

SETTLEMENT AGREEMENT & RELEASE – BABY DELIGHT, INC.

This Settlement Agreement and Release (the “Agreement”) is between Center for Environmental Health (“CEH”) and Baby Delight, Inc. (“Baby Delight”) (together, the “Parties”).

1. INTRODUCTION

1.1. On November 20, 2012, CEH sent a “Notice of Violation of Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)” (the “Notice”), to Baby Delight, the California Attorney General, the District Attorneys of every county in the State of California, and the City Attorneys for every city in State of California with a population greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) in foam-cushioned pads for children and infants to lie on. Baby Delight distributed and/or sold such products to retailers, who then sold such products to consumers in California.

1.2. The Notice alleges that Baby Delight’s products expose people to TDCPP, a chemical known to the State of California to cause cancer, specifically those persons who inhale TDCPP released from these products, or who touch or ingest dust contaminated by TDCPP from the products. The Notice alleges that such conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65, as Baby Delight causes these exposures without first providing clear and reasonable warning to such persons regarding the carcinogenic hazards associated with TDCPP.

1.3. Baby Delight asserts that it has fewer than 10 employees and thus is exempt from Proposition 65. However, upon receipt of the Notice, Baby Delight promptly contacted CEH in an effort to resolve CEH’s claims regarding products manufactured by Baby Delight in order to

resolve any Proposition 65 liability its customers may have as a result of selling products manufactured by Baby Delight.

1.4. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding products manufactured, distributed, and/or sold by Baby Delight. By executing this Agreement, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in this or any other or future legal proceedings.

2. DEFINITIONS

2.1. "Chemical Flame Retardant" means any halogenated or phosphorous-based chemical compound used for the purpose of resisting or retarding the spread of fire. "Chemical Flame Retardant" does not include any chemical that has been rated as a Benchmark 4 chemical pursuant to Clean Production Action's GreenScreen (<http://www.cleanproduction.org/Green.Greenscreen.php>).

2.2. "Covered Products" means foam-cushioned pads for children and infants to lie on, such as infant sleepers manufactured, distributed, and/or sold by Baby Delight.

2.3. "Effective Date" means the date on which the Parties execute this Agreement.

2.4. "Treated" means the addition or application of any Chemical Flame Retardant to any polyurethane foam used as filling material in any Covered Product.

3. INJUNCTIVE RELIEF

3.1. Reformulation of Covered Products. Baby Delight shall comply with the following requirements to reformulate the Covered Products to eliminate exposures to TDCPP arising from the use of the Covered Products:

3.1.1. Sales Compliance Date. As of the Effective Date, Baby Delight shall not manufacture, or distribute, sell, or offer for sale any Covered Product in which the polyurethane foam has been Treated with any Chemical Flame Retardant, including but not limited to TDCPP.

3.1.2. Specification and Certification from Suppliers. To ensure compliance with the reformulation provisions of this Agreement, Baby Delight shall issue specifications to its suppliers of polyurethane foam requiring that the polyurethane foam has not been treated with any Chemical Flame Retardant. Baby Delight shall obtain and maintain written certifications from its suppliers of polyurethane foam confirming that all such foam received by Baby Delight after the Effective Date has not been treated with any Chemical Flame Retardant.

3.2. Market Withdrawal of Covered Products. On or before the Effective Date, Baby Delight shall have: (1) ceased shipping the Covered Products identified in the Notice as non-exclusive exemplar product (“Noticed Products”) to retail stores in California, and (ii) sent instructions to any customers offering Noticed Products for sale in California to cease doing so and either to return all unsold Noticed Products to Baby Delight for destruction or disposal or to destroy or dispose of such Noticed Products directly. Any destruction or disposal of Noticed Products shall be in compliance with all applicable laws. Within ninety (90) days after the Effective Date, Baby Delight shall certify to CEH that it has complied with this section. If there is a dispute over the implementation of these requirements, CEH and Baby Delight shall meet and confer before seeking any remedy in court.

4. SETTLEMENT PAYMENTS

4.1. In consideration of the mutual covenants and releases provided in this Agreement, Baby Delight shall pay to CEH the total sum of \$25,000.00 (twenty-five thousand dollars and no cents). This total shall be paid in the manner set forth below, with each separate check delivered to the offices of the Lexington Law Group (Attn: Mark N. Todzo), 503 Divisadero Street, San Francisco, California 94117, and shall be made payable and allocated as follows:

4.1.1. Civil Penalty. Baby Delight shall pay a total of \$2,750.00 (two thousand seven hundred and fifty dollars and no cents) as a penalty pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center for Environmental Health and shall be delivered to the Lexington Law Group not later than March 31, 2014.

4.1.2. Monetary Payment in Lieu of Civil Penalty. Baby Delight shall pay a total of \$3,750.00 (three thousand seven hundred and fifty dollars and no cents) as payment to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and protecting the public from exposures to toxic chemicals, including chemical flame retardants. CEH may also use a portion of such funds to monitor compliance with this Agreement and to purchase and test Covered Products to confirm compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental justice groups working to educate and protect the public from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH website at www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the Center for Environmental Health and shall be delivered to the Lexington Law Group not later than March 31, 2014.

4.1.3. Attorneys' Fees and Costs. Baby Delight shall pay a total of \$18,500.00 (eighteen thousand and five hundred dollars and no cents) to reimburse CEH for its reasonable attorneys' fees and costs. This payment shall be made payable to the Lexington Law Group in three (3) installments. The first installment of \$5,000.00 (five thousand dollars and no cents) shall be delivered to the Lexington Law Group not later than December 31, 2013. The second installment of \$3,500 (three thousand and five hundred dollars and no cents) shall be delivered to Lexington Law Group not later than March 31, 2014. The third installment of \$10,000 (ten thousand dollars and no cents) shall be delivered to Lexington Law Group not later than June 30, 2014.

5. ENFORCEMENT OF SETTLEMENT AGREEMENT

5.1. The Parties agree that either Party may enforce any term or condition contained in this Agreement by motion or application for an order to show cause in the Superior Court of California in Alameda County in the pending case captioned CEH v. A Baby Inc., et al. (Case No. RG-13667688; filed Feb. 15, 2013). For purposes of this Agreement, notwithstanding Section 1.3 above, the Parties agree that the Superior Court of California in Alameda County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of Alameda. Should a Party to this Agreement prevail on any motion or application to enforce the terms of this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

5.2. Enforcement Procedures. Prior to bringing any motion or application to enforce the terms of this Agreement, a Party seeking to enforce shall provide the violating Party thirty (30) days advanced written notice of the alleged violation. For alleged violations of the

reformulation or market withdrawal provisions of Section 3 above, CEH shall provide Baby Delight with a copy of any test results that purportedly support CEH's allegations concurrently with its advanced written notice. The Parties shall meet and confer during such thirty (30) day period regarding the basis for the anticipated motion or application in an attempt to resolve the disputed issues informally. Should such attempts at informal resolution fail, the Party alleging violations may file its enforcement motion or application. This Agreement may only be enforced by the Parties.

6. MODIFICATION OF SETTLEMENT AGREEMENT

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

7. CLAIMS COVERED AND RELEASE

7.1. This Agreement full, final, and binding resolution between CEH acting in the public interest and Baby Delight and Baby Delight's parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliated companies, and their successors or assigns ("Baby Delight Releasees"), and all entities to whom they distribute or sell Covered Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees including, without limitation, Toys "R" Us-Delaware, Inc. ("Downstream Releasees"), of all claims arising from any violation of Proposition 65 that have been or could have been asserted in the public interest against Baby Delight Releasees and Downstream Releasees regarding the failure to warn about exposure to TDCPP in the Covered Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

7.2. Except as otherwise provided herein, CEH hereby releases and discharges Baby Delight with respect to any violation of Proposition 65 (or any other claim related to failure to warn about exposures to TDCPP in the Covered Products) that was or could have been asserted

in the public interest against Baby Delight Releasees and Downstream Releasees regarding the failure to warn about exposure to TDCPP in connection with Covered Products manufactured, distributed, or sold by Baby Delight prior to the Effective Date.

7.3. Compliance with the terms of this Agreement by Baby Delight and Downstream Releasees shall constitute compliance with Proposition 65 by Baby Delight and Downstream Releasees with respect to any alleged failure to warn about TDCPP in Covered Products manufactured, distributed, or sold by Baby Delight after the Effective Date.

8. PROVISION OF NOTICE

8.1. When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail as follows:

8.1.1. Notices to Baby Delight. The persons for Baby Delight to receive notices pursuant to this Agreement shall be:

Edward E. Hartley
Hassard Bonnington LLP
Two Embarcadero Center, Suite 1800
San Francisco, CA 94111
eeh@hassard.com

8.1.2. Notices to CEH. The persons for CEH to receive notices pursuant to this Agreement shall be:

Rick Franco
Center for Environmental Health
2201 Broadway, Suite 302
Oakland, California 94612
rick@ceh.org

Mark N. Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

8.2. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

9. GOVERNING LAW AND CONSTRUCTION

9.1. The terms of this Agreement shall be construed and enforced in accordance with the laws of the State of California.

10. ENTIRE AGREEMENT

10.1. 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, or understandings related thereto, if any, are hereby merged herein and therein.

10.2. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto.

10.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein.

10.4. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby.

10.5. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11. AUTHORIZATION

11.1. Each signatory to this Agreement certifies that he or she is fully authorized by the Party he or she represents to enter into and execute the Agreement on behalf of the Party represented and to legally bind that Party.

12. NO EFFECT ON OTHER SETTLEMENTS


12.1. Nothing in this Agreement shall preclude CEH from resolving any claim against another entity on terms that are different than those contained in this Agreement.

13. EXECUTION IN COUNTERPARTS

13.1. The stipulations to this Agreement may be executed in counterparts by means of electronic mail or facsimile, which taken together shall be deemed to constitute one document.

AGREED TO:

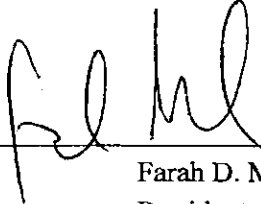
CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

Dated: 12/5/13

BABY DELIGHT, INC.



Farah D. Morton
President

Dated: December 2, 2013