

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ema Bell (“Plaintiff” or “Bell”) and Wild Eye Designs, Inc. (“Wild Eye Designs” or “Defendant”). Together, Bell and Wild Eye Designs are collectively referred to as the “Parties.” Bell is an individual who allegedly resides in the State of California, and seeks to improve human health by reducing or eliminating hazardous substances contained in consumer products. Bell alleges that Wild Eye Designs 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 Wild Eye Designs manufactured, distributed, and/or sold in California certain insulated wine handbags/purses containing the chemical di(2-ethylhexyl) phthalate (“DEHP”) without first providing California consumers with a Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are all insulated wine handbags/purses, including but not limited to UPC No. 400196774776 and/or Style No. 044028, that have been manufactured, imported, distributed, offered for sale and/or sold in California by Wild Eye Designs (the “Products”).

1.4 Notice of Violation. On January 9, 2020, Bell served SoFi Home Fashion, LLC (“SoFi”), Ross Stores, Inc. (“Ross”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided SoFi, Ross, and such others, including public enforcers, with notice that alleged that SoFi and Ross failed to warn California consumers that use of the Products may expose them to DEHP. Wild Eye Designs was subsequently identified as the supplier of the Products identified in the Notice and entered into negotiations to resolve Bell’s claims concerning alleged exposure to DEHP in the Products. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Wild Eye Designs enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notice, and to avoid prolonged and costly litigation. Wild Eye Designs denies the material factual and legal allegations contained in the Notice, maintains that it is not a person in the course of doing business subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Wild Eye Designs of any fact, finding, issue of law, or violation of law, including, but not limited to any fact or conclusions of law suggesting or demonstrating that Wild Eye Designs has sold any products in California, or that it is subject to or has violated Proposition 65, or that it is subject to personal jurisdiction in California, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Wild Eye Designs of any or the above, such being specifically denied by Wild Eye Designs. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Wild Eye Designs may have in this or any other future legal proceedings, including Wild Eye Designs' position that it is not a person in the course of doing business subject to Proposition 65, and is not subject to personal jurisdiction in California. This Settlement Agreement is the product of negotiation and compromise and is accepted by Wild Eye Designs solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties' obligations, responsibilities and duties under this Settlement Agreement..

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

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that Wild Eye Designs directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) Reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable 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 standards 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”)) each of DEHP, diisononyl phthalate (“DINP”), dibutyl phthalate (“DBP”), diisodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”), and butyl benzyl phthalate (“BBP”), in any accessible components when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies 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 Wild Eye Designs manufactures, imports, distributes, sells, and/or offers for sale in California that are not Reformulated Products. There shall be no obligation for Wild Eye Designs to provide a warning hereunder 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:

⚠ [California Prop 65] **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), 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.

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

⚠ [California Prop 65] **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Language in brackets optional.

2.4 The 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 Product itself, or on the Product’s packaging, container, or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The 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.

If Wild Eye Designs sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning or a clearly marked hyperlink to the warning using the word(s) “[California Prop 65] **WARNING**” (language in brackets optional) appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

2.5 Compliance with Warning Regulations. The Parties agree that Wild Eye Designs 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.

2.6 Public Benefit. It is Wild Eye Designs’s understanding that the commitments it has agreed to herein, and actions to be taken by Wild Eye Designs under this Settlement Agreement 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 Wild Eye Designs that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Wild Eye Designs's alleged failure to provide a warning concerning actual or alleged exposure to DEHP 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 Wild Eye Designs is in material compliance with the terms of this this Settlement Agreement.

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

In settlement of all claims for monetary relief of any kind related to the Notice or referred to in this Settlement Agreement (except for Plaintiff's attorney's fees and expenses set forth in Section 4 below), Wild Eye Designs shall pay \$500 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 Penalty 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 § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Wild Eye Designs shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

3.1 Civil Penalty. Within ten (10) days of the Effective Date, Wild Eye Designs shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375; and to (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$125. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 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 § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC

Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 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. Wild Eye Designs agrees to provide Bell's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payments to Bell, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) Tax Documentation. Wild Eye Designs 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 attorney's fees and expenses 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, Wild Eye Designs shall reimburse Bell's counsel the total amount of \$8,000 for any and all of Bell's attorney's fees and expenses, including but not limited to all investigative, expert, and testing expenses, incurred as a result of investigating and bringing this matter to Wild Eye Designs' attention, and negotiating this settlement in the public interest. Within ten (10) days of the Effective Date, Wild Eye Designs shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$8,000 for delivery to the address identified in § 3.2(a)(i), above..

5. **RELEASE OF ALL CLAIMS**

5.1 Release of Wild Eye Designs and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and Wild Eye Designs, 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 any actual or alleged failure to provide warnings for alleged exposures to DEHP contained in the Products, and Releasers hereby expressly release any such claims against Wild Eye Designs and its suppliers parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Wild Eye Designs directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers (including but not limited to Ross and SoFi), and their respective subsidiaries, affiliates, parents, franchisees, cooperative members, licensors, and licensees (collectively, the "Releasees"), from all claims for actual or alleged violations of Proposition 65 through the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 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, or 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, 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, arising out of the Products.

5.2 Wild Eye Designs' Release of Bell. Wild Eye Designs, 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 including but not limited to those arising out of the facts alleged in the Notice and relating to products manufactured by or for Wild Eye Designs and its affiliates through the Effective Date will develop or be discovered. Bell on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees only, on one hand, and Wild Eye Designs and its affiliates, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims against the Releasees for products manufactured by or for Wild Eye Designs and its affiliates up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

For Wild Eye Designs:

Warren Horwitz
1500 Military Road, Suite 100
Kenmore, NY 14217

With copy to:

J. Robert Maxwell
Rogers Joseph O'Donnell, PC
311 California Street, 10th Floor
San Francisco, CA 94104

For Bell:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either 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 § 25249.7(f).

11. **MODIFICATION**

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

12. **ENFORCEMENT**

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. If the alleged violation cannot be resolved, the Party

alleging a violation may thereafter move to enforce the terms of this Settlement Agreement. The prevailing Party on any motion to enforce this Settlement Agreement shall be entitled to its reasonable attorney's fees and costs.

13. JOINT PREPARATION

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. 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. 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.

15. 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.

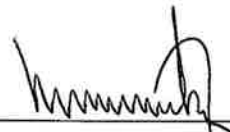
AGREED TO:

AGREED TO:

Date: 3/9/2021

Date: March 8 2021

By: 
Emma Bell

By: 
Wild Eye Designs, Inc.