

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak (“Wozniak”) and, Bed Bath & Beyond, Inc. (“BB&B”), with Wozniak and BB&B each individually referred to as a “Party” and collectively as the “Parties.” Wozniak is an individual residing in the State of 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. BB&B employs ten or more individuals 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 25249.5 et seq. (“Proposition 65”).

### 1.2 General Allegations

Wozniak alleges that BB&B manufactures, imports, sells and/or distributes for sale in the State of California, tools with vinyl/PVC grips containing di(2-ethylhexyl) phthalate (“DEHP”), and alleges that it does so without providing a Proposition 65 health hazard warning. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

For purposes of this Settlement Agreement “Products” means *Tool Kit 4 Pieces, UPC No. 4 44100 25839 6* identified in Wozniak’s Notice that are manufactured, sold or distributed for sale in California by BB&B.

### 1.4 Notice of Violation

On June 29, 2017, Wozniak served BB&B, the California Attorney General, and all other requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges that BB&B violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the

Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice. However, this Section shall not enhance, diminish or otherwise affect the commitments, obligations, responsibilities, and duties of Wozniak and Wozniak's attorneys or agents under this Settlement Agreement.

### **1.5 No Admission**

BB&B denies the material, factual, and legal allegations in the Notice, and maintains that all the products that it has manufactured, imported, sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by BB&B of any allegation, 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 BB&B of any allegation, fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by BB&B. This Section shall not, however, diminish or otherwise affect BB&B's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 10, 2018.

## **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

### **2.1 Commitment to Reformulate Products or Provide Warnings**

Commencing on the Effective Date and continuing thereafter, BB&B shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are either (a) Reformulated Products as defined by Section 2.2; or (b) offered with a clear and reasonable warning pursuant to Section 2.3, below.

## **2.2 Reformulated Products Defined**

For the purposes of this Settlement Agreement, “Reformulated Products” are defined as Products that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by state or federal government agencies for the purpose of determining DEHP content in a solid substance.

## **2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by BB&B that are not Reformulated Products, BB&B will only offer such Products with a clear and reasonable warning in accordance with this Section and/or in any manner specified in Title 27 California Code of Regulations section 25600, et seq., as amended from time to time. BB&B further agrees that any warning used will be prominently placed in relation to the Products with such conspicuousness when 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. For purposes of this Settlement Agreement, a warning satisfying the above criteria that is transmitted in accordance with the above criteria, and contains one of the following statements shall be deemed clear:

**WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm.**

**WARNING: This product can expose you to chemicals, including DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm.**

**WARNING: Use of this product will expose you to chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.**

If BB&B sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice and referred to in this Settlement Agreement, BB&B agrees to pay \$2,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Wozniak. BB&B’s payment shall be due on or before February 10, 2018, and delivered pursuant to Section 3.3. Wozniak’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payment.

#### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Wozniak and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. BB&B agrees to pay \$16,000 to Wozniak and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of BB&B’s management, and negotiating a settlement that provides a significant public benefit. BB&B’s payment

shall be due on or before February 10, 2018, and delivered pursuant to Section 3.3.

### **3.3 Payment Procedure**

All payments required by this Settlement Agreement shall be delivered via wire transfer to the Chanler Group IOLTA Attorney Trust Account. The wire transfer information (bank name, account number and routing number) has been provided to BB&B's counsel.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Wozniak's Release of BB&B**

This Settlement Agreement is a full, final, and binding resolution between Wozniak, in his individual capacity and not on behalf of the public, and BB&B, of any violation of Proposition 65 that was or could have been asserted by Wozniak, on his own behalf, or on behalf of his past and current agents, principals, representatives, and assignees, against BB&B or its parents, subsidiaries, direct and indirect affiliated entities under common ownership, directors, officers, employees, agents, principals, representatives, predecessors, successors, assignees, and each entity to whom BB&B directly or indirectly distributes, sells, or represents the Products, including manufacturers, suppliers, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees and their owners, directors, officers, employees, agents, principals, representatives, predecessors, successors, and assignees ("Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale by BB&B before the Effective Date, as alleged in the Notice. Wozniak agrees that compliance with this Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Products sold by BB&B after the Effective Date.

In further consideration of the promises and agreements herein contained, Wozniak, in his individual capacity and not on behalf of the public, and on behalf of his

past and current agents, principals, representatives, and assignees hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against BB&B Releasees, including, without limitation, all actions and causes of action in law and equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, distributed, and/or offered for sale by BB&B and Releasees before the Effective Date.

#### **4.2 BB&B's Release of Wozniak**

BB&B, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Wozniak, Wozniak's attorneys, and other representatives, for any action taken or statement made, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement 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. If Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, as to BB&B specifically as a result of a statutory exemption, or as to the Products, then BB&B may provide written notice to Wozniak of the asserted change in the law, or its applicability to BB&B or the Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement, with respect to, and to the extent that BB&B or the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice required by this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For BB&B:

Kenneth O. Bradley, Esq.  
Vice President - Litigation  
Bed Bath & Beyond, Inc.  
650 Liberty Avenue  
Union, NJ 07083  
908.855.4507

with a copy to:

Michelle Gillette, Esq.  
Crowell & Moring LLP  
3 Embarcadero Center, 26th Floor  
San Francisco, CA 94111  
415.365.7445

For Wozniak:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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 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)**

Wozniak and his 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. ENFORCEMENT OF SETTLEMENT AGREEMENT**

Only the Parties may enforce this Settlement Agreement. Either Party may enforce the terms and conditions of this Settlement Agreement by filing suit in a California Superior Court. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement. No action to enforce this Settlement Agreement, however, may be commenced or maintained unless the Party seeking enforcement notifies the other of the basis for any claimed or alleged breach or violation of this Settlement Agreement and, thereafter, meets and confers with the other Party for a period of not less than 45 days in an effort to resolve the alleged breach informally before filing suit alleging any breach or violation of this Settlement Agreement.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agree to all the terms and conditions set forth herein.

**AGREED TO:**

**AGREED TO:**

Date: 1/29/2018

Date: 1/24/2018

By: 

PAUL WOZNIAK

By: 

VP - Litigation

BED BATH & BEYOND, INC.