

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Ecological Alliance, LLC and World and Main LLC

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

1.2 General Allegations

Ecological alleges that World and Main manufactured and/or distributed and/or offered for sale in the State of California cable locks containing Di-n-butyl Phthalate (DBP) and luggage tags containing Diisononyl phthalate (DINP) and that such sales have not included warnings as alleged by Ecological 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 DBP and DINP under Proposition 65 as chemicals 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 cable locks and luggage tags that World and Main has sold, offered for sale or distributed in California and that contain DBP and/or DINP. All such items shall be referred to herein as the "Products."

1.4 Notice of Violation

On July 2, 2018, Ecological served Howard Berger Co., Inc. and on October 22, 2018, Ecological served World and Main, LLC, and Fry's Electronics, Inc., and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled "60-Day Notice of Violation" (The July 2 and October 22 notices together the "Notices") that provided World and Main and such public

enforcers with notice that World and Main 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 DBP and/or DINP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

The parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notices concerning World and Main's compliance with Proposition 65. Specifically, World and Main 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 World and Main 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 World and Main of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by World and Main. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of World and Main 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:

2.1 Commitment to Reformulate or Provide Warnings

(a) Commencing ninety days (90) after the Effective Date (the “Compliance Date”) and continuing thereafter, World and Main agrees to only manufacture for sale, purchase for sale, or distribute for sale in California Products that are either (i) “Reformulated Products” as defined by Section 2.2, or (ii) that are offered with a clear and reasonable warning pursuant to Section 2.3.

(b) The requirements in this Section 2 shall not apply to any Product that as of the Compliance Date is in the stream of commerce or is otherwise in World and Main’s inventory stock as of that date.

2.2 Reformulation Option

For purposes of this Agreement, “Reformulated Products” are Products containing no more than 1,000 parts per million (0.1%) of either DBP or DINP by weight in any accessible component of a Product when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or pursuant to any other methodology utilized by federal or state governmental agencies for purposes of determining phthalate content in solid substance.

2.3 Clear and Reasonable Warnings

(a) Commencing on the Effective Date, subject to Section 2.1(b) above, for all Products for sale in California that do not meet the definition of Reformulated Products as set forth in Section 2.2, World and Main shall provide clear and reasonable warnings in accordance with this Section, or title 27 California Code of Regulations section 25600 et seq., as amended from time to time. World and Main further agrees that any warning used will be prominently placed in relation to a Product with such conspicuousness when compared with other words,

statements, designs or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Agreement, a warning displayed or transmitted according to the above criteria that is affixed directly to a Product or its accompanying labeling or packaging that contains one of the following statements shall be deemed clear and reasonable:

⚠ WARNING: This product can expose you to chemicals, including [DINP] [DBP], which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov¹

or the following “short-form” warning:

⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov²

If World and Main sells Products via an internet website to customers with a California zip code, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (i) on the same web page on which a Product is displayed and/or described; (ii) on the same page as the price for the Product; or (iii) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the ~~warning statement appears elsewhere on the same web page in a manner that clearly associates it~~ with the Product(s) to which the warning applies.

¹ In lieu of specifying a specific phthalate compound, World and Main may, for purposes of this “long-form” warning, specify “phthalate compounds” as the specific identified chemical.

² This short-form warning may be used only on a product, product label, or as part of an internet warning, and must be in a type size no smaller than the largest type size used for consumer information on the product and no case smaller than 6-point type. The short-form warning may not be used on a warning sign, e.g., point-of-sale or shelf sign.

(b) The requirements for warnings, set forth in subsection 2.3(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 DBP and/or DINP should no longer be required, World and Main shall have no further obligations pursuant to this Settlement Agreement.

(d) In the event that the California Office of Environmental Health Hazard Assessment ("OEHHA") promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, World and Main shall be entitled to use, at their discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

3. MONETARY SETTLEMENT TERMS

3.1 Penalties Pursuant to Health & Safety Code Section 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, World and Main 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 OEHHA and the remaining 25% of the penalty remitted to Ecological. Ecological's counsel shall be responsible for timely delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

3.2 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 codified at Code of Civil Procedure section 1021.5 and principles of contract law for all work performed with regard to this matter. Under these

legal principles, World and Main shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to World and Main's attention. World and Main shall pay Ecological's counsel \$11,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notices.

3.3 Payment Information

By December 31, 2018, World and Main shall make a total payment of Eleven Thousand Five Hundred Dollars (\$11,500) 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.

4. RELEASE OF ALL CLAIMS

4.1 Release of World and Main, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments made pursuant to Section 3 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) World and Main, (b) each of World and Main's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders,

cooperative members, customers, owners, purchasers, users, and (c) World and Main'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 World and Main 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.

4.2 World and Main's Release of Ecological

World and Main 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.

4.3 Public Benefit

It is World and Main's position that the commitments it has agreed to herein, and actions to be taken by World and Main under this Settlement Agreement, confer a significant benefit to the general public, as set forth in California Civil Procedure Code section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to World and Main or any other Releasee's failure to provide a warning concerning exposures to DINP and/or DBP with respect to the Products they have respectively manufactured distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that World and Main is in material compliance with this Settlement Agreement.

5. 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 World and Main shall have no further obligations pursuant to this Settlement Agreement.

6. 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 World and Main:

Joshua A. Bloom, Esq.
Meyers Nave
555 12th Street, Suite 1500
Oakland, California 94607

For Ecological:

Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Suite 615
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.

7. 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.

8. 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).

9. 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.

10. ENFORCEMENT OF SETTLEMENT AGREEMENT

Any party may file suit in California Superior Court to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

No action to enforce this Settlement Agreement may be commenced or maintained unless the party seeking enforcement notifies the other party of the specific acts alleged to breach this Settlement Agreement and, thereafter, meets and confers with the other Party for a period of not less than 30 days in an effort to resolve any alleged breach informally before serving or filing any action to enforce the terms and conditions contained in this Settlement Agreement.

11. SEVERABILITY

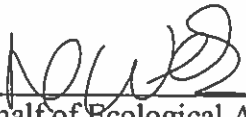

If, after the execution of this Settlement Agreement, any provision of this Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected so long as the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Agreement being contrary to the intent of the Parties in entering into this Agreement, or unless the Parties modify the Agreement such that the provision deemed unenforceable by the court is replaced with an enforceable provision that reflects the intent 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.

<p>AGREED TO:</p> <p>Date: December <u>22</u>, 2018</p> <p>By: <u></u></p> <p>On Behalf of Ecological Alliance, LLC</p>	<p>AGREED TO:</p> <p>Date: December <u>22</u>, 2018</p> <p>By: <u></u></p> <p>On Behalf of World and Main (Cranbury) LLC</p>
--	--

3083674.2