

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance LLC and Koch Industries, Inc.

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

1.2. NOV Allegations

Alliance alleges that Koch manufactured and distributed and offered for sale in the State of California: green wire ropes containing Di(2-ethylhexyl)phthalate [DEHP] and Poly Ropes containing Perfluorooctanoic Acid [PFOA] 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 & PFOA under Proposition 65 as chemicals 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 wire ropes containing Di(2-ethylhexyl)phthalate [DEHP] and Poly Ropes containing Perfluorooctanoic Acid [PFOA] that Koch 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 May 15, 2024, Alliance served Koch, 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 “Notice of Violation Against Koch Industries,

Inc. and Tractor Supply Company” (“May 15, 2024 Notice”) that provided Koch and such public enforcers with notice that Koch 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.

On May 6, 2024, Alliance served Wal-Mart Stores East, L.P., 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 “Notice of Violation Against Wal-Mart Stores East, L.P.” (“May 6, 2024 Notice”) that provided Koch and such public enforcers with notice that Koch 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 PFOA. The May 15, 2024 and May 6, 2024 Notices are collectively referred to herein as the “Notices”.

To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notices.

1.5. No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notices concerning Koch's compliance with Proposition 65. Koch denies the material factual and legal allegations contained in the Notices and maintains that all products it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with all applicable laws, statutory requirements, regulatory requirements, and any and all requirements potentially imposed under common law or at equity including, but not limited to, Proposition 65. Koch enters into this settlement merely to avoid the cost associated with litigation. Nothing in this Settlement Agreement shall be construed as an admission by Koch 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 Koch of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Koch on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Koch under this Settlement Agreement. Notwithstanding the allegations in the Notices, Koch 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. 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: REFORMULATION AND WARNINGS

2.1. Reformulation of Products

As of the Effective Date, Koch shall manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.2 and 2.4 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.3 and 2.5, as applicable. Products that were supplied to third parties by Koch up to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

2.2. Reformulation Standards - DEHP


"Reformulated Products" are defined as those Products containing DEHP 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 DEHP content in a solid substance.

2.3. Clear and Reasonable Warning Language - DEHP

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

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

(1)  **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate [DEHP], which are known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

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

(b) If Koch uses any 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) Foreign Languages. Additionally, if a Product's labeling is provided in a language other than English, the warning will be provided in that language in addition to English.

(d) Online Sales. If Koch sells Products via an internet website it controls to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; (c) on one or more web pages displayed to a California purchaser prior to purchase during the checkout process; or (d) via a hyperlink taking the customer to a separate page containing the warning language, provided that the hyperlink appears on the same page as either the Product description or Product price are displayed, or appears prior to completion of the sale at checkout. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the Product to which the warning applies.

(e) If Proposition 65 warnings for DEHP should no longer be required, Koch shall have no further obligations pursuant to this Settlement Agreement.

(f) The Parties agree the warnings set forth in subsection (a) comply with Proposition 65. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. At its election, in lieu of the warning methods set forth in subsection (a) above, Koch may alternatively utilize any warning content and methodology.


2.4. Reformulation Standards – PFOA


“Reformulated Products” are defined as those Products that do not knowingly contain any intentionally added PFOA, unless Koch complies with Section 2.5 below. =

2.5. Clear and Reasonable Warning Language - PFOA

Where required, Koch shall provide Proposition 65 warnings as follows on the Products:

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

(1)  **WARNING:** This product can expose you to Perfluorooctanoic Acid [PFOA], 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) If Koch uses any 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) Foreign Languages. Additionally, if a Product’s labeling is provided in a language other than English, the warning will be provided in that language in addition to English.

(d) Online Sales. If Koch sells Products via an internet website it controls to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Products is displayed and/or described; (b) on the same page as the price for the Products; (c) on one or more web pages displayed to a California purchaser prior to purchase during the checkout process; or (d) via a hyperlink taking the customer to a separate page containing the warning language, provided that the hyperlink appears on the same page as either the Products description or Products price are displayed, or appears prior to completion of the sale at checkout. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Products, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the Products to which the warning applies.

(e) If Proposition 65 warnings for PFOA should no longer be required, Koch shall have no further obligations pursuant to this Settlement Agreement.

(f) The Parties agree the warnings set forth in subsection (a) comply with Proposition 65. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. At its election, in lieu of the warning methods set forth in subsection (a) above, Koch may alternatively utilize any warning content and methodology.

3. DEEMED COMPLIANCE WITH PROPOSITION 65

3.1. Deemed Compliance with Proposition 65. The Parties agree that compliance by Koch with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP or PFOA from use of the Products.

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

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

In settlement of all the claims referred to in this Settlement Agreement, Koch 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 Alliance. Alliance's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

5. **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, Koch shall reimburse Alliance's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Koch's attention. Koch shall pay Alliance's counsel \$14,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notices.

6. **PAYMENT INFORMATION**

Within ten (10) business days of the Effective Date, Koch shall make a total payment of Fourteen Thousand Five Hundred Dollars (\$14,500) 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.: 325149324377

Beneficiary: Custodio & Dubey LLP

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

7. **RELEASE OF ALL CLAIMS**

7.1. **Release of Koch, 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 4 and 5 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) Koch, (b) each of Koch's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers (including but not limited to Tractor Supply Company and Wal-Mart Stores East, L.P., including any corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Koch's parent companies, corporate affiliates, subsidiaries, and successors in interest (including but not limited to Lehigh Consumer Products LLC and The Hillman Group, Inc.), and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and each of them (collectively "Releasees").

Alliance also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides Koch and the Releasees a 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 Koch 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.

7.2. Koch's Release of Alliance

Koch 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, and/or with respect to the Products.

8. 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, or as to the Products, then Koch shall have no further obligations pursuant to this Settlement Agreement.

9. 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 Koch: Bao M. Vu, Esq.
Stoel Rives LLP
1 Montgomery St. Suite 3230
San Francisco, CA 94104

For Alliance: Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., 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.

10. 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

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

12. ENTIRE AGREEMENT

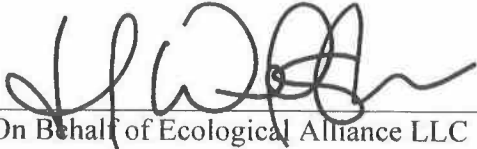
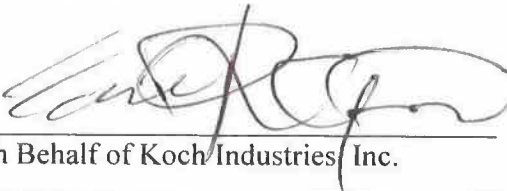
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

13. MODIFICATION

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

14. 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;">AGREED TO:</p> <p>Date: January <u>2</u>, 2025</p> <p>By:  On Behalf of Ecological Alliance LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: January <u>10</u>, 2025</p> <p>By:  On Behalf of Koch Industries Inc.</p>
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