

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Ecological Alliance, LLC and China Surplus International Limited**

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

1.2. **Ecological Allegations**

Ecological alleges that China Surplus manufactured and distributed in the State of California mixed media cases with handles 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.

1.3. **Product Description**

The products that are covered by this Settlement Agreement are defined as Mondo Llama mixed media cases (UPC# 737838798228) with handles that may contain DINP that China Surplus has sold, offered for sale, or distributed and/or will sell, offer for sale or distribute after the Effective Date in California. All such items shall be referred to herein as the "Products."

1.4. **Notice of Violation**

On July 12, 2021, Ecological served Target Corporation, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" ("Notice") that provided China Surplus and such public enforcers with notice that China Surplus 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 DINP. 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 China Surplus's compliance with Proposition 65. China Surplus denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products it has manufactured for sale and distribution, imported, or sold 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 China Surplus of any fact, finding, concession, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by China Surplus of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by China Surplus on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of China Surplus under this Settlement Agreement by the Parties.

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 the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

As of the Effective Date, China Surplus shall manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.1

below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. Products that were supplied to third parties by China Surplus prior to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold as previously manufactured, packaged and labeled.

2.1. Reformulation Standards

“Reformulated Products” are defined as the Accessible Components (meaning any component of the Products that could be touched by a person during reasonably foreseeable use) of those Products containing DINP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DINP content in a solid substance.

2.2. Warning Language

Where required, China Surplus shall provide Proposition 65 warnings on the Product’s label for Products containing DINP concentrations greater than 0.1 percent (as defined in Section 2.1 above) which are manufactured and distributed to retailers in California after the date of this Agreement as follows:

(a) China Surplus may use either of the following warning statements in full compliance with this Section:

(1) **WARNING:** This product can expose you to chemicals including DINP, which is known to the State of California to cause cancer.

For more information go to www.P65Warnings.ca.gov

(2) **WARNING:** Cancer—www.P65Warnings.ca.gov

(b) If China Surplus uses either of the above warning statements to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label 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) In the event that the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, China Surplus 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.

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

3. Compliance with Settlement Terms. The Parties agree that compliance with the terms of this Settlement Agreement by China Surplus shall be deemed to be compliance with Proposition 65 by all Releasees with respect to any exposures to DINP in the Products

manufactured, distributed, or sold by China Surplus after the Effective Date of the Settlement Agreement.

4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement and because it previously began to implement Proposition 65 warnings for the Products, China Surplus 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.

5. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney China Surplus doctrine and principles of contract law. Under these legal principles, China Surplus shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to China Surplus's attention. China Surplus shall pay Ecological's counsel \$19,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

6. PAYMENT INFORMATION

By November 22, 2021, China Surplus shall make a total payment of Nineteen Thousand Five Hundred Dollars (\$19,500) 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.: 325132729125

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

7. RELEASE OF ALL CLAIMS

7.1. Release of China Surplus, 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 4 and 5 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) China Surplus, (b) each of China Surplus's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users, (c) each of China Surplus's upstream vendors and entities that manufactured the Products or any component part thereof, (d) Target Corporation, and its corporate affiliates, subsidiaries, and each of their respective officers, directors, attorneys, representatives, shareholders, agents, employees, and sister and parent entities, and (e) China Surplus'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, 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 China Surplus 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.

7.2. China Surplus'es Release of Ecological

China Surplus 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.

8. 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 China Surplus shall have no further obligations pursuant to this Settlement Agreement.

9. 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) email by the other party at the following addresses:

For China Surplus: Bo Yang
yang@china-surplus.cn
China Surplus International Limited
Rm 306, Wanrong Building C Block
No. 1029 Nanhai Ave., Nanshan
Shenzhen, China 518067

For Ecological: Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Suite 2520
Los Angeles, CA 90071

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.

10. 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.

11. 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).

12. 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.

13. MODIFICATION

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

14. 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: November <u>15</u> 2021</p> <p>By: <u>[Signature]</u> On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: November <u>16</u>, 2021</p> <p>By: <u>[Signature]</u> On Behalf of China Surplus International Limited</p>
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