

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Ecological Alliance, LLC and DC Cargo Mall, Inc.**

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and DC Cargo Mall, Inc., including its owners, parents, subsidiaries, affiliates, sister and related companies ("Cargo"), on the other hand, with Ecological and Cargo collectively referred to as the "Parties."

1.2. **General Allegations**

Ecological alleges that Cargo manufactured and/or distributed and/or offered for sale in the State of California trailer storage bags 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 trailer storage bags that Cargo has sold, offered for sale or distributed in California and that allegedly contain DEHP. All such items shall be referred to herein as the "Products."

1.4. **Notice of Violation**

On March 2, 2020, Ecological served Cargo, Amazon.com, Inc. ("Amazon"), 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 Cargo and such public enforcers with notice that Cargo 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.

1.5. No Admission

The parties enter into this Settlement Agreement for the purpose of avoiding prolonged litigation concerning disputed claims between them as set forth herein and in the Notice concerning Cargo's compliance with Proposition 65. Specifically, Cargo 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 Cargo 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 Cargo of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Cargo. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Cargo 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. 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 that are already in the stream of commerce as of the Effective Date or that Cargo places into the stream of commerce within 90 days of the Effective Date.

2.2. Warning Language

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

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

(1) **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

(b) If Cargo 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.

(d) If Proposition 65 warnings for DEHP should no longer be required, Cargo 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, Cargo 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.

2.3. Compliance with Warning Regulations. The Parties agree that Cargo shall be deemed to be in compliance with this Settlement Agreement by adhering to §§ 2.1 and 2.2 of 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, Cargo 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, Cargo shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Cargo's attention. Cargo 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

By June 17, 2020, Cargo 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.: 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 Cargo, Downstream Customers and Upstream Vendors

This Settlement Agreement is a full, final, and binding resolution between the 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 releases from and waives all rights to institute or participate in, directly or indirectly, any form of legal action that has been, could have been or may in the future be asserted 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 under statutory or common law, whether under federal or state law, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Cargo, (b) Amazon, (c) each of Cargo's downstream distributors (including but not limited to eBay), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, (d) Cargo's and Amazon's parent companies, corporate affiliates, subsidiaries, and each of their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") and all entities not otherwise listed above to whom Releasees directly or indirectly provide, distribute, or sell the Products.

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 Cargo and the Releasees. This general release provided by Ecological is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. Ecological acknowledges that the claims

released in this section may include unknown claims and nevertheless waives California Civil Code section 1542 as to any such unknown claims. Ecological further 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. Ecological acknowledges and understands the significance and consequence of this specific waiver of California Civil Code section 1542 and Ecological's release shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6.2. Cargo's Release of Ecological

Cargo 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

The Parties agree that compliance by Cargo with this Settlement Agreement constitutes compliance with Proposition 65 with respect to the Products.

6.4. Public Benefit

It is the Parties' understanding that the commitments Cargo has agreed to herein, and actions to be taken by Cargo 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, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to the Products, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Cargo is in material compliance with this Settlement Agreement.

7. ENFORCEMENT

After the Effective Date, prior to bringing any motion, order to show cause, or other proceeding regarding any of the Products and/or this Agreement, Ecological shall provide Cargo with a Notice of Violation ("NOV") for each Product alleged to be in violation. The NOV shall include the date of the alleged violation(s), city and state of sale, name of vendor(s), proof of purchase(s), photograph(s) of the Product(s) (so Cargo may verify authenticity), and any test data obtained by Ecological regarding each Product. Ecological shall take no further action regarding any alleged violation nor seek any monetary recovery for itself, its past and current representatives, agents, attorneys, successors and/or assigns if, within thirty (30) business days of receiving the NOV, Cargo demonstrates to Ecological or its authorized representative: (a) the Covered Product(s) were sold by Cargo before the Effective Date; (b) Cargo directed the affected

store to take corrective action by either removing the Product(s) from sales to California residents or by placing the required warning label on the remaining Product(s) sold or offered for sale in California within thirty (30) calendar days from the date of service of the NOV; (c) the Products is free of DEHP as judged against the current safe harbor levels, including No Significant Risk Levels (NSRLs) for cancer-causing chemicals and Maximum Allowable Dose Levels (MADLs), for chemicals listed as causing birth defects or other reproductive harm as published by OEHHA; (d) that it provides a warning prior to the sale of the Product(s) in accordance with Section 2.2 of this Agreement.

8. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

9. 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 Cargo shall have no further obligations pursuant to this Settlement Agreement.

10. 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 Cargo: Neal Cohen, Esq.
Neal Cohen Law LLC
6930 Carroll Avenue, Suite 423
Takoma Park, MD 20912

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.

11. 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.

12. 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).

13. 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.

14. MODIFICATION

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

15. 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: June <u>11</u>, 2020</p> <p>By: <u></u> On Behalf of Ecological Alliance, LLC</p> | <p style="text-align: center;">AGREED TO:</p> <p>Date: June <u>15</u>, 2020</p> <p>By: <u></u> On Behalf of DC Cargo Mall, Inc.</p> |
|--|--|