

SETTLEMENT AGREEMENT

AG Notice Nos. 2024-02196 and 2024-02197

1. INTRODUCTION

1.1 Epps and ULINE, Inc.

This settlement agreement (Settlement Agreement) is entered into by and between Jay Epps (Epps) and ULINE, Inc. (Settling Entity) with Epps and the Settling Entity referred to as the “Parties.” Epps is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Pursuant to California Health & Safety Code §§25249.5, *et seq.* (Proposition 65), the Settling Entity is a responsible party selling the products at issue set forth in subsection 1.3 below to California consumers.

The Parties have agreed, for the purposes of this Settlement Agreement, that the entity responsible for the import, distribution, sale and/or otherwise facilitation for sale in California of lead-based soldering wire and lead tape on uline.com is the Settling Entity.

1.2 General Allegations

Epps alleges that the Settling Entity manufactures, imports, distributes, sells and/or otherwise facilitate for sale in California lead tape and soldering wire containing lead, and that it does so without providing the health hazard warning required by Proposition 65 for consumer exposures to lead. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products covered by this Settlement are lead-based soldering wire (including kits containing such items) and lead tape and are offered for sale on uline.com to businesses,

consumers and other citizens in California (hereinafter referred to as the “Product” or “Products”).

1.4 Notices of Violation

On or about May 31, 2024, Epps mailed to the Settling Entity, and certain requisite public enforcement agencies two 60-Day Notices of Violation, alleging that it violated Proposition 65 when it failed to warn customers or consumers in California that soldering wire (including kits containing such items) and lead tape expose users to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the May 31, 2024 Notices (hereinafter referred to as the “the Notices”).

1.5 No Admission

The Settling Entity denies the material, factual and legal allegations contained in the Notices and maintains that all Products it sold and distributed in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by the Settling Entity 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 the Settling Entity of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean October 4, 2024.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Injunctive Relief

The Settling Entity agrees to provide the requisite health hazard warning as set forth in subsections 2.3 below for each Product unless it is reformulated.


2.2 Reformulation Standards

A "Reformulated Product": (a) contain lead in concentrations that do not exceed 90 parts per million (ppm), equivalent to 0.009%, in any exterior parts analyzed pursuant to U.S. Environmental Protection Agency (EPA) testing methodologies 3050B and 6010B; and (b) yield a result of no more than 1.0 micrograms of lead when sampled according to NIOSH 9100 protocol and analyzed according to EPA 6010B. In addition to the above test methodologies, the Settling Entity may use equivalent methodologies utilized by a state or federal agency in the United States to determine lead content in a solid substance or the amount of the bioavailability of lead through a wipe test, respectively.

2.3 Clear and Reasonable Warnings

For Products that are not "Reformulated Products" and are sold on uline.com to California consumers after the Effective Date, Settling Entity shall provide clear and reasonable warnings for all units of the Products offered for sale on uline.com and sold to any purchaser with a shipping address in California. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

(a) Warning. The warning shall consist of the following statement or other substantially similar language that is in compliance with Proposition 65 (Warning):

 **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 information go to www.P65Warnings.ca.gov

(b) **Short-Form Warning.** Products sold on uline.com may use the following short-form warning as set forth in this Section 2.3 (Short-Form Warning) so long as it is allowed under Proposition 65's implementing regulations:

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

(c) **Foreign Language Requirement.** The Settling Entity shall comply with the requirements set forth in 27 California Code of Regulations §25602(d) if and to the extent it applies to any sale of any of the Products to any purchaser with a California shipping address.


2.4 Stream of Commerce

There shall be no obligation to provide warnings for Products that as of the Compliance Date were already in the stream of commerce, which includes product already ordered from a manufacturer or supplier, or that were part of Settling Entity's physical inventory.

2.5 On-Product Warnings

The Settling Entity shall affix a warning to the label or otherwise directly on each unit of the Product or the immediate product packaging sold online to consumers in California. For the purpose of this Settlement Agreement, "label" means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning language shall consist of either the Warning, or the Short-Form Warning described above in subsection 2.3(a) or (b), respectively, and be consistent with §2.3(c) above if it applies.

2.6 Internet Warnings

For any of the Products that are not Reformulated Products pursuant to Section 2.2 and are offered for sale on uline.com to California consumers after the Effective Date, except those described in Section 2.4, such online Product listings shall contain a Warning or Short-Form Warning (as set forth above) which is displayed to the purchaser prior to completion of the transaction without requiring the potential buyer to use considerable effort to be made aware of the health hazard advisory. The warning or a clearly and reasonably marked hyperlink to the warning using the signal word “**Warning**” or “**Product Warning**” given in conjunction with the online sale of the Products may appear either: (a) prominently placed on a webpage in which the Product’s photograph, price, or “add to cart” section are displayed; (b) on the same webpage as the order form for the Product; or (c) on any webpage displayed to the purchaser during the checkout process and prior to its completion for any purchaser with a California shipping address. The symbol “” may be placed adjacent to the signal word. The internet warning may use the Short-Form Warning content described in subsection 2.3(b) if it is allowed by Proposition 65’s implementing regulations.

2.7 Option to Delist

On or before the Compliance Date, the Settling Entity may, at its option, comply with the injunctive commitments set forth in Sections 2.3 through 2.6 above by delisting a Product from uline.com such that the item is then unavailable in general or for online sale for shipment to an address in California. If it does so, the previously delisted Product may be reinstated for sale online to California consumers if it complies with Sections 2.1 through 2.6 prior to the date of such relisting.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Fines

Pursuant to Health & Safety Code §25249.7(b), and in settlement of all claims alleged in the notice, the Settling Entity agrees to pay a total of \$4,000 in civil fines. This payment will be allocated in accordance with Health & Safety Code §25249.12(c)(1) and (d), with 75% of the penalty amount paid to the Office of Environmental Health Hazard Assessment (OEHHA) and the remaining 25% of the penalty amount paid to and retained by Epps.

The Settling Entity will deliver its civil penalty payment to the address in subsection 3.3 by overnight courier, with a tracking number, or through an automatic electronic transfer such that payment is received by Epps' counsel within before twenty-one (21) days of the Effective Date. For non-electronic payments the Settling Entity shall provide two checks made payable to: (a) "OEHHA" in the amount of \$3,000; and (b) "Jay Epps" in the amount of \$1,000. Thereafter, Epps' counsel shall send the portions of the penalties paid by the Settling Entity to OEHHA and Epps.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Epps and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Settlement Agreement had been settled. Shortly after the other settlement terms had been finalized, the Settling Entity expressed a desire to resolve Epps' fees and costs. The Parties then negotiated a resolution of the compensation due to Epps' counsel under general contract principles, Proposition 65 implementing regulation for fee awards at 11 California Code of Regulations §3201 and/or the private attorney general doctrine codified at California Code of Civil Procedure §1021.5. For all work performed

through the mutual execution of this agreement, the Settling Entity shall reimburse Epps' counsel \$33,500. The Settling Entity will deliver its payment to the address in subsection 3.3 within twenty-one days of the Effective Date by overnight courier, with a tracking number, or through an automatic electronic transfer. The reimbursement shall cover all fees and costs incurred by Epps investigating, bringing this matter to the Settling Entity's attention and negotiating a settlement of the matter in furtherance of the public interest.

3.3 Payment Address and Effect of Non-Payment

All non-electronic payments required by this Settlement Agreement shall be delivered to the following address:

Chanler, LLC
Attn: Proposition 65 Controller
72 Huckleberry Hill Road
New Canaan, CT 06840

Should the payments due under Section 3 not clear within two business days from the Effective Date, then this Settlement Agreement shall be null and void.

4. CLAIMS COVERED AND RELEASED

4.1 Epps' Release of the Settling Entity

This Settlement Agreement is a full, final and binding resolution between Epps, as an individual (and not on behalf of the public yet furthers its health interest), and the Settling Entity, of any violation of Proposition 65 that was or could have been asserted by Epps on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against the Settling Entity, and its past, current, and future direct and indirect parents, subsidiaries, affiliated entities under common ownership, predecessors, successors, directors, officers, managers, shareholders, members, employees, agents, assignees, and attorneys, as well

as those who purchased the Products on uline.com (Releasees) based on their alleged or actual failure to warn about alleged exposures to lead contained in the Products that were sold and/or offered for sale in California by the Settling Entity through uline.com before the Effective Date, as alleged in the Notices.

In further consideration of the promises and agreements herein contained, Epps as an individual and not on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, 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 exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to lead in the Products, sold and/or offered for sale by the Settling Entity, before the Effective Date, against the Settling Entity and the Releasees.

The Parties further understand and agree that this subsection 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors, importers or suppliers who sold the Products to the Settling Entity. Nothing in this subsection affects Epps' right to commence or prosecute an action under Proposition 65 against a releasee that does not involve the Products that were sold and/or offered for sale in California by the Settling Entity.

4.2 The Settling Entity's Release of Epps

The Settling Entity, on behalf of themselves, their past, current and future agents, representatives, attorneys, successors, and/or assignees, hereby waive any and all claims against Epps and his attorneys and other representatives, for any and all actions taken or statements

made (or those that could have been taken or made) by Epps and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 in connection with the Notices or Products.

4.3 California Civil Code § 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Epps on behalf of himself only, on one hand, Settling Entity, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through 60 days after the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5. SEVERABILITY

If, subsequent to its execution, 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.

6. GOVERNING LAW & ENFORCEMENT

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 if any of the provisions of

this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then the Settling Entity shall provide written notice to Epps of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve the Settling Entity from any obligation to comply with any other applicable state or federal law or regulation.

The Parties agree that if OEHHA changes any of its applicable regulations, including its warning regulations, then the Settling Entity may either conform with the revised regulations or continue to conform with the terms provided in this Settlement Agreement if the new implementing regulations so allow.

7. NOTICE

Unless specified herein, all correspondence, notices and service of process required to be provided pursuant to this Settlement Agreement shall be in writing and: (a) personally delivered; (b) sent by first-class (registered or certified mail) return receipt requested; (c) sent by a recognized overnight courier to any party by the other party at the following addresses; or (d) electronically transmitted to one party by the other party at the following addresses:

For the Settling Entity:

ULINE, Inc.

*Carol Brophy
Dennis Raglin
STEPTOE LLP
633 W 5th Street, Suite 1900
Los Angeles, CA 90211
cbrophy@steptoe.com
draglin@steptoe.com*

With a Copy To:

*Patrick Milne
Senior Corporate Counsel
ULINE
12575 Uline Drive
Pleasant Prairie, WI 53158*

For Epps:

Proposition 65 Coordinator
Chanler, LLC
72 Huckleberry Hill Road
New Canaan, CT 06840
clifford@chanlerllc.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.

8. COUNTERPARTS; FACSIMILE AND 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.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

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

10. MODIFICATION

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

11. AUTHORIZATION

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

AGREED TO:

Date: October 1, 2024

By: Jay Epps

AGREED TO:

Date: September 30, 2024

By: Eric Blanchard
Eric Blanchard
General Counsel
ULINE