

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Ecological Alliance, LLC and Alex Toys LLC

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

#### 1.2. General Allegations

Ecological alleges that Alex Toys manufactured and distributed and offered for sale in the State of California gel pens sold in pouches 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 Settlement Agreement are defined as gel pens contained in pouches that Alex Toys 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 March 11, 2019, Ecological served Alex Toys, Ross Stores, 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 "60-Day Notice of Violation" ("Notice") that provided Alex Toys and such public enforcers with notice that Alex Toys was allegedly in

violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed consumers and customers 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 Alex Toys's compliance with Proposition 65. Alex Toys 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 Alex Toys 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 Alex Toys of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Alex Toys on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Alex Toys 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, Alex Toys 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 Alex Toys 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 8270E 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, Alex Toys shall provide Proposition 65 warnings on the Product’s label as follows:

- (a) Alex Toys 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 Alex Toys 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) Alex Toys shall be deemed to be in compliance with this Settlement Agreement by either adhering to Section 2 of this Settlement Agreement or by complying with the Article 6 clear and reasonable warning requirements adopted by OEHHA.

(e) If Proposition 65 warnings for DEHP should no longer be required, Alex Toys 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, Alex Toys shall pay a total of \$200 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, Alex Toys shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Alex Toys's attention. Alex Toys shall pay Ecological's counsel \$13,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Alex Toys shall make two separate civil penalty payments to 1) OEHHA in the amount of One Hundred Fifty Dollars (\$150) and 2) Ecological in the amount of Fifty Dollars (\$50). Alex Toys shall make a payment of Thirteen Thousand Dollars (\$13,000) for 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

All payments shall be mailed to Custodio & Dubey LLP within fifteen (15) business days of execution of this Settlement Agreement.

Other than these payments, each side is to bear its own attorneys' fees and costs.

Custodio & Dubey agrees to provide IRS W-9 forms for itself and Ecological Alliance, LLC, and Alex Toys agrees to provide IRS 1099 forms for its payments to, each of the payees under this settlement agreement.

**6. RELEASE OF ALL CLAIMS**

**6.1. Release of Alex Toys, 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 that could have been, have been or may in the future be asserted relating to the Products, including, without limitation, all notices of violation, 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) Alex Toys, (b) each of Alex Toys's downstream distributors (including but not limited to Ross Stores, Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and each of their respective past and present subsidiaries, affiliates and parents, franchisees, cooperative members and licensees, divisions, predecessors, successors and assigns and each of their respective owners, officers, directors, board members, trustees, shareholders, managers, members, employees, agents, attorneys, insurers, auditors, accountants, experts, stockholders, representatives, partners, and any other persons acting on their behalf, and (c) Alex Toys's parent companies, corporate affiliates, subsidiaries, divisions, predecessors, successors and their respective officers, directors, board members, trustees, managers, members, marketplaces, stockholders, partners, successors and assignees, accountants, experts, insurers, auditors

,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 Alex Toys 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.

**6.2. Alex Toys's Release of Ecological**

Alex Toys 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 Alex Toys 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 Alex Toys:            Robert S. Niemann, Esq.  
                                 Keller & Heckman, LLP  
                                 Three Embarcadero Center, Suite 1420  
                                 San Francisco, CA 94111

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**


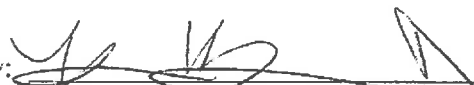
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**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.

<b>AGREED TO:</b> Date: July <u>5</u> , 2019 By:  On Behalf of Ecological Alliance, LLC	<b>AGREED TO:</b> Date: July <u>5</u> , 2019 By:  On Behalf of Alex Toys, LLC
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