

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Ema Bell and Cryntel Enterprises, Inc.

This Settlement Agreement is entered into by and between Ema Bell ("Bell") and Cryntel Enterprises, Inc. ("Cryntel"), with Bell and Cryntel collectively referred to as the "Parties." Bell 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. Cryntel 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 & Safety Code section 25249.6, et seq. ("Proposition 65").

1.2 General Allegations

Bell alleges that Cryntel has manufactured, imported, distributed and/or sold in the State of California floor tiles containing Di(2-ethylhexyl) phthalate ("DEHP"). DEHP is listed under Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

1.3 Product Description

The product that is addressed by this Settlement Agreement is tile flooring that Plaintiff alleges contains DEHP, *355791 SS 12-IN x 12-IN ADOBE VI Model/Modèle/Modelo: 50051CA (# 0 94611 01778 6)*, that is manufactured, imported, distributed, sold and/or offered for sale by Cryntel in the State of California (referred to hereinafter as the "Product")

1.4 Notice of Violation

On June 23, 2014, Bell served Cryntel and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Cryntel, and such others, including public enforcers, with notice that alleged that Cryntel was in violation of Proposition 65 for failing to warn consumers and customers that the Product exposed users in California to DEHP.

No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Cryntel denies the material factual and legal allegations contained in Bell's Notice, and maintains that to the best of Cryntel's knowledge all products that it has sold and distributed in California, including the Product, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Cryntel 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 Cryntel of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Cryntel. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

Notwithstanding Bell's allegations in the Notice, Cryntel maintains that it has not knowingly manufactured, or caused to be manufactured, the Product for sale in California which is in violation of Proposition 65.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 07, 2014.

2. INJUNCTIVE RELIEF

2.1 Formulation / Reformulation Standards

Acceptable formulated and "Reformulated Products" are defined as products which yield less than or equal to 1,000 ppm of DEHP, when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining phthalate content.

2.2. Formulated / Reformulation Commitment

As of the Effective Date, Cryntel shall not knowingly manufacture, import, distribute, sell or offer the Product for sale in the State of California unless it is a Formulated or Reformulated Product pursuant to Section 2.1 above.

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

In settlement of all the claims referred to in this Settlement Agreement, Cryntel shall pay a total of \$2,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (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 Bell. Each penalty payment shall be delivered to the addresses listed in Section 3.3 below. Crytel shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing that are not received within two business days of the date they are due.

3.1 Initial Civil Penalty

On or before the Effective Date, Crytel shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$500. All penalty payments shall be delivered to the addresses listed in Section 3.2 below.

3.2 Payment Procedures

3.2.1 Issuance of Payments. Payments shall be delivered as follows:

(a) All payments owed to Bell, pursuant to Section 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 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

A copy of the checks payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

3.2.2 Issuance of 1099 Forms. After each penalty payment, Cryntel shall issue separate 1099 forms for each payment to Bell, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.2.1 above.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Bell and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Bell then expressed a desire to resolve the fee and cost issue shortly after the

other settlement terms had been finalized. The Parties reached an accord on the compensation due to Bell and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure section 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Cryntel shall reimburse Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to Cryntel's attention, and negotiating a settlement in the public interest. On or before the Effective Date, Cryntel shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$18,000 for delivery to the following address:

Evan Smith, Esq.
Brodsky & Smith, LLC
2 Bala Plaza, Ste. 510
Bala Cynwyd, PA 19004

5. RELEASE OF ALL CLAIMS

5.1 Release of Cryntel, Lowe's Companies Inc., Lowe's Home Centers, LLC and Downstream Customers and Entities

Bell acting in her own behalf and in the public interest, releases Cryntel and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys and each entity to whom Cryntel directly or indirectly distributes or sells the Product including, but not limited to, Lowe's Companies Inc., Lowe's Home Centers, LLC, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all

claims for violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to the DEHP contained in the Product that was manufactured, distributed, sold and/or offered for sale by Cryntel.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section(s) 3 and 4 above, Bell, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, provides a 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 Cryntel or 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 DEHP in the Product.

5.2 Cryntel's Release of Bell

Cryntel, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Bell, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Bell and her 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 the Product.

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.

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 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Cryntel shall provide written notice to Bell 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, the 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 Cryntel:

Steven Dreyer, President
CRYNTEL ENTERPRISES
10412 W. State Rd 84 #101
Davie, Florida 33324

For Bell:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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: 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)

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

11. MODIFICATION

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

12. 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: 10/09/14

Date: Oct 09, 2014

By: 
Ema Bell

By: 
Steven Dreyer, President
Cryptel Enterprises Ltd., Inc.