

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Ecological Alliance LLC and Bioworld Merchandising

This Settlement Agreement is entered into by and between Ecological Alliance LLC (“Alliance”), on the one hand, and Bioworld Merchandising (“Bioworld”), on the other hand, with Alliance and Bioworld collectively referred to as the “Parties.”

#### 1.2. Bioworld Allegations

Alliance alleges that Bioworld manufactured and distributed and offered for sale in the State of California pixar mugs – UPC #196179167665, containing Lead, 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 Lead 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 specifically defined as mugs, including pixar mugs under UPC #196179167665, containing Lead that Bioworld has 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 July 6, 2022, Alliance served Bioworld, Homegoods, Inc., 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 Bioworld and such public enforcers with notice that Bioworld 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 Lead. 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 Bioworld's compliance with Proposition 65. Bioworld denies the material factual and legal allegations contained in Alliance'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 Bioworld 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 Bioworld of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Bioworld on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Bioworld 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 by the Parties.

**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

As of the Effective Date, Bioworld 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 Bioworld prior to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

### **2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products that (a) contain no more than 90 parts per million (“ppm”) lead in any decoration, colored artwork, designs, and/or marking on the surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; (b) yield a result of non-detect (defined as no more than 25ppm by weight of lead) for any decorations or design located in the upper 20 millimeters of a Product, i.e., the “Lip-and-Rim” area when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content on a solid substance; and (c) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.

### **2.2 Warning Language**

Where required, Bioworld shall provide Proposition 65 warnings on the Product’s label as follows:

- (a) Bioworld may use either of the following warning statements in full compliance with this Section:
  - (1) **WARNING: Consuming this product can expose you to chemicals including Lead, which [is] 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).

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

(b) 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.

(c) If Proposition 65 warnings for Lead should no longer be required, Bioworld shall have no further obligations pursuant to 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 and because it previously began to implement Proposition 65 warnings or reformulation for the Products, Bioworld 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 Alliance. Alliance'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 Alliance and its counsel under the private attorney general doctrine and principles of contract law codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this

agreement. Under these legal principles, Bioworld shall reimburse Alliance's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Bioworld's attention. Bioworld shall reimburse Alliance's counsel \$12,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within ten (10) days of the effective date, Bioworld shall make a total payment of Twelve Thousand Two Hundred Dollars (\$12,200) 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.: 325149324377

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 Bioworld, 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 3 and 4 above, Alliance, 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) Bioworld, (b) each of Bioworld's downstream distributors, i", wholesalers, vendors, licensors, licensees, auctioneers, retailers (including but not limited to Homegoods, Inc.), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users and their respective affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees") and (c) Bioworld's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

Alliance also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a Bioworld 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 Bioworld and the Releasees arising out of the alleged or actual exposure to lead from use of the Products. Alliance acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A 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.

Alliance, 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. Bioworld's Release of Alliance**

Bioworld waives any and all claims against Alliance, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Alliance 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 Bioworld with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products.

**6.4 Public Benefit.** It is Bioworld's understanding that the commitments it has agreed to herein, and actions to be taken by it 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 Bioworld that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to its failure to provide a warning concerning exposure to lead prior to use of the Products it has manufactured, imported, 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 Bioworld 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 Bioworld 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 Bioworld:                      John J. Allen, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
865 South Figueroa Street, Suite 2800  
Los Angeles, CA 90017-2543

For Alliance:                      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.

**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)**

Alliance 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.

**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: December __, 2022	Date: December <u>14</u> , 2022
By: _____ On Behalf of Ecological Alliance LLC	By:  On Behalf of Bioworld Merchandising


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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> Date: December 20, 2022 By:  On Behalf of Ecological Alliance LLC	<b>AGREED TO:</b> Date: December __, 2022 By: _____ On Behalf of Bioworld Merchandising
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