

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and Expanscience Laboratories, Inc.

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Expanscience Laboratories, Inc. d/b/a Mustela ("Expanscience"), on the other hand, with Ecological and Expanscience collectively referred to as the "Parties."

1.2. General Allegations

Ecological alleges that Expanscience distributed and offered for sale in the State of California cleansing wipes with packaging containing Diisononyl phthalate [DINP] 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 DINP under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3. Product Description

The products that are covered by this Settlement Agreement are defined as cleansing wipes with packaging that Expanscience has or caused to be sold, offered for sale or distributed in California that Ecological alleges contain DINP. All such items shall be referred to herein as the "Products."

1.4. Notice of Violation

On May 28, 2019, Ecological served Expanscience, Buy Buy Baby, Inc., 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 Expanscience and such public enforcers with notice that Expanscience 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 DINP. 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 Expanscience's compliance with Proposition 65. Specifically, Expanscience denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 and any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Expanscience 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 Expanscience of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Expanscience. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Expanscience under this Settlement Agreement. The Agreement shall not be offered or received in evidence or requested in discovery in any action or proceeding as evidence of an admission or concession by Expanscience.

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

No later than 90 days after the Effective Date, Expanscience shall only sell or offer for sale in California packages of its Mustela Cleaning Wipes product ("Mustela Wipes") that will result in an exposure level of less than 146 ug/day, determined based on three exposures per day to the Mustela Wipes clear plastic package of no more than five minutes per exposure solely for the purpose of removing the three reusable packages of wipes found in each Mustela Wipes package, with the further assumption that the Mustela Wipes plastic package is recycled or otherwise disposed of within thirty days of purchase, and that no consumer remains a purchaser of Mustela Wipes for more than fifteen years as the product is primarily intended for use with infants. Mustela Wipes sold in California that would result in an exposure level higher than 146 ug/day, when calculated based on the aforementioned assumptions, shall be accompanied by a warning consistent with the requirements of Proposition 65, as set forth at 27 CCR Sections 25600.1-25607.13. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that Expanscience places into the stream of commerce within 90 days of the Effective Date.

If Proposition 65 warnings for DINP or the Mustela Wipes product should no longer be required, Expanscience shall have no further obligations pursuant to this provision of 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, Expanscience, while disputing any violation of law, shall pay a total of \$500 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 and Ecological's portions of any penalty payment made under this Settlement Agreement.

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, Expanscience shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Expanscience's attention. Expanscience shall pay Ecological's counsel \$10,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By January 15, 2020, Expanscience shall make a total payment of Ten Thousand Five Hundred Dollars (\$10,500) for the civil penalties and attorney's fees / costs by wire transfer to Plaintiff's counsel Custodio & Dubey LLP ("C&D"):

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325104702031

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

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 Products, 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) Expanscience, (b) each of Expanscience's downstream distributors (including but not limited to Buy Buy Baby, Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Expanscience'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 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 Expanscience 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.

6.1. Expanscience's Release of Ecological

Expanscience 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. WARRANTY OF C&D

C&D and any attorneys working for it represent and warrant on behalf of themselves, and all other acting on their behalf, that C&D (1) has not been retained in any capacity by any other individuals or entities with claims against Expanscience; (2) does not represent, nor have any knowledge of, any other potential claimant with claims against Expanscience; (3) is not aware of, nor been informed of, any other plaintiff, class, class member or attorney who intends to bring claims against Expanscience; and (4) is not actively soliciting and will not actively solicit other persons to bring claims against Expanscience. This section is intended to comply with the Rules of Professional Conduct and is not intended, nor shall it be construed to, restrict Pacific from practicing law.

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 Expanscience 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 Expanscience: Angela L. Diesch, Esq.
DIESCH LAW GROUP APC
2207 Plaza Drive, Ste. 300
Rocklin, CA 95765

For Ecological: Vineet 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. NO RELIANCE

Each of the Parties represents and warrants that, except for the representations and warranties specifically set forth in this Agreement, in executing this Agreement, it does not rely, and has not relied, on any representation or statement made by any other Party, on any representation or statement made by anyone acting on behalf of any Party, or any representation or statement made by any other person.

15. CONSTRUCTION

Each Party has cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the same shall not be construed against any Party on the ground that said Party drafted this Agreement.

16. CONFIDENTIALITY & NON-DISPARAGEMENT

16.1. Ecological and its counsel expressly acknowledge and understand that this Agreement and its contents, and the settlement communications involving his counsel to reach this Agreement, shall be held strictly confidential by them, except as required to comply with statutory mandatory provisions as identified in this Settlement Agreement. Except as specifically provided in this Settlement Agreement Ecological and its undersigned counsel shall not disclose to any third

party or otherwise publish any information regarding the terms and conditions of this Agreement or settlement negotiations without the prior written consent of Expanscience.

16.2. Notwithstanding the foregoing, nothing herein shall prohibit or restrict Ecological or its counsel from informing their accountants or tax preparers of the terms of this Agreement, or, if required by law, disclosing to any governmental or regulatory authority the amount paid in settlement, provided that Ecological and its counsel advise their accountants or tax preparers of, and obtain assurances that they will comply with, the confidentiality provisions of this Agreement. Nothing herein shall prohibit Ecological or its counsel from complying with a valid subpoena or court order, or any other legal process, requiring production of this Agreement, disclosure of the terms of this Agreement, or disclosure of anything else covered by the confidentiality provisions of this Agreement. Upon receiving such a subpoena, court order or other legal process, Ecological or its counsel shall immediately give notice to Expanscience at the email address and mailing address listed below and identify the matter in which such subpoena, court order, or other legal process is issued, provide a copy of the subpoena, court order, or other legal process and the time in which production or disclosure is required so as to afford Expanscience the opportunity to obtain an order barring such production or disclosure.

16.3. Ecological and its undersigned counsel further agree that they will not make or cause to be made any statements to any individual or entity in any respect discussing the underlying facts of Ecological's allegations regarding Expanscience's products that were the subject of the Notice, or any statements that disparage, are inimical to, or damage the reputation of Expanscience. The restrictions contained in this paragraph shall apply to any statements made in any forum, including but not limited to any form of social media, blogs, or the like.

16.4. Ecological recognizes, acknowledges, and agrees that any breach or threatened breach of this section of the Agreement will cause irreparable harm to Expanscience that cannot be compensated by an award of damages alone. Accordingly, and in addition to all other rights and remedies available for a breach or threatened breach of this section, Plaintiff agrees that Expanscience shall be entitled to equitable (including but not limited to injunctive) relief to prevent breaches of this section of the Agreement, and to specifically enforce this Agreement.

17. **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.

IN WITNESS WHEREOF, the Parties hereto each have approved and executed this Settlement Agreement effective as of the last date signed below.

DATED: January 2, 2020

Ecological Alliance, LLC

By: 
Harmony Welsh

DATED: January 2, 2020

Custudio & Dubey, LLP

By: 
Vineet Dubrey, Esq.
Attorney for Plaintiffs

DATED: January 3, 2020

Expanscience Laboratories, d/b/a Mustela

By: _____
Stanislaus Baudry

APPROVED AS TO FORM AND CONTENT:

DATED: January 3, 2020

Diesch Law Group, APC

By: _____
Angela L. Diesch, Esq.
Attorney for Expanscience Laboratories,
Inc.