

# SETTLEMENT AND RELEASE AGREEMENT

## 1. INTRODUCTION

### 1.1 Ecological Alliance, LLC, Ace Hardware Corporation and The Keeney Manufacturing Company.

This Settlement Agreement is entered into by and between Ecological Alliance, LLC (“Ecological”), on the one hand, and Ace Hardware Corporation (“ACE”) and The Keeney Manufacturing Company (“Keeney”) on the other hand, with Ecological, ACE and Keeney collectively referred to as the “Parties,” for the purpose of avoiding the cost and expense associated with further dispute and litigation. Ecological is a California limited liability company, which states that it is 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 ACE and Keeney are a companies in the course of doing business for purposes of Proposition 65.

### 1.2 General Allegations

Ecological alleges that ACE and/or Keeney distributed and/or sold in the State of California urinal spuds containing lead, 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”). 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 defined as urinal spuds, manufactured by, or offered for sale or distributed in California by ACE or Keeney, containing

lead. All such items shall be referred to herein as the “Products.”

#### **1.4 Notice of Violation**

On or about March 10, 2016, Ecological served ACE, 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 ACE, Amazon.com, Inc., and such public enforcers with notice that alleged that ACE and Amazon.com, Inc. 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 Notices.

#### **1.5 No Admission**

ACE and Keeney deny the material factual and legal allegations contained in Ecological’s Notice and maintains that all products 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 ACE or Keeney 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 ACE or Keeney of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by ACE and Keeney. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of ACE or Ecological 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 Exemption**

Products manufactured or acquired by ACE or Keeney for sale in California after the Effective Date shall not need a warning 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**

Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. The warning requirements set forth in Section 2.3 below shall apply only to Products that ACE and/or Keeney manufactures or acquires after the Effective Date 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 manufactured, in ACE's, Amazon.com, Inc., or Keeney's inventory and/or are already in the stream of commerce in California as of the Effective Date.

## **2.3 Warning Language**

Where required under Sections 2.1 and 2.2 above, ACE and/or Keeney shall provide Proposition 65 warnings as follows:

- (a) ACE and/or Keeney may use the following warning statement:

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or 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, ACE and/or Keeney 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, Keeney shall pay a total of Two Hundred Dollars (\$200) in civil penalties pursuant to Health and Safety Code section 25249.7(b). This 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") by Ecological and the remaining 25% of the penalty remitted to Ecological. Keeney shall pay Ecological's counsel the entire civil penalty payment referenced herein, and Ecological's counsel will transmit 75% of the civil penalty payment to OEHHA.

**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, Keeney shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to ACE's attention. Keeney shall pay Ecological's counsel Seven Thousand Two Hundred Dollars (\$7,200) for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within seven (7) days after this Settlement Agreement is fully executed by the Parties, Keeney shall make a total payment of Seven Thousand Four Hundred Dollars (\$7,400) 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 ACE and Downstream Customers**

This Settlement Agreement is a full, final and binding resolution between Ecological and ACE and Keeney of any violation of Proposition 65 that was or could have been asserted by Ecological

on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, against ACE or Keeney, its parent companies, corporate affiliates, affiliated entities under common ownership, subsidiaries, and their respective officers, directors, members, attorneys, representatives, shareholders, agents, employees, and each entity to whom ACE or Keeney directly and indirectly sells or distributed the Products (including Amazon.com, Inc.), including its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, members, owners, purchasers and users (collectively "Releasees") based on the alleged or actual failure to warn about exposures to lead from Products sold or distributed for sale by ACE or Keeney in California before the Effective Date.

In further consideration of the promises and agreements herein, Ecological, in its own capacity, 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 it may have 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"). The releases provided by Ecological under this Settlement Agreement are provided solely on Ecological's own behalf and not on behalf of the public in California.

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 ACE, Keeney and the Releasees. Ecological understands and agrees that as a condition of this Settlement Agreement, it waives any and all rights and benefits which he now has, or in the future may have, by virtue of 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.

Ecological and its attorneys further agree that they shall not publish this Settlement Agreement (or any of the terms thereof) on the internet, through the media, or by any other means of communication, nor shall they cause the same to be done. However, this provision shall not be construed to prevent any disclosures that may be necessary to effectuate the terms of the Settlement Agreement or to comply with any reporting requirements to the California Attorney General or as required by law, rule or regulation.

#### **6.2 ACE and Keeney's Release of Ecological**

ACE and Keeney waive 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 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 ACE and Keeney 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 ACE and Keeney:

Roger A. Cerda, Esq.  
**ALSTON & BIRD LLP**  
333 South Hope Street  
16th Floor  
Los Angeles, CA, 90071

For Ecological:

Vineet Dubey  
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.

**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**

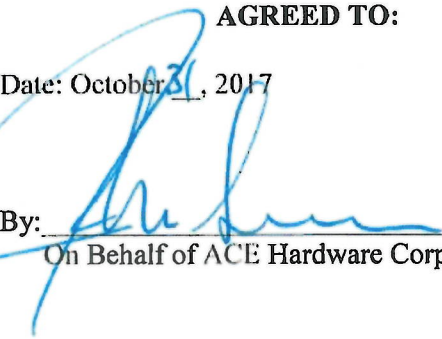
This Settlement Agreement may be modified only by a written agreement signed by the Parties.

**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.

<b>AGREED TO:</b> Date : October <u>13</u> , 2017  By: <u>H. Welsh</u> On Behalf of Ecological Alliance, LLC	<b>AGREED TO:</b> Date: October __, 2017  By: _____ On Behalf of ACE Hardware Corporation
	<b>AGREED TO:</b> Date: October __, 2017  By: _____ On Behalf of The Keeney Manufacturing Company

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><b>AGREED TO:</b></p> <p>Date : October __, 2017</p> <p>By: _____ On Behalf of Ecological Alliance, LLC</p>	<p><b>AGREED TO:</b></p> <p>Date: October <u>31</u>, 2017</p> <p>By:  _____ On Behalf of ACE Hardware Corporation</p>
	<p><b>AGREED TO:</b></p> <p>Date: October __, 2017</p> <p>By: _____ On Behalf of The Keeney Manufacturing Company</p>

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> Date : October __, 2017  By: _____ On Behalf of Ecological Alliance, LLC	<b>AGREED TO:</b> Date: October __, 2017  By: _____ On Behalf of ACE Hardware Corporation
	<b>AGREED TO:</b> Date: October <u>16<sup>th</sup></u> , 2017  By: <u>Brent J. Paul, VP/Controller</u> On Behalf of The Keeney Manufacturing Company