

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”) on the one hand, and SunnyLife, LLC, SunnyLife Retail, LLC, SunnyLife Australia (collectively, “SunnyLife”) on the other. Together, Ferreiro and SunnyLife are collectively referred to as the “Parties.” Ferreiro is an individual who resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Ferreiro alleges that SunnyLife is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

**1.2 General Allegations.** Ferreiro alleges that SunnyLife has exposed individuals to diisodecyl phthalate (DIDP) from its sales of SUNNYLIFE SHARK ATTACK mini beach bats bags without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DIDP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

**1.3 Product Description.** The products covered by this Settlement Agreement are SUNNYLIFE SHARK ATTACK mini beach bats bags which are children’s bags which are intended for use of children under three (3) years old (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by SunnyLife.

**1.4 Notice of Violation.** On July 16, 2021, Ferreiro served SunnyLife, Lee Blondie Pty Ltd. as trustee for the Lee Blondie Trust, Cost Plus Management Services, Inc., Cost Plus, Inc., Cost Plus World Market, LLC (collectively, Cost Plus, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided SunnyLife and such others, including public enforcers, with notice that alleged that SunnyLife was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to DIDP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** SunnyLife denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed 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 SunnyLife 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 SunnyLife of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by SunnyLife. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, SunnyLife maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

## **2. INJUNCTIVE RELIEF: COMPLIANCE AND/OR WARNINGS**

**2.1 Compliance of Products.** As of the Effective Date, and continuing thereafter, Products that SunnyLife directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be Compliant Products pursuant to § 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a “Compliant Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Compliant Product.

**2.2 Compliance Standard.** “Compliant Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DIDP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

**2.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all

Products that SunnyLife manufactures, imports, distributes, sells, or offers for sale in California that is not a Compliant Product. There shall be no obligation for SunnyLife to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

**⚠ WARNING:** This product can expose you to chemicals including di-isodecyl phthalate (DIDP), which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** SunnyLife may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

**⚠ WARNING:** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**2.4** A **Warning** or **Alternative Warning** provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The **Warning** shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the **Warning** is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The **Warning** may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where SunnyLife offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the warning to the

purchaser prior to completing the purchase. To comply with this Section, SunnyLife shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

**2.5 Compliance with Warning Regulations.** The Parties agree that SunnyLife shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the Product and the exposure at issue after the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, SunnyLife shall pay a total of Twelve Thousand dollars (\$12,000.00), (hereinafter the "Settlement Sum") which Settlement Sum shall be paid in portions identified below consisting of \$11,500 (reimbursement of attorneys fees) and \$500.00 as a Civil Penalty in accordance with this Section. For all amounts due and owing that are not received within the payment times set forth below, SunnyLife shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

**3.1 Civil Penalty. Civil Penalty.** Within fifteen (15) business days of the Effective Date, Sunnylife shall issue two (2) separate checks or wires for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and to (b) "Precilla Balabbo" in the amount of \$125.00. The Civil Penalty payment(s) shall be delivered and or electronically sent to the addresses identified in § 3.2, below.

**3.2 Payment Procedures.**

**(a) Issuance of Payments.** Payments shall be delivered as follows:

All payments owed to Balabbo, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire  
Brodsky Smith  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

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:

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

**(b) Copy of Payments to OEHHA.** Sunnyslife agrees to provide Balabbo's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Balabbo, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

Evan J. Smith, Esquire  
Brodsky Smith  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

Or if wired directly to Brodsky Smith to be paid to Balabbo and OEHHA as follows:

**If ACH:**  
**BANK OF AMERICA**  
Brodsky Smith Trust Account  
Account Number: 325179952900

Routing Number: 121000358

**If WIRE:**

**BANK OF AMERICA**

Brodsky Smith Trust Account

Account Number: 325179952900

Routing Number: 026009593

If a wire or ACH is done, an email must be sent to [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com) to advise it was sent in order for proper accounting to be done for this payment.

**(b) Tax Documentation.** SunnyLife agrees to provide a completed IRS 1099 for its payments to, and Ferreiro agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Anthony Ferreiro" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) "Brodsky Smith" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Ferreiro and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Ferreiro and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, SunnyLife shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to SunnyLife's attention, and negotiating a settlement in the public interest. As described above, and in payment of the attorneys fees portion of the Settlement Sum, SunnyLife shall deliver a check payable in the amount of \$11,500.00 which shall constitute reimbursement of Ferreiro's attorney's fees.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of SunnyLife and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and SunnyLife, of any violation of Proposition 65 that could have been asserted by Ferreiro or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to DIDP from use of the Products, and Releasers hereby release any such claims against SunnyLife and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom SunnyLife directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Cost Plus, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on exposure to DIDP from use of the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical DIDP from use of the Products.

**5.2 SunnyLife's Release of Ferreiro.** SunnyLife, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Ferreiro, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ferreiro and/or his attorneys and other

representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to exposure to DIDP from the Products.

**5.3 California Civil Code § 1542.** It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Ferreiro on behalf of himself only, on one hand, and SunnyLife, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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 HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HIS, WOULD HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Ferreiro and SunnyLife each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5.4 Deemed Compliance with Proposition 65.** The Parties agree that compliance by SunnyLife with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DIDP from use of the Products.

**5.5 Public Benefit.** It is SunnyLife's understanding that the commitments it has agreed to herein, and actions to be taken by SunnyLife under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of SunnyLife that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to SunnyLife failure to provide a warning concerning exposure to DIDP prior to use of 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 Settlement Agreement, provided that SunnyLife is in material compliance with this Settlement Agreement.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law 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 or limited by reason of law generally, or as to the Products, SunnyLife shall provide written notice to Ferreiro of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

**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 or two-day courier on any party by the other party to the following addresses:

For SunnyLife:

Farayan Andrew Afifi  
Afifi Law Group  
201 Wilshire Blvd Suite 201 B  
Los Angeles, CA 90401

For Ferreiro:

Evan J. Smith  
Brodsky Smith  
Two Bala Plaza, Suite 805

Bala Cynwyd, PA 19004

Either 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: SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, 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 § 25249.7(f)**

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

**11. MODIFICATION**

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

**12. ENTIRE AGREEMENT**

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.

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13. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 10 | 5 | 23

Date \_\_\_\_\_

By: Anthony Ferreiro  
Anthony Ferreiro

By: \_\_\_\_\_  
SunnyLife, I.I.C.

**AGREED TO:**

Date \_\_\_\_\_

By \_\_\_\_\_  
SunnyLife Retail, I.I.C.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 10/05/2023

By: \_\_\_\_\_  
Anthony Ferreiro

By:   
SunnyLife, LLC

**AGREED TO:**

Date: 10/05/2023

By:   
SunnyLife Retail, LLC,