

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and True Fabrications, Inc.

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

1.2. General Allegations

Alliance alleges that Fabrications manufactured, distributed, and/or offered for sale flasks with traveling cases (the “Product”) in the State of California that allegedly contain 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 Product covered by this Settlement Agreement is defined as flasks with traveling cases that allegedly contain DEHP that Fabrications has sold, offered for sale or distributed in California.

1.4. Notice of Violation

On March 2, 2023, Alliance served Fabrications, Tuesday Morning, 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 Fabrications and such public enforcers with notice that Fabrications was

allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Product allegedly 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

To avoid the costs and uncertainties of litigation, the Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Fabrications' compliance with Proposition 65. Specifically, Fabrications denies the material factual and legal allegations contained in Alliance's Notice and maintains that all products that Fabrications has sold and/or distributed in California, including the Product, 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 Fabrications 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 Fabrications of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Fabrications. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Fabrications 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.

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNING

2.1. Reformulation of Product

No later than 180 days after the Effective Date, Product shall either be: (a) reformulated pursuant to Section 2.2 below; or (b) labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.3 below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product compliant with the standard set forth in Section 2.2 below. The warning requirement set forth in Sections 2.3 and 2.4 shall not apply to any Reformulated Product.

2.2. Reformulation Standard

“Reformulated Product” shall mean Product that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP.


2.3. Warning


No later than 180 days after the Effective Date, Product shall be accompanied by a warning as described in Section 2.4 below, unless the Product is a Reformulated Product. The warning requirements set forth in this Section 2.3 and warning language in Section 2.4 shall apply only to Product distributed, marketed, sold, or shipped for sale in the State of California. The warning requirement shall not apply to Product already in the stream of commerce as of the Effective Date or that Fabrications places into the stream of commerce within 120 days of the Effective Date.

2.4. Warning Language

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

- (a) Fabrications 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 Fabrications elects to use the warning statements identified in either 2.4(a)(1) or (2), Fabrications 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 subsections (a) and (b) 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 by law, Fabrications shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that, after the Effective Date, 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, Fabrications 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, Fabrications 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. Under these legal principles, Fabrications shall reimburse Alliance’s counsel for fees and costs, incurred as a result of investigating and bringing this matter to Fabrications’ attention. Fabrications shall pay Alliance’s counsel \$10,000 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, Fabrications shall make a total payment of Ten Thousand Two Hundred Dollars (\$10,200) for the civil penalties and attorneys’ 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 Fabrications, 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 Product, 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) Fabrications, (b) each of Fabrications' downstream distributors (including but not limited to Tuesday Morning, Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Fabrications' 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, 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 Fabrications 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. Fabrications' Release of Alliance

Fabrications 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 Fabrications in this matter, and/or with respect to the Product.

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 Product, then Fabrications shall have no further obligations pursuant to this Settlement Agreement.

8. CONSTRUCTION

The language in all parts of this Settlement Agreement shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.*, or specifically herein. The captions and paragraph headings used in this Settlement Agreement are for reference only and shall not affect the construction of 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; (ii.) email; or (iii) overnight courier on any party by the other party at the following addresses:

For Fabrications: Monica Browner, Esq.
 Downey Brand LLP
 621 Capitol Mall, 18th Floor
 Sacramento, CA 95814
 mbrowner@downeybrand.com

For Alliance: Vineet Dubey, Esq.
 Custodio & Dubey LLP
 445 S. Figueroa St., Suite 2520
 Los Angeles, CA 90071
 dubey@cd-lawyers.com

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)

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

12. COMPUTING TIME

In computing any period of time under this Settlement Agreement, where the last day of such period falls on a Saturday, Sunday, or Federal or State Holiday, the period runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State Holiday.

13. FULL SETTLEMENT

This Settlement Agreement constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Settlement Agreement has been freely and voluntarily entered into by the parties with and upon advice of counsel.

14. 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.

15. MODIFICATION

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

16. 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: July <u>10</u> 2023</p> <p>By: <u></u> On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: July __, 2023</p> <p>By: _____ On Behalf of True Fabrications, Inc.</p>
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This Settlement Agreement may be modified only by a written agreement signed by the Parties.

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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.

AGREED TO:	AGREED TO:
Date: July __, 2023	Date: July <u>17</u> , 2023
By: _____ On Behalf of Ecological Alliance, LLC	By: <u>Dhruv Agarwal</u> On Behalf of True Fabrications, Inc.