

SETTLEMENT AGREEMENT

1. **INTRODUCTION**

1.1 Parties

This Settlement Agreement is entered into by and between Tilla Abbitt (“Abbitt”) and The ERGO Baby Carrier, Inc. and its affiliates, including without limitation, Orbit Baby, Inc. (collectively referred to herein as “ErgoBaby”), with Abbitt and ErgoBaby each referred to individually as a “Party” and collectively as the “Parties.” Abbitt is an individual residing in San Francisco, California. ErgoBaby employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

1.2 General Allegations

Abbitt alleges that ErgoBaby distributed for sale in California, an Orbit Baby G2 car seat with foam padding containing tris (1,3-dichloro-2-propyl) phosphate (“TDCPP”) without providing the health hazard warning required by Proposition 65. TDCPP is a flame retardant chemical used in both soft and rigid polyurethane foam, plastics and fabric backings. On October 28, 2011, California listed TDCPP pursuant to Proposition 65 as a known carcinogen. TDCPP became subject to the “clear and reasonable warning” requirements of the act one year later on October 28, 2012. Cal. Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

1.3 Product Description

The products covered by this Settlement Agreement are Orbit Baby car seats with foam padding that are sold or distributed for sale in California by ErgoBaby (“Products”). This includes, but is not limited to, the *Orbit Baby Toddler Car Seat G2, ORB837000M, UPC #810449020015* (“Exemplar Product”) identified as a non-exclusive exemplar on Abbitt’s 60-day notice of violation.

1.4 Notice of Violation

On November 28, 2014, Abbitt served ErgoBaby, and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that ErgoBaby violated Proposition 65 by failing to warn its customers and consumers in California that the Exemplar Product exposed users to TDCPP. To the best of the Parties’ knowledge, no public enforcer has commenced or is otherwise prosecuting the allegations set forth in the Notice.

1.5 No Admission

ErgoBaby denies the material, factual, and legal allegations contained in the Notice. Nothing in this Settlement Agreement shall be construed as an admission by ErgoBaby of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by ErgoBaby of any fact, finding, conclusion, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect ErgoBaby’s obligations, responsibilities, or duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, “Effective Date” shall mean March 20, 2015.

2. MONETARY PAYMENTS

2.1 Civil Penalties

Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all of the claims alleged in the Notice and referred to in this Settlement Agreement, ErgoBaby shall pay \$2,500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% of the penalty retained by Abbitt.

2.2 Representations

ErgoBaby represents that the information regarding its knowledge of TDCPP, the Products, and its compliance efforts, provided to Abbitt are truthful to the best of its knowledge

and constitute material factors upon which Abbitt has relied to determine the civil penalties assessed under this Settlement Agreement.

2.3 Reimbursement of Fees and Costs

Under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, the Parties negotiated ErgoBaby's reimbursement of Abbitt's attorneys' fees and costs. Under their agreement, ErgoBaby agrees to pay Abbitt and her counsel \$12,500 for all work performed through the mutual execution of this Settlement Agreement, including all fees and costs incurred as a result of investigating, bringing this matter to ErgoBaby's attention, and negotiating a settlement in the public interest.

2.4 Payment Procedures. The payments under Sections 2.1 and 2.3 of this Settlement Agreement are due within thirty business days of the Effective Date.

2.4.1 Payment Addresses

(a) All payments and tax documentation owed to Abbitt and her counsel under this Settlement Agreement shall be delivered to:

(b) All payments and tax documentation owed to OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Check Memo line "Prop. 65 Penalties") at one of the following addresses, as appropriate:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery or Courier:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

2.4.2 Tax Documentation

ErgoBaby shall issue a separate 1099 form for each of the following payees: (a) Tilla Abbitt, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties; (b) the California “Office of Health Hazard Assessment” (EIN: 68-0284486); and (c) David Buckingham, Esq., whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties.

3. CLAIMS COVERED AND RELEASED

Abbitt, acting on her own behalf and on behalf of her attorneys and other representatives, hereby releases ErgoBaby and its parents, subsidiaries, affiliated entities under common ownership (including, but not limited to, Orbit Baby, Inc.), its directors, officers, agents employees, attorneys, and each entity with whom they do business related to the Products, including, but not limited, to distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensees, manufacturers and suppliers (collectively, “Releasees”), from all claims for violations of Proposition 65, alleging a failure to warn about exposures to TDCPP in the Products. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to TDCPP from the Products.

Abbitt, on her own behalf and on behalf of her attorneys and other representatives, also provides 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, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP in Products sold or distributed for sale by ErgoBaby.

4. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within thirty-six months of the execution of this Settlement Agreement, ErgoBaby may send Abbitt a written request, asking that she file a complaint in the public interest, incorporate the terms of this Settlement Agreement into a proposed consent judgment (as may be required to be modified by the court), and seek the court’s approval and entry of consent judgment pursuant

to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Abbitt and ErgoBaby agree to reasonably cooperate, to use their best efforts and that of their counsel to support and obtain the entry of this Settlement Agreement as a consent judgment by a superior court in California in a timely matter.

5. SEVERABILITY

If, subsequent to the Parties' execution of this Settlement Agreement, any term is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then ErgoBaby may provide written notice to Abbitt of its asserted change in the law, and shall have no further 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 ErgoBaby from any obligation to comply with any pertinent state or federal law or regulation.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the other party at the following addresses:

To ErgoBaby:

Charles Pak, General Counsel
The ERGO Baby Carrier, Inc.
617 W. 7th Street, Suite 1000
Los Angeles, CA 90017

To Abbitt:

Tilla Abbitt
c/o David Buckingham, Esq.
104 Clipper Street
San Francisco, CA 94114

With a copy to:

Michael Sanders, Chief Operating Officer
The ERGO Baby Carrier, Inc.
617 W. 7th Street, Suite 1000
Los Angeles, CA 90017

And:

Leila C. Bruderer, Esq.
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

8. **COUNTERPARTS, FACSIMILE SIGNATURES**

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

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

Abbitt and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. **MODIFICATION**

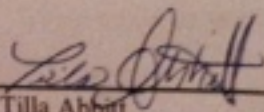
This Settlement Agreement may be modified only by written agreement of the Parties.

11. **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.

AGREED TO:

Dated: 3/19/15

By: 
Tilla Abbitt

AGREED TO:

Dated: _____

By: _____

THE ERGO BABY CARRIER, INC.
AND ORBIT BABY, INC.

And:

Leila C. Bruderer, Esq.
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

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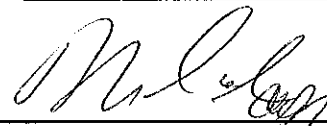
AGREED TO:

Dated: _____

By: _____
Tilla Abbitt

AGREED TO:

Dated: 3/20/2015

By:  _____

THE ERGO BABY CARRIER, INC.
AND ORBIT BABY, INC.

APPROVED AS TO FORM:

Dated: 3/20/15



Leila Bruderer
DOWNEY BRAND LLP
On behalf of THE ERGO BABY CARRIER, INC.
AND ORBIT BABY, INC.

Dated: _____

David Buckingham
On behalf of Tilla Abbitt

APPROVED AS TO FORM:

Dated: _____

Leila Bruderer
DOWNEY BRAND LLP
On behalf of THE ERGO BABY CARRIER, INC.
AND ORBIT BABY, INC.

Dated: 3/19/2015 _____

David Buckingham
David Buckingham
On behalf of Tilla Abbitt