

# SETTLEMENT AND RELEASE AGREEMENT

## 1. INTRODUCTION

### 1.1 Ecological Alliance, LLC and Star Asia, U.S.A., LLC

This Settlement Agreement is entered into by and between Ecological Alliance, LLC (“Ecological”) and Star Asia, U.S.A., LLC (“Star Asia”), with Ecological and Star Asia each individually referred to as a “Party” and collectively referred to as the “Parties.” Ecological is a California limited liability company seeking to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Ecological contends that Star Asia is a company in the course of doing business for purposes of California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Ecological alleges that Star Asia distributed and/or sold in the State of California swivel connectors containing lead and that such sales have not included warnings pursuant to Proposition 65. Lead is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Star Asia denies Ecological’s claims and maintains that it has complied with Proposition 65 and all other applicable laws. .

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as swivel connectors, including but not limited to UPC #802090193699, manufactured, sold, or distributed by Star Asia. All such items shall be referred to herein as the “Products.”

### 1.4 Notice of Violation

On or about June 2, 2015, Ecological served Star Asia, The Pep Boys Manny Moe & Jack of California, and all 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 Star Asia and such public enforcers with notice that alleged that Star Asia was 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 lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Star Asia denies the material factual and legal allegations contained in Ecological’s Notice and maintains that all products that it has sold and distributed in California, including the Products, have been, and are, in compliance with Proposition 65 and all other applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by Star Asia 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 Star Asia of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Star Asia. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Star Asia 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 by the Parties.

**2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

On and after the Effective Date, any Products that Star Asia manufactures, ships, or sells, for sale in California, shall comply with either Section 2.1 or Section 2.2. The requirements of this Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date, and such Products are included within the scope of the release in Section 5.1.

**2.1 Reformulation Option**

The Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the Products do not exceed the following limits for lead: 100 ppm by weight for any accessible component part. For purposes

of this Settlement Agreement, accessible component part shall mean components of the Product to which a person would be exposed to lead by direct contact during normal use of the Product.

## **2.2 Warning Alternative**

Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning on the label or packaging. Where required under Sections 2.1 and 2.2 above, Star Asia shall provide Proposition 65 warnings as follows:

(a) Star Asia may use either of the following warning statements, with the bracketed terms optional:

**WARNING:** This product contains [lead,] a chemical known to the State of California to cause birth defects or other reproductive harm.

or, where Star Asia has reason to believe that chemicals listed under Proposition 65 in addition to lead are present in a Product,

**WARNING:** This product contains chemicals[, including lead] known to the State of California to cause [cancer and] birth defects or [and] other reproductive harm.

(b) 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.

(c) If Proposition 65 warnings for lead should no longer be required, Star Asia 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, Star Asia shall pay a total of Two Thousand Dollars (\$2,000) in civil penalties in accordance with this Section. Ecological's shall allocate the penalty payment 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 Ecological. Star Asia shall issue a check to “Custodio & Dubey LLP, client trust account” in the amount of Two Thousand Dollars (\$2,000) for the civil penalty payment. Star Asia shall make this payment within five (5) business days of the Effective Date and deliver this payment to counsel for Ecological as listed in Section 7.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Star Asia shall reimburse Ecological’s counsel for all fees and costs, incurred as a result of investigating, bringing this matter to Star Asia’s attention, and negotiating a settlement. Star Asia shall pay Ecological’s counsel Thirteen Thousand Dollars (\$13,000) for all attorneys’ fees, expert and investigation fees, and related costs associated with this matter and the Notice. Star Asia shall issue a check to “Custodio & Dubey LLP” in the amount of Thirteen Thousand Dollars (\$13,000) for the payment required under this Section 4. Star Asia shall make this payment within five (5) business days of the Effective Date and deliver this payment to counsel for Ecological as listed in Section 7.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Star Asia and Downstream Customers**

This Settlement Agreement is a full, final and binding resolution between Ecological, on its own behalf and not on behalf of the public, and Star Asia, of any violation of Proposition 65 that was or could have been asserted by Ecological, on behalf of itself, or on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees against (i) Star Asia, its parents, subsidiaries, and affiliated entities under common ownership; (ii) each entity to whom Star Asia directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers (including, but not limited to The Pep Boys Manny Moe & Jack of California), franchisors, franchisees, cooperative members, licensors, licensees, and their respective parents, subsidiaries, and affiliated entities under

common ownership; and (iii) the respective directors, officers, owners, attorneys, shareholders, and employees of any of the entities listed in subsections (i) and (ii), above (the entities and individuals identified in subsections (i) through (iii), above are collectively referred to as "Releasees"), based on the alleged failure to warn about potential exposures to lead contained in Products manufactured, distributed, sold and/or offered for sale by Star Asia in the State of California before the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ecological, on behalf of itself, and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, and not on behalf of the public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases and waives all claims relating to the Products, including, without limitation, all actions, causes of action (in law or in equity) suits, liabilities, demands, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees), obligations or damages (collectively, "Claims") arising under Proposition 65 or any other statutory or common law with respect to lead in the Products manufactured, distributed, sold and/or offered for sale by Star Asia.

Ecological 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 Claims of any nature whatsoever, whether known or unknown, suspected or unsuspected, fixed or contingent, against the Releasees. Ecological acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN  
HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE

MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR.

Ecological, 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.

The Parties agree that compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Releasees with the requirements of Proposition 65 with respect to alleged exposure to lead in the Products.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Releasees under Proposition 65 as covered under this release. If requested in writing by Star Asia, Ecological shall promptly file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code section 25249.7, or as may be otherwise allowed by law, and Ecological shall reasonably cooperate with Star Asia and use its best efforts and that of its counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to California Civil Procedure sections 1021 and 1021.5, Star Asia will reimburse Ecological and its counsel for their reasonable attorney's fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed Fifteen Thousand Dollars (\$15,000). No fees under this paragraph will be due and owing to Ecological and its counsel unless a written request is made by Star Asia to have Ecological file a complaint and seek a consent judgment. Such additional fees shall be paid by Star Asia within ten (10) days after its receipt of an invoice from Ecological's counsel for work performed under this paragraph.

**5.2 Star Asia's Release of Ecological**

Star Asia waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological 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.

**6. 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 Products and/or lead, then Star Asia may provide written notice to Ecological of any asserted change in the law, in which event Star Asia shall have no further obligations pursuant to this Settlement Agreement.

**7. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing or sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) overnight courier on any Party by the other Party at the following addresses:

For Star Asia:

Sarah Esmaili  
Arnold & Porter LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111

For Ecological:

Vineet Dubey  
Custodio & Dubey  
448 S. Hill St., Suite 850  
Los Angeles, CA 90401

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.

**8. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

Ecological and its attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**10. MODIFICATION**

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

**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 any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

**12. 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: _____ Date : September <u>28</u> , 2015	Date: September ____, 2015
By: _____ <i>Harmony Walsh</i> On Behalf of Ecological Alliance, LLC	By: _____ On Behalf of Star Asia, U.S.A., LLC

<p><b>AGREED TO:</b></p> <p>Date : September __, 2015</p> <p>By: _____ On Behalf of Ecological Alliance, LLC</p>	<p><b>AGREED TO:</b></p> <p>Date: September <u>26</u>, 2015</p> <p>By:  _____ On Behalf of Star Asia, U.S.A., LLC</p>
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