SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and VS International, LLC

This Settlement and Release Agreement ("Agreement") is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and VS International, LLC ("VS"), on the other hand, with Ecological and VS collectively referred to as the "Parties."

1.2. General Allegations

Ecological alleges that VS manufactured and/or distributed and/or offered for sale in the State of California badminton sets containing Di(2-ethylhexyl)phthalate [DEHP] 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 DEHP 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 Agreement are defined as badminton sets (UPC#400029648311) that VS has sold to Five Below, Inc. ("Five Below") which then sold same in California and that allegedly contain DEHP. All such items shall be referred to herein as the "Products."

1.4. Notice of Violation

On October 26, 2018, Ecological served Five Below, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with documents entitled "60-Day Notice of Violation" ("Notice") that provided Five Below and VS and such public enforcers with notice that Five Below and VS were

allegedly 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 DEHP. A copy of said Notice is attached hereto as Exhibit "A". 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 Agreement to settle disputed claims between them as set forth herein and in the Notice concerning VS's compliance with Proposition 65. Specifically, VS denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has sold for further sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Agreement shall be construed as an admission by VS of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by VS of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by VS. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of VS under this Agreement.

1.6. Effective Date

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

2. INJUNCTIVE RELIEF: WARNING

2.1. Warning

Products shall be accompanied by a warning as described in Section 2.2 below, no later than 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. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that VS places into the stream of commerce within 90 days of the Effective Date.

2.2. Warning Language

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

(a) VS may use any of the following warning statements in full compliance with this Section:

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

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

(b) If VS elects to use the warning statements identified in either 2.2(a)(1) or (2), it may 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 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, VS shall have no further obligations pursuant to this Agreement.

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

In settlement of all the claims referred to in this Agreement, VS shall pay a total of $500 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 remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Ecological. Ecological's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this 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, VS shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to VS's attention. VS shall pay Ecological's counsel $10,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By April 30, 2019, VS shall make a total payment of Ten Thousand Five Hundred Dollars ($10,500) 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 VS, 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) VS, (b) each of VS's downstream or upstream distributors (including but not limited to Five Below), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) VS'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 VS 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. VS's Release of Ecological

VS 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 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 VS shall have no further obligations pursuant to this Agreement.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this 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 VS: Fred J. Stellato, Esq.
Norris McLaughlin, P.A.
515 W. Hamilton Street | Suite 502
Allentown, PA 18101

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 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. **CONFIDENTIALITY**

It is understood that Ecological and its attorneys, if any, represent and agree that, except for matters of public record as of the date of this Agreement, they will keep the terms and

contents of this Agreement confidential, and that they will not hereinafter disclose the terms of this Agreement to any third party except as required by law or as necessary to effectuate the terms of this Agreement. Where disclosure to third parties (i.e., attorneys, financial or tax advisors, etc.) is required in order to carry out the terms and conditions of this Agreement, such third parties shall be informed of and bound by this confidentiality clause. In no event shall Ecological or its attorneys made or cause to be made any comment, written statement, or press release concerning the fact of this settlement or the substance of its terms. Ecological agrees that the terms of this confidentiality provision are part of the consideration given for this Agreement.

12. ENTIRE AGREEMENT

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

14. AUTHORIZATION

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

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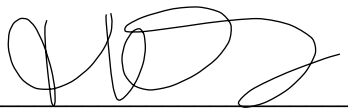
Agreement.

AGREED TO:	**AGREED TO:**
Date: March 8, 2019	Date: March __, 2019
By:  _____ On Behalf of Ecological Alliance, LLC	By: _____ On Behalf of VS International, LLC