

## SETTLEMENT AND RELEASE AGREEMENT

### 1. **INTRODUCTION**

#### 1.1. **Ecological Alliance, LLC and Apex Tool Group**

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

#### 1.2. **Ecological Allegations**

Ecological alleges that Apex manufactured and distributed in the State of California snap ring pliers containing Diisononyl phthalate [DINP], 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 DINP 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 snap ring pliers (Universal Product Code 037103276520) that Apex has 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 January 12, 2021, Ecological served Home Depot U.S.A., 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"). Apex later received the Notice from Home Depot. The Notice provided Apex and such public enforcers with notice that Apex 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 DINP. 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 Apex's compliance with Proposition 65. Apex denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products it has manufactured for sale and distribution, imported, or sold 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 Apex of any fact, finding, concession, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Apex of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Apex on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Apex under this Settlement Agreement by the Parties.

**1.6. Effective Date**

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

**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

All Products manufactured on or after 90 days from the Effective Date for authorized sale in California shall be Reformulated Products, as defined pursuant to Section 2.1 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. Products that were supplied to third parties by Apex prior to the Effective Date shall

be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold as previously manufactured, packaged and labeled.

### **2.1. Reformulation Standards**

“Reformulated Products” are defined as the Accessible Components (meaning any component of the Products that could be touched by a person during reasonably foreseeable use) of those Products containing DINP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DINP content in a solid substance.

### **2.2. Warning Language**

Where required, Apex shall provide Proposition 65 warnings on the Product’s label as follows:

(a) Apex may use either of the following warning statements in full compliance with this Section:

(1) **WARNING:** This product can expose you to chemicals including DINP, which is known to the State of California to cause cancer.

For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

(2) **WARNING:** Cancer–[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

(b) If Apex uses either of the above warning statements to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label 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) In the event that the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, Apex shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

(e) If Proposition 65 warnings for DINP should no longer be required, Apex 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, Apex 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 portion 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 doctrine and principles of contract law. Under these legal principles, Apex shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Apex's attention. Apex shall pay Ecological's counsel \$16,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within 30 days of the Effective Date, Apex shall make a total payment of Sixteen Thousand Five Hundred Dollars (\$16,500) 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.: 325132729125

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 Apex, Downstream Distributors and Retailers, 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 and 5 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) Apex, (b) each of Apex's downstream distributors and retailers, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users, (c) each of Apex's upstream vendors and entities that manufactured the Products or any component part thereof, (d) Home Depot U.S.A., Inc., and its corporate affiliates, subsidiaries, and each of their respective officers, directors, attorneys, representatives, shareholders, agents, employees, and sister and parent entities, and (e) Apex'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 Apex 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. Apex's Release of Ecological**

Apex 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 Apex 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; and (ii) email by the other party at the following addresses:

For Apex:

Jessie M. Gabriel, Esq.  
The Gabriel Firm PLLC d/b/a All Places

128 E Broadway #1229  
New York, NY 10002  
[jessie@all-places.com](mailto:jessie@all-places.com)

For Ecological: Vineet Dubey, Esq.  
Custodio & Dubey LLP  
445 S. Figueroa St., Suite 2520  
Los Angeles, CA 90071  
  
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.

**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).

**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.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: December <u>23</u>, 2021</p> <p>By:  _____ On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: January 3, 2021</p> <p>By:  _____ On Behalf of Apex Tool Group</p>
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