

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement (“Agreement”) is entered into by and between Ema Bell (“Bell”) and Craig Electronics, Inc. and its affiliates (“Craig Electronics”). Bell and Craig Electronics are collectively referred to herein as, the “Parties.” Bell claims that she is an individual that 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.

#### 1.2 General Allegations

Bell claims that Craig Electronics employs ten or more persons and 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") and that it causes to be manufactured, distributed or sold to California customers mobile accessories including smartphone armbands including but not limited to UPC No. 7 31398 43315 5 (referred to as “Product(s)”). Bell alleges that Craig Electronics has imported, distributed and/or sold the Product without a requisite Proposition 65 warning and that the Product contains the chemical Diisononyl phthalate (DINP). On December 20, 2013, the State of California listed DINP as a chemical known to the State to cause cancer.

On October 26, 2016, Bell served Rite Aid Corporation (“Rite Aid”), Craig Electronics, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*” (the “Notice”). The Notice provided Craig Electronics and such others, including public enforcers, with

notice that alleged that Craig Electronics was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Product exposed users in California to DINP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

### **1.3 No Admission**

Craig Electronics 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 Product, have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Craig Electronics of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Craig Electronics of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Craig Electronics. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Agreement. Notwithstanding the allegations in the Notice, Craig Electronics maintains that it has not knowingly manufactured or distributed, or caused to be manufactured or distributed, Products for sale in California in violation of Proposition 65. Nothing in this settlement agreement, nor compliance with its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Craig Electronics, or its owners, officers, directors, employees, parents, subsidiaries, employees, shareholders, directors, insurers, attorneys, successors and assigns, past and present, affiliated entities or corporations, or entities absorbed by merger or acquisition, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal

proceeding, except as expressly provided in this Agreement.

#### **1.4 Effective Date**

For purposes of this Agreement, the term “Effective Date” shall mean the date that the parties execute this Agreement.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation of the Product**

Commencing on the Effective Date, and continuing thereafter, Craig Electronics shall only ship, sell, or offer for sale in California, Reformulated Products pursuant to Section 3.2 of this Settlement Agreement, or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3 of this Settlement Agreement. Craig Electronics and its downstream retailers shall have no obligation to reformulate or label Products that entered the stream of commerce prior to the Effective Date. For purposes of this Consent Judgment, “Reformulated Products” are Products, as defined herein, that are in compliance with the standard set forth below in Section 2.2.

### **2.2 Reformulated Products**

Reformulated Products” shall mean Products that contain less than or equal to 1,000 parts per million (“ppm”) of DINP when analyzed pursuant to CPSC-CH-C1001-09.3 Standard Operating Procedure for Determination of Phthalates method or EPA methods 3580A or 8270C or any products which Craig Electronics can demonstrate that the level of exposure to DINP as a result of the use of the use of the product is within a “safe harbor” level established pursuant to Proposition 65.

### **2.3 Clear and Reasonable Warning**

Commencing on the Effective Date, Craig Electronics shall, for all Products it sells or distributes and which is intended for sale in California that is not a Reformulated Product, or which Craig Electronics has reason to believe will be shipped or sold in California, provide clear and reasonable warnings as set forth in subsections 2.3(a) below. The 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 is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Craig Electronics shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

#### **(a) Retail Store Sales**

**(i) Product Labeling.** Craig Electronics shall affix a warning to the packaging, labeling or directly on each Product shipped for California retail sale after the Effective Date that is not Reformulated Product using language similar to the warning described below:

**[PROPOSITION 65] WARNING:**

This product contains a chemical known to the State of California to cause cancer.

The bracketed text may, but is not required to be used.

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

In settlement of all the claims referred to in this Agreement, Craig Electronics shall pay a total of \$1,500.00 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 3.2 below. Craig Electronics 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 ten business days of the date they are due.

**3.1 Civil Penalty**

On or before the Effective Date, Craig Electronics shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,125.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$375.00. All penalty payments shall be delivered to the addresses listed in Section 3.2 below.

**3.2 Payment Procedures**

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

**(i)** All payments owed to Bell, pursuant to Section 4.1 shall be delivered to the following payment address:

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

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1 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  
1001Street  
Sacramento, CA 95814

(b) **Copy of Payments to OEHHA.** Craig Electronics agrees to provide Bell's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Bell, to be delivered to the address provided in Section 4.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Craig Electronics agrees to provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

(i) "Ema Bell" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;

(ii) “Brodsky & Smith, LLC” (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 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 § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Craig Electronics shall reimburse Bell’s counsel for fees and costs incurred as a result of investigating and bringing this matter to Craig Electronics’ attention, and negotiating a settlement in the public interest. On or before the Effective Date, Craig Electronics shall issue a check payable to “Brodsky & Smith, LLC” in the amount of \$13,500.00 for delivery to the following address:

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

**5. RELEASE OF ALL CLAIMS**

**5.1** This Agreement is a full and final resolution between Bell on behalf of herself and her past and current agents, representatives, attorneys, successors and/or assignees, on the one hand, and (a) Craig Electronics and its respective owners, officers,

directors, insurers, attorneys, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister and related companies, entities absorbed by merger or acquisition, their predecessor or successor entities, and their heirs, assigns and successors in interest, past or present and (b) any other person or entity who may directly or indirectly use, provide, maintain, distribute or sell Products in the course of doing business, including but not limited to each of Craig Electronics' suppliers, customers, distributors, wholesalers, retailers, including, but not limited to, Rite Aid, on the other hand, for all violations or claimed violations of Proposition 65 up through the Effective Date or with regard to any Product that was shipped by Craig Electronics to Rite Aid prior to the Effective Date based on exposure to DINP and Di(2-ethylhexyl) phthalate (DEHP) or the failure to warn about exposure to DINP or DEHP arising in connection with the Products manufactured, shipped and/or otherwise distributed for California sale on or before the Effective Date. ("Released Claims"). Craig Electronics' compliance with this Agreement shall constitute compliance with Proposition 65 with respect to DINP and DEHP contained in Product.

## **5.2 Bell's Release**

Bell, acting on her own behalf, waives, releases and forever discharges Craig Electronics and its parents, subsidiaries, affiliated entities under common ownership, successors and/or assignees, directors, officers, agents, employees, attorneys and each entity to whom Craig Electronics directly or indirectly distributes or sells the Product, including, but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Rite Aid and its affiliates and subsidiaries, 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 chemicals DINP and DEHP that are contained in the



Product, and was distributed, sold and/or offered for sale by Craig Electronics to customers and consumers in the State of California. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against Craig Electronics and/or the Releasees for failure to provide warnings for alleged exposures to DINP and DEHP contained in the Product.

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 Craig Electronics 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 chemical DINP in the Product.

### **5.3 Craig Electronics' Release**

Craig Electronics, 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 Product.

### **5.4 California Civil Code Section 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. Bell on

behalf of herself only, on one hand, and Craig Electronics, 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 Sections 5.2 and 5.3 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads 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 and Craig Electronics each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

**6. SEVERABILITY**

If, subsequent to the execution of this Agreement, any of the provisions of this Agreement, other than the releases provided by Bell, 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 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or if the provisions of this Agreement are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered by reason of law generally as to the Product, then Craig Electronics shall provide written notice to Bell of any asserted

change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Product is so affected.

## **8. ENFORCEMENT**

**8.1** No action to enforce this Agreement may be commenced or maintained, and no notice of violation related to the Products may be served or filed against Releasees by Bell, or anyone represented by Brodsky & Smith LLP, unless the party seeking enforcement or alleging violation notifies the other party of the specific acts alleged to breach this Agreement at least 90 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 8.3 below.

**8.2** Any notice to Craig Electronics must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without a warning or reformulation, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

**8.3** Within thirty (30) days of receiving the notice described in Section 8.2, Craig Electronics shall either (a) (1) send the customer to whom the product was sold a letter directing that either (a) the offending product be immediately removed from inventory and returned to Craig Electronics or (b) a label be placed on the Product or (2) refute the information provided under Section 8.2.

**8.4** Should Craig Electronics not comply with the terms of Section 8.3(a) or the parties be unable to resolve any dispute regarding the information provided pursuant to Section 83(b), then any party may seek relief to enforce this Agreement.

9. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this 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 Craig Electronics:

Albert Cohen  
Loeb & Loeb LLP  
10100 Santa Monica Blvd., Suite 2200  
Los Angeles, CA 90067

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.

10. **FULLY INTEGRATED AGREEMENT**

This Agreement constitutes the entire agreement between the Parties pertaining to the resolution of the issues addressed herein and any and all prior discussions, negotiations, commitments and understandings related thereto, are hereby merged herein and superseded by this Settlement Agreement. No representations, oral or otherwise, express or implied, other than those contained in this Settlement Agreement shall be deemed to exist or bind any of the Parties hereto.

11. COUNTERPARTS: SIGNATURES

This 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.

12. 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).

13. MODIFICATION

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

14. AUTHORIZATION

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

**AGREED TO:**

2/1/2017

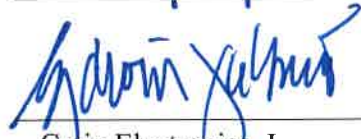
Date: \_\_\_\_\_

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

**AGREED TO:**

2/03/07

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

By:  \_\_\_\_\_  
Craig Electronics, Inc.