

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ema Bell (“Bell”) and Forever 21, Inc. (“Forever 21”). Together, Bell and Forever 21 are collectively referred to as the “Parties.” Bell 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. Bell alleges that Forever 21 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 § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Bell alleges that Forever 21 has exposed individuals to the chemicals di(2-ethylhexyl) phthalate (DEHP), di-n-butyl phthalate (DBP), and diisononyl phthalate (DINP) (collectively, the “Listed Phthalates”) from its sales of (a) Forever 21 Hair Tools Totes, (b) Forever 21 Jump Ropes, and (c) Forever 21 Hair Accessories Kits without first providing clear and reasonable health hazard exposure warnings as required under Proposition 65.

1.2.1 DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.2.2 DBP is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

1.2.3 DINP is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Product Description. The products covered by this Settlement Agreement are Forever 21 (a) Hair Tools Totes, (b) Jump Ropes, and (c) Hair Accessories Kits (collectively, the “Products”) that are manufactured, distributed and/or offered for sale in California by Forever 21.

1.4 Notices of Violation. On or about March 29, 2018, April 23, 2018, and April 27, 2018, Bell served Forever 21 and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (collectively, the “Notices”), alleging that Forever 21 was in violation of Proposition 65 for failing to warn California consumers

and customers that use of Forever 21 Hair Tools Totes, Jump Ropes, and Hair Accessories Kits expose them to the Listed Phthalates. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Forever 21 denies the material factual and legal allegations contained in the Notices and maintains that, to the best of its knowledge, all products that are or have been sold and 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 Forever 21 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 Forever 21 of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Forever 21. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Forever 21 maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: WARNINGS


2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that Forever 21 directly imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product.

2.2 Reformulation Standard. “Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of the Listed Phthalates when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C

or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Forever 21 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Forever 21 to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including [name of one or more chemicals], which is [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.¹²³

(b) **Alternative Warning:** Forever 21 may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.⁴⁵⁶

2.4 A **Warning** or **Alternative Warning** provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the

¹ For Product that contain DEHP only, the **Warning** should indicate “[...]known to the State of California to cause cancer and birth defects or other reproductive harm.”

² For Product that contains DBP only, the **Warning** should indicate “[...]known to the State of California to cause birth defects or other reproductive harm.”

³ For Product that contains DINP only, the **Warning** should indicate “[...]known to the State of California to cause cancer.”

⁴ For Product that contain DEHP only, the **Alternative Warning** should indicate “Cancer and Reproductive Harm - www.P65Warnings.ca.gov.”

⁵ For Product that contains DBP only, the **Alternative Warning** should indicate “Reproductive Harm - www.P65Warnings.ca.gov.”

⁶ For Product that contains DINP only, the **Alternative Warning** should indicate “Cancer - www.P65Warnings.ca.gov.”

warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

2.5 Compliance with Warning Regulations. Forever 21 shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, Forever 21 shall pay \$3,000.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to OEHHA and the remaining 25% of the penalty remitted to Bell. The Civil Penalty payment(s) shall be delivered to the addresses identified in Section 3.2, below.

3.1 Civil Penalty. Within ten (10) days of the Effective Date, Forever 21 shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and to (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$750.00. The Civil Penalty payments shall be delivered to the addresses identified 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 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

(ii) 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

(b) **Copy of Payments to OEHHA.** Forever 21 agrees to provide Bell's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payment to Bell, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

(C) **Tax Documentation.** Forever 21 agrees to provide a completed IRS 1099 for its payments to, and Bell agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Ema Bell" whose address and tax identification number shall be provided within five (5) days 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 reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter 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, Forever 21 shall reimburse Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to Forever 21's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Forever 21 shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$32,000.00 for delivery to the address identified in Section 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Forever 21 and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and Forever 21, of any violation of Proposition 65 that was or could have been asserted by Bell or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to the Listed Phthalates contained in the Products, and Releasers hereby release any such claims against Forever 21 and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Forever 21 directly or indirectly distributes or sells the Products(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 Listed Phthalates that are contained in the Products, and that were distributed, sold and/or offered for sale by Forever 21 to customers and consumers in the State of California.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Bell, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims

that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of 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 Listed Phthalates in the Products.

5.2 Forever 21's Release of Bell. Forever 21, 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.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Products will develop or be discovered. Bell on behalf of herself only, on one hand, and Forever 21, 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 5.1 and 5.2, 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 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 Forever 21 each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. Compliance by Forever 21 with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to the Listed Phthalates in the Products.

5.5. Public Benefit. It is Forever 21's understanding that the commitments it has agreed to herein, and actions to be taken by Forever 21 under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Forever 21 that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Forever 21 failure to provide a warning concerning exposure to the Listed Phthalates prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Forever 21 is in material compliance with this Settlement Agreement.

6. ENFORCEMENT

6.1 Either party may file suit before the Superior Court of the County of Alameda to enforce the terms and conditions contained in this Settlement Agreement subject to Sections 6.2 and 6.3, below. The prevailing Party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

6.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Products may be served or filed against Forever 21 by Bell, unless Bell notifies Forever 21 of the specific future acts alleged to breach this Settlement Agreement at least sixty (60) days before serving or filing any action or Notice of Violation, and Forever 21 fails to comply with the requirements imposed on it as set forth in Section 6.3, below. Any notice to Forever 21 must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without either reformulation or a Proposition 65 compliant exposure, and (d) any other evidence or other support for the allegations in the notice.

6.3 The Parties agree that, within thirty (30) days of receiving the notice described in Section 6.2, above, Forever 21 shall either (a) agree in writing not to contest Bell's notification and make a contribution to Bell to be used by Bell in its Proposition 65 inspections and enforcement in the amount of (i) \$5,000.00 in the event that prior to taking delivery of the product, Forever 21 failed

to obtain from its supplier independent testing data for a representative sample of the product from the lot or batch shipped to Forever 21 demonstrating that it met the reformulation standard required pursuant to the Settlement Agreement; (ii) a contribution of \$2,500.00 in the event that, prior to taking delivery of the product, Forever 21 received from its supplier independent testing data showing that the lot or batch from with the product was shipped met the reformulation standard required pursuant to this Agreement, or (b) refute the information provided to Forever 21 by Bell under Section 6.2 with analytical data reasonably acceptable to Bell showing representative samples of the product meet the Reformulation Standard. In the event that Forever 21 fails to refute the information provided by Bell, and the parties are unable to resolve the dispute, Bell, in her sole discretion may elect to file a Notice of Violation with the California Attorney General and seek all penalties, damages, and other remedies available under Proposition 65 through a court proceeding notwithstanding the amounts listed in this Section 6.3.

7. **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 but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

8. **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 or limited by reason of law generally, or as to the Products, Forever 21 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, a Product is so affected.

9. **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 Forever 21:

John J. Allen
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543

For Bell:

Evan Smith
Brodsky & Smith, LLC
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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. 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

12. MODIFICATION

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

13. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

14. 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.

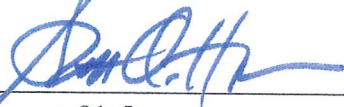
AGREED TO:

AGREED TO:

Date: _____

Date: 10/17/18

By: _____
Ema Bell

By: 
Forever 21, Inc.

