

# **SETTLEMENT AGREEMENT**

AG Notice Nos. 2023-03441 and 2023-03604

## **1. INTRODUCTION**

### **1.1 Epps and AliExpress E-Commerce One Pte. Ltd.**

This settlement agreement (Settlement Agreement) is entered into by and between Jay Epps (Epps) and AliExpress E-Commerce One Pte. Ltd. (Settling Entity) with Epps and the Settling Entity referred to as the “Parties.” Epps is an individual residing in 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. Pursuant to California Health & Safety Code §§25249.5, *et seq.* (Proposition 65), Epps alleges that the Settling Entity is a responsible party selling the products at issue set forth in subsection 1.3 below to California consumers.

The Parties have agreed, for the purposes of this Settlement Agreement, that the entity responsible for the import, distribution, sale and/or otherwise facilitation for sale in California of solder wire and fishing sinkers containing lead on aliexpress.com is the Settling Entity.

### **1.2 General Allegations**

Epps alleges that the Settling Entity imports, distributes, sells, and/or otherwise facilitates for sale in California solder wire and fishing sinkers containing lead, and that they do so without providing the health hazard warning required by Proposition 65 for consumer exposures to lead. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

As described in subsection 1.4, Epps mailed to Alibaba Group Holding Ltd. and Alibaba Group (U.S.) Inc. 60-Day Notices of Violation on November 2, 2023, and November 16, 2023

(“Notices”). Alibaba Group Holding Ltd. and Alibaba Group (U.S.) Inc. caused the Notices to be re-directed to the Settling Entity. The Settling Entity is now entering this Settlement Agreement to resolve the issues raised in the Notices.

### 1.3 Product Description

The products covered by this Settlement Agreement are fishing weights (including kits containing such items) and solder wire (including kits containing such items) that allegedly contain lead and are allegedly offered for sale by the Settling Entity to consumers in California (hereinafter referred to as the “Product” or “Products”).

### 1.4 Notices of Violation

On or about November 2, 2023, Epps mailed to the Settling Entity (as described above) through Alibaba Group Holding Ltd. and Alibaba Group (U.S.) Inc., and certain requisite public enforcement agencies, a 60-Day Notice of Violation (November 2 Notice), alleging that the Settling Entity violated Proposition 65 when it failed to warn customers or consumers in California that certain fishing weights (including certain kits containing such items) expose users to lead. On or about November 16, 2023, Epps mailed to the Settling Entity through Alibaba Group Holding Ltd. and Alibaba Group (U.S.) Inc., and certain requisite public enforcement agencies, a 60-Day Notice of Violation (November 16 Notice), alleging that the Settling Entity violated Proposition 65 when it failed to warn customers or consumers in California that certain solder wire (including certain kits containing such items) expose users to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the November 2 Notice and November 16 Notice.

### 1.5 No Admission

The Settling Entity denies the material, factual, and legal allegations contained in the Notices and maintains that any products that were sold and/or 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 the Settling Entity 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 the Settling Entity of any fact, finding, conclusion, issue of law or violation of law. This subsection shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement.

### 1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 6, 2024.

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

### 2.1 Injunctive Relief

The Settling Entity agrees to provide the requisite health hazard warning as set forth in subsections 2.3 below for each Product unless it is reformulated.

### 2.2 Reformulation Standards

A “Reformulated Product”: (a) contains lead in concentrations that do not exceed 90 parts per million (ppm), equivalent to 0.009%, in any exterior parts analyzed pursuant to U.S. Environmental Protection Agency (EPA) testing methodologies 3050B and 6010B; and (b) yields a result of no more than 1.0 micrograms of lead when sampled according to NIOSH 9100 protocol and analyzed according to EPA 6010B. In addition to the above tests, the Settling Entity may use equivalent methodologies utilized by a state or federal agency in the United

States to determine lead content in a solid substance or the amount of the bioavailability of lead through a wipe test, respectively.

### 2.3 Clear and Reasonable Warnings

Commencing on or before July 31, 2024 (Compliance Date), with regard to Products sold on aliexpress.com for which a clear and reasonable Proposition 65 warning does not appear on aliexpress.com and the Product is not a Reformulated Product, as described in subsection 2.2 above, the Settling Entity shall provide clear and reasonable warnings for all units of the Products offered for sale on aliexpress.com and sold to any purchaser with a shipping address in California. Each warning shall be prominently placed with such conspicuousness as 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.

(a) **Warning.** The warning shall consist of the following statement or other safe harbor language that is in compliance with Proposition 65 (Warning):

 **WARNING:** This product can expose you to chemicals including lead, 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)

(b) **Short-Form Warning.** Products sold on aliexpress.com may use, but are not required to use, the following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning) or any safe harbor language so long as it is allowed under Proposition 65's implementing regulations:

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

(c) **Foreign Language Requirement.** The Settling Entity shall comply with the requirements set forth in 27 California Code of Regulations § 25602(d) if and to the extent it applies to any sale of any of the Products to any purchaser with a California shipping address.

## 2.4 Product Warnings

The Settling Entity shall comply with Cal. Code Regs., tit. 27, § 25600 et seq., to provide a Warning for Products that are not Reformulated Products offered for sale on aliexpress.com and sold to any purchaser with a shipping address in California.

For any of the Products that are not Reformulated Products pursuant to subsection 2.2 and are offered for sale on aliexpress.com to California consumers after the Compliance Date, such online Product listings shall contain a Warning or Short-Form Warning (as set forth above) which is displayed to the purchaser prior to completion of the transaction or during the purchase of the Products without requiring the potential buyer to use considerable effort to be made aware of the health hazard advisory. The warning or a clearly and reasonably marked hyperlink to the warning using the signal word “**Warning**” or “**California Proposition 65 Warning**” given in conjunction with the online sale of the Products may appear either: (a) on the same webpage in which the Products are displayed; (b) on the same webpage as the order form for the Product; or (c) on any webpage displayed to the purchaser during the checkout process or prior to its completion for any purchaser with a California shipping address. The symbol “” may be placed adjacent to the signal word “**Warning**” or “**California Proposition 65 Warning**”. The internet warning may use the Short-Form Warning content described in subsection 2.3(b).

For any of the Products that are not Reformulated Products pursuant to subsection 2.2 and are offered for sale on aliexpress.com to California consumers after the Compliance Date, the Settling Entity shall request and require its suppliers and vendors of Products sold on aliexpress.com, to provide a Warning or Short-Form Warning (as set forth above), including any applicable on-product labeling in order to comply with Cal. Code Regs., tit. 27, § 25600 et seq.

## 2.5 Option to Delist

At any time, the Settling Entity may, at its option, comply with the injunctive commitments set forth in subsections 2.3 through 2.4 above by delisting a Product from aliexpress.com such that the item is then unavailable in general or for online sale for shipment to an address in California. If it does so, the previously delisted Product may be reinstated for sale online to California consumers if it complies with subsections 2.1 through 2.5 prior to the date of such relisting. Nothing contained herein modifies the Settling Entity's obligation to comply with the injunctive commitments by the Compliance Date.

## 3. MONETARY SETTLEMENT TERMS

### 3.1 Civil Fines

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notices, the Settling Entity agree to pay a total of \$250,000 in civil fines. Such civil penalty payment will be allocated according to California Health & Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five percent (25%) of the penalty payment paid to Epps. Payment will be made in two installments of \$200,000 and \$50,000. The Settling Entity's first installment is due on the Effective Date. The second installment is due on July 31, 2024 (a "Payment Date," and collectively with the Effective Date, the "Payment Dates")

The Settling Entity shall pay either in checks made payable to (a) "Jay Epps" and "OEHHA"; or may pay (b) via electronic transfer to "Chanler, LLC," and Epps' counsel shall send the portions of the penalties paid by the Settling Entity to OEHHA and Epps in accordance with California Health & Safety Code § 25249.12(c)(1) and (d) discussed above. For non-

electronic payments the Settling Entity shall provide two checks made payable to: (a) “OEHHA” in the amount; and (b) “Jay Epps”. Thereafter, Epps’ counsel shall send the portions of the penalties paid by the Settling Entity to OEHHA and Epps.

If an officer of the Settling Entity certifies, in writing, on or before May 31, 2024, that all Products shipped for sale by the Settling Entity in California on or after May 31, 2024, are or will be in compliance with this Settlement Agreement, then the second installment of the civil penalty shall be waived in its entirety. The certification shall be received by Epps and his counsel by electronic mail at the address set forth in Section 8. If the certification is not received in a timely manner, then the Settling Entity shall pay second installment of the civil penalty, on July 31, 2024 as specified above.

### 3.2 Reimbursement of Attorneys’ Fees and Costs

The Parties acknowledge that Epps and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Settlement Agreement had been settled. Shortly after the other settlement terms had been finalized, the Settling Entity expressed a desire to resolve Epps’ fees and costs. The Parties then negotiated a resolution of the compensation due to Epps’ counsel under general contract principles, Proposition 65 implementing regulation for fee awards at 11 California Code of Regulations §3201, and/or the private attorney general doctrine codified at California Code of Civil Procedure §1021.5. For all work performed through the mutual execution of this Settlement Agreement, the Settling Entity shall reimburse Epps’ counsel \$495,000. The Settling Entity will deliver its payment to the address in subsection 3.3 by overnight courier, with a tracking number, or through an automatic electronic transfer such that payment is received by Epps’ counsel on the Effective Date. The reimbursement shall

cover all fees and costs incurred by Epps investigating, bringing this matter to the Settling Entity's attention and negotiating a settlement of the matter in furtherance of the public interest.

### 3.3 Payment Address and Effect of Non-Payment

All non-electronic payments required by this Settlement Agreement shall be delivered to the following address:

Chanler, LLC  
Attn: Proposition 65 Controller  
72 Huckleberry Hill Road  
New Canaan, CT 06840

Should the payments due under Section 3 not clear within ten calendar days from the Payment Dates, then Epps shall notify the Settling Entity in writing that the payment has not cleared. Upon receipt of written notice, the Settling Entity shall have five calendar days to cause the payment to be cleared. If after written notice, the payment does not clear in accordance with the above terms, then Epps may provide written notice to the Settling Entity declaring this Settlement Agreement null and void and Epps and his counsel shall return any previous payment(s) to the Settling Entity within five calendar days of the written notice.

## 4. CLAIMS COVERED AND RELEASED

### 4.1 Epps' Release of the Settling Entity

This Settlement Agreement is a full, final and binding resolution between Epps, as an individual (and not on behalf of the public yet furthers its health interest, unless it is judicially approved, in which case the release would be in furtherance of the public interest), and the Settling Entity, of any violation of Proposition 65 that was or could have been asserted by Epps on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against the Settling Entity, the noticed parties Alibaba Group Holding Limited and Alibaba Group (U.S.) Inc and its and their past, current, and future direct and indirect parents,

subsidiaries, affiliated entities under common ownership, predecessors, successors, directors, officers, managers, shareholders, members, employees, agents, assignees, attorneys, and each entity to or via whom the Settling Entity directly or indirectly distributes or sells or facilitates for sale the Products (including, but not limited to, vendors, suppliers, distributors, wholesalers, customers, retailers, e-commerce platforms, and each of their respective parents, subsidiaries, and affiliates, and each of their respective directors, officers, employees, representatives, attorneys, successors, and/or assignees), franchises, cooperative members, and licensees (collectively, Releasees), based on their alleged or actual failure to warn about alleged exposures to lead contained in the Products that were manufactured, distributed, sold, facilitated for sale, and/or otherwise allegedly offered for sale in California by, through, on behalf or for the benefit of, or with the aid or assistance of the Settling Entity and/or any Releasees expressly through aliexpress.com before the Effective Date, as alleged in the Notices.

In further consideration of the promises and agreements herein contained, Epps as an individual and not on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of his rights to institute or 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 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to lead in the Products manufactured, distributed, sold and/or offered for sale by the Settling Entity, before the Effective Date, against the Settling Entity and/or any Releasees.

Nothing in this subsection affects Epps' right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products that were sold and/or offered for sale in California by the Settling Entity, Alibaba Group Holding Limited and/or Alibaba Group (U.S.) Inc.

It is the Parties' position that the commitments agreed to herein, and actions taken by the Settling Entity under this Settlement Agreement confer a significant benefit to the public, as set forth in California Code of Civil Procedure § 1021.5 and 11 and California Code of Regulations § 3201. As such, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to the Settling Entity's failure to provide a warning concerning exposures to lead with respect to the Products, they have respectively manufactured, sold, imported, distributed or offered for sale in California through the compliance dates referenced in Section 2 above; such private party action would not confer a significant benefit on the general public as to the Products addressed in this Agreement, provided that the Settling Entity is in material compliance with this Settlement Agreement. This paragraph does not constitute a release by Epps on behalf of the general public under this Settlement Agreement.

#### 4.2 The Settling Entity's Release of Epps

The Settling Entity, on behalf of themselves, their past, current, and future agents, representatives, attorneys, successors, and/or assignees, hereby waive any and all claims against Epps and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Epps and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 in connection with the Notices or Products that were sold and/or offered for sale in California by the Settling Entity.

#### 4.3 Additional Limited Release

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. Epps, on behalf of himself only and not in his representative capacity, and the Settling Entity on behalf of itself only, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. The Parties acknowledge that the claims released in subsections 4.1 and 4.2 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 KNOWN 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.

Epps on behalf of himself only, and the Settling Entity on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542. The additional limited release in this subsection 4.3, expressly excludes alleged or actual failure to warn about alleged exposures to lead contained in the Products that were manufacturer, distributed, sold, facilitated for sale, and/or otherwise allegedly offered for sale in California by, through, on behalf or for the benefit of, or with the aid or

assistance of the Settling Entity and/or any Releasees through non-aliexpress.com platforms, including but not limited to alibaba.com, before the Effective Date.

**5. SEVERABILITY**

If, subsequent to its execution, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable (except subsection 4.1), the validity of the enforceable provisions remaining shall not be adversely affected.

**6. GOVERNING LAW & ENFORCEMENT**

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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then the Settling Entity shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve or prevent the Settling Entity from any obligation to comply with any other applicable state or federal law or regulation.

The Parties agree that if OEHHA changes any of its applicable regulations, including its warning regulations, then the Settling Entity may either conform with the revised regulations or continue to conform with the terms provided in this Settlement Agreement if the new implementing regulations so allow.

**7. NOTICE**

Unless specified herein, all correspondence, notices and service of process required to be provided pursuant to this Settlement Agreement shall be in writing and: (a) personally delivered;

(b) sent by first-class (registered or certified mail) return receipt requested; (c) sent by a recognized overnight courier to any party by the other party at the following addresses; or (d) electronically transmitted to one party by the other party at the following addresses:

For the Settling Entity:

AliExpress E-Commerce One Pte. Ltd.  
Attn: Xingjian (Jeff) Zhao, Senior Legal Counsel  
51 Bras Basah Road, #01-21 Lazada One, Singapore 189554  
us.productsafety@aliexpress.com

For Epps:

Proposition 65 Coordinator  
Chanler, LLC  
72 Huckleberry Hill Road  
New Canaan, CT 06840  
clifford@chanlerllc.com

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.

**8. COUNTERPARTS; FACSIMILE AND 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.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

**10. MODIFICATION**

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

**11. AUTHORIZATION**

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

**AGREED TO:**

Date: April 29, 2024

By:  \_\_\_\_\_  
Jay Epps

**AGREED TO:**

Date: April 30, 2024

By:  \_\_\_\_\_  
Xingjian Zhao  
Authorized Signatory  
AliExpress E-Commerce One Pte. Ltd.