

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Ema Bell and Bath Accessories Company, Inc.

This Settlement Agreement is entered into by and between Ema Bell ("Bell") and Bath Accessories Company, Inc. ("Bath Accessories"). Together, Bell and Bath Accessories are collectively referred to as the "Parties." Bell 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. Bath Accessories is considered 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 Bath Accessories has imported, distributed, and/or sold in the State of California poly vinyl chloride ("PVC") shower caps (the "Products"), including but not limited to a PVC shower cap marketed under the Gal Pal - Bouffant brand as UPC No. 6 36581 14612 9, without requisite Proposition 65 warnings. Bell further alleges that such warnings are required because the Products contain the chemical Diisononyl phthalate (DINP). On December 20, 2013, the State of California listed DINP under Proposition 65 as a chemical known to the State to cause cancer.

#### 1.3 Notice of Violation

On or about August 11, 2016, Bell served Bath Accessories, as well as The TJX Operating Companies, Inc. and NBC Fourth Realty Corp. (collectively, "TJ Maxx"), and various public enforcement agencies with a document entitled "Notice of Violation of California

Health & Safety Code § 25249.6, *et seq.*” (“Notice”). The Notice provided Bath Accessories and others, including public enforcers, with notice that alleged that sale of the Products was in violation of California Health & Safety Code § 25249.6 for failing to provide Proposition 65 warnings that they exposed consumers in California to DINP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.4 No Admission**

Bath Accessories denies the material factual and legal allegations contained in the Notice and avers that all of its products that are or have been sold and distributed in California, including the Products, have been and are in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Bath Accessories 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 Bath Accessories of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Bath Accessories under this Settlement Agreement.

#### **1.5 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date that this Settlement Agreement is signed by both Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation of the Products**

Commencing on the Effective Date, and continuing thereafter, Bath Accessories shall only manufacture, import, or otherwise source for authorized sale in California, Reformulated Products as defined pursuant to Section 2.2 below or Products that are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.3 below. Products acquired by, and/or

sold in the state of California by Bath Accessories prior to the Effective Date are exempted from the foregoing obligation and may be offered for sale in California and sold through downstream distributors, dealers, and retailers, including TJ Maxx, as previously packaged and received by Bath Accessories.

## **2.2 Reformulation Standard**

“Reformulated Products” shall mean Products that contain less than or equal to 1,000 parts per million (“ppm”) each of DINP, Di-n-butyl Phthalate (“DBP”), Butyl benzyl phthalate (“BBP”), Di-n-hexyl Phthalate (“DnHP”), di-isodecyl phthalate (“DIDP”), and Diisononyl Phthalate (“DINP”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent testing methodologies authorized by government agencies for the detection of phthalate chemicals in consumer products.

## **2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date, Bath Accessories shall, for all Products it distributes and that are authorized by it for sale in California that are not Reformulated Products, affix a warning to the consumer-facing packaging or directly on each Product that states:

**WARNING:** This product contains chemicals known to the State of California to cause cancer.

By August 30, 2018, such warnings shall comply with the revised warning requirements of Proposition 65 as follows:

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

or

**WARNING:** This product contains phthalate chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

or

**WARNING:** This product can expose you to chemicals, including DINP, which are 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).

Regardless of which warning statement is utilized, it 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 prior to purchase or use.

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

3.1 In settlement of all the claims referred to in this Settlement Agreement, Bath Accessories shall pay a total of \$900.00 in civil penalties pursuant to California Health & Safety Code § 25249.7(b) in accordance with this Section. This penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(l) 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. More specifically, within fourteen (14) business days of the Effective Date, Bath Accessories or its counsel Corporate Counsel Law Group, LLP through its client-trust account, shall issue two separate checks for the civil penalty payment to (a) “OEHHA” in the amount of \$675.00 and with the memo line on the check indicating “Prop 65 Penalties-Bell v. Bath Accessories/DINP” (Bath Accessories may reference OEHHA’s Tax Identification Number of 68-0284486 for this check); and (b) “Brotsky & Smith, LLC in Trust for Bell” in the amount of \$225.00 (for which Bell shall provide Bath Accessories a completed IRS Form W-9 with a tax identification number within two days following the Effective Date, if not beforehand). These checks shall be delivered as follows:

(i) The check to Bell shall be delivered to the following address:

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

(ii) The check for OEHHA shall be delivered to one of 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

OR

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

Bath Accessories agrees to provide Bell's counsel with a copy of its check payable to OEHHA upon request.

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 this Settlement Agreement had been mutually agreed upon. 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 § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Under these legal principles, Bath Accessories shall reimburse Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to Bath Accessories' attention, and negotiating a settlement thereof. Within fourteen (14) business days of the Effective Date, Bath Accessories, or its counsel Corporate Counsel Law Group, LLP through its client trust account, shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$8,100.00 for delivery to the following address:

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

To facilitate timely payment, within two days following the Effective Date, if not beforehand, Brodsky & Smith LLC shall provide Bath Accessories with a completed IRS Form W-9 with its tax identification number.

5. **RELEASE OF ALL CLAIMS**

**5.1 Release of Bath Accessories and Downstream Retailers and Entities**

Bell, acting on her own behalf, releases Bath Accessories, its parent and affiliates, and their respective directors, officers, shareholders, agents, employees, and attorneys, and each entity to whom Bath Accessories directly or indirectly distributes or sells, or for which it otherwise fulfills orders for, the Products, including, but not limited to, downstream distributors, wholesalers, customers, marketplace hosts and retailers (including, but not limited to, TJ Maxx) and their respective parents, affiliates, and subsidiaries, franchisees, cooperative members, and licensees (collectively, all of the preceding shall be referred to as the "Releasees"), from all claims for violations of Proposition 65 based on the failure to warn about alleged exposures to Listed Phthalates in the Products as acquired by Bath Accessories prior to the Effective Date. As

between Bell and Bath Accessories and the Releasees, compliance with the terms of this Settlement Agreement shall be deemed to constitute compliance with Proposition 65 relative to Listed Phthalates in the Products.

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 against Bath Accessories or its affiliated companies of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising up to the Effective Date, whether based on Proposition 65 or otherwise. In this regard, Bell acknowledges that she is familiar with Section 1542 of the California Civil Code, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Bell is, in this regard, therefore expressly waiving and relinquishing any and all rights and benefits that she may have under, or that may be conferred on her by the provisions of, California Civil Code § 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

#### **5.2 Bath Accessories' Release of Bell**

Bath Accessories, 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/or 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 Products.

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 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to DINP or the Products, Bath Accessories 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 Products are 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 Bath Accessories:

Howard N. Chung  
Corporate Counsel Law Group, LLP  
25 Kearny Street, Suite 302  
San Francisco, California 94108



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 in this Settlement Agreement.

13. CONFIDENTIALITY: Each of the parties, and their respective attorneys, agents and employees, agrees that to not disclose any term or aspect of this Settlement Agreement and not to make, express, transmit speak, write, verbalize or otherwise communicate in any way any remark, comment, message, information, declaration, communication or other statement of any kind, whether verbal, in writing, electronically transferred or otherwise, regarding the parties, the Products, or any other part of this Settlement Agreement, unless required by law or upon

subpoena. The terms of this Agreement and the amount of the settlement herein are to be kept confidential by all parties.

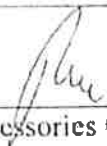
**AGREED TO:**

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

By: \_\_\_\_\_  
Ema Bell

**AGREED TO:**


Date: 12/30/16

By:  \_\_\_\_\_  
Bath Accessories Company, Inc.

**AGREED TO AS TO FORM:**

\_\_\_\_\_  
Evan J. Smith, Esq.  
Brodsky & Smith, LLC  
Attorneys for Ema Bell

Dated: December \_\_, 2016

  
\_\_\_\_\_  
Howard N. Chung, Esq.  
Corporate Counsel Law Group, LLP  
Attorneys for Bath Accessories Company,  
Inc. 1-9-2017  
Dated: ~~December \_\_, 2016~~

subpoena. The terms of this Agreement and the amount of the settlement herein are to be kept confidential by all parties.

**AGREED TO:**

Date: 11/01/17

By:   
Ema Bell

**AGREED TO:**

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

By: \_\_\_\_\_  
Bath Accessories Company, Inc.

**AGREED TO AS TO FORM:**

  
Evan J. Smith, Esq.  
Brodsky & Smith, LLC  
Attorneys for Ema Bell  
Dated: 11/01/2017  
~~December~~ \_\_, 2017

\_\_\_\_\_  
Howard N. Chung, Esq.  
Corporate Counsel Law Group, LLP  
Attorneys for Bath Accessories Company,  
Inc.  
Dated: December \_\_, 2016