

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Ema Bell (“Bell”) and Elemis USA, Inc. (“Elemis”). Together, Bell and Elemis are collectively referred to as the “Parties.” Bell is an individual who resides in the State of California, and alleges that she 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 Elemis 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 § 25249.5 et seq. (“Proposition 65”).

**1.2 General Allegations.** Bell alleges that Elemis has exposed individuals to the chemical di-isodecyl phthalate (DIDP) from its sales of Elemis branded cosmetic cases, including but not limited to “The Skinny Confidential” cases, without first providing users and consumers of the product with a clear and reasonable warning as required pursuant to Proposition 65. DIDP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

**1.3 Product Description.** The products covered by this Settlement Agreement are cosmetic cases, including but not limited to “The Skinny Confidential” cosmetic case (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Elemis.

**1.4 Notice of Violation.** On April 14, 2021, Bell served Elemis, Elemis Limited, Elemis SPS LLC, Ulta Beauty, Inc., and various public enforcement agencies with a document entitled “60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act” (the “Notice”). The Notice provided Elemis and such others, including public enforcers, with notice that Elemis was allegedly in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to DIDP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Elemis 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 Products, have been and are in compliance with all laws.

Nothing in this Settlement Agreement shall be construed as an admission by Elemis 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 Elemis of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Elemis. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Elemis 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 Elemis directly or indirectly manufactures, 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 DIDP 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 warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Elemis manufactures, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Elemis to provide a 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 di-isodecyl phthalate (DIDP), which is known to the State of California to reproductive toxicity. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Elemis 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:** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**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 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. 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 Elemis sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning 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 Elemis 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, Elemis shall pay \$2,000.00 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 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, Elemis 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, Elemis shall issue two (2) separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b) “Brodsky Smith in Trust for Bell” in the amount of \$500.00. 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 or wired as follows:

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

Wiring Instruction:  
Routing# 036076150  
Account #6101580265  
Citizens Bank  
225 Lancaster Avenue  
Ardmore PA 19003

(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.** Elemis 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 § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Elemis 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” (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**

Elemis shall reimburse Bell’s counsel \$22,000.00 for fees and costs incurred as a result of investigating and bringing this matter to Elemis’s attention, and negotiating a settlement. Payment shall be made within twenty (20) days of the Effective Date, Elemis shall issue a check payable to “Brodsky Smith” for delivery to the address identified in § 3.2(a)(i), above, or wire the funds to the account listed in § 3.2(a)(i). For all amounts due and owing that are not received within the payment times set forth herein, Elemis shall pay a late penalty payment fee equal to \$100/day.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Elemis and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and Elemis, 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 DIDP from the Products, and Releasers hereby release any such claims against Elemis and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, including but not limited to Elemis SPS LLC (together, the “Elemis Entities”), and each entity to whom the Elemis Entities directly or indirectly distribute or sell the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Ulta Beauty, Inc., and its respective subsidiaries, affiliates, parents, franchisees, cooperative members and licensees (collectively with the Elemis Entities, the “Releasees”), from all claims for violations of Proposition 65 through the Effective Date for the Products.

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 further waives,

releases and relinquishes all claims that they 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, penalties, remedies, and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of the alleged or actual exposure to the chemical DIDP from use of the Products.

**5.2 Elemis's Release of Bell.** Elemis, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Bell and her attorneys and other representatives, whether known or unknown, based on 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, in the course of investigating the claims in the Notice or otherwise seeking to enforce Proposition 65 against it with respect to the Products.

**5.3 California Civil Code § 1542.** It is possible that other claims not known to Bell relating to the Products will develop or be discovered. Bell on behalf of herself only, acknowledges 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 § 5.1, 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 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Bell acknowledges and understands the significance and consequences of this specific waiver of California Civil Code § 1542.

**5.4 Deemed Compliance with Proposition 65.** The Parties agree that compliance by Elemis with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DIDP from use of the Products.

**5.5. Public Benefit.** It is Elemis's understanding that the commitments it has agreed to herein, and actions to be taken by Elemis 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 Elemis that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Elemis's failure to provide a warning about DIDP in the Products it 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 Elemis is in material compliance with this Settlement Agreement.

**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 remaining terms 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 without regard to its conflicts of law principles. 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, Elemis may 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.

**8. NOTICES**

Unless otherwise 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 Elemis:



Elemis USA, Inc.  
1140 Broadway, Suite 1601  
New York, NY 10001

With a copy to:

Matthew Kaplan  
Tucker Ellis LLP  
515 South Flower Street, Forty Second Floor  
Los Angeles, CA 90071

For Bell:

Evan J. Smith  
Brodsky Smith  
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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

**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 signed by the Parties.

**12. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding 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. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party hereto.

**13. INTERPRETATION**

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

**14. AUTHORIZATION**

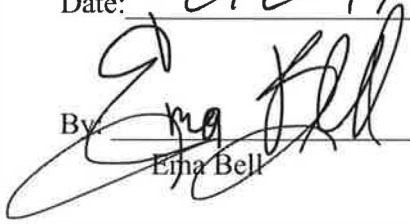
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 2/24/22

Date: 2nd March 2022

By:   
Elna Bell

By:   
Elemis USA, Inc.