

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Ecological Alliance, LLC and Coverite Industries, Inc.**

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

1.2. **General Allegations**

Ecological alleges that Coverite manufactured and distributed and offered for sale in the State of California security kits 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. Coverite denies all allegations made by Ecological.

1.3. **Product Description**

The products that are covered by this Settlement Agreement are defined as security kits, including but not limited to UPC #719626201004 that Coverite has sold, offered for sale or distributed in California and that contain lead. All such items shall be referred to herein as the "Products."

1.4. **Notice of Violation**

On March 22, 2018, Ecological served Coverite, The Pep Boys Manny Moe & Jack of California, 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 Coverite and such public enforcers with notice that

Coverite 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 Coverite's compliance with Proposition 65. Specifically, Coverite 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 Coverite 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 Coverite of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Coverite. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Coverite under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the last date of when this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF: WARNING

2.1. Warning

Where legally required, Coverite will display warning labels compliant with the rules and regulations of the State of California on Products. The warning requirements 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 Coverite places into the stream of commerce within 90 days of the Effective Date.

3. REIMBURSEMENT OF FEES AND COSTS

Each of the Parties shall bear their own attorney's fees and costs for this matter.

4. PAYMENT INFORMATION

Within seven business days of the full execution of the Settlement Agreement, Coverite shall make a total payment of Eight Thousand Two Hundred Fifty Dollars (\$8,250) by mail to Plaintiff's counsel Custodio & Dubey LLP with a check issued to "Custodio & Dubey LLP, client trust account" at the following address:

Custodio & Dubey LLP
448 S. Hill Street, Suite 615
Los Angeles, CA 90013

5. RELEASE OF ALL CLAIMS

5.1. Release of Coverite, 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 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 (a) Coverite, (b) each of Coverite's downstream distributors (including but not limited to The Pep Boys Manny Moe & Jack of California), wholesalers, distributors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Coverite's 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 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 Coverite 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 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.

5.2. Coverite's Release of Ecological

Coverite 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 in this matter.

6. 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 Coverite shall have no further obligations pursuant to this Settlement Agreement.

7. 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; or (iii) email at the following addresses:

For Coverite: Tommy SF Wang, Esq.
Leontyne Fan, Esq.
Wang IP Law Group, P.C.
18645 E. Gale Ave., Suite 205
City of Industry, CA 91748
Email: Twang@thewangiplaw.com

For Ecological: Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Suite 615
Los Angeles, CA 90013

Email: dubey@cd-lawyers.com

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.

8. 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.

9. 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).

10. CONFIDENTIALITY

The Parties agree that this Settlement Agreement and all negotiations leading up to it shall remain confidential and non-public information. Disclosure shall only be by operation of law. In the event that Coverite is Noticed for a similar legal action, Coverite may provide copies of this agreement to such noticing party to establish that the matter has already been resolved. The Parties recognize that this provision does not prohibit Parties from disclosing the contents of the Settlement Agreement for tax purposes.

11. 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.

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement signed by 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: <u>September 27</u> , 2018 By:  On Behalf of Ecological Alliance, LLC	AGREED TO: Date: <u>10-3</u> , 2018 By:  On Behalf of Coverite Industries, Inc.
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