

## SETTLEMENT AND RELEASE AGREEMENT

### 1. **INTRODUCTION**

#### 1.1. **Ecological Alliance LLC and The Orvis Company, Inc.**

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

#### 1.2. **Alliance’s Allegations**

Alliance alleges that Orvis manufactured and distributed and offered for sale in the State of California scissor forceps containing Di(2-ethylhexyl)phthalate (“DEHP”), 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 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 scissor forceps containing DEHP that Orvis 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 13, 2022, Alliance served Orvis, Sportsman’s Warehouse, 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 Proposition 65 notice of violation (“Notice”) that provided Orvis and such public enforcers with notice that Orvis 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 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 Orvis's compliance with Proposition 65. Orvis denies the material factual and legal allegations contained in Alliance's Notice and maintains, to the best of its knowledge, that it has not knowingly manufactured, distributed, imported, sold or offered for sale, or caused to be manufactured, distributed, imported, sold or offered for sale, the Products in violation of Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Orvis 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 Orvis of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Orvis on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Orvis under this Settlement Agreement.

**1.6. Public Benefit**

It is Orvis's understanding that the commitments it has agreed to herein, and actions to be taken by Orvis under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure Section 1021.5 and Cal. Admin. Code tit. 11, Section 3201. As such, it is Orvis's intent that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Orvis's failure to provide a warning concerning exposure to DEHP prior to use of the Products it has manufactured, distributed, imported, sold, or offered for sale in California, or will manufacture, distribute,

import, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to the Products addressed in this Settlement Agreement.

**1.7. 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: REFORMULATION AND WARNINGS**

Within thirty (30) days of the Effective Date, Orvis shall manufacture, distribute, 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 Orvis prior to the Effective Date or that were placed into the stream of commerce in California within thirty (30) days of the Effective Date, shall be deemed compliant with Proposition 65 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 containing DEHP 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 DEHP content in a solid substance.

## 2.2. Warning Language

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

- (a) Orvis may use either of the following warning statements in full compliance with this Section:
  - (1) **WARNING:** This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer, 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 Orvis 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) If Proposition 65 warnings for DEHP should no longer be required, Orvis shall have no further obligations pursuant to this Settlement Agreement.

**2.3. Compliance with Warning Regulations**

The Parties agree that Orvis shall be deemed to be in compliance with this Settlement Agreement by either adhering to Sections 2.1 and 2.2 of this Settlement Agreement or by complying with warning content and/or methods of transmission adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

**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 for the Products, Orvis 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 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 and shall provide proof of such payment to counsel for Orvis, as identified in Section 8 of this Settlement Agreement, on or before September 30, 2022.

**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. Under these legal principles, Orvis shall reimburse Alliance's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Orvis's attention. Orvis shall pay Alliance's counsel \$14,000 for all

attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within thirty (30) Days of the Effective Date, Orvis shall make a total payment of Fourteen Thousand Five Hundred Dollars (\$14,500) for the civil penalties and attorney's fees / costs by check made out to "Custodio and Dubey, client trust account" and send to Plaintiff's counsel's address in Paragraph 8 of this agreement.

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

**6. RELEASE OF ALL CLAIMS**

**6.1. Release of Orvis, 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) Orvis, (b) each of Orvis's downstream distributors (including but not limited to Sportsman's Warehouse, Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Orvis'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 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 Orvis and the Releasees. Alliance 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.

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. Orvis's Release of Alliance**

Orvis 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.

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, or as to the Products and/or DEHP, then Orvis 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 Orvis: Ted Weiss, Esq.  
BakerHostetler  
11601 Wilshire Boulevard | Suite 1400  
Los Angeles, CA 90025-0509

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**

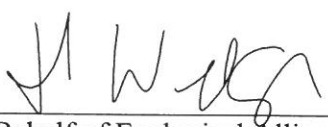
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**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: September <u>7</u> , 2022	Date: September __, 2022
By:  On Behalf of Ecological Alliance LLC	By: _____ On Behalf of The Orvis Company, Inc.

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**

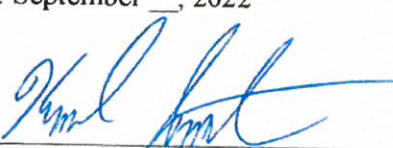
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

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: September __, 2022	Date: September <sup>12</sup> __, 2022
By: _____ On Behalf of Ecological Alliance LLC	By:  On Behalf of The Orvis Company, Inc.

**ORVIS**

**KENNETH J. SMITH**  
VP, Customer Operations  
178 Conservaton Way  
Sunderland, VT 05250-4465  
802 362 8577  
smithk@orvis.com  
[www.orvis.com](http://www.orvis.com)

MADE FROM 100% PCW RECYCLED PAPER 