

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Ecological Alliance, LLC and Bioworld Merchandising, Inc.

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

#### 1.2. General Allegations

1.2.1 Ecological 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 Bioworld employs ten or more persons, and EA alleges that Bioworld 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 Ecological alleges that Bioworld imported, sold, and/or distributed for sale in California Products, as herein described, 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 Bioworld failed to provide the health hazard warning required pursuant Proposition 65.

#### 1.3. Product Description

The products covered by this Settlement Agreement consist of headgear in the form of hats and caps including but not limited to UPC No. 493260400800 (collectively "hats") that

Bioworld has sold, offered for sale or distributed in California and that contain DEHP. All such items shall be referred to herein as the "Products."

**1.4. Notice of Violation**

On November 29, 2018, Ecological served Bioworld, Target Corporation ("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 "Amended 60-Day Notice of Violation" ("Notice") that provided Bioworld and such public enforcers with notice that Bioworld was 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. 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 Bioworld's compliance with Proposition 65. Specifically, on its own and Target's behalves, Bioworld 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 Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Bioworld of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Bioworld of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Bioworld on its

behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Bioworld 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: REFORMULATION AND WARNINGS**

As of the Effective Date, Bioworld shall manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.1 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. Products that were supplied to third parties by Bioworld prior to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

**2.1. Reformulation Standards**

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

**2.2. Warning Language**

Where required, Bioworld shall provide Proposition 65 warnings on the Product's label as follows:

- (a) Bioworld may use either of the following warning statements in full compliance with this Section:

(1) **WARNING:** This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

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

(b) If Bioworld uses either of the above warning statements to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label 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 DEHP should no longer be required, Bioworld 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 and because it previously began to implement Proposition 65 warnings for the Products, Bioworld 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 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, Bioworld shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Bioworld's attention. Bioworld shall pay Ecological's counsel \$22,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

By March 25, 2019, Bioworld shall make a total payment of Twenty-Two Thousand Five Hundred Dollars (\$22,500) for the civil penalties and attorney's fees / costs by check or 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 Bioworld, 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) Bioworld, (b) each of Bioworld's downstream distributors, wholesalers, vendors, licensors (including, but not limited to Joypixels, Inc., licensees, auctioneers, retailers (including, but not limited to Target Corporation), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Bioworld'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, 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 Bioworld 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. Bioworld's Release of Ecological**

Bioworld 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 by reason of law generally, or as to the Products, then Bioworld shall have no further obligations pursuant to this Settlement Agreement.

## **8. ENFORCEMENT OF SETTLEMENT AGREEMENT.**

8.1. 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 8.2 and 8.3 below. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

8.2. 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 Bioworld by Ecological, unless Ecological notifies Bioworld 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 Bioworld fails to comply with the requirements imposed on it as set forth in Section 8.3 below. Any notice to Bioworld 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.

8.3. 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 8.2, Bioworld shall either (a) agree in writing not to contest Ecological's notification and make a contribution to Ecological to be used by Ecological 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, Bioworld failed to obtain from its supplier independent testing data for a representative sample of the product from the lot or batch shipped to Bioworld 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, Bioworld demonstrates to Ecological's reasonable satisfaction that it received from its supplier independent testing data showing that the lot or batch from with the product was shipped met the reformulation standard required pursuant



to this Agreement, or (b) refute the information provided to Bioworld by Ecological under Section 8.2 with analytical data reasonably acceptable to Ecological showing representative samples of the product meet the Reformulation Standard. In the event that Bioworld fails to refute the information provided by Ecological, and the parties are unable to resolve the dispute, Ecological, 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 8.3.

9. 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 8.2 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.

#### 10. 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 Bioworld:            John J. Allen, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
865 South Figueroa St., Suite 2800  
Los Angeles, CA 90017

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.

11. 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.

12. 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).

13. 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.

14. MODIFICATION

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

15. 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;"><b>AGREED TO:</b></p> <p>Date: March <u>19</u>, 2019</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: March __, 2019</p> <p>By: _____ On Behalf of Bioworld Merchandising, Inc.</p>
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<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: March __, 2019	Date: March <u>22</u> , 2019
By: _____ On Behalf of Ecological Alliance, LLC	By:  On Behalf of Bioworld Merchandising, Inc.