

## SETTLEMENT AND RELEASE AGREEMENT

### 1. **INTRODUCTION**

#### 1.1. **Ecological Alliance, LLC and FLP, LLC**

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

#### 1.2. **General Allegations**

Ecological alleges that FLP manufactured and/or distributed and/or offered for sale in the State of California vegetable peelers and bottle openers containing Di-n-butyl Phthalate [DBP] and that such sales have not included clear and reasonable 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 DBP 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 vegetable peelers (including but not limited to UPC #740985882016) and bottle openers (including but not limited to UPC #740985882047) that FLP has sold, offered for sale, or distributed and that have been placed into the stream of commerce in California by FLP or any other person or entity after FLP sold them, and that contain DBP. All such items shall be referred to herein as the "Products."

#### **1.4. Notice of Violation**

On February 14, 2020, 2018, Ecological served FLP, True Value Company, L.L.C., 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 FLP and such public enforcers with notice that FLP 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 DBP. 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 FLP's compliance with Proposition 65. Specifically, FLP 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 FLP 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 FLP of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by FLP. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of FLP 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 by each of the Parties.

## **2. INJUNCTIVE RELIEF: WARNING**

### **2.1. Warning**

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 are distributed, marketed, sold or shipped for sale in the State of California. The warning requirement shall not apply to Products manufactured before the Effective Date, or Products that are already in the stream of commerce as of the Effective Date, or that FLP places into the stream of commerce within 90 days of the Effective Date.

### **2.2. Warning Language**

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

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

(1) **WARNING:** The packaging for this product can expose you to DBP, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more info 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 FLP elects to use the warning statements identified in either 2.2(a)(1) or (2), it may 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. In lieu of the proceeding warning content and methods set forth herein, FLP may use any warning content and method that complies with Title 27, California Code of Regulations, section 25600 et. seq., as amended August 30, 2016 and subsequently thereafter.

(d) If Proposition 65 warnings for DBP should no longer be required, FLP 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 regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, FLP 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, FLP 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, FLP shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to FLP's attention. FLP shall pay Ecological's counsel \$12,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within ten (10) business days of the Effective Date, FLP shall make a total payment of Twelve Thousand Five Hundred Dollars (\$12,500) 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.: 325104702031

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 FLP, 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) FLP, (b) each of FLP's downstream distributors (including but not limited to True Value Company, L.L.C.) (collectively, the "Downstream Customers"), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) FLP's and FLP's Downstream Customers' 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 FLP 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. FLP's Release of Ecological**

FLP 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 FLP with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposure to DEHP in the Products.

**6.4. Public Benefit**

It is the understanding of the Parties that the commitments FLP has agreed to herein, and the actions to be taken by FLP under this Settlement Agreement, could confer a significant public benefit to the general public as set forth in California Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intention of the Parties that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to FLP's alleged failure to provide a warning concerning exposure to DEHP from 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 to the general public as to those Products addressed in this Settlement Agreement, provided that FLP 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, then FLP 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 FLP:                      Landon D. Bailey  
                                    BAILEY PLC  
                                    641 Fulton Avenue, Suite 200  
                                    Sacramento, CA 95825

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 the 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>April 30 Date: <del>May</del> __, 2020</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: May __, 2020 <b>APRIL 30</b></p> <p>By:  On Behalf of FLP, LLC</p>
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