

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Ecological Alliance, LLC and Hobby Lobby Stores, Inc.

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Hobby Lobby Stores, Inc. ("Hobby Lobby"), on the other hand, with Ecological and Hobby Lobby collectively referred to as the "Parties."

#### 1.2. General Allegations

Ecological alleges that Hobby Lobby manufactured and distributed and offered for sale in the State of California sewing kits containing Di(2-ethylhexyl)phthalate [DEHP] and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed DEHP under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

#### 1.3. Product Description

The products that are covered by this Settlement Agreement are defined as sewing kit luggage tags, Item #1520097 that Hobby Lobby has sold, offered for sale or distributed in California and that contain DEHP. All such items shall be referred to herein as the "Products."

#### 1.4. Notice of Violation

On or about February 19, 2018, Ecological served Hobby Lobby and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" ("Notice") that provided Hobby Lobby and such public enforcers with notice that Hobby Lobby was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and

customers that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.5. No Admission**

The parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Hobby Lobby's compliance with Proposition 65. Specifically, Hobby Lobby denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Hobby Lobby of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Hobby Lobby of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Hobby Lobby. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Hobby Lobby under this Settlement Agreement.

**1.6. Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

**2. INJUNCTIVE RELIEF: WARNING**

**2.1. Warning**

Products shall be accompanied by a warning as described in Section 2.2 below, no later than 90 days after the Effective Date. The warning requirements set forth in Section 2.2 below

shall apply only to Products that are distributed, marketed, sold or shipped for sale in the State of California. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that Hobby Lobby places into the stream of commerce within 90 days of the Effective Date. The warning requirements set forth in Section 2.2 below shall apply only to Products that Hobby Lobby itself manufactures or distributes after the Effective Date that are distributed, marketed, sold or shipped for sale by Hobby Lobby in the State of California. The warning requirement shall not apply to Products that are not sold or distributed by Hobby Lobby.

**2.2. Warning Language**

Where required, Hobby Lobby shall provide Proposition 65 warnings as follows:

(a) Hobby Lobby may use any of the following warning statements in full compliance with this Section:

- (1) **WARNING:** This product contains a chemical known to the State of California to cause birth defects and other reproductive harm.
- (2) **WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects, or other reproductive harm.
- (3) **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more info go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).
- (4) **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) If Hobby Lobby elects to use the warning statements identified in either 2.2(a)(3) or (4), it may also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING".

(c) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(d) If Proposition 65 warnings for DEHP should no longer be required, Hobby Lobby shall have no further obligations pursuant to this Settlement Agreement.

### **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION**

#### **25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Hobby Lobby shall pay a total of \$350 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Ecological. Ecological's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

Hobby Lobby shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing

75% of the total penalty (i.e., \$262.50); and (b) one check in an amount representing 25% of the total penalty (i.e., \$87.50) made payable directly to "Ecological Alliance" (Custodio & Dubey LLP will provide Hobby Lobby with tax identification information on or before the Effective Date). Hobby Lobby shall mail these payments within ten (10) business days after the Effective Date at which time such payments shall be mailed to the following addresses respectively:

Office of Environmental Health Hazard Assessment  
Attn: Mike Gyurics  
1001 I Street  
Mail Stop 12-B  
Sacramento, CA 95814

Ecological Alliance  
C/O Vineet & Dubey  
Custodio & Dubey LLP  
448 S. Hill St., Suite 615  
Los Angeles, CA 90013

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Hobby Lobby shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Hobby Lobby's attention. Hobby Lobby shall pay Ecological's counsel \$7,500 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Hobby Lobby shall deliver a check for \$7,500 to "Custodio & Dubey LLP" within ten (10) days of the Effective Date. Custodio & Dubey LLP will provide Hobby Lobby with tax identification information on or before the Effective Date. Other than the payment required hereunder, each side is to bear his or its own attorneys' fees and costs.

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**6. RELEASE OF ALL CLAIMS**

**6.1. Release of Hobby Lobby, Downstream Customers and Upstream**

**Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ecological, in its representative capacity, and on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Product sewing kits luggage tags, Item #1520097 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Hobby Lobby, (b) each of Hobby Lobby's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Hobby Lobby's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities. (collectively "Releasees"). Ecological further releases Releasees from all claims for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the Products as set forth in the Notice of Violation. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products.

Ecological also, in its capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general 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, known or unknown, suspected or unsuspected, against Hobby Lobby and the Releasees. Ecological acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Ecological, in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

**6.2. Hobby Lobby's Release of Ecological**

Hobby Lobby waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

**7. SEVERABILITY AND MERGER**

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

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**8. 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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Hobby Lobby shall have no further obligations pursuant to this Settlement Agreement.

**9. NOTICES**

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

For Hobby Lobby: Anne Marie Ellis, Esq.  
Buchalter, A Professional Corporation  
18400 Von Karman Avenue, Suite 800  
Irvine, CA 92612-0514

For Ecological: Vincet Dubey, Esq.  
Custodio & Dubey LLP  
448 S. Hill St., Suite 615  
Los Angeles, CA 90013



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

**10. COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

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

**12. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**13. MODIFICATION**

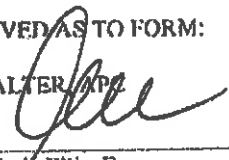
This Settlement Agreement may be modified only by a written agreement signed by the Parties.

14. 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 herein.

APPROVED AS TO FORM:

BUCHALTER, LLP



By:   
Anne Marie Ellis, Esq.  
Attorneys for Hobby Lobby Stores, Inc

Date: 5/29/18

CUSTODIO & DUBEY LLP

By:   
Vineet Dubey, Esq.  
Attorneys for Ecological Alliance LLC

Date: 5/25/18

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| <p>AGREED TO:</p> <p>Date: May <u>25</u>, 2018</p> <p>By: <br/>On Behalf of Ecological Alliance, LLC</p> | <p>AGREED TO:</p> <p>Date: May <u>30</u>, 2018</p> <p>By: <br/>On Behalf of Hobby Lobby Stores, Inc.</p> |
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