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8 Attorneys for Plaintiff
9 SUSAN DAVIA
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FILED

MAY 25 2022

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: J. Berg, Deputy J Berg

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,

Plaintiff,

v.

MYTAGALONGS, INC., BED BATH &
BEYOND INC. and DOES 1-150,

Defendants.

Case No. CIV 2000229

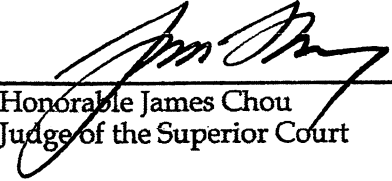
**JUDGMENT AS TO DEFENDANT
MYTAGALONGS, INC. ON PROPOSITION
65 SETTLEMENT**

Action Filed: January 17, 2020
Trial Date: None assigned

1 In the above-entitled action, Plaintiff Susan Davia and Defendant Mytagalongs, Inc. having
2 agreed through their respective counsel that a judgment be entered pursuant to the terms of the
3 Consent to Judgment Settlement Agreement ("Agreement") entered into by the parties in resolution
4 of this Proposition 65 action, and following the issuance of an order approving the parties'
5 settlement of remedial action, civil penalties and attorney fee and cost reimbursement agreements
6 on this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health &
7 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in
8 accordance with the terms of the two settlement agreements attached hereto as Exhibit A. By
9 stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of
10 Civil Procedure § 664.6.

11 IT IS SO ORDERED.

12 Dated: 05/25/22



Honorable James Chou
Judge of the Superior Court

EXHIBIT A

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Attorneys for Plaintiff
SUSAN DAVIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,
Plaintiff,

v.

MYTAGALONGS, INC., BED BATH &
BEYOND INC. and DOES 1-150,
Defendants.

Case No. CIV2000229
**ATTORNEY FEE AND COST
REIMBURSEMENT SETTLEMENT
AGREEMENT**
C.C.P. Section 664.5, C.C.P. Section 1021.5
Action Filed: January 17, 2020
Trial Date: None Assigned

1 **1. BACKGROUND**

2 **1.1 The Parties**

3 This settlement agreement ("Agreement" or "Settlement Agreement") is entered into by and
4 between plaintiff Susan Davia ("Davia"), on the one hand, and defendants Mytagalongs, Inc.
5 ("Mytagalongs") on the other hand, with Davia and Mytagalongs collectively referred to as the
6 "Parties."

7 **1.2 Section 664.6 Settlement**

8 The Parties stipulate and agree that this Agreement is and shall be considered a written
9 stipulation to settlement of a dispute pursuant to C.C.P. Section 664.6.

10 **1.3 Scope of Agreement**

11 Davia brought Marin County Superior Court action CIV2000229 ("Action") to enforcer her
12 claims that Mytagalongs and Bed Bath & Beyond, Inc. participated in the manufacture, distribution
13 and/or sale, in the State of California, of luggage tags and travel accessories with vinyl/PVC
14 components that exposed users to di(2-ethylhexyl)phthalate ("DEHP") and diisononyl phthalate
15 ("DINP") without first providing a "clear and reasonable warning" under Proposition 65. In a
16 separate Consent to Judgment Settlement Agreement ("Consent Judgment"), the Parties resolved
17 all issues in that Action except for the amount of reimbursement, if any, of Davia's reasonable
18 prevailing party fees and costs. In Section 4.3 of the Consent Judgment (Reimbursement of Davia's
19 Fees and Costs), the Parties stipulated Davia is the prevailing party in that Action and agreed to
20 resolve the issue of Davia's fee/cost reimbursement by a mediation/arbitration procedure. This
21 Agreement represents the resolution of the fee/cost reimbursement issue pursuant to Section 4.3 of
22 the Consent Judgment and reflects the terms of agreement for such fee/cost reimbursement to
23 counsel for Davia.

24 **1.4 No Admission**

25 This Agreement resolves claims that are disputed by Mytagalongs. The Parties enter into
26 this Agreement pursuant to a full, final and binding settlement of any and all fee/cost
27 reimbursement claims between the Parties for the purpose of avoiding prolonged resolution and
28 mutually increased fees and costs. Nothing in this Agreement shall be construed as an admission

1 by Mytagalongs of any fact, finding, issue of law, or violation of law, nor shall compliance with this
2 Agreement constitute or be construed as an admission by Mytagalongs of any fact, finding,
3 conclusion, issue of law, or violation of law, all of which are specifically denied by Mytagalongs.
4 However, notwithstanding the foregoing, this section shall not diminish or otherwise affect
5 Mytagalongs' obligations, responsibilities, and duties under this Agreement.

6 **1.5 Consent to Jurisdiction**

7 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
8 Court has jurisdiction over Mytagalongs as to this Agreement, has jurisdiction to enforce the
9 Agreement until performance in full of its terms and to enter judgment on this Agreement and that
10 venue for any proceeding to enforce this Agreement or enter judgment thereon is proper in the
11 County of Marin.

12 **2. MONETARY PAYMENTS**

13 **2.1 Reimbursement of Davia's Fees and Costs**

14 In consideration for resolution of Davia's right to claim reimbursement of all of her
15 reasonable fees and costs incurred as a result of prosecution of the Action, in consideration for
16 avoidance of the mutual accrual of additional fees and cost through a potentially prolonged and
17 expensive binding arbitration procedure, and consistent with the private attorney general
18 doctrine codified at California Code of Civil Procedure section 1021.5, Mytagalongs and its
19 counsel, Manning & Kass, Ellrod, Ramirez, Trester LLP, hereby stipulate and agree to pay
20 Davia's counsel the amount of \$107,684.35 as compromise reimbursement for all fees and costs
21 incurred investigating, litigating and enforcing the Action and participating in this resolution
22 procedure (hereafter, "Payment").

23 **2.2 Payment Procedures**

24 Payment shall be made payable to "Sheffer Law Firm" (Memo line "Prop 65 Fees & Costs,
25 2018-02201") and shall be delivered to plaintiff's counsel at the following address:

26 Sheffer Law Firm
27 Attn: Proposition 65 Controller
28 232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

1 Payment shall be made within ten (10) days of full execution of this Agreement. Mytagalongs
2 and its counsel, Manning & Kass, Ellrod, Ramirez, Trester LLP, shall be liable for payment of
3 interest, at a rate of 10% simple interest, for any amount of the Payment not received by the
4 Sheffer Law Firm within two business days of the due date for Payment.

5 Should Sheffer Law Firm receive Payment before the Court has approved the Consent
6 Judgment, Sheffer Law Firm agrees to and shall keep the entirety of Payment in Trust for payor
7 until such time as the Court approves the Consent Judgment. In such case, the Sheffer Law
8 Firm shall continue to hold Payment in trust until the Court enters an order approving the
9 Consent Judgment. If the Court does not approve the Consent Judgment within 180 days of
10 submission of the Consent Judgment to the Court for approval, the Sheffer Law Firm shall
11 return all Payment funds to the payor.

12 **2.3 Delayed or Non-Payment of Civil Penalties or Attorney Fees**

13 While the obligations of this Agreement are binding upon execution, the Release of
14 Mytagalongs shall not become effective until after Payment has been made, all funds have cleared
15 and the Court has approved the Consent Judgment. While the obligations of this Agreement are
16 binding upon execution, the parties stipulate and agree that Davia retains the right to terminate this
17 Agreement, and to terminate her agreement to the Consent Judgment before its approval by the
18 Court, if Payment is not delivered to plaintiff within (10) days of full execution of this Agreement.

19 **3. RELEASES**

20 **3.1 Davia's Release of Mytagalongs and Bed Bath & Beyond**

21 **3.1.1** This fee/cost reimbursement settlement agreement is a full, final and binding
22 resolution between Davia and Mytagalongs of any prevailing party fee and/or cost recovery that
23 was or could have been asserted by Davia on behalf of herself, her representatives or attorneys,
24 against Mytagalongs and each of its directors, officers, employees and attorneys ("Releasees"),
25 based on her prevailing in Marin County Superior Court action CIV 2000229.

26 **4. SEVERABILITY**

27 If any of the provisions of this Agreement are found by a court to be unenforceable, the
28

1 validity of the enforceable provisions remaining shall not be adversely affected, unless the Court
2 finds that any unenforceable provision is not severable from the remainder of the Agreement.

3 **5. GOVERNING LAW**

4 The terms of this Agreement shall be governed by the laws of the State of California.

5 **6. MODIFICATION**

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

7 **7. ENTIRE AGREEMENT**

8 This Agreement contains the sole and entire agreement and understanding of the Parties
9 with respect to the fee/cost reimbursement subject matter hereof, and any and all prior discussions,
10 negotiations, commitments, and understandings related hereto. No representations, oral or
11 otherwise, express or implied, other than those contained herein have been made by any Party
12 hereto. No supplementation, modification, waiver, or termination of this Agreement shall be
13 binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of
14 this Agreement shall be deemed or shall constitute a waiver of any of the other provisions, whether
15 or not similar, nor shall such waiver constitute a continuing waiver

16 **8. ATTORNEY'S FEES**

17 Should Davia prevail on any motion, application or other proceeding to enforce a violation
18 of this Agreement, or to enter judgment upon this Agreement, she shall be entitled to her
19 reasonable attorney fees and costs incurred as a result of such motion, order or application,
20 consistent with C.C.P. § 1021.5.

21 **9. NEUTRAL CONSTRUCTION**

22 This Agreement was subject to revision and modification by the Parties and has been
23 accepted and approved as to its final form by all Parties and their counsel. Any uncertainty or
24 ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the
25 manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute
26 or rule of construction providing that ambiguities are to be resolved against the drafting Party
27 should not be employed in the interpretation of this Agreement and, in this regard, the Parties
28 hereby waive California Civil Code Section 1654.

1 **10. COUNTERPARTS, FACSIMILE SIGNATURES**

2 This Agreement may be executed in counterparts and by facsimile or portable document
3 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
4 shall constitute one and the same document.

5 **11. AUTHORIZATION**

6 The undersigned are authorized to execute this Agreement on behalf of their respective
7 party and have read, understood, and agree to all of the terms and conditions of this Agreement.

8 **IT IS SO AGREED**

<p>Dated: March __, 2022</p> <p>_____ Jeff Orloff, V.P. Finance Mytagalongs, Inc.</p>	<p>Dated: March __, 2022</p> <p>_____ Susan Davia</p>
<p>Dated: March __, 2022</p> <p>_____ David V. Roth, Esq. Manning & Kass, Ellrod, Ramirez, Trester LLP</p>	

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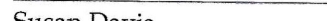
The undersigned are authorized to execute this Agreement on behalf of their respective party and have read, understood, and agree to all of the terms and conditions of this Agreement.

IT IS SO AGREED


Dated: March 9, 2022


Jeff Orloff, V.P. Finance
Mytagalongs, Inc.

Dated: March __, 2022


Susan Davia

Dated: March 9, 2022


David V. Roth, Esq.
Manning & Kass, Ellrod, Ramirez,
Trester LLP

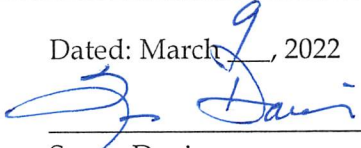
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<p>Dated: March __, 2022</p> <p>_____ David V. Roth, Esq. Manning & Kass, Ellrod, Ramirez, Trester LLP</p>	

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4 Attorneys for Plaintiff
5 SUSAN DAVIA

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 MYTAGALONGS, INC., BED BATH &
BEYOND INC. and DOES 1-150,

16 Defendants.
17

Case No. CIV2000229

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: January 17, 2020
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This consent to judgment settlement agreement (“Agreement” or “Settlement Agreement”)
4 is entered into by and between plaintiff Susan Davia (“Davia”), on the one hand, and defendants
5 Mytagalongs, Inc. (“Mytagalongs”) and Bed Bath & Beyond, Inc. (“Bed Bath & Beyond”), on the
6 other hand, with Davia, Mytagalongs and Bed Bath & Beyond collectively referred to as the
7 “Parties.”

8 **1.2 Davia**

9 Davia is an individual residing in the State of California who seeks to promote awareness of
10 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
11 substances contained in consumer products.

12 **1.3 Mytagalongs and Bed Bath & Beyond**

13 Each Mytagalongs and Bed Bath & Beyond is a person in the course of doing business for
14 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
15 Code §§ 25249.6 *et seq.* (“Proposition 65”).

16 **1.4 General Allegations**

17 Davia alleges that Mytagalongs and Bed Bath & Beyond participated in the manufacture,
18 distribution and/or sale, in the State of California, of luggage tags and accessories with vinyl/PVC
19 components that exposed users to di(2-ethylhexyl)phthalate (“DEHP”) and diisononyl phthalate
20 (“DINP”) without first providing a “clear and reasonable warning” under Proposition 65. DEHP is
21 listed as a carcinogen and reproductive toxin pursuant to Proposition 65. DINP is listed as a
22 carcinogen pursuant to Proposition 65. DEHP and DINP shall hereafter collectively be referred to
23 hereinafter as the “Listed Chemical.”

24 **1.5 Notices of Violation**

25 On December 6, 2018, Davia served Mytagalongs, Bed Bath & Beyond and various requisite
26 public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided
27 public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code §
28 25249.6 for failing to warn consumers of the presence of the Listed Chemical found in the luggage

1 tag Covered Products (defined hereafter) sold in California (AG Notice 2018-02201). The December
2 6, 2018, 60-Day Notice of Violation served on Mytagalongs and Bed Bath & Beyond shall be referred
3 to herein as the "Notice."

4 On March 27, 2019, Davia served Mytagalongs, Bed Bath & Beyond and various requisite
5 public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation"
6 that provided public enforcers and the noticed entities with notice of alleged violations of Health &
7 Safety Code § 25249.6 for failing to warn consumers of the presence of the Listed Chemical found in
8 the luggage tag, travel pouch and travel bottles Covered Products (defined hereafter) sold in
9 California (AG Notice 2019-00588). The March 27, 2019, 60-Day Notice of Violation served on
10 Mytagalongs and Bed Bath & Beyond shall be referred to herein as the "Supplemental Notice."

11 On April 16, 2021, Davia served Mytagalongs and various requisite public enforcement
12 agencies with a document entitled "Second Supplemental 60-Day Notice of Violation" that
13 provided public enforcers and the noticed entities with notice of alleged violations of Health &
14 Safety Code § 25249.6 for failing to warn consumers of the presence of the Listed Chemical found in
15 the beach kit and compact travel bottles Covered Products (defined hereafter) sold in California
16 (AG Notice 2021-00888). The April 16, 2021, 60-Day Notice of Violation served on Mytagalongs
17 shall be referred to herein as the "Second Supplemental Notice."

18 Mytagalongs received the Notice, Supplemental Notice and Second Supplemental Notice.
19 The Parties represent that, as of the date this Agreement is executed, to the best of their knowledge,
20 no public enforcer has commenced or is diligently prosecuting a Proposition 65 enforcement action
21 against Mytagalongs or Bed Bath & Beyond related to the Listed Chemical in the Covered Products,
22 as identified in the Notice, Supplemental Notice or Second Supplemental Notice.

23 **1.6 Complaint**

24 On January 17, 2020, Davia filed a Complaint in the Superior Court of the State of California
25 for the County of Marin, Case No. CIV2000229, alleging violations by Mytagalongs and Bed Bath &
26 Beyond of Health and Safety Code § 25249.6 based on the alleged exposures to the Listed Chemical
27 in the Covered Products.

1 On December 9, 2021, pursuant to leave of Court granted in its order dated December 2,
2 2021, Davia filed a First Amended Complaint in the Superior Court of the State of California for the
3 County of Marin, Case No. CIV2000229. The First Amended Complaint also alleges violations by
4 Mytagalongs and Bed Bath & Beyond of Health and Safety Code § 25249.6 based on the alleged
5 exposures to the Listed Chemical in the Covered Products and incorporates the fact of the April 16,
6 2021, Second Supplemental 60-Day Notice of Violation and the additional exemplar products
7 contained therein (the “Action”).

8 **1.7 No Admission**

9 This Agreement resolves claims that are denied and disputed by Mytagalongs and Bed Bath
10 & Beyond. The Parties enter into this Agreement pursuant to a full, final and binding settlement of
11 any and all claims between the Parties for the purpose of avoiding prolonged litigation. Each
12 Mytagalongs and Bed Bath & Beyond denies the material factual and legal allegations contained in
13 the Notice, maintains that it did not knowingly or intentionally expose California consumers to the
14 Listed Chemical through the reasonably foreseeable use of the Covered Products and further
15 contends that all Covered Products it has manufactured, distributed and/or sold in California have
16 been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed
17 as an admission by Mytagalongs of any fact, finding, issue of law, or violation of law, nor shall
18 compliance with this Agreement constitute or be construed as an admission by Mytagalongs of any
19 fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by
20 Mytagalongs. However, notwithstanding the foregoing, this section shall not diminish or
21 otherwise affect Mytagalongs’ obligations, responsibilities, and duties under this Agreement.

22 **1.8 Consent to Jurisdiction**

23 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
24 Court has jurisdiction over Mytagalongs as to the allegations in the Notice received from Davia,
25 and this Agreement and that venue is proper in County of Marin. The Parties further stipulate that
26 this Agreement shall be deemed made pursuant to Code of Civil Procedure Section 664.6, and that
27 the Marin County Superior Court has jurisdiction over the parties to enforce the Agreement until
28 performance in full of its terms.

1 **2. DEFINITIONS**

2 **2.1** The term “Product” or “Covered Product” shall mean all Mytagalongs brand
3 luggage tags and travel accessories with vinyl/PVC components, including, but not limited to
4 Mytagalongs Set of 2 Luggage Loops (all colors), Mytagalongs Waterproof Pouch/Dry Stash
5 (068528568952), Mytagalongs Silicone Travel Bottles Case (068528554214), Mytagalongs Beach Kit
6 (822279013068) and Mytagalongs Compact Travel Bottles (822279001645).

7 **2.2** The term “Phthalate Free” Covered Product shall mean that each vinyl component of
8 each Covered Product contains less than or equal to 1,000 parts per million (“ppm”) of di(2-
9 ethylhexyl phthalate) (“DEHP”), dibutyl phthalate (“DBP”), diisononyl phthalate (“DINP”),
10 diisodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”)
11 as determined test results using Environmental Protection Agency (“EPA”) testing methodologies
12 3580A and 8270C.

13 **2.3** “Effective Date” shall mean July 1, 2021.

14 **3. INJUNCTIVE RELIEF**

15 **3.1 Product Reformulation Commitment**

16 **3.1.1** No later than the Effective Date, Mytagalongs shall provide the Phthalate Free
17 phthalate concentration standards of Section 2.2 to its then-current vendors of any Covered Product
18 and instruct such entities not to incorporate any raw or component materials that do not meet the
19 Phthalate Free concentration standards of Section 2.2 into any Covered Product. Mytagalongs shall
20 maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards
21 for two (2) years after the Effective Date and shall produce such copies to Davia within fifteen (15)
22 days of receipt of reasonable request made in writing from Davia.

23 **3.1.2** After the Effective Date, Mytagalongs shall provide the Phthalate Free phthalate
24 concentration standards of Section 2.2 to any New Vendors of any Covered Product and instruct
25 such entities not to incorporate any raw or component materials that do not meet the Phthalate Free
26 concentration standards of Section 2.2 into any Covered Product. “New Vendors” means vendors
27 of Covered Products from whom Mytagalongs was not obtaining Covered Products as of the
28 Effective Date. Prior to purchase and acquisition of any Covered Product from any New Vendor,


1 Mytagalongs shall obtain a written confirmation and accompanying laboratory test result from the
2 New Vendor demonstrating compliance with the Phthalate Free phthalate concentration standard
3 in all materials comprising the Covered Product. For two (2) years after the Effective Date, for
4 every Covered Product Mytagalongs manufactures, causes to be manufactured, orders, causes to be
5 ordered or otherwise obtains from a New Vendor after the Effective Date, Mytagalongs shall
6 maintain copies of all testing of such Covered Product demonstrating compliance with this section,
7 shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration
8 standards and shall produce such copies to Davia within thirty (30) days of receipt of reasonable
9 request made in writing from Davia.

10 **3.1.3** As of September 1, 2021, Mytagalongs shall not manufacture, cause to be
11 manufactured, order or cause to be ordered any Covered Product that is not Phthalate Free. For
12 every Covered Product Mytagalongs manufactures, causes to be manufactured, orders, causes to be
13 ordered or otherwise obtains after the Effective Date, Mytagalongs shall maintain copies of all
14 testing of such Covered Products, or vinyl component thereof, demonstrating compliance with this
15 section, shall maintain copies of all vendor correspondence relating to the Phthalate Free
16 concentration standards of Section 2.2 and shall produce such copies to Davia within thirty (30)
17 days of receipt of reasonable request made in writing from Davia.


18 **3.2** Previously Distributed Covered Products.

19 **3.2.1** Customer Notification - No later than the Effective Date, Mytagalongs shall send a
20 letter, electronic or otherwise ("Notification Letter") to: (1) each retailer or distributor in California
21 to which it, after January 1, 2018, supplied any Covered Product and (2) any other retailer or
22 distributor in California that Mytagalongs reasonably understands or believes has any inventory of
23 Covered Products. The Notification Letter shall advise the recipient that Covered Product contains
24 DEHP and DINP, chemicals known to the State of California to cause cancer and birth defects or
25 other reproductive harm. The Notification letter shall direct recipient that all Covered Product
26 must either have a label attached to the packaging or on a shelf sign proximate to the display of
27 Covered Product, expressly referring to the Covered Product, which label or sign contains one of
28 the following warnings, before it is sold in the California market or to a California customer. The


Notification Letter shall include a sheet of white background, adhesive Proposition 65 Warning stickers with the following warning in no less than Book Antiqua, point 9 font (or its equivalent):

 **WARNING:** This product can expose you to chemicals, including di(2-ethylhexyl)phthalate (DEHP) and diisononyl phthalate (DINP), that are 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;

or

 **WARNING:** This product can expose you to di(2-ethylhexyl)phthalate (DEHP) and diisononyl phthalate (DINP), chemicals 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;

or, only for any Covered Products with the warning statement contained on the product, the product label, or the immediate packaging of the Covered Product itself,

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

The Notification Letter shall be sent with return receipt requested. The Notification Letter shall request written confirmation from the recipient, within 15 days of receipt, that all such inventory for California sale has been, or will be, labelled with the warning language identified in this section.

3.2.2 Mytagalongs shall maintain records of compliance correspondence, inventory reports or other communication confirming compliance with § 3.2.1 for three (3) years from the Effective Date and shall produce copies of such records to Davia within thirty (30) days of receipt of reasonable request made in writing from Davia.


3.3 Existing Inventory Product Labels

For any inventory of Covered Products obtained by Mytagalongs prior to January 1, 2019, Mytagalongs shall not sell or ship any of such Covered Product unless the Covered Product is demonstrated to be Phthalate Free or Mytagalongs has complied with the warning requirements set forth in this Section 3.3. Each warning communicated by Mytagalongs for any Covered Product


1 shall be communicated in such a way as to render it likely to be read and understood by an
2 ordinary individual under customary conditions *before* purchase or use.

3 **3.3.1 Covered Product Label.**


4 For all Covered Products that are not Phthalate Free, Mytagalongs shall affix a label to the
5 product, the product label, or the immediate packaging of the Covered Product itself that states:

6
7  **WARNING:** This product can expose you to
8 chemicals, including di(2-ethylhexyl)phthalate (DEHP) and diisononyl phthalate (DINP), that are
9 known to the State of California to cause cancer and
10 birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov;

11 or

12  **WARNING:** This product can expose you to
13 di(2-ethylhexyl)phthalate (DEHP) and diisononyl
14 phthalate (DINP), chemicals known to the State of
California to cause cancer and birth defects or other
15 reproductive harm. For more information go to
www.P65Warnings.ca.gov;

16 or,

17  **WARNING:** Cancer and Reproductive Harm -
18 www.P65Warnings.ca.gov

19 The label shall be prominently affixed with such conspicuousness as compared with other words,
20 statements, designs, or devices, as to render it likely to be read and understood by an ordinary
21 individual under customary conditions *before* purchase or use.

22 **3.3.3 Catalog Warning**

23 As a material term of this Agreement, Mytagalongs represents it does not utilize a catalog to
24 sell Covered Products. Mytagalongs shall therefore have no catalog warning requirements under
25 this Agreement.
26
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1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalty**

3 As a condition of settlement of all the claims referred to in this Agreement, Mytagalongs
4 shall pay a total of \$10,000 in civil penalties in accordance with California Health & Safety Code §
5 25249.12(c)(1) & (d).

6 **4.2 Augmentation of Penalty Payments**

7 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
8 upon Mytagalongs and its counsel for accurate, good faith reporting to Davia of the nature and
9 amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers
10 and presents to Mytagalongs evidence that the Covered Products have been distributed by
11 Mytagalongs in sales volumes materially different (more than 20%) than those identified by
12 Mytagalongs prior to execution of this Agreement, then Mytagalongs shall be liable for an
13 additional penalty amount of \$10,000.00. Mytagalongs shall also be liable, in accordance with the
14 requirements of Code of Civil Procedure section 1021.5 for any reasonable, additional attorney fees
15 expended by Davia in discovering such additional retailers or sales. Davia agrees to provide
16 Mytagalongs with a written demand for all such additional penalties and attorney fees under this
17 Section. After service of such demand, Mytagalongs shall have thirty (30) days to agree to the
18 amount of fees and penalties owing by Mytagalongs and submit such payment to Davia in
19 accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4.
20 Should this thirty (30) day period pass without any such resolution between the parties and
21 payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for
22 additional civil penalties pursuant to this Section and shall be entitled to all reasonable attorney
23 fees and costs, in accordance with the requirements of Code of Civil Procedure section 1021.5,
24 relating to such claim.

25 **4.3 Reimbursement of Davia's Fees and Costs**

26 The Parties acknowledge that Davia and her counsel declined to consider any
27 reimbursement of plaintiff's fees or costs until all other terms of the settlement were reached. The
28 Parties attempted, but were unable, to reach an accord on the compensation due to Davia and her

1 counsel under the private attorney general doctrine codified at Code of Civil Procedure ("CCP") §
2 1021.5 for all work performed through the approval of this settlement and for all work reasonably
3 to be performed in connection with the terms set forth in this Agreement. Davia and her counsel
4 assert that they are entitled to some amount of reasonable attorneys' fees and costs under the
5 prerequisites set forth by CCP § 1021.5 and defendants have disputed the nature and extent of
6 certain of plaintiff's fees and costs in this action.

7 As an alternative method to resolve plaintiff's fee and cost reimbursement for this
8 action, if any, the Parties hereby stipulate and agree to a fee and cost resolution procedure
9 through mediation and binding arbitration. For purposes of this Agreement only, the parties
10 stipulate and agree that Davia is the prevailing party in this action and the only issue remaining
11 for resolution under this Agreement and this section is the reasonable amount of plaintiff's fee
12 and cost reimbursement, if any, under the principles of C.C.P. Section 1021.5. The Parties
13 stipulate and agree that, under this mediation/arbitration procedure Davia is entitled to seek to
14 recover not only fees and costs expended in her efforts to prosecute her claims against
15 defendants and to secure this Agreement, but also those fees and costs incurred with Davia's
16 and her counsel's continuing efforts in any mediation or arbitration procedure under this
17 section ("fees on fees").

18 By no later than April 1, 2022, the Parties shall schedule a full day mediation with, at
19 plaintiff's sole discretion and selection, either Hon. Bonnie Sabraw (retired, ADR Services),
20 Hon. James McBride (retired, ADR Services), Hon. Alfred Chiantelli (retired, ADR Services) or
21 Michael Ornstil (JAMS). At the time of initial scheduling of the mediation, the selected
22 mediator shall also be advised and must agree to complete a binding arbitration of the fee cost
23 reimbursement issue if mediation does not resolve the dispute. The mediation shall be
24 scheduled to take place no later than June 1, 2022. Defendants shall be solely responsible for
25 payment of the mediation fees. Any resolution of the fee/cost reimbursement issue at
26 mediation shall be reduced to a signed, written settlement stipulation of that issue pursuant to
27 C.C.P. Section 664.6.

28 Should the Parties be unable to successfully and completely mediate the issue of

1 reimbursement of plaintiff's fees and costs by June 1, 2022, the parties shall immediately
2 schedule a binding arbitration hearing with the selected mediator to commence no later than
3 July 8, 2022. Defendants shall be solely responsible for payment of the arbitration fees. The
4 arbitration hearing shall be conducted under the arbitrator's rules for arbitration, as modified
5 only by written agreement of the Parties. The Parties, subject to the arbitrator's discretion and
6 rules, shall be permitted to submit any evidence relevant to the issue of plaintiff's reasonable
7 attorney fee and cost lodestar under the principles of C.C.P. Section 1021.5. The Parties
8 stipulate, in an effort to reduce the further accrual of additional fees or costs in this
9 mediation/arbitration procedure, that the Parties are not required to use expert witness
10 testimony to support or attack any element of plaintiff's reimbursement claim and that the
11 failure to use such an expert shall not be held against any party. To protect disclosure of
12 competition sensitive and private information, all facts, documents and other evidence
13 submitted in any fee/cost arbitration proceeding shall be and remain confidential.

14 After submission of all evidence and argument in any binding arbitration, the arbitrator
15 shall issue a written award containing a confidential explanation for the fee/cost award as well
16 as a separate, written award containing only the arbitrator's decision as to the amount of fees
17 and cost defendants are required to reimburse plaintiffs' attorneys, if any, for plaintiff's work
18 on this action. The decision of the arbitrator shall be final and binding upon all Parties. Each
19 defendant Mytagalongs and Bed Bath & Beyond shall be jointly and severally liable for
20 payment of the arbitrator's fee/cost reimbursement award, if any.

21 Full payment of the arbitration award, if any, shall be made within 30 days of service of the
22 arbitration award on counsel for defendants. Payment of any fee and cost arbitration award under
23 this Section shall be delivered to plaintiff's counsel at the following address:

24 Sheffer Law Firm
25 Attn: Proposition 65 Controller
26 232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

27 Mytagalongs and Bed Bath & Beyond shall be jointly and severally liable for payment of
28 interest, at a rate of 10% simple interest, on the full amount of the full arbitration award under

1 this Section if any amount of the award it is not received by the Sheffer Law Firm within two
2 business days of the due date for such payment.

3 **4.4 Civil Penalty Payment Procedures**

4 No later than fifteen (15) days after execution of this Agreement, Mytagalongs shall deliver
5 the civil penalty payment required by this Agreement to its counsel. Within one (1) week of receipt
6 of the settlement funds, Mytagalongs' counsel shall confirm receipt in writing to plaintiff's counsel
7 and, thereafter, hold Mytagalongs' settlement checks or payment(s) until such time as the Court
8 approves this settlement as contemplated by Section 6. Within five (5) business days of the date
9 plaintiff provides electronic mail notice to counsel for Mytagalongs that the Court has approved
10 this settlement, Mytagalongs' counsel shall deliver the civil penalty payments to plaintiff's counsel
11 as follows:

12 a civil penalty check payable to "OEHHHA" (Memo line "Prop 65 Penalties, 2018-02201"), in
13 the amount of \$7,500;

14 a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2018-02201")
15 in the amount of \$2,500; and

16 The Section 4.1 civil penalty payment shall be delivered to plaintiff's counsel at the
17 following address:

18 Sheffer Law Firm
19 Attn: Proposition 65 Controller
20 232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

21 All Section 4.2 civil penalty and attorney fee/cost payments, if any, shall be delivered to
22 plaintiff's counsel at the following address on or before the date agreed upon pursuant to that
23 section or as ordered by the Court:

24 Sheffer Law Firm
25 Attn: Proposition 65 Controller
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

26 Mytagalongs shall be liable for payment of interest, at a rate of 10% simple interest, for all
27 amounts due and owing from it under this Section that are not received by Sheffer Law Firm within
28

1 two business days of the due date for such payment.

2 **4.5 Issuance of 1099 Forms**

3 Mytagalongs shall be responsible for issuance of all required tax forms relating to its
4 payments of civil penalties.

5 **4.6 Delayed or Non-Payment of Civil Penalties**

6 While the obligations of this agreement are binding upon execution, the Release of
7 Mytagalongs shall not become effective until after all Section 4.1 civil penalty payments have been
8 made by Mytagalongs and all funds have cleared.

9 **5. RELEASES**

10 **5.1 Davia's Release of Mytagalongs and Bed Bath & Beyond**

11 **5.1.1** Except as noted hereafter, this settlement agreement is a full, final and binding
12 resolution between Davia and Mytagalongs of any violation of Proposition 65 that was or could
13 have been asserted by Davia on behalf of herself, her representatives or attorneys, against
14 Mytagalongs and Bed Bath & Beyond and each of its directors, officers, employees and attorneys
15 ("Releasees"), based on their failure to warn about alleged exposures to any Listed Chemical
16 contained in the Covered Products that were distributed or sold by Mytagalongs or Bed Bath &
17 Beyond before the Effective Date. As to Davia only, Mytagalongs' compliance with the terms of
18 this Agreement shall constitute compliance with Proposition 65 as to exposures to DINP, DIDP,
19 DEHP, DBP, BBP and DnHP in the Covered Products.

20 **5.1.2** Except as noted hereafter, in further consideration of the promises and agreements
21 herein contained, Davia on behalf of herself, her past and current representatives, heirs, successors,
22 assigns and attorneys, hereby waives all Davia's rights to institute or participate in, directly or
23 indirectly, any form of legal action and releases all claims that Davia may have, including, without
24 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
25 obligations, damages, fines or penalties limited to and arising under proposition 65 with respect to
26 the Listed Chemical in the Covered Products sold by Mytagalongs or Bed Bath & Beyond before the
27 Effective Date (collectively "claims"), against Mytagalongs and Releasees.

28 **5.1.3** Except as noted hereafter, Davia also, in her individual capacity, provides a general

1 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
2 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
3 liabilities and demands of Davia, of any nature, character or kind, known or unknown, suspected or
4 unsuspected, arising out of the subject matter of the Notice as to Covered Products sold by
5 Mytagalongs or Releasees before the Effective Date. Davia acknowledges that she is familiar with
6 section 1542 of the California civil code, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
8 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW
9 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
10 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
11 OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR
12 HER SETTLEMENT WITH THE DEBTOR OR RELEASED
13 PARTY.

14 Except as noted hereafter, Davia, in her individual capacity expressly waives and
15 relinquishes any and all rights and benefits that she may have under, or which may be conferred on
16 her by the provisions of Section 1542 of the California Civil Code as well as under any other state or
17 federal statute or common law principle of similar effect, to the fullest extent that he may lawfully
18 waive such rights or benefits pertaining to the released matters. In furtherance of such intention,
19 excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete
20 release notwithstanding the discovery or existence of any such additional or different claims or
21 facts arising out of the released matters.

22 This Section 5.1 release is expressly limited to those claims that arise under Proposition 65,
23 as such claims relate to Mytagalongs's alleged failure to warn about exposures to or identification
24 of the Listed Chemical contained in the Covered Products sold before the Effective Date as such
25 claims are identified in Ms. Davia's Proposition 65 Notice, Supplemental Notice and Second
26 Supplemental Notice to Mytagalongs.

27 The Parties further understand and agree that this Section 5.1 release shall not extend
28 upstream to any entities, other than Mytagalongs, that manufactured the Covered Products or any
29 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
30 component parts thereof to Mytagalongs.

1 The Parties further understand and agree that this Section 5.1 release, and any waiver
2 contained herein, does not release, waive or otherwise compromise Davia's right to reimbursement
3 of her attorney fees and costs as will be determined by the Parties' fee and cost resolution
4 procedure pursuant to Section 4.3 of this Agreement.

5 **5.2 Mytagalongs' Release of Davia**

6 Mytagalongs, on behalf of itself, its past and current agents, representatives, attorneys,
7 successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and
8 other representatives, for any and all actions taken or statements made (or those that could have
9 been taken or made) by Davia and her attorneys and other representatives, whether in the course of
10 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
11 respect to the Products. Mytagalongs acknowledges that it is familiar with Section 1542 of the
12 California Civil Code, which provides as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
14 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW
15 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
16 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
17 OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR
18 HER SETTLEMENT WITH THE DEBTOR OR RELEASED
19 PARTY.

20 Mytagalongs expressly waives and relinquishes any and all rights and benefits which it may
21 have under, or which may be conferred on him by the provisions of Section 1542 of the California
22 Civil Code as well as under any other state or federal statute or common law principle of similar
23 effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the
24 released matters. In furtherance of such intention, the release hereby given shall be and remain in
25 effect as a full and complete release notwithstanding the discovery or existence of any such
26 additional or different claims or facts arising out of the released matters.

25 **6. COURT APPROVAL**

26 This Agreement is effective upon execution but must also be approved by the Court. The
27 parties stipulate and agree that only Davia may move this Court for approval of this settlement and
28 entry of judgment thereon. If the Court does not approve this Agreement in its entirety, the Parties

1 shall meet and confer to determine whether to modify the terms of the Agreement and to resubmit
2 it for approval. In meeting and conferring, the Parties agree to negotiate in good faith in an effort to
3 reach agreement on any actions reasonably necessary to amend and/or modify this Agreement in
4 order to further the mutual intention of the Parties in entering into this Agreement. Davia retains
5 the right to terminate this Agreement at any time before it is approved by the Court. The
6 Agreement shall become null and void if, for any reason, it is not approved and entered by the
7 Court, as it is executed, within one year after it has been fully executed by all Parties. The Parties
8 agree that, upon Court approval, a Court judgment shall be entered on the terms of this Agreement.

9 **7. SEVERABILITY**

10 If any of the provisions of this Agreement are found by a court to be unenforceable, the
11 validity of the enforceable provisions remaining shall not be adversely affected, unless the Court
12 finds that any unenforceable provision is not severable from the remainder of the Agreement.

13 **8. GOVERNING LAW**

14 The terms of this Agreement shall be governed by the laws of the State of California.

15 **9. NOTICES**

16 When any Party is entitled to receive any notice under this Agreement, the notice shall be
17 sent by certified mail and electronic mail to the following:

18 **For Mytagalongs, Inc.:**

19 Nicole Authier, President
20 Mytagalongs, Inc.
21 5905 Kieran
Saint-Laurent, Quebec H4S 0A3

22 **With a copy to their counsel:**

23 David V. Roth, Esq.
24 Manning & Kass, Ellrod, Ramirez, Trester LLP
One California Street, Suite 900
25 San Francisco, CA 94111
dvr@manningllp.com

26 **For Davia:**

27 Proposition 65 Coordinator
28 Sheffer Law Firm

232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

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

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

11. MODIFICATION

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

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 any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. Excepting any other agreement reached pursuant to Section 4.3 of this Agreement, no other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

13. ATTORNEY'S FEES

13.1 Should either Party prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, that Party shall be entitled to her reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5.

13.2 Except as to Davia's right to reimbursement of her attorney fees and costs pursuant to Section 4.3 of this Agreement, and as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notice.

1 **13.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions
2 pursuant to law.

3 **14. NEUTRAL CONSTRUCTION**

4 Both Parties and their counsel have participated in the preparation of this Agreement and
5 this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to
6 revision and modification by the Parties and has been accepted and approved as to its final form by
7 all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement
8 shall not be interpreted against any Party as a result of the manner of the preparation of this
9 Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing
10 that ambiguities are to be resolved against the drafting Party should not be employed in the
11 interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code
12 Section 1654.

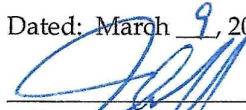
13 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

14 This Agreement may be executed in counterparts and by facsimile or portable document
15 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
16 shall constitute one and the same document.

17 **16. AUTHORIZATION**

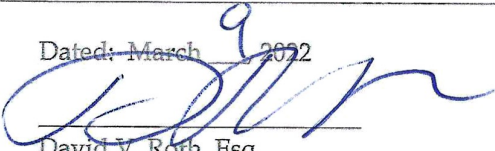
18 The undersigned are authorized to execute this Agreement on behalf of their respective
19 party and have read, understood, and agree to all of the terms and conditions of this Agreement.

20 **IT IS SO AGREED**

<p>21 Dated: March <u>9</u>, 2022</p> <p>22 </p> <p>23 _____ 24 Jeff Orloff, V.P. Finance 25 Mytagalongs, Inc.</p>	<p>21 Dated: March __, 2022</p> <p>22 _____ 23 Susan Davia</p>
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1 Approved as to form:
2
3

4 Dated: March 9, 2022
5

6 
7 David V. Roth, Esq.
8 Manning & Kass, Ellrod, Ramirez,
9 Trester LLP
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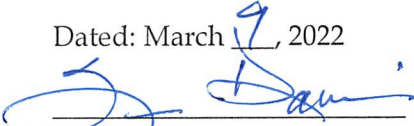
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16 shall constitute one and the same document.

17 **16. AUTHORIZATION**

18 The undersigned are authorized to execute this Agreement on behalf of their respective
19 party and have read, understood, and agree to all of the terms and conditions of this Agreement.

20 **IT IS SO AGREED**

<p>21 Dated: March __, 2022</p> <p>22</p> <p>23 _____ 24 Jeff Orloff, V.P. Finance 25 Mytagalongs, Inc.</p>	<p>21 Dated: March 9, 2022</p> <p>22  23 _____ 24 Susan Davia</p>
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