

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Ecological Alliance LLC and Progressive International Corporation**

This Settlement Agreement is entered into by and between Ecological Alliance LLC (“Alliance”), on the one hand, and Progressive International Corporation (“Progressive”), on the other hand, with Alliance and Progressive collectively referred to as the (“Parties”), to resolve the allegations in the January 23, 2025 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2. **Progressive Allegations**

Alliance alleges that Progressive manufactured and distributed and offered for sale in the State of California: winged corkscrews containing Di-n-butyl Phthalate (“DBP”) and that such sales have not included warnings pursuant to Proposition 65. California has identified and listed DBP 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 winged corkscrews that Progressive 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 23, 2025, Alliance served Progressive, Walmart, 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 Progressive and such public enforcers with notice that Progressive 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 DBP. 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 Progressive's compliance with Proposition 65. Progressive 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, nor shall compliance with this Settlement Agreement constitute or be construed as, an admission by Progressive of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Progressive on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Progressive under this Settlement Agreement. Progressive 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. Commitment to Reformulate or Warn

Commencing within ninety (90) days of the Effective Date, and continuing thereafter, Progressive shall manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.2 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.3 below. Products that were placed into the stream of commerce supplied to third parties by Progressive within 90-days of the Effective Date including, without limitation, Products in distribution centers, in inventory, or at retail locations, 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 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.


2.3. Clear and Reasonable Warning Language

Where required, Progressive shall provide on the Product’s label a warning in compliance with Article 6 of Proposition 65 regulations (27 California Code of Regulations §§ 25600 et seq.); for example:


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

- (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 birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

- or -

- (2)  **WARNING:** Risk of Reproductive Harm from exposure to Di-n-butyl Phthalate [DBP]. See www.P65Warnings.ca.gov.

- or -

- (3)  **WARNING:** Can expose you to Di-n-butyl Phthalate [DBP], a reproductive toxicant. See www.P65Warnings.ca.gov.

(b) If Progressive 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.” The term “WARNING” can be replaced with “CA WARNING” or “CALIFORNIA WARNING” in bold text.

(c) 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, after the Effective Date, Progressive sells Products that are not Reformulated 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 Products 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 DBP should no longer be required, Progressive 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, Progressive shall pay a total of \$1,000 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 ATTORNEYS' FEES AND COSTS

The Parties reached an accord on the amount of reimbursement due to Alliance and its counsel under the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 and principles of contract law. Under these legal principles, Progressive shall reimburse Alliance's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Progressive's attention. Progressive shall pay Alliance's counsel \$11,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By 30 days from the date of signature of this agreement, Progressive shall make a total payment of \$12,000 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 Progressive, 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, the public interest, and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees ("Releasors"), hereby releases Progressive, its past and present parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Progressive directly or indirectly distributes or sells the Products including, but not limited to (i) its downstream distributors, wholesalers, marketplace hosts, customers, retailers, franchisee, cooperative members, licensees, and (ii) Wal-Mart Stores East, L.P., Walmart Inc., Wal-mart.com USA, LLC, and related entities as well as their respective officers, directors, attorneys, representatives, shareholders, agents, subsidiaries, affiliates, and employees, and sister and parent entities (collectively, "Downstream Releasees") based on the failure to provide a clear and reasonable warning under Proposition 65 about alleged exposures to DBP contained in the Products that were manufactured, processed, distributed, sold and/or offered for sale in California before the Effective Date, as set forth in the Notice. The Parties further agree that compliance with Section 2 of this Settlement Agreement shall be deemed compliance with Proposition 65 with respect to alleged exposures to DBP in the Products.

Further, the Releasors hereby waive all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Alliance may have, 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) Progressive, (b) Walmart Inc., Wal-Mart Stores East, L.P., and Wal-mart.com USA, LLC (collectively, "Walmart") (c) each of Progressive's upstream or downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, (d) Progressive'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, and (e) Walmart's parent companies, sister companies, corporate affiliates, and subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, 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 Progressive, Downstream Releasees, and 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 Progressive, Downstream Releasees, 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. Progressive's Release of Alliance

Progressive 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, preempted, or is otherwise rendered inapplicable by reason of law, generally, or as to the Products, then Progressive 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 Progressive: Honeylyn Chang
Chief Financial Officer
Evriholder Products LLC
975 W. Imperial Hwy. Suite 100
Brea, CA 92821

With a copy to: Natalie E. Rainer
K&L Gates LLP
4 Embarcadero Center, Suite 1200
San Francisco, CA 94111

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 and its counsel agree 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 prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically

referred to in this Settlement Agreement have been made by any Party hereto. No other agreements, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

12. SEVERABILITY



If any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

13. MODIFICATION

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

14. 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: April <u>18</u> 2025</p> <p>By:  On Behalf of Ecological Alliance LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: April <u>18</u>, 2025</p> <p>By:  On Behalf of Progressive International Corporation</p>
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