

## SETTLEMENT AGREEMENT AND RELEASE

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between Ecological Alliance, LLC (“Plaintiff” or “Ecological”) and Lucky Star Enterprise & Co., Ltd. (“Defendant” or “Lucky Star”). Together, Ecological and Lucky Star are collectively referred to as the “Parties.” Ecological is a California limited liability company that seeks to improve human health by reducing or eliminating hazardous substances contained in consumer products. Ecological alleges that Lucky Star is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

**1.2 General Allegations.** Ecological alleges that Lucky Star manufactured and/or distributed card holders, including but not limited to UPC# 984431931479 offered for sale by retailers, including Target Corporation (“Target”), containing the chemical Di(2-ethylhexyl) phthalate (“DEHP”) without first providing California consumers with a Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

**1.3 Product Description.** The products covered by this Settlement Agreement are card holders that have been manufactured, imported, distributed, offered for sale and/or sold in California by Lucky Star and/or its chain of distribution (the “Products”).

**1.4 Notice of Violation.** On September 1, 2020, Ecological served Lucky Star, Target, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Lucky Star, Target, and such others, including public enforcers, with notice that alleged that Lucky Star and Target failed to warn California consumers that use of the Products may expose them to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** The Parties enter into this Settlement Agreement to settle the disputed claims between them as set forth herein and in the Notice. Specifically, Lucky Star enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have

been raised in the Notice, and to avoid prolonged and costly litigation. Lucky Star denies the material factual and legal allegations contained in the Notice, maintains that it is not a person subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all products that it has manufactured and/or distributed to retailers for sale in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Lucky Star of any fact, finding, issue of law, or violation of law; including, but not limited to any fact or conclusions of law suggesting or demonstrating that Lucky Star has sold any products in California, or that it has violated Proposition 65, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Lucky Star of any or the above, such being specifically denied by Lucky Star. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Lucky Star may have in this or any other future legal proceedings. This Settlement Agreement is the product of negotiation and compromise and is accepted by Lucky Star solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties' obligations, responsibilities and duties under this Settlement Agreement.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Agreement is fully executed by the Parties.

## **2. INJUNCTIVE RELIEF**


**2.1 Reformulation of Products.** As of the Effective Date, and continuing thereafter, Products that Lucky Star directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) Reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product.

**2.2 Reformulation Standard.** "Reformulated Products" shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million ("ppm")) each of DEHP in any


accessible components when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

**2.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing thereafter, Lucky Star must provide a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 for all Products that Lucky Star manufacturers, imports, distributes, sells, and/or offers for sale in California that are not Reformulated Products. There shall be no obligation for Lucky Star to provide a warning hereunder for Products that entered the stream of commerce prior to the Effective Date and all Products manufactured before the Effective Date may continue to be sold without warning and pursuant to the Release in § 5 below. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl) phthalate (DEHP), which are 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).

(b) **Alternative Warning:** Lucky Star may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

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

**2.4** The warning provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Product itself, or on the Product’s packaging, container, 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 reasonably 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.

If Lucky Star sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning or a clearly marked hyperlink to the warning using the word(s) “[California Prop 65] **WARNING**” (language in brackets optional) appears 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 during the checkout process. 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.

**2.5 Compliance with Warning Regulations.** The Parties agree that Lucky Star shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 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.

**2.6 Public Benefit.** It is Lucky Star’s understanding that the commitments it has agreed to herein, and actions to be taken by Lucky Star under this Settlement Agreement 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 Lucky Star that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Lucky Star’s alleged failure to provide a warning concerning actual or alleged exposure to DEHP prior to use of 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 as to those Products addressed in this Settlement Agreement, provided that Lucky Star is in material compliance with this Settlement Agreement.

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

In settlement of all claims for monetary relief of any kind related to the Notice or referred to in this Settlement Agreement (except for Plaintiff's attorneys' fees and expenses set forth in Section 4 below), Lucky Star shall pay \$100.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Ecological. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

**3.1 Civil Penalty.** Within ten (10) days of the Effective Date, Lucky Star shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$75.00; and to (b) "Custodio & Dubey LLP in Trust for Ecological Alliance, LLC" in the amount of \$25.00.

**3.2 Payment Procedures.**

**(a) Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments, pursuant to § 3.1 shall be made by mail or wire transfer to Plaintiff's counsel, Custodio & Dubey LLP, as set forth below. Plaintiff's counsel will remit the portions due to the State of California Office of Environmental Health Hazard Assessment and to Plaintiff.

Vineet Dubey, Esquire  
Custodio & Dubey LLP  
448 S Hill Street, Suite 615  
Los Angeles, CA 90013

Vineet Dubey, Esquire  
Bank: Bank of America, N.A.  
Routing Transit No.: 026009593  
Account No.: 325104702031  
Beneficiary: Custodio & Dubey LLP

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Ecological and its counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of attorneys' fees and expenses to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Ecological and its counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Lucky Star shall reimburse Ecological's counsel the total amount of \$10,000.00 for any and all of Ecological's attorneys' fees and expenses, including but not limited to all investigative, expert, and testing expenses, incurred as a result of investigating and bringing this matter to Lucky Star's attention, and negotiating this settlement in the public interest. Within ten (10) days of the Effective Date, Lucky Star shall mail or wire funds in the amount of \$10,000.00 for delivery to the address or bank account identified in § 3.2(a)(i), above.

#### **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Lucky Star, its Chain of Distribution and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Ecological, acting on its own behalf, and Lucky Star, of any violation of Proposition 65 that was or could have been asserted by Ecological or on behalf of its past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for actual or alleged failure to provide warnings for alleged exposures to DEHP contained in the Products, and Releasers hereby release any such claims against Lucky Star and its parents, subsidiaries, affiliated entities, including specifically Design International Group, Inc., shareholders, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Lucky Star directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers (including but not limited to Target), and their respective subsidiaries, affiliates and parents, shareholders, franchisees, cooperative members, licensors, licensees and employees (collectively, the "Releasees"), from all claims for violations of Proposition 65 in relation to the sale of all Products manufactured prior to and through the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Ecological, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that it may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the manufacture, distribution and/or sale of the Products.

**5.2 Lucky Star's Release of Ecological.** Lucky Star, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby 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/or its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in relation to the Notice.

**5.3 California Civil Code § 1542.** It is possible that other claims not known to the Parties including those arising out of the facts alleged in the Notice and relating to products manufactured by or for Lucky Star and its affiliates through the Effective Date will develop or be discovered. Ecological on behalf of itself, its past and current agents, representatives, successors and/or assignees only, on one hand, and Lucky Star and its affiliates, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims against the Releasees for products manufactures by or for Lucky Star and its affiliates up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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 expressly waives and relinquishes any and all rights and benefits that it may have under, or that may be conferred upon it by, the provisions of 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 they may lawfully waive such rights or benefits pertaining to the released matters.

**5.4 Deemed Compliance with Proposition 65.** The Parties agree that compliance by Lucky Star with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP or other listed phthalates from use of the Products.

**6. 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.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law 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 or limited by reason of law generally, or as to the Products, Lucky Star shall provide written notice to Ecological of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

**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 or two-day courier on any party by the other party to the following addresses:



For Lucky Star:

Renée D. Wasserman  
Alecia E. Cotton  
Rogers Joseph O'Donnell, PC  
311 California Street, 10th Floor  
San Francisco, CA 94104

For Ecological Alliance:

Vineet Dubey  
Custodio & Dubey LLP  
448 S. Hill St., Suite 615  
Los Angeles, CA 90013

Either 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: SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, 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 § 25249.7(f)**

Ecological agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

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

**12. ENFORCEMENT**

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. If the alleged violation cannot be resolved, the Party alleging a violation may thereafter move to enforce the terms of this Settlement Agreement.

**13. JOINT PREPARATION**

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

**14. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**15. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: April 23, 21

Date: \_\_\_\_\_

By:   
Ecological Alliance, LLC

By: \_\_\_\_\_  
Lucky Star Enterprise & Co., Ltd.

13. **JOINT PREPARATION**

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

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15. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ecological Alliance, LLC

**AGREED TO:**

Date: Apr. 22, 2021  
**LUCKY STAR ENTERPRISE & CO. LTD.**

By:   
Lucky Star Enterprise & Co., Ltd.