

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ecological Alliance, LLC (“Alliance”) and Ideal Industries, Inc. (“Ideal”). Together, Alliance and Ideal are collectively referred to as the “Parties.”

1.2 General Allegations. Alliance alleges that Ideal has exposed individuals to diisononyl phthalate (DINP) from its sales of rod flex kits with storage containers/tubes, including but not limited to UPC # 78325064576, without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Product Description. The products covered by this Settlement Agreement are rod flex kits with storage containers/tubes, including but not limited to UPC # 783250564576, (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Ideal.

1.4 Notice of Violation. On August 15, 2023, Alliance served Lowe’s Home Centers, LLC, (“Lowe’s”), Ideal, and various public enforcement agencies with a document entitled “Notice of Violation Against Ideal Industries, Inc. and Lowe’s Home Centers, LLC of California Health & Safety Code Section 25249.6” (the “Notice”). The Notice provided Ideal, Lowe’s and such others, including public enforcers, with notice that alleged that Ideal and/or Lowe’s were in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to DINP. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Ideal and Lowe’s deny the material factual and legal allegations contained in the Notice and maintain that, to the best of their knowledge, all products that are or have been sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Ideal or Lowe’s 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 Ideal or Lowe’s of any fact, finding,

conclusion, issue of law or violation of law, such being specifically denied by Ideal and Lowe's. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Ideal maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Agreement. The Parties have agreed to enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice. Specifically, all existing or potential claims or disputes between the Parties relating to the Products or the Notice, and any potential or real claims, demands, complaints, causes of action, proceedings, charges, suits, obligations, liabilities or other matters (collectively, "Claims") relating thereto, are intended to be fully and forever settled and released in accordance with the terms in this Settlement Agreement.

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

2. INJUNCTIVE RELIEF - WARNINGS

2.1 Clear and Reasonable Warning. No later than sixty (60) days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.1 and 2.2 must be provided for all Products that Ideal manufactures, imports, distributes, sells, or offers for sale in California (except for Products that Ideal may hereinafter reformulate and for which no warning is required under Proposition 65). There shall be no obligation for Ideal to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.1(a) or (b), respectively:

(a) **Warning.** The "Warning" shall consist of the statement:

⚠ WARNING: This product can expose you to chemicals including diisononyl phthalate (DINP), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Ideal may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) ("**Alternative Warning**") as follows:

⚠ WARNING: Cancer - www.P65Warnings.ca.gov.

2.2 Print Color. Where any sign, label, or shelf tag for the Products 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.”

2.3 Foreign Languages. If the Product’s labeling is provided in a language other than English, the Warning will be provided in that language in addition to English.

2.4 Online Sales. If Ideal sells Products to customers located in California via an internet website it controls, the warning requirements of this section shall be satisfied if the warning is provided by including either the warning or a clearly marked hyperlink using the word “WARNING” on the Product display page, by otherwise prominently displaying the warning to the purchaser prior to completing the purchase (such as a warning that is adjacent to or appears on the same web page in a manner that clearly associates it with the Product to which the warning applies), or in a manner which is otherwise compliant with regulations promulgated by the Office of Environmental Health Hazard Assessment.

2.5 Compliance with Warning Regulations. In addition to the foregoing, the Parties agree that Ideal shall be deemed to be in compliance with this Settlement Agreement by complying with warning regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date, applicable to the Products and the exposures at issue.

2.6 Regulatory Changes. If Proposition 65 warnings for DINP or the Products should no longer be required, Ideal shall have no further obligations pursuant to this Settlement Agreement. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Ideal 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.

2.7 Other Warning Methods. The Parties recognize that the requirements for warnings set forth in this Settlement Agreement are not the exclusive methods of providing a warning under

Proposition 65 and its implementing regulations, and it is the intent of the Parties that any warnings given by Ideal relating to the Products shall be provided in a manner, and in such form, as is compliant with regulations promulgated by the Office of Environmental Health Hazard Assessment.

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

In settlement of all the claims referred to in this Settlement Agreement, Ideal shall pay a total of \$200 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Alliance. Alliance's counsel shall be solely responsible for delivering OEHHA's portion of the penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Alliance and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Ideal shall reimburse Alliance's counsel for fees and costs incurred as a result of investigating and bringing the matter to Ideal's attention. Ideal shall pay Alliance's counsel \$9,000.00 for all attorney's fees, expert and investigation fees, and related costs, associated with this matter and the Notice.

5. PAYMENT INFORMATION

Within ten (10) days of the Effective Date, Ideal shall make a total payment of Nine Thousand Two Hundred Dollars (\$9,200.00) for the civil penalties and fees and costs, by check sent to Plaintiff's counsel as follows:

Vineet Dubey
Custodio & Dubey
445 S. Figueroa Street
Suite 2520
Los Angeles, CA 90071
Tax ID#: 46-1919008

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

6. RELEASE OF ALL CLAIMS

6.1 Release of Ideal, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made as set forth above, Alliance, 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) Ideal, (b) each of Ideal's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users (specifically including Lowe's), and (c) Ideal's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities. (collectively "Releasees").

Alliance 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 Ideal and the Releasees. Alliance 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.

Alliance, 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 Ideal's Release of Alliance

Ideal waives any and all claims against Alliance, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Alliance 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, with respect to the Products as related to Proposition 65 only.

7. PUBLIC BENEFIT

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

8. NON-DISPARAGEMENT

Alliance covenants and agrees that it will not at any time knowingly defame, disparage, or impugn the reputation of IDEAL or any of the IDEAL Releasees, as defined herein. "Disparage" as

used in this Settlement Agreement means to make any statement, written or oral, that casts an entity or individual in a negative light, or attributes any negative quality to the entity or its products or services or that state, suggest or imply that IDEAL or the IDEAL Releasees engage in violations of law, or deceptive marketing or labeling.

9. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the heirs, executors, administrators, legal representatives, successors, and assigns of the respective parties.

10. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining 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 Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

11. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law 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 or limited by reason of law generally, or as to the Products, then Ideal shall have no further obligations pursuant to this Settlement Agreement.

10. 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 or two-day courier on any party by the other party to the following addresses:

For Ideal:

Jeffrey D. Smith
Honigman LLP

650 Trade Centre Way, Ste. 200
Kalamazoo, MI 49002

For Alliance:

Vineet Dubey
Custodio & Dubey
445 S. Figueroa Street
Suite 2520
Los Angeles, CA 90071

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.

11. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Alliance agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f).

13. MODIFICATION

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

14. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

15. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

[signatures on next pages]

AGREED TO:

Date: 6/10/24

By: 
Ecological Alliance, LLC

AGREED TO:

Date: 10 June 2024

By: 
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IDEAL Industries, Inc.