

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between:

Michael DiPirro

(referred to herein as “DiPirro”) represented by his attorneys,

Law Office of David R. Bush and Jeremy Fietz, Attorney-at-Law, and

The Exploratorium

(referred to herein as “Noticed Party”) represented by its attorneys,

Wilson Sonsini Goodrich & Rosati.

DiPirro 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. Noticed Party employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

DiPirro alleges that the Noticed Party manufactures, imports, sells, or distributes for sale, in the State of California products containing Diethylhexyl phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer and birth defects or other reproductive harm (hereinafter the “Listed Chemical”).

#### **1.3 Product Description**

The products covered by this Settlement Agreement are Bike Panniers containing the Listed Chemical that are manufactured, sold, or distributed for ultimate sale to consumers in the State of California by the Noticed Parties, including, but not limited to, the: Exploratorium Bike Pannier (the “Products”).

#### **1.4 Notice of Violation**

On or about April 19, 2024, DiPirro served Noticed Party and certain requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), a document that informed the recipients of DiPirro’s allegation that Noticed Party violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical. To the best of DiPirro’s knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Noticed Party denies the material, factual, and legal allegations contained in the Notice and maintain that all of the products they have manufactured, sold, or distributed for sale 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 Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by the Noticed Party. This section shall not, however, diminish or otherwise affect the Noticed Party’s obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the day the final requisite signature is applied to the Settlement Agreement.

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

**2.1 Product Warnings.** Commencing within thirty (30) days of the Effective Date, for any of the Noticed Party’s Products that contain more than 0.1 percent (1,000 parts per million) of the Listed Chemical (which Noticed Party will determine through its own independent testing using a laboratory accredited by the State of California) and are shipped to any California resident consumer, or any agent, distributor, or affiliated company working on behalf of Noticed Party, for potential sale to California consumers, Noticed Party shall provide a clear and reasonable warning

on the label of each Product as set forth in Section 2.3. 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

**2.2 Internet Warnings.** In addition to the warning specified in Section 2.1 above, for all Products that Noticed Parties offer for sale directly to consumers in California via the internet, Noticed Parties shall provide a warning for such Products by including the warning set forth below in Section 2.3 on one or more of the following: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same web page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The internet warning described above can also be delivered through a hyperlink using the word “[California Prop 65] WARNING” (language in brackets optional), which then takes the user to a display of the warning set out in Paragraph 2.3.

**2.3 Text of the Warning.** The Noticed Parties shall use the warning set forth below, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be black or white if the color yellow is otherwise not used on the Product’s packaging):



**WARNING: This product can expose you to chemicals including Diethylhexyl 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).**

Foreign Language Requirement. Where a product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the Warning must also be provided in that language in addition to English.

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

**3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The Noticed Party shall make a civil penalty payment of \$1000 as a component of this settlement. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Noticed Party shall pay a total of \$35,500 for fees and costs incurred as a result of the time and resources DiPirro and his enforcement team have spent on this matter, including but not limited to: investigation, working with toxicology experts, bringing this matter to the Noticed Party’s attention, document preparation, negotiating a settlement in the public interest, and post-settlement compliance investigation.

**5. PAYMENT AND FORM 1099**

**5.1 Payment.** The settlement payments shall be made in two installments: the first in the amount of \$20,000 shall be delivered within fifteen (15) days of the Effective Date and the second in the amount of \$16,500 shall be delivered within forty-five (45) days after the effective date, to the bank account of Jeremy Fietz, Attorney at Law (via wire transfer, or ACH payment; number provided upon request) or by physical check to the office of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123, Santa Rosa CA 95405, and for the latter option shall be in the form of a check made payable to: “Jeremy Fietz, Attorney at Law”. For any payment that is returned for any reason, including insufficient funds, a payment must be made by Noticed Party in form of a cashier’s check within three (3) calendar days of notification of insufficient funds, plus a 10% service fee paid to DiPirro’s attorneys. Any payment that is not actually received by the due date will also be subject to a 10% late fee.

**5.2 Issuance of 1099 Form.** The Noticed Party shall provide DiPirro's counsel, Jeremy Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall be made on the Form 1099 MISC with the amount reported in box 10 ("Gross proceeds paid to an attorney"). The Noticed Party acknowledges that 1099 shall NOT be issued under form 1099 NEC. A W9 shall be provided by Jeremy Fietz, Attorney-at-Law after this Agreement has been fully executed by the Parties to this agreement.

**6. CLAIMS COVERED AND RELEASED**

**6.1 DiPirro's Release of Noticed and Related Parties**

This Settlement Agreement is a full, final, and binding resolution between DiPirro and the Noticed Party of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against any of the Noticed Party, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom either Noticed Party directly or indirectly distributes or sells the Products ("Releasees"), including its downstream distributors and retailers including Amazon.com, but not including its upstream suppliers and manufacturers, for unwarned exposures to the Listed Chemical from the Products manufactured, distributed, sold or distributed for sale in California by the Noticed Party prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his 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 that he may have against the Noticed Party and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for exposures to the Listed Chemical from Products distributed, sold, or distributed for sale in California by the Noticed Party prior to the Effective Date.

## **6.2 Noticed Party's Release of DiPirro**

Each Noticed Party, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro 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 DiPirro and his attorneys and other representatives, whether in the course of investigating Proposition 65 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6.3. The release in this Settlement Agreement extends to claims that the Parties do not know or suspect to exist in their favor and which, if known by them, would have materially affected their decisions to enter into this Settlement Agreement. The Parties acknowledge that they are familiar with Section 1542 of the California Civil Code, 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.”**

The Parties, having been advised by counsel, expressly waive and relinquish any right or benefit that they have or may have under Section 1542 of the California Civil Code and under any other statute, rule or legal principle of similar effect of any jurisdiction, to the full extent that they may waive all such rights and benefits pertaining to the matters released in this Settlement Agreement.

## **7. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

7.1. Di Pirro represents and warrants to Noticed Party that he has not heretofore assigned or otherwise transferred, or attempted to assign, or transfer, any present or threatened claim or claims against Noticed Party, and that there is no other person or legal entity that has not executed this Agreement as a releasing party that has any interest in any such claim or claims against Noticed

Party. Di Pirro and Law Office of David R. Bush and Jeremy Fietz further represent and warrant to Noticed Party that neither Di Pirro and Law Office of David R. Bush and Jeremy Fietz represent or know of any other specific individuals who intend to make demands or bring litigation concerning the Products or against Noticed Party. Di Pirro and Law Office of David R. Bush and Jeremy Fietz represent and warrant that neither Di Pirro and Law Office of David R. Bush and Jeremy Fietz have been notified or otherwise informed of any such intention or consideration thereof. Likewise, Noticed Party represents and warrants to Di Pirro and Law Office of David R. Bush and Jeremy Fietz that it has not heretofore assigned or otherwise transferred, or attempted to assign, or transfer, any present or threatened claim or claims against Di Pirro and Law Office of David R. Bush and Jeremy Fietz, and that there is no other person or legal entity that has not executed this Agreement as a releasing party that has any interest in any such claim or claims against Di Pirro and Law Office of David R. Bush and Jeremy Fietz.

7.2 This section is intended to comply with Rule 5.6(a)(2) of the California Rules of Professional Conduct and is not intended to, nor shall it be construed to, unlawfully or unethically restrict the practice of law.

**8. SEVERABILITY**

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

**9. 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 the Noticed Party may provide written notice to DiPirro of any asserted change in the law, and have

no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Noticed Party from any obligation to comply with any pertinent state or federal toxics control laws.

**10. NOTICES**

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

For The Exploratorium:

Joshua A. Baskin  
Wilson Sonsini Goodrich & Rosati  
One Market Plaza, Spear Tower #3300  
San Francisco, CA, 94105

AND

For Michael DiPirro:

Jeremy Fietz, Attorney-at-Law  
4241 Montgomery Drive, #123  
Santa Rosa CA 95405

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

**11. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.



**12. POST-EXECUTION ACTIVITIES**

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

**13. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the parties to this agreement.

**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 of this Settlement Agreement.

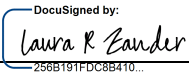
AGREED TO:

Date: August 27, 2024

By:   
Michael DiPirro

AGREED TO:

Date: 8/30/2024

By:   
The Exploratorium      Laura R Zander  
Print Name: \_\_\_\_\_  
Title: Chief Financial and Operating Officer