

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and Isaco International Corporation

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

1.2. General Allegations and Product Description

Ecological alleges that Isaco distributed and offered for sale in the State of California briefs with plastic packaging, including but not limited to Style #554137F8, sold by retailers including but not limited to, Burlington Coat Factory Direct Corporation; and briefs, including but not limited to Style #555107-941, sold by retailers, including but not limited to, Homegoods, Inc. and substantially similar products (“Products”) that cause exposures to Di(2-ethylhexyl)phthalate [DEHP] without first providing clear and reasonable warning under 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 and birth defects or other reproductive harm.

1.3. Notice of Violation

On April 22, 2019, Ecological served Isaco, Homegoods, Inc., Burlington Coat Factory Direct Corporation, 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 Isaco and such public enforcers with notice that Isaco 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.

1.4. No Admission

The parties enter into this Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Isaco's compliance with Proposition 65. Specifically, Isaco 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 and any other statutory, regulatory, common law or equitable doctrine. Nothing in this Agreement shall be construed as an admission by Isaco 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 Isaco of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Isaco. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Isaco under this Agreement.

1.5. Effective Date

For purposes of this Agreement, the term "Effective Date" shall mean the date on which the last Party executes the Agreement.

2. INJUNCTIVE RELIEF: WARNING

2.1. Reformulated Products

Commencing within 90 days of on the Effective Date, and continuing thereafter, Isaco agrees to only import or manufacture Product in California that is (a) "Reformulated Products" or (b) Products with a clear and reasonable warning, as set forth in Sections 2.2 and 2.3 or as

defined by the California Code of Regulations, Title 27, Div. 4, Chap. 1, Art. 6 (commencing at §25600). For purposes of this Agreement, "Reformulated Products" are Products containing DEHP in concentrations of 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 other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance. Reformulated Product shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirement if the Product contains DEHP and/or other regulated phthalates in a concentration of less than or equal to 1,000 parts per million.


2.2. Clear and Reasonable Warning

For all Products that are not Reformulated Products, which are imported or manufactured later than 90 days after the Effective Date and are subsequently offered for retail sale in California, Isaco shall provide clear and reasonable warnings as set forth herein or as defined by the California Code of Regulations, Title 27, Div. 4, Chap. 1, Art. 6 (commencing at §25600). The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that Isaco places into the stream of commerce within 90 days of the Effective Date.


2.3. Warning Language

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

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

- (1)  **WARNING:** This product can expose you to chemicals including Di(2-ethylexyl) 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.

(c) The warning shall 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”.

(d) 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.

(e) If Proposition 65 warnings for DEHP or the Products should no longer be required, Isaco 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, Isaco 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 and Ecological's portions 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, Isaco shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Isaco's attention. Isaco 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**

On or before August 21, 2019, Isaco 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. **CLAIMS COVERED AND RELEASED**

6.1. **Release of Isaco, 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, in its representative capacity, and 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) Isaco, (b) each of Isaco's distributors, wholesalers, manufacturers, vendors, licensors, licensees, auctioneers, retailers (including but not limited to Homegoods, Inc., Burlington Coat Factory Direct Corporation) and their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees)", franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Isaco'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 Isaco 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. Isaco's Release of Ecological

Isaco 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. SEVERABILITY

If, subsequent to the execution of this Agreement, any of the provisions of this Agreement are 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 Agreement shall be governed by the laws of the State of California and apply within the State of California. Actions to enforce any provision of this Agreement shall be venued in the Superior Court of Sacramento, 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 Isaco shall have no further obligations pursuant to this Agreement.

9. 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 Isaco: Will Wagner, Esq.
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

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.

10. 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.

11. 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).

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,

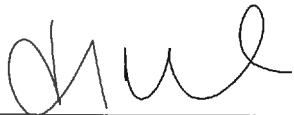
commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

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 Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: August <u>13</u>, 2019</p> <p>By: <u></u> On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: August __, 2019</p> <p>By: _____ On Behalf of Isaco International Corporation</p>
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This Agreement may be modified only by a written agreement signed by the Parties.

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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 Agreement.

AGREED TO:	AGREED TO:
Date: August __, 2019	Date: August <u>14</u> , 2019
By: _____ On Behalf of Ecological Alliance, LLC	By: <u>David L Tenner</u> On Behalf of Isaco International Corporation