required, FAB shall provide Proposition 65 warnings as follows:

- (a) FAB may use any of the following warning statements in full compliance with this Section:
  - (1) **WARNING:** This product contains a chemical known to the State of California to cause birth defects and other reproductive harm.
  - (2) **WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects, or other reproductive harm.
  - (3) **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl)phthalate, 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](http://www.P65Warnings.ca.gov).

(4) **WARNING: Cancer and Reproductive Harm –**

[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) If FAB elects to use the warning statements identified in either Section 2.2(a)(3) or (4), it may also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a black outline. 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:**".

(c) The requirements for warnings, set forth in Section 2.2(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.

(d) If Proposition 65 warnings for DEHP should no longer be required, FAB shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that the California Office of Environmental Health Hazard Assessment ("OEHHA") promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, FAB shall be entitled to use, at their discretion, such other warning text and/or methods of transmission in compliance with 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, FAB shall pay a total of Five Hundred Dollars (\$500) in civil penalties in accordance with this Section. The civil

penalty payment shall be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) and (d), with 75% of the funds remitted to the OEHHA and the remaining 25% of the penalty remitted to Ecological. The civil penalty payment shall be delivered to Ecological's counsel by FAB pursuant to Section 5 below. Ecological's counsel shall be responsible for delivering OEHHA's and Ecological's portions of any penalty payment made under this Settlement Agreement.

**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, FAB shall reimburse Ecological's counsel for fees and costs incurred as a result of investigating and bringing this matter to FAB's attention. FAB shall pay Ecological's counsel a total of Nine Thousand Dollars (\$9,000) for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within ten (10) business days after the Effective Date, FAB shall make a total payment of Nine Thousand Five Hundred Dollars (\$9,500) for the civil penalties and reimbursement of attorney's fees and costs by wire transfer to Ecological'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 side is to bear its own attorneys' fees and costs.

## **6. RELEASE OF ALL CLAIMS**

### **6.1. Release of FAB, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ecological, on behalf of itself, its past and current 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 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 (a) FAB and its owners, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, employees, successors, assignees, and sister and parent entities, and (b) each entity to or from whom FAB directly or indirectly receives, provides, distributes or sells the Products, including but not limited to, distributors, wholesalers, customers, manufacturers, suppliers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, including, but not limited to Five Below, Inc., and each of their respective owners, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, successors, assignees, and sister and parent entities (persons and entities listed in (a) and (b) are collectively the "Releasees").

Ecological also, in its capacity, on behalf of itself, its past and current 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 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 FAB and the Releasees. 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 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 or benefits pertaining to the released matters.

**6.2. FAB's Release of Ecological**

FAB 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 it 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 or limited by reason of law generally, or as to DEHP and/or the Products, FAB 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 FAB:                   Malcolm Weiss, Esq.  
                                  Shannon Oldenburg, Esq.  
                                  Hunton Andrews Kurth LLP  
                                  550 South Hope Street  
                                  Suite 2000  
                                  Los Angeles, CA 90071

For Ecological:           Vineet Dubey, Esq.  
                                  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 section 25249.7(f).



**11. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, but only to the extent the deletion of the provision deemed unenforceable does not materially affect or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

**12. ENTIRE AGREEMENT**


This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**13. MODIFICATION**

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

**14. 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.

AGREED TO:	AGREED TO:
Date: August <u>21</u> , 2018	Date: August __, 2018
By: <u></u> On Behalf of Ecological Alliance, LLC	By: _____ On Behalf of Fashion Accessory Bazaar, LLC

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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 style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: August __, 2018</p> <p>By: _____ On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: August <u>27</u>, 2018</p> <p>By:  _____ On Behalf of Fashion Accessory Bazaar, LLC</p>
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