

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance LLC and Randa Apparel and Accessories

This Settlement Agreement is entered into by and between Ecological Alliance LLC ("Alliance"), on the one hand, and Randa Accessories Leather Goods LLC ("Randa"), on the other hand, with Alliance and Randa collectively referred to as the "Parties."

1.2. Randa Allegations

Alliance alleges that Randa manufactured and distributed and offered for sale in the State of California: scissors in travel kits containing Di-n-butyl Phthalate [DBP] 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 DBP under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3. Product Description

The products that are covered by this Settlement Agreement are defined as scissors in travel kits containing DBP that Randa either has imported, manufactured, directly or indirectly distributed or sold, or offered for sale in California or will in the future either import, manufacture, directly or indirectly distribute or sell, or offer for sale, in California. All such past and future items shall be referred to herein as the "Products."

1.4. Notice of Violation

On January 9, 2024, Alliance served Kenneth Cole Productions, Inc. and Macy's 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 the Notice recipients and such public enforcers with notice that they were 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 DBP. Upon identification of Randa, Alliance issued a supplemental notice dated April 12, 2024 amending the Notice to identify Randa as an additional Notice letter recipient. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice, including as amended to name Randa.

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 the Notice recipients' compliance with Proposition 65. Randa 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 against interest by Randa 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 against interest by Randa of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Randa on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Randa under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 21, 2024, provided no public prosecutor has commenced enforcement on the allegations in the Notice, including as amended, prior to the Effective Date.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

For Products manufactured after the Effective Date, Randa 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 manufactured after the Effective Date are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. All Products manufactured prior to or on the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through by any person, at any time, in any form previously manufactured, packaged and labeled.


2.1. Reformulation Standards


"Reformulated Products" are defined as those Products containing DBP 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 DBP content in a solid substance.

2.2. Warning Language

Where required, Randa shall provide Proposition 65 warnings on either the Product's label, on the Product itself, or on the consumer-ready packaging including the Product, or on any kit containing the Product as a component, as follows:

(a) Randa may use either of the following warning statements in full compliance with this Section, with the text in [brackets] as optional in Randa's sole discretion:

(1)  **WARNING:** This product can expose you to chemicals including Di-n-butyl Phthalate [DBP], 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 Randa 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 warning 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. The Parties acknowledge that kits containing Products could cause exposures to Proposition 65 listed chemicals in addition to DBP and thus Randa may elect to include a cancer warning. In

addition, Randa may, without notice to Alliance or amendment of this Settlement Agreement, employ any form of “safe harbor” warning in effect at the time the warning is provided, provided Randa follows the content and method of transmission requirements set forth in the applicable regulations governing provision of “safe harbor” warnings.

(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 Randa 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 Product; (c) on one or more web pages displayed to a California purchaser prior to completion of 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 (including within a kit containing other items) to which the warning applies.

(f) If Proposition 65 warnings for DBP should no longer be required, Randa 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 for the Products, Randa shall pay a total of \$100.00 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's counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Randa shall reimburse Alliance and Alliance's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Randa's attention. Randa shall pay Alliance's counsel \$17,000.00 in complete satisfaction of all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice, including as amended.

5. **PAYMENT INFORMATION**

No later than five (5) days after the Effective Date, Randa shall make a total payment of Seventeen Thousand One Hundred Dollars (\$17,100.00) 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. Prior to the Effective Date, Custodio & Dubey LLP shall provide its Form W-9 information to Randa upon request.

6. **RELEASE OF ALL CLAIMS**

6.1. **Release of Randa, 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, 4 and 5 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) Randa, and (b) each of Randa's upstream suppliers and downstream distributors (including but not limited to Kenneth Cole Productions, Inc. and Macy's Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Randa's parent companies, corporate affiliates, subsidiaries, predecessors or successors, and their respective officers,

directors, attorneys, representatives, shareholders, agents, and employees(collectively "Releasees") up through the Effective Date.

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 Randa release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims, against Randa and the Releasees. 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 personal 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 up through and including the Effective Date. For the sake of clarity, Alliance affirms that the releases of Claims herein apply to all Products manufactured prior to or on the Effective Date, regardless of when they may be sold (or given away) by any person.

6.2. Randa's Release of Alliance

Randa waives any and all claims against Alliance, its attorneys and other representatives, for any and all actions taken, or statements 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 up through the Effective Date.

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. The Settlement Agreement shall not apply to Products that are not sold or given away to California consumers. After the Effective Date, Randa's compliance with this Settlement Agreement in all material respects, including its money payment as provided for hereunder, shall constitute compliance with Proposition 65 respect to warnings, or reformulation, for DBP in any Products (including within any kit where such Products are a component) regardless of when, or by whom, such Products are sold or given away. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law, or as to the Products, then Randa 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 Randa: Judith M. Praitis, Esq.
Faegre Drinker Biddle & Reath LLP
1800 Century Park East, Suite 1500
Los Angeles, CA 90067

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 AND ENFORCEMENT**



This Settlement Agreement may be modified only by a written agreement signed by the Parties. This Settlement Agreement is enforceable solely by the Parties hereto. Prior to enforcement the Parties agree to meet and confer in good faith in an effort to resolve their dispute informally.

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.

14. **PUBLIC BENEFIT**

The Parties hereby agree that it is their intention that this Settlement Agreement provides a substantial public benefit in that Randa is agreeing to pay a civil penalty to the State of California, and to provide warnings on Products manufactured after the Effective Date which contain DBP above the standard for warnings set forth herein. If a subsequent enforcer were to attempt to prosecute Randa (or any Releasee) with regard to alleged DBP in the Products, and Randa is in material compliance with the terms contained herein, the Parties agree that no substantial public benefit would arise from such prosecution in light of the undertakings and agreements made herein.

AGREED TO:	AGREED TO:
Date: June <u>17</u> , 2024	Date: June <u>21</u> , 2024
By:  On Behalf of Ecological Alliance LLC	By:  GENERAL COUNSEL On Behalf of Randa Accessories Leather Goods LLC