

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Ecological Alliance, LLC and Engineered Specialty Products, Inc.

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Ecological Alliance, LLC (“Ecological”), on the one hand, and Engineered Specialty Products, Inc. (“ESP”), on the other hand, with Ecological and ESP 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 ESP is a company in the course of doing business for purposes of Proposition 65.

1.2 General Allegations

Ecological alleges that ESP distributed and/or sold in the State of California needle valves containing lead and that such sales have not included Proposition 65 warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”). Lead is listed 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 all ESP needle valves that Ecological alleges ESP has sold, offered for sale or distributed in California that contain lead. All such items shall be referred to herein as the “Products.”

1.4 Notice of Violation

On October 10, 2016 Ecological served ESP, Amazon.com, Inc., 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 ESP and such public enforcers with notice that alleged that ESP 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. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

The Parties enter into this Settlement Agreement as a full and final settlement of the allegations set forth in the Notice for the purpose of avoiding prolonged and costly litigation and resolving the issues raised therein, both as to past and future conduct. ESP denies all 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, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by ESP 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 ESP of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by ESP. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of ESP 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.

2. INJUNCTIVE RELIEF

1.1. Proposition 65 Compliance for the Products

Any Product that is distributed sold, or offered for sale in the State of California commencing 90 days after the Effective Date, shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements, with respect to lead, if no Accessible Component Part of such Covered Product contains more than 100 parts per million (“ppm”) of lead. For purposes of this Consent Judgment, “Accessible Component Part” shall mean components of the Product to which a person would be exposed to lead by direct contact during reasonably foreseeable use of the Product.

2.1 Warning

Products that are offered for sale in California that do not meet standard above shall be accompanied by a Proposition 65 warning as described in Section 2.2 below no later than 90 days after the Effective Date. The warning requirements set forth in Section 2.2 below shall apply only to Products that are distributed, marketed, sold or shipped for sale in the State of California. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that ESP places into the stream of commerce within 90 days of the Effective Date.

2.2 Warning Language

Where required herein with respect to the Products, ESP shall provide Proposition 65 warnings as follows:

(a) ESP may use any one of the following Proposition 65 warning statements in full compliance with this Section:

- (1) **[California Proposition 65] WARNING:** This product contains a chemical known to the State of California to cause birth defects and other reproductive harm.
- (2) **[California Proposition 65] WARNING:** This product contains chemicals known to the State of California to cause cancer, and birth defects, or other reproductive harm.

- (3) **[California Proposition 65] WARNING:** This product can expose you to lead, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more info go to www.P65Warnings.ca.gov.
- (4) **[California Proposition 65] WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.
- (b) If ESP elects to use the warning statements identified in either 2.2(a)(3) or (4), it may also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product 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) If Proposition 65 warnings for lead should no longer be required, ESP 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 the Notice and this Settlement Agreement, ESP shall pay a total of \$500 in civil penalties in accordance with this Section. After investigation and an exchange of relevant information between the Parties, Ecological agrees that this civil penalty satisfies the criteria set forth in Health & Safety Code § 25249.7. The civil 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 Ecological. Ecological’s counsel shall be solely responsible for delivering to OEHHA its 75% portion of the civil penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation ESP will pay to Ecological and its counsel under the private attorney general doctrine and principles of contract law for purposes of resolving the claims alleged in the Notice. Under these legal principles, ESP shall reimburse Ecological’s counsel for fees and costs incurred as a result of investigating and bringing this matter to ESP’s attention. ESP shall pay Ecological’s counsel a total all inclusive sum of \$9,500 for all attorneys’ fees, expert fees, investigation fees, and all other costs and expenses associated with the investigation of this matter, preparing and serving the Notice, preparing the certificate of merit, the negotiation of this Settlement Agreement, and any other expenses incurred in connection with this matter.

5. PAYMENT INFORMATION

By April 28, 2017, ESP shall make a total payment of \$10,000 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.: 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 ESP, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements contained herein, and for the payments to be made pursuant to Sections 3 and 4 above, Ecological, 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, attorneys' fees and any other expenses) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) ESP, (b) each of ESP's downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including but not limited to Amazon.com, Inc.), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) ESP's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") related to products manufactured, distributed or sold through 90 days after the Effective Date.

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 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 ESP and 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 ESPERIALLY 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.

6.2 ESP's Release of Ecological

ESP 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.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply only 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 ESP shall have no further obligations pursuant to this Settlement Agreement. Should either party allege a breach of this Settlement Agreement, that party shall notify the other party, and the Parties agree to meet and confer in good faith to determine if the dispute can be resolved before initiating any enforcement action.

8. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter 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 Consent Judgment have been made by any Party hereto. No amendment, supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by an authorized representative of each Party and approved by the Court.

9. JOINT PREPARATION

The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

10. 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 ESP:

President or CEO
Engineered Specialty Products, Inc.
3295 Cobb International Blvd
Kennesaw, GA 30152

With copy to:

J. Robert Maxwell, Esq.
ROGERS JOSEPH O'DONNELL
311 California Street, 10th floor
San Francisco, CA 94104

For Ecological:

Vineet Dubey, Esq,
Custodio & Dubey LLP
448 S. Hill St., 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.

11. 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.

12. 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).



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>24</u> 2017</p> <p>By: </p> <p>On Behalf of Ecological Alliance, L.L.C.</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: April <u>24</u>, 2017</p> <p>By: </p> <p>On Behalf of Engineering Specialty Products, Inc.</p>
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Harmony Welsh

Brian Whitford
PRESIDENT & CEO