

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Ecological Alliance, LLC and Globe Fire Sprinkler Corporation

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Globe Fire Sprinkler Corporation ("Globe"), on the other hand, with Ecological and Globe collectively referred to as the "Parties."

#### 1.2. General Allegations

Ecological alleges that Globe manufactured and distributed and offered for sale in the State of California sprinklers 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"). California has identified and listed lead 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 those products Globe has sold, offered for sale or distributed in California from February 19, 2017 to February 19, 2018 and that contain lead. All such items shall be referred to herein as the "Products."

#### 1.4. Notice of Violation

On February 19, 2018, Ecological served Globe, Amazon.com, Inc., and the requisite 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 Globe and such public enforcers with notice that Globe 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**

The parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Globe's compliance with Proposition 65. Specifically, Globe denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Globe 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 Globe of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Globe. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Globe 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: WARNING**

**2.1. Warning**

Products shall be accompanied by a 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 Globe places into the stream of commerce within 90 days of the Effective Date. The warning requirement shall not apply to downstream distributors of Globe's products, known or unknown, including, but not limited to distributors, licensors, retailers, and installers, either wholesale or retail, selling or installing Globe's products in the State of California of whom Globe has no reasonable basis of control.

**2.2. Warning Language**

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

(a) Globe may use any of the following warning statements in full compliance with this Section:

(1) **WARNING:** This product contains a chemical known to the State of California to cause birth defects and other reproductive harm.

(2) **WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects, or other reproductive harm.

(3) **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](http://www.P65Warnings.ca.gov).

(4) **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) If Globe 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, but the Parties acknowledge the foregoing method of providing a warning are in compliant with Proposition 65.

(d) If Proposition 65 warnings for lead should no longer be required, Globe 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, Globe shall pay a total of \$500 in civil penalties in accordance with this Section. The 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 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, Globe shall reimburse Ecological's counsel for fees and costs, incurred as a result of

investigating and bringing this matter to Globe's attention. Globe shall pay Ecological's counsel \$18,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By June 20, 2018, Globe shall make a total payment of Eighteen Thousand Five Hundred Dollars (\$18,500) 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 Globe, Downstream Customers and Upstream Vendors

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 Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, interest, 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 (a) Globe, (b) each of Globe's downstream distributors (including

Amazon.com, Inc.), wholesalers, distributors, licensors, licensees, auctioneers, retailers, franchisees, dealers, installers of Products, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Globe's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities. (collectively "Releasees").

6.2. 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 Globe and the Releasees.

**Globe's Release of Ecological**

Globe 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.

6.3. **Waiver of California Civil Code Section 1542**

The Parties understand and agree that this Settlement Agreement extends to all claims brought by or against the Parties of any nature and kind, known or unknown, suspected or unsuspected, anticipated or unanticipated arising out of or in connection with the Products, including but not limited to, 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 and in that regard each party acknowledges that it has read, considered and understands the provisions and significance of Section 1542 of the California Civil Code which reads as follows:

**GENERAL RELEASE. 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.**

The Parties understand and acknowledge that a risk exists that it incurred or suffered or may incur or suffer, loss or damages as a result of the matters, facts, events, occurrences, transactions, causes and things referred to in this Settlement Agreement which were unknown, unsuspected, or unanticipated at the time this Settlement Agreement was executed. The Parties each assume this risk, and agree that the foregoing release shall in all respects be effective and not subject to termination or rescission. The Parties acknowledge and agree that the release and the waiver of Civil Code section 1542 does not extinguish, release, or otherwise impair the obligations set forth in Section 6.1 and 6.2.

7. **BASED ON THE ADVICE OF ITS RESPECTIVE COUNSEL, EACH PARTY VOLUNTARILY, AND WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE, WAIVES AND RELINQUISHES ANY AND ALL RIGHTS THAT IT MAY HAVE UNDER SECTION 1542 AS WELL AS UNDER THE PROVISIONS OF ALL COMPARABLE, EQUIVALENT OR SIMILAR STATUTES AND PRINCIPLES OF COMMON LAW OR OTHER DECISIONAL**

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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 Globe 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 Globe: Christian Barton, Esq.  
Morris Sullivan Lemkul, LLP  
9915 Mira Mesa Blvd., Suite 300  
San Diego, CA 92131

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).

11. CONFIDENTIALITY

The Parties agree that all negotiations leading up to the Settlement Agreement shall remain confidential and non-public information. Disclosure shall only be by operation of law. In the event that Globe is Noticed for a similar legal action, both parties understand and agree Globe may provide copies of this agreement to such noticing party to establish that the matter has already been resolved.

The Parties, and their respective attorneys, further agree that if the Parties, or their attorneys, or any members, partners, or employees of such attorney's law offices or firms, breaches the confidentiality provisions of this Settlement Agreement, then the aggrieved party in addition to and not in lieu of any other rights or remedies that the aggrieved party may have under applicable law, has the right and standing to enjoin any person or entity who has announced an intention to violate the confidentiality provisions of this Settlement Agreement or who has violated the confidentiality provisions of this Settlement Agreement from any future violation thereof. The Parties, and their respective attorneys, acknowledge that confidentiality is an essential term of this Settlement Agreement and that a breach of this provision of the Settlement Agreement by either party will cause irreparable harm to the other party for which the party cannot be reasonably or adequately compensated by damages. The Parties, and their respective attorneys further acknowledge that either party, if aggrieved by a violation of the confidentiality of the Settlement Agreement, in addition to and not in lieu of any other rights or remedies that an aggrieved party may have under applicable law, may specifically enforce the

confidentiality provisions of this Settlement Agreement through a court of competent jurisdiction, and be entitled to the costs and fees thereof, including attorneys' fees for enforcing these rights. Further, as the damages to be incurred, though certain, are not readily calculable and therefore the party who breaches this provision of the Settlement Agreement shall be required to pay to the aggrieved party within thirty (30) days, the sum of \$10,000.00 per breach of the Confidentiality Clause of the Settlement Agreement.

12. ENTIRE AGREEMENT

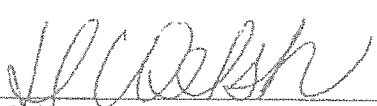

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

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.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: May <u>31</u> , 2018	Date: May <u>31</u> , 2018
By:  On Behalf of Ecological Alliance, LLC	By:  On Behalf of Globe Fire Sprinkler Corporation