

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and Weihai Luda Co. Ltd.

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Weihai Luda Co. Ltd., a.k.a. Weihai Luda Arts & Craft ("Weihai"), on the other hand, with Ecological and Weihai collectively referred to as the "Parties."

1.2. General Allegations

Ecological alleges that Weihai manufactured and distributed visors containing Diisononyl phthalate [DINP] which were offered for sale in the State of California by retailer Target Corporation ("Target"), 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"). California has identified and listed DINP under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3. Product Description

The products that are covered by this Settlement Agreement are defined as visors that Weihai has or caused to be sold, offered for sale or distributed in California and that contain DINP, including but not limited to those with UPC:492020449554. All such items shall be referred to herein as the "Covered Products."

1.4. Notice of Violation

On July 31, 2018, Ecological served Target, 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 "60-Day Notice of Violation" ("Notice") that provided

Target and such public enforcers with notice that Weihai was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Covered Products exposed users in California to DINP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

As the manufacturer of the Covered Products, Weihai was notified by Target of the Notice and the Proposition 65 allegations therein.

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 Weihai's compliance with Proposition 65. Specifically, Weihai denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Covered 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 constitute or be construed, considered, offered, or admitted as evidence of an admission by Weihai of any fact, finding, issue of law, or violation of law, or evidence of fault, wrongdoing, or liability by Weihai, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Weihai of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Weihai. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Weihai under this Settlement Agreement.

Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that the Parties may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

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

Weihai represents that it is not presently selling or otherwise distributing the Covered Products for sale in or into California. Weihai agrees, however, that should it recommence sales of the Covered Products in or into California in the future, it will only offer (a) Covered Products that contain no more than 1,000 parts per million DINP, or (b) Covered Products that are sold with a clear and reasonable health hazard warning, pursuant to sections 2.1 and 2.2 below.

2.1. Warning

No later than 90 days after the Effective Date, Weihai shall only sell, or offer for sale in California, Covered Products that are accompanied by a warning as described in Section 2.2 below unless the Covered Product contains no more than 1,000 parts per million DINP. The warning requirement shall not apply to Covered Products that are already in the stream of commerce as of the Effective Date or that Weihai places into the stream of commerce within 90 days of the Effective Date.

2.2. Warning Language

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

(a) Weihai may use any of the following warning statements, which the Parties agree constitutes a clear and reasonable warning for the Covered Products, in full compliance with this Section:

(1) **WARNING:** This product can expose you to chemicals including Diisononyl phthalate (DINP), which is known to the State of California to cause cancer. For more info go to www.P65Warnings.ca.gov.

OR

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

(b) The warning shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold 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 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.

(d) If Proposition 65 warnings for DINP or the Covered Products should no longer be required, Weihai 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, Weihai shall pay a total of \$1,000 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds (\$750.00) remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty (\$250.00) remitted to Ecological. 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, Weihai shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Weihai's attention. Weihai shall pay Ecological's counsel \$19,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

On or before May 20, 2019, Weihai shall make a total payment of Twenty Thousand Dollars (\$20,000.00) for the civil penalties and attorney's fees / costs 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 side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1. Release of Weihai, 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, in its representative capacity, and 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 Covered 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) Weihai, (b) each of Weihai's downstream distributors (specifically including but not limited to Target Corporation), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users, and (c) Weihai's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities. (collectively "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 Weihai 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 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.

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.

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 Covered Products, then Weihai 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 Weihai: Kendra Lounsberry, Esq.
Barnes & Thornburg LLP
2029 Century Park E., Suite 300
Los Angeles, CA, 90067-2904

For Ecological: Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Suite 615
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. 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.


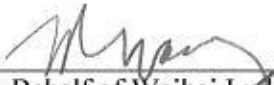
12. MODIFICATION

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

13. 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 style="text-align: center;">AGREED TO:</p> <p>Date: May <u>13</u>, 2019</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: May <u>13</u>, 2019</p> <p>By:  On Behalf of Weihai Luda Co. Ltd., a.k.a. Weihai Luda Arts & Craft</p>
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