

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance LLC and Fujian Putian Power Rich Co.

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

1.2. Fujian Allegations

Alliance alleges that Fujian manufactured, distributed and offered for sale in the State of California: women’s sandals, UPC # 050428373972, 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 women’s sandals, UPC # 050428373972, that Fujian 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 January 30, 2024, Alliance served Fujian, CVS Pharmacy, Inc. (“CVS”), 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 Fujian and such public enforcers with notice that Fujian 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 Fujian's compliance with Proposition 65. Fujian denies the material factual and legal allegations contained in Alliance's Notice and maintains that all products 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 Fujian 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 Fujian of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Fujian on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Fujian under this Settlement Agreement.

Notwithstanding the allegations in the Notice, Fujian maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

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 WARNINGS**

2.1. **Reformulation of Products**

As of the Effective Date, Fujian 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 Fujian 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.


2.2. **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.

2.3. **Clear and Reasonable Warning Language**


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

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

- (1)  **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, birth defects or other

reproductive harm. For more information go to

www.P65Warnings.ca.gov

- (2)  **WARNING: Cancer and Reproductive Harm –**
www.P65Warnings.ca.gov.

(b) If Fujian 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) Foreign Languages. Additionally, if a Product’s labeling is provided in a language other than English, the warning will be provided in that language in addition to English.

(e) Online Sales. If Fujian sells Products via an internet website it controls to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning 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 Products; (c) on one or more web pages displayed to a California purchaser prior to purchase during the checkout process; or (d) via a hyperlink

taking the customer to a separate page containing the warning language, provided that the hyperlink appears on the same page as either the Products description or Products price are displayed, or appears prior to completion of the sale at checkout. 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 Products, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the Products to which the warning applies.

(f) If Proposition 65 warnings for DEHP should no longer be required, Fujian 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, Fujian 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, Fujian shall reimburse Alliance’s counsel for fees and costs, incurred as a result of investigating and bringing this matter to Fujian’s attention. Fujian shall pay Alliance’s counsel \$13,000 for all

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

5. PAYMENT INFORMATION

By April 30, 2024, Fujian shall make a total payment of Thirteen Thousand Two Hundred Dollars (\$13,200) 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 Fujian, 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) Fujian, (b) each of Fujian's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers (including but not limited to CVS), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Fujian's parent

companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and each of them (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 Fujian and the Releasees a 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 Fujian 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. Fujian's Release of Alliance

Fujian 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, then Fujian 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 Fujian: Alecia E. Cotton, Esq.
 ROGERS JOSEPH O'DONNELL
 311 California Street, 10th floor
 San Francisco, CA 94104

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.

AGREED TO:	AGREED TO:
Date: April 16 2024	Date: April __, 2024
By:  On Behalf of Ecological Alliance LLC	By: _____ On Behalf of Fujian Putian Power Rich Co.

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.

AGREED TO:

Date: April __, 2024

By: _____
On Behalf of Ecological Alliance LLC

AGREED TO:

Date: April 19, 2024

By: _____
On Behalf of Fujian Putian Power Rich Co.

