

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and Southern Marketing Affiliates Inc.

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

1.2. General Allegations

Ecological alleges that Southern Marketing manufactured and distributed and offered for sale in the State of California fuel elbow strainers 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.

1.3. Product Description

The products that are covered by this Settlement Agreement are defined as fuel elbow strainers that Southern Marketing has or caused to be sold, offered for sale or distributed in California. All such items shall be referred to herein as the "Products."

1.4. Notice of Violation

On November 25, 2019, Ecological served Tractor Supply Company, 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 Southern Marketing and such public enforcers with notice that Southern Marketing 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 Southern Marketing's compliance with Proposition 65. Specifically, Southern Marketing 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 and any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Southern Marketing 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 Southern Marketing of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Southern Marketing. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Southern Marketing 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

No later than 120 days after the Effective Date, Southern Marketing shall only sell or offer for sale in California Products that are accompanied by a warning as described in Section 2.2 below unless the Product contains less than 1,000 parts per million Lead. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that Southern Marketing places into the stream of commerce within 120 days of the Effective Date.

2.2. Warning Language

Where required to provide warnings pursuant to Section 2.1 of this Agreement, Southern Marketing shall provide Proposition 65 warnings as follows:

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

(1) **WARNING:** This product can expose you to chemicals including Lead, which is known to the State of California to cause cancer or other reproductive harm. For more info go to www.P65Warnings.ca.gov.

(2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

(b) The warning shall 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 Proposition 65 warnings for Lead or the Products should no longer be required, Southern Marketing 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, Southern Marketing 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 and Ecological's portions 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, Southern Marketing shall reimburse Ecological's counsel for fees and costs, incurred as a

result of investigating and bringing this matter to Southern Marketing's attention. Southern Marketing shall pay Ecological's counsel \$10,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

On or before March 10, 2020, Southern Marketing shall make a total payment of Ten Thousand Five Hundred Dollars (\$10,500) 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.: 325104702031

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 Southern Marketing, 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, in its representative capacity, and 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) Southern Marketing, (b) each of Southern Marketing's downstream distributors (including but not limited to Tractor Supply Company), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Southern Marketing'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, assignees and/or 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 Southern Marketing and the Releasees. Ecological expressly acknowledges that it is releasing its ability to bring representative suits under Proposition 65 against the Releasees in the future. 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.

6.2. Southern Marketing's Release of Ecological

Southern Marketing 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, then Southern Marketing 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 Southern Marketing: David M. Gilmore, Esq.
GILMORE MAGNESS JANISSE
7789 N. Ingram Ave., Suite 105
Fresno, CA 93711

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.

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). Otherwise, Ecological and its attorneys have not and will not disclose the alleged violation and the terms of this agreement to any person or entity other than an agency as may be required by law.

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.

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| <p style="text-align: center;">AGREED TO:</p> <p>Date: February <u>28</u> 2020</p> <p>By: <u></u> On Behalf of Ecological Alliance, LLC</p> | <p style="text-align: center;">AGREED TO:</p> <p>Date: February <u>28</u>, 2020</p> <p>By: <u></u> On Behalf of Southern Marketing Affiliates Inc.</p> |
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