

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and Dexter Axle Company

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

1.2. General Allegations

Ecological alleges that Dexter imported, and/or manufactured and/or distributed and/or sold or offered for sale in the State of California or to California consumers vinyl seals containing Di(2-ethylhexyl)phthalate "(DEHP)", 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 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 all sizes and forms of packaging of vinyl seals containing DEHP, that Dexter has either imported, manufactured, sold, offered for sale or distributed in California or to California consumers. All such items shall be referred to herein as the "Products."

1.4. Notice of Violation

On July 24, 2020, Ecological served Dexter, Amazon.com, Inc., 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 Dexter and such public enforcers with notice that Dexter 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 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 Dexter's compliance with Proposition 65. Specifically, Dexter denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has imported, manufactured, distributed, sold or offered for sale in California, including the Products, have been and are in compliance with Proposition 65 or any other statute, regulation, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission against interest by Dexter 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 against interest by Dexter of any fact, finding, conclusion, issue of law, or violation of law. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Dexter under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date that Dexter has notice that this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF: WARNING



2.1. Warning

Products that Dexter sells or distributes shall be accompanied by a warning as described in Section 2.2 below, no later than ninety (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 Parties agree that such Products shall be accompanied by a warning as described in Section 2.2 below unless the Product contains no more than 1,000 parts per million DEHP. Products with less than 1,000 parts per million DEHP shall be considered not to need a warning under Proposition 65. The warning requirement shall not apply to Products that are manufactured prior to the date that is ninety (90) days after the Effective Date, regardless of when such Products are sold or given away in California.

2.2. Warning Language

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

- (a) Dexter 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 info go to www.P65Warnings.ca.gov.
- (2)  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

(b) If Dexter 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, Dexter 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, Dexter 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, Dexter 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, Dexter shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Dexter's attention. Dexter shall pay Ecological's counsel \$27,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

Within twenty (20) business days of the Effective Date, Dexter shall make a total payment of Twenty-Seven Thousand Five Hundred Dollars (\$27,500) 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. Plaintiff agrees to provide taxpayer information if requested by Dexter to process the payment within two (2) days of Dexter's request.

6. RELEASE OF ALL CLAIMS

6.1. Release of Dexter, 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, 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) Dexter, (b) each of Dexter's upstream suppliers and downstream distributors (including but not limited to Amazon.com, Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Dexter'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 Dexter 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. Dexter's Release of Ecological

Dexter 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 up through the Effective Date.

6.3 Preclusive Effect of this Settlement Agreement

The Parties hereby agree that it is their intention that this Settlement Agreement provides a substantial public benefit in that Dexter is agreeing to pay a civil penalty to the State of California, and to provide warnings on Products manufactured on or more than ninety (90) days after the Effective Date which contain DEHP above the standard for warnings set forth herein. If a subsequent enforcer were to attempt to prosecute Dexter with regard to alleged DEHP in the

Products, the Parties agree that no substantial public benefit would arise from such prosecution in light of the agreements made herein.

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. The warning obligations of this Settlement Agreement do not apply to Products that are not sold or given away in 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 Dexter shall have no further obligations pursuant to this Settlement Agreement. The Parties agree that Dexter's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Products.

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 Dexter:	Judith M. Praitis, Esq. Faegre Drinker Biddle & Reath LLP 1800 Century Park East, Suite 1500 Los Angeles, CA 90067
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For Ecological:	Vineet Dubey, Esq. Custodio & Dubey LLP 448 S. Hill St., Suite 615 Los Angeles, CA 90013
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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) and to submit to the State of California \$375 of the civil penalty payment made hereunder.

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.

<p>AGREED TO:</p> <p>Date: October <u>22</u> 2020</p> <p>By: <u></u></p> <p>On Behalf of Ecological Alliance, LLC</p>	<p>AGREED TO:</p> <p>Date: October __, 2020</p> <p>By: _____</p> <p>On Behalf of Dexter Axle Company</p>
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