

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and DAP Products Inc.

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

1.2. General Allegations

Ecological alleges that DAP manufactured and distributed and offered for sale in the State of California caulking tools containing Di(2-ethylhexyl)phthalate ("DEHP"), 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 DEHP 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 caulking tools that DAP has sold, offered for sale or distributed in California and that allegedly contain DEHP. All such items shall be referred to herein as the "Products."

1.4. Notice of Violation

On October 11, 2019, Ecological served DAP, Anawalt Lumber Materials & Co., 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 DAP and such public enforcers with notice that DAP 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 DEHP. 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 DAP's compliance with Proposition 65. DAP denies the material, factual and legal allegations contained in Ecological's Notice and maintains that all products that it has distributed in California, including the Products, have been and are in compliance with Proposition 65 and any other applicable statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by DAP 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 DAP of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by DAP on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of DAP 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. SETTLEMENT PAYMENT & TERMS

2.1 The Parties reached an accord on the compensation as DAP shall pay Ecological's counsel Eighteen Thousand and Zero Cents (\$18,000). By June 15, 2020, DAP shall make the total payment of Eighteen Thousand Dollars (\$18,000) by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325104702031

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

2.2 While DAP maintains that all products it has distributed in California to date have been and are in compliance with Proposition 65, DAP agrees that, as of the Effective Date, it shall not manufacture for sale in the state of California caulking tool kit UPC #070798091252 containing any prohibited level of DEHP.

3. RELEASE OF ALL CLAIMS

3.1. Release of DAP, 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, managers, members, 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) DAP, (b) each of DAP's downstream distributors (including but not limited to Anawalt Lumber & Materials, Co.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) DAP'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, 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 DAP 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

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.

3.2. DAP's Release of Ecological

DAP 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. 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 DAP shall have no further obligations pursuant to this Settlement Agreement.

5. 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 DAP: Karen M. Sullivan, Esq.
MGM The Law Firm
400 Spectrum Center Drive, Suite 1450
Irvine, CA 92618

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.

6. 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.

7. 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).

8. 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.

9. MODIFICATION

Except as provided herein, this Settlement Agreement may be modified only by a written agreement signed by the Parties.

10. 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:	AGREED TO:
Date: May __, 2020	Date: May <u>15</u> , 2020
By: _____ On Behalf of Ecological Alliance, LLC	By:  On Behalf of DAP Products Inc.

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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 style="text-align: center;">AGREED TO:</p> <p>Date: May <u>13</u>, 2020</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: May __, 2020</p> <p>By: _____ On Behalf of DAP Products Inc.</p>
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