

**SETTLEMENT AND RELEASE AGREEMENT BETWEEN ECOLOGICAL
ALLIANCE, LLC AND SEALED UNIT PARTS CO., INC.**

1. INTRODUCTION

1.1. The Parties

This Settlement and Release Agreement (“Agreement”) is entered into by and between Ecological Alliance, LLC (“Ecological”), on the one hand, and Sealed Unit Parts Co., Inc. (“Supco”), on the other hand, with Ecological and Supco collectively referred to as the “Parties.”

1.2. General Allegations and Product Description

Ecological alleges that Supco distributed and offered for sale in the State of California saddle valves, including but not limited to UPC #687152032068, sold by retailers including but not limited to, Amazon.com, Inc. and substantially similar products (“Products”) that cause exposures to Lead without first providing clear and reasonable warning under the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 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 and birth defects or other reproductive harm.

1.3. Notice of Violation

On November 26, 2019, Ecological served Supco, 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 Supco and such public enforcers with notice that Supco was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers 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.

1.4. No Admission

The parties enter into this Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Supco's compliance with Proposition 65. Specifically, Supco denies the material factual and legal allegations contained in Ecological's Notice and maintains that, to the best of its knowledge, 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 Agreement shall be construed as an admission by Supco of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Supco of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Supco. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Supco under this Agreement.

1.5. Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.6. Effective Date

For purposes of this Agreement, the term "Effective Date" shall mean the date on which a complete copy of the Agreement is delivered to each Parties' counsel.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNING

2.1. Reformulated Products

Commencing within 90 days of the Effective Date, and continuing thereafter, Supco agrees to import or manufacture Products for subsequent sale to California consumers that either:

(a) contain less than or equal to 1,000 parts per million (0.1%) by weight of Lead (“Reformulated Products”), or (b) bear a clear and reasonable warning, as set forth in Sections 2.2 and 2.3, or as provided by the California Code of Regulations, Title 27, Div. 4, Chap. 1, Art. 6 (commencing at § 25600), as those regulations may be amended from time to time.

To determine whether a Product is a Reformulated Product, it must be analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, and the testing sample shall be analyzed using Inductively Coupled Plasma-Mass Spectrometry, or other methodologies utilized by federal or state government agencies for the purpose of determining Lead content in a solid substance. The Parties agree that Reformulated Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirement if the Product contains Lead in a concentration of less than or equal to 1,000 parts per million.


2.2. Clear and Reasonable Warning


For all Products that are not Reformulated Products, which are imported or manufactured later than 90 days after the Effective Date and are subsequently offered for retail sale in California, Supco shall provide clear and reasonable warnings as set forth herein or as defined by the California Code of Regulations, tit. 27, div. 4, chap. 1, art. 6 (commencing at § 25600). The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that Supco places into the stream of commerce within 90 days of the Effective Date.

2.3. Warning Language

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

(a) Supco 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 and birth defects 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 warning shall be provided on the Product’s label, by shelf tag, or, where the Product is being sold online, by placing the warning onto the product display page.

(c) The requirements for warnings set forth in subsections (a) and (b) above are imposed pursuant to the terms of this Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. The Parties further recognize that Supco shall be deemed to be in compliance with this subsection by complying with the safe

harbor warning regulations promulgated by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA").

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Agreement, Supco shall pay a total of \$400 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 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 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, Supco shall reimburse Ecological's counsel for fees and costs incurred as a result of investigating and bringing this matter to Supco's attention. Supco shall pay Ecological's counsel \$9,500 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

On or before April 3, 2020, Supco shall make a total payment of Nine Thousand Nine Hundred Dollars (\$9,900) for civil penalties, 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, the Parties agree to bear their own fees and costs.

6. CLAIMS COVERED AND RELEASED

6.1. Release of Supco, 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 relating to the Products, and releases all claims 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) Supco, (b) each of Supco's distributors, wholesalers, manufacturers, vendors, licensors, licensees, auctioneers, retailers (including but not limited to Amazon.com, Inc. and their respective subsidiaries, affiliates, parents, franchisees, cooperative members, and licensees), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Supco'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, fees (including but not limited to attorneys' fees), damages, losses, claims, liabilities, and demands of any nature, character, or kind, known or unknown, suspected or unsuspected, against Supco 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.

6.2. Supco's Release of Ecological

Supco 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. Public Benefit

The Parties understand and agree that the commitments Supco has agreed to herein, and actions to be taken by Supco under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Administrative Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Supco's failure to provide a warning concerning exposure to Lead prior to use of the Products it has 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 Agreement, provided that Supco is in material compliance with this Agreement.

7. SEVERABILITY

If, subsequent to the execution of this Agreement, any of the provisions of this Agreement are deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected, but only to the extent 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.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California and apply within the State of California. Actions to enforce any provision of this Agreement shall be venued in the Superior Court of California, County of Sacramento. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Supco shall have no further obligations pursuant to this Agreement.

9. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (i) first-class mail (registered or certified), return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

For Supco: Will Wagner, Esq.
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

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.

10. **COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This 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.

11. **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).

12. **ENTIRE AGREEMENT**

This 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,


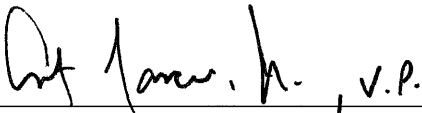
commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties as to the subject matter of this Agreement.

13. MODIFICATION

This Agreement may be modified only by a subsequent written agreement signed by the Parties.

14. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligations that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

AGREED TO: Date: March <u>26</u> 2020 By:  On Behalf of Ecological Alliance, LLC	AGREED TO: Date: March <u>25</u> , 2020 By:  On Behalf of Sealed Unit Parts Co., Inc.
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