

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Ecological Alliance, LLC and Miller Manufacturing Company

This Settlement and Release Agreement (“Settlement Agreement”) is entered into by and between Ecological Alliance, LLC (“Ecological”) and Miller Manufacturing Company (“Miller”) (collectively, “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 Miller is a company in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.* (“Proposition 65”).

1.2 General Allegations

Ecological alleges that Miller manufactured, distributed and/or sold in the State of California, Bird Fountains 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.

1.3 Product Description

The products that are covered by this Settlement Agreement are any and all Bird Fountains containing lead that are manufactured, distributed, offered for sale and/or sold by Miller (“Products”).

1.4 Notice of Violation

On or about July 29, 2016, Ecological served Miller and various 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

Miller and such public enforcers with notice that alleged that Miller was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to lead (see 1.4(a)). To the best of the Parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.4(a) Ecological's Notice is the basis for the "claims," which means any and all past, present, or future claims, counterclaims, cross-claims, disputes, demands, actions and causes of action, petitions, suits, debts, liabilities, defenses, obligations, damages (whether general, special, consequential, punitive, statutory, or other), penalties, costs, losses, expenses, and attorneys' fees (whether incurred prior to or after the date of the Agreement), whether known or unknown, liquidated or unliquidated, fixed or contingent, direct or indirect, suspected or unsuspected, premised on direct recovery, contribution, or indemnity, whether based on contract, tort, statute, or other legal or equitable theory of recovery, whether written or oral, among or between the Parties, that arise out of or relate to the Lawsuit, Lease or the Premises.

1.5 No Admission

Miller 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 since a label change was implemented some years ago. Nothing in this Settlement Agreement shall be construed as an admission by Miller 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 Miller of any fact, finding, conclusion, issue of law, or violation of law, such being

specifically denied by Miller. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Miller under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean 90 days after the date this Settlement Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Warning

Products shall be accompanied by a warning as described in Section 2.2 below. The warning requirements set forth in Section 2.2 below shall apply only to Products that Miller manufactures after the Effective Date that it then distributes, markets, sells or ships for sale in the State of California. The warning requirement shall not apply to Products that are manufactured prior to or are already in the stream of commerce as of the Effective Date and shall not apply to the extent that the Product is modified or reformulated so as not to require a Proposition 65 warning for lead.

2.2 Warning Language

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

- (a) Miller may use the following warning statement:
 - (1) **WARNING:** This product contains a chemical known to the State of California to cause birth defects 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, Miller shall have no further obligations pursuant to this Settlement Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(B)

In settlement of all the claims referred to in this Settlement Agreement and defined in 1.4 above, Miller shall pay a total of Two Hundred Dollars (\$200) in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code §§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.

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, Miller shall reimburse Ecological’s counsel for fees and costs incurred as a result of investigating and bringing this matter to Miller’s attention. Miller shall pay Ecological’s counsel Four Thousand Eight Hundred Dollars (\$4,800) for all attorneys’ fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

On or before December 16, 2016, Miller shall make a total payment of Five Thousand Dollars (\$5,000) for the civil penalties and attorney’s fees / costs described in Sections 3 and 4 of this Settlement Agreement by check or wire transfer to Plaintiff’s counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.
Routing No.: 026009593
Account No.: 325054144600
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 Miller and Downstream Customers and Entities**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 of this Settlement Agreement, Ecological, on behalf of itself, its past and current agents, members, representatives, attorneys, predecessors, successors and/or assignees, hereby waives any and all rights to institute or participate in, directly or indirectly, any form of legal action, and releases any and all claims concerning or relating in any way whatsoever 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 ("Claims"), against Miller and each of its past, present, or future downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, predecessors, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively, "Releasees").

Ecological also, in its individual 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 of any and all other claims 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 Miller and the Releasees. Ecological acknowledges that it is familiar with California Civil Code §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 §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 Miller's Release of Ecological

Miller 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 up to the Effective Date.

6.3 Other Notices

As of the Effective Date, Ecological represents and warrants that it has not identified any other products manufactured, distributed or sold by Miller as to which it intends to serve a notice under Proposition 65 on Miller.

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 Products, then Miller 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 Miller:

Kristine M. Boylan, Esq.
Briggs and Morgan, P.A.
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

For Ecological:

Vineet Dubey, Esq.
Custodio & Dubey LLP
448 South Hill Street, Suite 612
Los Angeles, CA 90013

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)

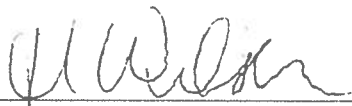

Ecological agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

AGREED TO: Date: December 8, 2016 By:  On Behalf of Ecological Alliance, LLC	AGREED TO: Date: December 8, 2016 By:  On Behalf Miller Manufacturing Company
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