

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between ECOLOGICAL ALLIANCE, LLC. ("EA") and FOREVER 21, INC. ("Forever 21"), with Forever 21 and EA each individually referred to as a "Party" and collectively as the "Parties."

1.2 Introduction and General Allegations.

1.2.1 EA is a not-for profit entity duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.2.2 Forever 21 employs ten or more persons, and EA alleges that Forever 21 is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.2.3 EA alleges in two separate Notices of Violation dated August 8, 2018 (the "August NOV") and September 14, 2018 (the "September NOV") that Forever 21 imported, sold, and/or distributed for sale in California, travels sets and similar types of bags (collectively "handbags") containing Di-(2-ethylhexyl) phthalate ("DEHP") a chemical pursuant to Proposition 65 listed by the State of California to cause cancer, birth defects or other reproductive harm and that Forever 21 failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its handbags

1.3 Product Description.

The products covered by this Settlement Agreement are bags, totes, handbags and pouches, including without limitation the travel set designated and the bag identified by UPC #001656649011 in the August NOV and the travel set identified by UPC #0027707011 in the September NOV ("Covered Products").

1.4 60 Day Notices of Violation and Exchange of Information.

On August 8, 2018 and September 14, 2018, EA served Forever 21, and the requisite public enforcement agencies with two 60-Day Notices of Violation ("Notices"), related to the Covered Products, alleging that Forever 21 violated Proposition 65. The Notices alleged that Forever 21 had failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from its import, sale and/or distribution of the Covered Products.

EA subsequently provided Forever 21 with test results in EA's possession concerning its allegations. Forever 21 provided EA with sales data related to the Covered Products and noted that the travel sets designated UPC #00160787031 and UPC #0027707011 were, in fact, the same item which Forever 21 had ordered from its supplier at different times. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission.

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute"). Specifically, EA alleges that Forever 21 imported, manufactured, sold or distributed for sale in the state of California, Covered Products which contained DEHP without first providing the clear and reasonable exposure warning required by Proposition 65, and Forever 21 denies that such a warning is required under Proposition 65 or any otherwise applicable law.

Forever 21 denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products that it has imported, manufactured and/or sold and distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Forever 21 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 Forever 21 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Forever 21. This Section shall not, however, diminish or otherwise affect Forever 21's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date.

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 30, 2018.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

2.1 Reformulation Standard.

Within ninety (90) days of the Effective Date, Forever 21 agrees to only import, manufacture and/or sell or offer for sale or purchase for sale in or into California, Covered Products which are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Covered Products, including any printed, applied, dyed or other graphic image present on any accessible component of any Covered Product, containing less than or equal to 1,000 parts per million (0.1%) DEHP in each accessible component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-09.3, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance, or any other methodology utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance ("Reformulation Standard").

2.2 Accessible Component.

The term "Accessible Component" shall mean any component of the Covered Product that could be touched by a person during reasonably foreseeable use.

3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

Forever 21 shall pay a civil penalty of \$500.00 in recognition that Forever 21 has previously settled with another private enforcer under Proposition 65 relating to phthalates in bags and has already adopted a program requiring its bag and accessory suppliers to meet the Reformulation Standard, said penalty to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to EA. Forever 21 shall issue two separate checks for the penalty payment: (a) one check made payable to Custodio & Dubey LLP in Trust for the State of California's Office of

Environmental Health Hazard Assessment ("in Trust for OEHHA") in the amount of \$375.00, representing 75% of the initial civil penalty and (b) one check to Custodio & Dubey LLP in Trust for Ecological Alliance, LLC in the amount of \$125.00, representing 25% of the civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Custodio & Dubey LLP, who shall furnish a W-9 at least five calendar days before payment is due. The payments shall be delivered on or before January 21, 2019, to the following address:

Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill Street, Suite 615
Los Angeles 90013

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that EA and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to EA and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. More specifically, Forever 21 shall pay the total amount of \$8,000.00 for fees and costs incurred by EA as a result of investigating, bringing this matter to the attention of Forever 21, and negotiating a settlement. Forever 21 shall make the check payable to "Custodio & Dubey LLP" and shall deliver payment on or before January 21, 2019, to the following address:

Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill Street, Suite 615
Los Angeles 90013

To allow for the issuance of a timely payment to be rendered pursuant to the above, EA shall provide Forever 21 with a completed IRS Form W-9 for the Custodio & Dubey LLP at least five calendar days prior to payment.

5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.

EA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, releases Forever 21, of any violation of Proposition 65 that was or could have been asserted by EA against Forever 21, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, each manufacturer or other entity supplying Forever 21 with the Covered Products, and each entity to which Forever 21 directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively "Releasees") for any and all claims based on their alleged or actual failure to warn about alleged exposures to DEHP contained in the Covered Products that were allegedly manufactured, imported, distributed, sold and/or offered for sale by Forever 21 (either directly or through the Releasees) in California before the Effective Date. This release is provided in EA's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, EA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Forever 21 and Releasees that it or they may have including, without limitation, all actions, and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigative fees, expert fees, and attorneys' fees for any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date by Forever 21 or Releasees.

5.2 Forever 21's Release of EA.

Forever 21 on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against EA, its attorneys and other

representatives, for any and all actions taken or statements made by EA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

6. ENFORCEMENT OF SETTLEMENT AGREEMENT.

6.1 Either party may file suit before the Superior Court of the County of Los Angeles to enforce the terms and conditions contained in this Settlement Agreement subject to Sections 6.2 and 6.3 below. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

6.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Forever 21 by EA, unless EA notifies Forever 21 of the specific future acts alleged to breach this Settlement Agreement at least sixty (60) days before serving or filing any action or Notice of Violation, and Forever 21 fails to comply with the requirements imposed on it as set forth in Section 6.3 below. Any notice to Forever 21 must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without either reformulation or a Proposition 65 compliant warning, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

6.3 For a period of three (3) years after the Effective Date of this Agreement, the parties agree that, within sixty (60) days of receiving the notice described in Section 6.2, Forever 21 shall either (a) agree in writing not to contest EA's notification and make a contribution to EA to be used by EA in its Proposition 65 inspections and enforcement in the amount of either: (1) \$5,000.00, in the event that prior to taking delivery of the product, Forever 21 failed to obtain from its supplier independent testing data for a representative sample of the product from the lot or batch shipped to Forever 21 demonstrating that it met the reformulation standard required pursuant to the Settlement Agreement; or (2) \$2,500.00 in the event that, prior to taking delivery of the product, Forever 21 demonstrates to EA's reasonable satisfaction that it received from its supplier independent testing data showing that the lot or batch from which the product was shipped met the reformulation standard required pursuant to this Agreement, or (b) refute the information

provided to Forever 21 by EA under Section 6.2 with analytical data reasonably acceptable to EA showing representative samples of the product meet the Reformulation Standard. In the event that Forever 21 fails to refute the information provided by EA, and the parties are unable to resolve the dispute, EA, in its sole discretion may elect to file a Notice of Violation with the California Attorney General and seek all penalties, damages, and other remedies available under Proposition 65 through a court proceeding notwithstanding the amounts listed in Section 6.3.

6.4 The Parties expressly agree that any and all applicable time limitations (whether arising from statutes, equitable principles or otherwise under common law) relating to any legal claims arising from the notice under Section 6.2 shall be tolled for the 60-day period. During this tolling period, no time shall be considered to pass, lapse or accrue with respect to any statutes of limitation or other time-based defense of any kind whatsoever.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

8. 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.

9. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Forever 21:	DO WON CHANG, President
	FOREVER 21
	3880 North Mission Road
	Los Angeles, CA 90031

with a copy to: John J. Allen
Allen Matkins Leck Gamble Mallory and Natsis LLP
865 South Figueroa Street
Suite 2800
Los Angeles, CA 90017

For EA: Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill Street, Suite 615
Los Angeles 90013

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

12. MODIFICATION

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

13. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: Jan 29, 19

By: [Signature]
Ecological Alliance, LLC.

Date: January 17, 2019

By: [Signature]
Forever 21, Inc.
Counsel