

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Ecological Alliance, LLC and BSN Sports, LLC

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

#### 1.2. General Allegations

Ecological alleges that BSN manufactured and/or distributed and/or offered for sale in the State of California floor tapes containing Diisononyl phthalate [DINP], 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 DINP 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 floor tapes manufactured, distributed, supplied, imported, or provided by BSN which have been sold, offered for sale, or distributed in California. All such items shall be referred to herein as the "Products."

#### 1.4. Notice of Violation

On June 19, 2020, Ecological served BSN, Amazon.com, Inc., and the requisite public enforcement agencies with documents entitled "Notice of Violation Against BSN Sports, LLC and Amazon.com, Inc. of California Health & Safety Code Section 25249.6" ("Notice") that provided BSN and such public enforcers with notice that BSN was alleged to be in violation of

Proposition 65 for failing to warn consumers that the Products allegedly exposed users in California to DINP. To 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, including concerning BSN's compliance with Proposition 65. Specifically, BSN denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products distributed, supplied, imported, or provided by BSN which have been sold, offered for sale, or distributed in California, including the Products, have been and are in compliance with all laws, including Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by BSN 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 BSN of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by BSN. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of BSN under this Settlement Agreement. Notwithstanding the allegations in the Notice and/or its compliance with this Settlement Agreement, BSN maintains that it has not knowingly or intentionally caused exposures to chemicals in violation of Proposition 65. Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, argument, or defense that the Parties may have with respect to the allegations contained in the Notice or with respect to any other future legal proceedings, except as otherwise provided herein.

**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 OR REFORMULATION**

**2.1. Warning or Reformulation**

Except as otherwise provided herein, the Products shall be accompanied by a warning as described in Section 2.2 below no later than 90 days after the Effective Date, subject to the following limitations and conditions:

- (a) 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.
- (b) The Parties agree that the Products described in Subsection (a) only require a warning as described in Section 2.2 if such Products contain more than 1,000 parts per million DINP. Accordingly, in lieu of providing a warning, BSN may reformulate any Products that are distributed, marketed, sold, or shipped for sale in the State of California to contain 1,000 parts per million DINP or less; products containing 1,000 parts per million DINP or less shall be considered compliant with Proposition 65 and with this Settlement Agreement.
- (c) The warning or reformulation requirements provided herein shall not apply to Products that are already in the stream of commerce as of the Effective Date or that BSN places into the stream of commerce within 90 days of the Effective Date.

## **2.2. Warning Language and Methods**

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

(a) BSN may use either of the following warning statements, both of which shall be considered compliant with Proposition 65 and with this Settlement Agreement:

(1) **WARNING:** This product can expose you to chemicals including diisononyl phthalate (DINP), 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](http://www.P65Warnings.ca.gov).

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

(b) If BSN 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 black outline. However, 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 word “**WARNING**”, in a size no smaller than the height of the word “**WARNING**”.

(c) 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. The 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.

(d) If BSN sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears in a manner permitted under 27 Cal. Code Regs. §25602(b). This includes presentation of the warning or of a clearly marked hyperlink using the word “**WARNING**” either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

(e) The requirements for warnings set forth in this Section are imposed pursuant to the terms of this Settlement Agreement. However, the Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(f) In the event that the California Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates one or more regulations requiring or permitting warning text and/or methods of warning transmission different than

those set forth above, BSN shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

(g) If Proposition 65 warnings for DINP should no longer be required, BSN shall have no further obligations pursuant to this Settlement Agreement.

**2.3. Compliance with Proposition 65.**

The Parties agree that BSN shall be deemed to be in compliance with this Settlement Agreement, and with Proposition 65, by any of the following options: (1) warning pursuant to §§ 2.1 and 2.2(a)-(d) of this Settlement Agreement; (2) reformulating pursuant to § 2.1(b) of this Settlement Agreement; or (3) by utilizing warning text and/or methods of warning transmission required or permitted by OEHHA, including those adopted after the Effective Date, which are appropriate for the Products at issue and the exposure alleged pursuant to § 2.2(f) 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, BSN shall pay a total of \$900 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 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, BSN shall reimburse Ecological's counsel for fees and costs incurred as a result of investigating and bringing this matter to BSN's attention. BSN shall pay Ecological's counsel \$12,000 for all fees and costs, including attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within fourteen (14) days of the Effective Date, BSN shall make a total payment of Twelve Thousand Nine Hundred Dollars (\$12,900) 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 BSN, Downstream Distributors 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 ("Releasers"), 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 and any associated costs) of any nature whatsoever, whether known or unknown,

suspected or unsuspected, fixed or contingent (collectively "Claims"), against (a) BSN; (b) Amazon.com, Inc.; (c) each of BSN's and Amazon.com, Inc.'s direct or indirect downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, marketplaces, dealers, shareholders, cooperative members, customers, owners, purchasers, users; and (d) their respective officers, directors, attorneys, representatives, shareholders, agents, licensees, licensors, employees, successors, assignees, subsidiaries, affiliated entities, and sister and parent entities (groups (a), (b), (c) and (d) collectively, "Releasees").

Ecological also, in its capacity on behalf of Releasors and *not* in its representative capacity, provides a general release herein which shall be effective 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 BSN 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 Releasors, 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 and BSN each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.



**6.2. BSN's Release of Ecological**

BSN 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.

**6.3. Public Benefit**

It is BSN's understanding that the commitments it has agreed to herein, and actions to be taken by BSN 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, any future action alleging a violation of Proposition 65 with respect to BSN and/or the Releasees relating to the Products they have 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 as to those Products addressed in this Settlement Agreement, provided that BSN 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 BSN 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 BSN: Erika R. Schulz, Esq.  
Blank Rome LLP  
2029 Century Park East, 6th Floor  
Los Angeles, CA 90067

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**


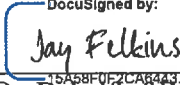
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties with respect to the subject matter hereof.

**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.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: November <u>3</u> 2020	Date: November <u>10</u> , 2020
By: 	By: 
On Behalf of Ecological Alliance, LLC	On Behalf of BSN Sports, LLC EVP & GC