

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Ecological Alliance, LLC and Allied Moulded Products, Inc.

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Allied Moulded Products, Inc. ("Allied"), on the other hand, with Ecological and Allied collectively referred to as the "Parties."

1.2 General Allegations

Ecological alleges that Allied distributed and/or sold in the State of California floor box assemblies 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 cancer, birth defects or other reproductive harm. Allied 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 floor box assemblies and floor box assembly accessories manufactured, sold, or distributed by Allied. All such items shall be referred to herein as the "Products."

1.4 Notice of Violation

On or about May 12, 2017, Ecological served Allied, 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 Allied and such public enforcers with notice that alleged that Allied 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 lead. 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

Allied 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 Allied 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 Allied of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Allied. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Allied 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.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

On and after the Effective Date, any Products that Allied manufactures 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 6.

2.1 Reformulation Option

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 Option

Products that do not meet the reformulation 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 Allied distributes, sells, or ships for sale in the State of California after the Effective Date. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date.

2.3 Warning Language

Where required under Section 2.2 above, Allied shall provide Proposition 65 warnings as follows:

- (a) Allied may use any of the following warning statements, with the bracketed language being optional:
 - (1) **WARNING:** This product contains [a] chemical[s] known to the State of California to cause [cancer and] birth defects or other reproductive harm.
 - (2) **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.
 - (3) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

(b) If Allied elects to use the warning statements identified in either 2.3(a)(2) or (3), 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 at any time the warnings set forth in subsection (a) above are no longer compliant under Proposition 65, Allied may provide an alternative warning that is clear and reasonable. If Proposition 65 warnings for lead should no longer be required, Allied 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, Allied shall pay a total of \$500 in civil penalties in accordance with this Section. Ecological 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. Ecological's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

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, Allied shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Allied's attention and negotiating a settlement. Allied shall pay Ecological's counsel \$12,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By August 10, 2017, Allied shall make a total payment of Twelve Thousand Five Hundred Dollars (\$12,500) for the civil penalties and attorney's fees / costs required by sections 3 and 4 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 Allied, Downstream Customers and Upstream Vendors

This Settlement Agreement is a full, final and binding resolution between Ecological, on its own behalf and not on behalf of the public, and Allied, 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) Allied, its parents, subsidiaries, and affiliated entities under common ownership; (ii) each entity to whom

Allied directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers (including, but not limited to Amazon, Inc.), franchisors, franchisees, cooperative members, licensors, licensees, and their respective parents, subsidiaries, and affiliated entities under common ownership; (ii) each entity from whom Allied directly or indirectly purchases or acquires the Products, including but not limited to upstream vendors, manufacturers, or manufacturers' representatives, and their respective parents, subsidiaries, and affiliated entities under common ownership and (iv) the respective directors, officers, owners, attorneys, shareholders, and employees of any of the entities listed in subsections (i), (ii) and (iii), above (the entities and individuals identified in subsections (i) through (iv), above are collectively referred to as "Releasees"), based on the alleged failure to warn about any exposures to lead contained in Products.

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, 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 and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Releasees.

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 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 the Releasees with the requirements of Proposition 65 with respect to any exposures to lead in the Products.

6.2 Allied's Release of Ecological

Allied 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 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 Allied 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 Allied:

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

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.

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).

12. **MODIFICATION**

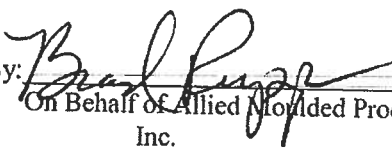
This Settlement Agreement may be modified only by a written agreement signed by the Parties.

14. **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.

13. **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 : July __, 2017 By: _____ On Behalf of Ecological Alliance, LLC	AGREED TO: Date: July <u>25</u> 2017 By:  On Behalf of Allied Molded Products, Inc.
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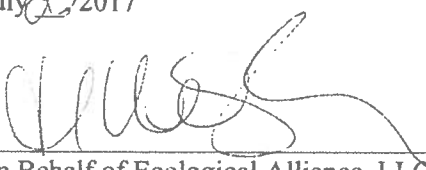
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13. **AUTHORIZATION**

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>AGREED TO:</p> <p>Date : July 25, 2017</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p>AGREED TO:</p> <p>Date: July __, 2017</p> <p>By: _____ On Behalf of Allied Moulded Products, Inc.</p>
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