

# SETTLEMENT AND RELEASE AGREEMENT

## 1. INTRODUCTION

### 1.1. Ecological Alliance, LLC and Little Kids, Inc.

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

### 1.2. General Allegations

Ecological alleges that Little Kids manufactured and distributed and offered for sale in the State of California pong games with cases, sold by retailers including but not limited to, Wal-Mart Stores East L.P., and substantially similar products ("Products") that cause exposures to Di(2-ethylhexyl)phthalate ("DEHP") without first providing clear and reasonable warning under 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. Notice of Violation

On January 19, 2021, Ecological served Little Kids, Wal-Mart Stores East, L.P., 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 Little Kids and such public enforcers with notice that Little Kids 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.

#### **1.4. No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Little Kids' compliance with Proposition 65. Little Kids denies the material factual and legal allegations contained in Ecological's Notice and maintains that, to the best of its knowledge, 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 Little Kids and/or Wal-Mart Stores East L.P., Wal-Mart Stores, Inc., Walmart Inc., their agents, representatives and anyone else acting on their behalf (collectively, "Walmart") 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 Little Kids and/or Walmart of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Little Kids on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Little Kids under this Settlement Agreement.

#### **1.5. Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed and delivered to each Parties' counsel.

## **2. INJUNCTIVE RELIEF: WARNING**

### **2.1. Warning**

As of the Effective Date, Little Kids shall manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.2

below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.3 below, or as provided by the California Code of Regulations, Title 27, Div. 4, Chap. 1, Art. 6 (commencing at § 25600). Products that were supplied to third parties by Little Kids prior to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

## **2.2. Reformulation Standards**

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than or equal to 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the phthalate content in a solid substance. The Parties agree that Reformulated Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirement if the Product contains DEHP in a concentration of less than or equal to 1,000 parts per million.

## **2.3. Warning Language**

Where required, Little Kids shall provide Proposition 65 warnings as follows:

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

- (1) **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (“DEHP”), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(2) **WARNING: Cancer and Reproductive Harm –**  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) If Little Kids uses either of the above warning statements to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label 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. The Parties further recognize that Little Kids shall be deemed to be in compliance with this subsection by complying with the safe harbor warning regulations promulgated by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA").

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

(e) In the event that the California Legislature, the Office of Environmental Health Hazard Assessment or any other law-making or regulatory entity promulgates one or more statutes or regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Little Kids shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Little Kids shall pay a total of \$100 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 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.

**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, Little Kids shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Little Kids's attention. Little Kids shall pay Ecological's counsel \$9,400 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

By July 12, 2021, Little Kids shall make a total payment of Nine Thousand Five Hundred Dollars (\$9,500) for the civil penalties and attorney's fees / costs by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

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**

**6.1. Release of Little Kids, Downstream Distributors 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, 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) Little Kids, (b) each of Little Kids's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, (c) Little Kids's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and (d) Walmart (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, fees (including but not limited to attorneys' fees), damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Little Kids 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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. Little Kids's Release of Ecological**

Little Kids 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.

**6.3. Public Benefit**

The Parties understand and agree that the commitments Little Kids has agreed to herein, and actions to be taken by Little Kids under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Administrative Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Little Kids' failure to

provide a Proposition 65 warning concerning the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Agreement, provided that Little Kids is in material compliance with this Agreement.

**7. 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 Little Kids shall have no further obligations pursuant to this Settlement Agreement.

**8. 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 Little Kids:       Deepi Miller, Esq.  
                              Greenberg Traurig, LLP  
                              1201 K Street, Suite 1100  
                              Sacramento, CA 95814

For Ecological:       Vineet Dubey, Esq.  
                              Custodio & Dubey LLP  
                              445 S. Figueroa St., Suite 2520  
                              Los Angeles, CA 90071

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.



**9. 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.

**10. 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).

**11. ENTIRE AGREEMENT**

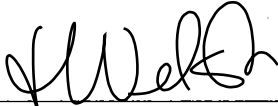
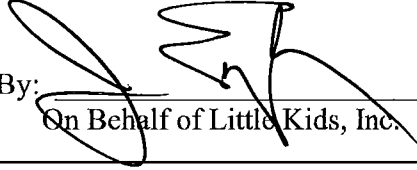
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**12. MODIFICATION**

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

**13. 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.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: July <u>8</u> 2021</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: July <u>7<sup>th</sup></u>, 2021</p> <p>By:  On Behalf of Little Kids, Inc.</p>
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