

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and Gourmet Home LLC

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

1.2. General Allegations

Ecological alleges that Gourmet manufactured and/or distributed and/or offered for sale in the State of California shoe organizers with packaging 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 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 shoe organizers with packaging that contain DEHP that Gourmet has either imported, or manufactured, or distributed or directly or indirectly sold, or offered for sale, and which were sold to California consumers. All such items shall be referred to herein as the "Products."

1.4. Notice of Violation

On April 8, 2019, Ecological served Tuesday Morning, Inc. 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 Gourmet, Tuesday Morning, Inc., and such public enforcers with notice that Gourmet

was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn that the Products exposed users in California to DEHP. To the knowledge of Gourmet and Ecological, no public enforcer has commenced or 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 them as set forth herein and in the Notices concerning Gourmet's compliance with Proposition 65. Specifically, Gourmet denies the material factual and legal allegations contained in Ecological's Notices and maintains that all products that it has manufactured, imported, distributed, directly or indirectly sold or offered for sale 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 against interest by Gourmet 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 against interest by Gourmet of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Gourmet. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Gourmet under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean when this Settlement Agreement has been fully executed.

2. INJUNCTIVE RELIEF: WARNING

2.1. Warning

If required, 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 Gourmet either purchases, imports, manufactures, distributes, markets, sells or offers 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 Gourmet places into the stream of commerce within 90 days of the Effective Date, or which contain less than 1000 parts per million (ppm) DEHP.

2.2. Warning Language

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

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

(1) **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and 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 Gourmet is required to warn, either of the warning statement in 2.2(a)(1) or (2) must 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 DEHP should no longer be required, Gourmet shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that the Office of Environmental Health Hazard Assessment promulgates one or more "safe harbor" regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Gourmet shall be entitled to use, at their discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Gourmet shall pay a total of \$200.00 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, Gourmet shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Gourmet's attention. Gourmet shall pay Ecological's counsel \$10,000.00 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

On or before August 9, 2019, Gourmet shall make a total payment of Ten Thousand Two Hundred Dollars (\$10,200.00) 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 Gourmet, Downstream and Upstream Parties

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) Gourmet, (b) each of Gourmet's upstream and downstream manufacturers, importers, distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers (including without limitation Tuesday Morning, Inc.), franchisees, dealers, shareholders, cooperative members, owners, purchasers, users, and (c) Gourmet's parent companies, predecessors, successors, 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 Gourmet 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. Gourmet's Release of Ecological

Gourmet waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements 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 up through the Effective Date.

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 Gourmet shall have no further obligations pursuant to this Settlement Agreement. The Parties deem compliance with this Settlement Agreement by Gourmet to constitute compliance under Proposition 65 with respect to the Products and to confer a significant public benefit.

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 Gourmet: Judith M. Praitis, Esq.
 Sidley Austin LLP

555 W 5th St
Los Angeles, CA 90013
jpraitis@sidley.com

For Ecological: Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Suite 615
Los Angeles, CA 90013
dubey@cd-lawyers.com

Courtesy copies may also be sent via email. 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


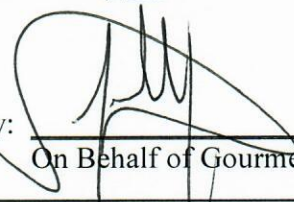
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties. If any public prosecutor files an action on or prior to December 10, 2018 on either Notice, whether against Tuesday Morning, Inc. or against Gourmet, or both, or files an action on or prior to December 10, 2018 respecting DEHP in any Product, this Settlement Agreement shall be void *ab initio* and the Parties shall have no duties hereunder.

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: July^{August} 1, 2019</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: July 31, 2019</p> <p>By:  On Behalf of Gourmet Home LLC</p>
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