

SETTLEMENT AGREEMENT

BETWEEN

EMA BELL.

AND

SFERRA FINE LINENS, LLC.

Emma Bell (“Bell”) and Sferra Fine Linens LLC. (“SFERRA”), collectively referred to as the “Parties,” enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle Bell’s allegations that SFERRA and certain Downstream Releasees including but not limited to Federated Department Stores, Inc., Blomingtondale’s, and Macy’s West Stores, Inc. and others as further defined below, violated the California Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §25249.6 et seq. (“Proposition 65”). The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

1.0 Introduction

1.1 Bell is a citizen of the state of California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 Bell alleges that SFERRA manufactures, imports, sells, or distributes, for sale in the State of California, plastic bags that contain Diisononyl phthalate (DINP) above the No Significant Risk Level (“NSRL”) without first providing a clear and reasonable warning as required by Proposition 65.

1.3 ~~DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer, if it causes exposures that exceed the daily dose level set forth by OEHHA.~~

1.4 The products covered by this Settlement Agreement are plastic bags manufactured by or for SFERRA, imported by or for SFERRA, or distributed or sold by or for SFERRA to others, including, but not limited to, Federated Department Stores, Inc., Blomingle's, and Macy's West Stores, Inc.

1.5 On December 20, 2013, the State of California added DINP to the list of chemicals subject to Proposition 65.

1.6 This addition took place more than twelve (12) months before Bell served SFERRA and Downstream Releasees with its "60-Day Notice of Violation," which is further described below.

1.7 DINP is referred to hereinafter as the "Listed Chemical"

1.8 On or about April 18, 2019, Bell served SFERRA and Downstream Releasees, as well as certain relevant public enforcement agencies with a document entitled "60-Day Notice Of Violation" ("Notice") advising of its intent to sue for alleged violations of Proposition 65 arising from or related to Covered Products containing the Listed Chemical.

1.9 The Notice alleged that SFERRA and Downstream Releases violated Proposition 65 by failing to warn consumers in California that use of Covered Products purportedly exposed users to the Listed Chemical.

1.10 To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the same allegations against the SFERRA and the Downstream Releasees.

1.11 SFERRA denies the material, factual and legal allegations contained in the Notice, and maintains that all of the products that it has sold and distributed in California, including the Covered Products, are and have been in compliance with all laws, including Proposition 65.

1.12 The Parties enter into this Settlement Agreement to settle disputed claims between

the Parties as alleged in the Notice and as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute").

1.13 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any alleged violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission against interest, by any Party or any Releasee or Downstream Releasee, of any alleged fact, conclusion of law, issue of law, or violation of law.

1.14 Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission against interest or evidence of fault, wrongdoing, or liability by the SFERRA and/or the Downstream Releasees, their officers, directors, employees, or parents, subsidiaries or affiliated corporations, any person acting for any of them, any direct or indirect customer of SFERRA and/or the Downstream Releasees who sold or sells the Covered Products, and/or any Downstream Releasees, as defined below, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

1.15 Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Bell or SFERRA or the Downstream Releasees may have against one another in any other legal proceeding as to allegations unrelated to the Dispute or claims released herein.

2.0 Release

~~2.1 This Settlement Agreement is a full, final, and binding resolution between Bell, acting in its individual capacity only, and not its representative capacity, on the one~~

hand, and (a) SFERRA, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, carriers, licensors, licensees, brands, shareholders, members, officers, directors, insurers, agents, attorneys, predecessors, successors, and assigns (collectively, "Releasees"), and (b) all entities to whom SFERRA directly or indirectly have provided, distributed, or sold the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including Federated Department Stores, Inc., Blomingtondale's, and Macy's West Stores, Inc., and their respective attorneys, officers, directors, employees, agents, contractors, subcontractors, predecessors, successors, assigns, subsidiaries, parent(s) and affiliated companies (and each of the officers, directors, legal representatives, insurers, and assigns thereof) (collectively, "Downstream Releasees"), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65, or any statutory or common law claim that has been, could have been or may in the future be asserted against the SFERRA and/or Downstream Releasees regarding (I) the Dispute, (II) the Covered Products, (III) exposing persons to the Listed Chemical, or (IV) the failure to warn about exposure to the Listed Chemical arising in connection with the Covered Products; whether manufactured, shipped, and/or otherwise distributed prior to the Effective Date, and even if sold by the Releasees or the Downstream Releasees after the Effective Date (collectively, the "Covered Matters").

2.2 Bell, her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all

actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively the "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Matter.

2.3 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, her past and current agents, representatives, attorneys, successors, and/or assignees, in her individual and not representative capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of, 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 it may lawfully waive such rights or benefits pertaining to the Covered Matters.

3.0 SFERRA's Duties

3.1 Commencing sixty (60) days after the Effective Date, SFERRA shall only sell or offer for sale, in California, Covered Products that are Compliant Products. For purposes of this Settlement Agreement, Compliant Products are defined as those Covered Products either (a)

containing the Listed Chemical in a concentration less than or equal to 1,000 parts per million (“ppm”) (0.1%) when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other scientifically reliable methodology for determining the Listed Chemical content in a substance of the form of the Covered Products herein (“Reformulation Standard”), or (b) exhibiting a warning in compliance with Proposition 65 (“Compliant Warning”).

3.2 Whenever a clear and reasonable warning is required under Section 3.1 for Covered Products offered for sale in the State of California, it shall state one of the warnings described in Section 3.3 in such a conspicuous and prominent manner as to be likely to be read and understood by the consumer prior to or at the time of the sale or purchase.

3.3 The Parties agree that any warning which conforms with the provisions of Title 27 California Code of Regulations Article 6 Clear and Reasonable Warnings Section 25600 et. seq. shall constitute a Compliant Warning for the Listed Chemical in the Covered Products.

3.4 If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Settlement Agreement, SFERRA may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations.

4.0 **Payments**

4.1 **Payment from SFERRA.** Within twenty (20) business days of the Effective Date, SFERRA shall make the Total Settlement Payment of \$27,500.

4.2 **Allocation of Payments.** The Total Settlement Payment shall be paid in three (3) separate checks made payable and allocated as follows:

4.2.1 Civil Penalty. SFERRA shall pay \$2,500 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to Bell and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment in the amount of \$1,8750.00 shall be made payable to OEHHA. This payment shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The Bell portion of the civil penalty payment in the amount of \$625.00 shall be made payable to Ema Bell. This payment shall be delivered to the Law Office of Brodsky & Smith LLC, Two Bala Plaza, Suite 510, Bala Cynwyd, PA 19004.

4.2.2 Attorneys' fees and Costs. A reimbursement of Bell's attorney's fees and costs in the amount of \$25,000.00 payable to the "Law Office of Brodsky & Smith LLC". This payment shall be delivered to the Law Office of Brodsky & Smith, LLC, Two Bala Plaza, Suite 510, Bala Cynwyd, PA 19004.

4.2.3 Tax Forms: Additionally, two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,8750.00. The second 1099 shall be issued in the amount of \$625.00 to Bell and

delivered to: Law Office of Brodsky & Smith, LLC, Two Bala Plaza, Suite 510, Bala Cynwyd, PA 19004.

5.0 Report of the Settlement Agreement to the Office of the Attorney General of California

5.1 Bell shall report this Settlement Agreement to the California Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

6.0 Execution in Counterparts and Facsimile

6.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document.

6.2 A facsimile or portable document format (PDF) signature shall be as valid as the original.

7.0 Entire Agreement

7.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings.

7.2 No other agreements, oral or otherwise, exist to bind any of the Parties.

8.0 Modification of Settlement Agreement

8.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

9.0 Application of Settlement Agreement

9.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, Bell and the Releasees and Downstream Releasees identified in Section 2 above. SFERRA's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 by

the Releasees and Downstream Releasees with regard to the Listed Chemical in the Covered Products.

100 Enforcement of Settlement Agreement

10.1 Any Party may file suit before the Superior Court of the County of San Diego, consistent with the terms and conditions set forth in Sections 10.2 and 10.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement.

10.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no Notice of Violation related to the Covered Products may be served or filed against the Releasees and Downstream Releasees by Bell, unless the Party seeking enforcement or alleging violation notifies the other Party of the specific act(s) alleged to constitute a breach of this Settlement 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 10.3 below. Any notice to SFERRA alleging a new violation with respect to a Covered Product must contain (a) the name of the product, including SKU if applicable, (b) specific dates when the product was sold after the Effective Date in California without reformulation or a warning, (c) the store or other place at which the product was available for sale to consumers, (d) evidence that the Reformulation Standard was exceeded or a warning was not provided, and (e) any other evidence or other support for the allegations in the notice.

10.3 Within thirty (30) days (or such additional time as the Parties may mutually agree upon) of receiving the notice described in Section 10.2, SFERRA and Bell shall meet and confer on the alleged violation. If SFERRA refutes the alleged violation (for example, by establishing the Covered Product is subject to the releases of claims herein or producing test results documenting the subject Covered Product meets the Reformulation Standard), no further action is

necessary. If Bell establishes the violation, then SFERRA shall send the store or other place at which the product was available for sale to the public a letter directing that the subject product be immediately removed from inventory and returned to SFERRA. Should the Parties be unable to resolve the dispute, any Party may seek relief under Section 10.1.

11.0 Notification Requirements

11.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For Bell:

Evan Smith, Esq.
Law Office of Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

For SFERRA

Sferra Fine Linens, LLC
ATTN: Christopher McRorie
General Counsel
SFERRA Fine Linens, LLC
Highlander Partners, LP
300 Crescent Court, Suite 550
Dallas, Texas 75201

With Copy to:

S. Wayne Rosenbaum
Environmental Law Group
250 Broadway, Suite 1900
San Diego, CA 92101

Any Party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

12.0 Severability

12.1 If subsequent to the execution of this Settlement Agreement, any of the provisions

of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

13.0 Governing Law

13.1 The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. This Settlement Agreement shall have no application to Covered Products which are not sold to California customers.

13.2 In the event that Proposition 65 is repealed, preempted, or otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then SFERRA shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, any Covered Products that are so affected.

13.3 The Parties, including their counsel, have jointly participated in the preparation of this Settlement Agreement, and this Settlement Agreement is the result of the joint efforts of the Parties.

13.4 This Settlement Agreement was subject to revision and modification by the Parties, and has been accepted and approved as to its final form by all Parties and their counsel.

13.5 Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

14.0 Authorization

14.1 Each signatory to this Settlement Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement on behalf of the Party represented, and to thus legally

bind that Party.

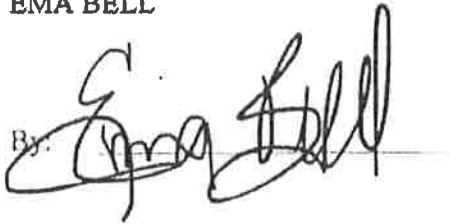
14.2 The undersigned have read, understand, and agree to all of the terms and conditions of this Settlement Agreement.

14.3 Except as explicitly provided herein, each Party is to bear its own fees and costs.

AGREED TO:

Dated: 7/2/19

EMA BELL

By: 

Dated:

SFERRA, LLC

By: 

Christopher McRorie
Vice President, General Counsel & Secretary