

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and CBI Distributing Corp.

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

1.2. General Allegations

Ecological alleges that CBI has exposed individuals to the chemical Di(2-ethylhexyl) phthalate (DEHP) from its sales of dress your diary kits with plastic packaging without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required 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 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3. Product Description

The products that are covered by this Settlement Agreement include but are not limited to plastic packaging on dress your diary kits, UPC #888711398995, and related products (the “Products”) that CBI has or caused to be sold, offered for sale, imported or distributed in California.

1.4. Notice of Violation

On May 17, 2019, Ecological served CBI, 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 CBI and such public

enforcers with notice that CBI was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn California consumers and customers that the Products allegedly exposed users 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 CBI's compliance with Proposition 65. Specifically, CBI denies the material factual and legal allegations contained in Ecological's Notice and maintains that, to the best of its knowledge, 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 Settlement Agreement shall be construed as an admission by CBI 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 CBI of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by CBI. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of CBI 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: WARNING


2.1. Clear and Reasonable Warning


For all Products placed into the stream of commerce more than 90 days after the Effective Date, and continuing thereafter, a clear and reasonable warning as set forth in this §§ 2.1 and 2.2 must be provided for all Products that CBI manufacturers, imports, distributes, sells, or offers for sale in California unless the Products contains no more than 1,000 parts per million DEHP by weight. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that CBI places into the stream of commerce within 90 days of the Effective Date.

2.2. Warning Language

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

- (a) CBI 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-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) The warning provided pursuant to § 2.2 must print the word “**WARNING:**” in all in all capital letters and in bold font, followed by a colon and 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:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

(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 on the Products should no longer be required, CBI shall have no further obligations pursuant to this Settlement Agreement.

2.3 **Compliance with Warning Regulations.** CBI shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.1 and 2.2 of this Settlement Agreement or by complying with warning requirements adopted by the State of

California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, CBI 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 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 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, CBI shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to CBI's attention. CBI shall pay Ecological's counsel \$11,000 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 16, 2019, CBI shall make a total payment of Eleven Thousand Two Hundred Dollars (\$11,200) 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 CBI, 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 (including Proposition 65), 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) CBI, (b) each of CBI's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) CBI'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 CBI 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. CBI's Release of Ecological

CBI 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.

6.3 Deemed Compliance with Proposition 65. Compliance by CBI with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP and other regulated phthalates from use of the Products.

6.4 **Public Benefit.** It is Parties understanding that the commitments herein, and actions to be taken by CBI under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to CBI's failure to provide a Proposition 65 warning on the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public, provided that CBI is in material compliance with this Settlement Agreement.

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, CBI 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 CBI:	Stephen Sernett, Esq. General Counsel Claire's Stores 2400 West Central Road Hoffman Estates, IL 60192
----------	--

With a Copy to: 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.

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.


AGREED TO:

Date: August 1, 2019

By: 
On Behalf of Ecological Alliance, LLC

AGREED TO:

Date: August 1, 2019

By: 
Stephen Sernett, General Counsel
On Behalf of CBI Distributing Corp.