

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement (“Agreement”) is entered into by and between Anthony Ferreiro (“Ferreiro”), Levinsohn Textile Company, Inc. (“Levinsohn”) and Macy’s West Stores, LLC, Macy’s, Inc, A Corporation of Delaware (Macy’s, Inc.) and Macy’s, Inc. (collectively “Macy’s”). Together, Ferreiro, Levinsohn and Macy’s are collectively referred to as the “Parties.” Ferreiro is an individual who 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. Ferreiro alleges that Levinsohn and Macy’s are persons 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. Ferreiro alleges that Levinsohn and Macy’s have exposed individuals to the chemical di(2-ethylhexyl) phthalate (DEHP) from their sales of Fresh Ideas mattress protector without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. 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 Agreement are Fresh Ideas mattress protectors (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Levinsohn or Macy’s.

1.4 Notice of Violation. On May 17, 2021, Ferreiro served Levinsohn and Macy’s 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 Levinsohn, Macy’s and others, including public enforcers, with notice that alleged that Levinsohn and Macy’s were violating Proposition 65 by failing to warn California consumers and customers that use of the Products will expose them to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Levinsohn and Macy's deny the material factual and legal allegations contained in the Notice and maintain that, to the best of their 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, including, but not limited to, Proposition 65. Nothing in this Agreement shall be construed as an admission by Levinsohn or Macy's 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 Levinsohn or Macy's of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Levinsohn and Macy's. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Agreement. Notwithstanding the allegations in the Notice, Levinsohn and Macy's maintain that they have 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 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 Levinsohn directly 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 Agreement, a "Reformulated Product" is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirements set forth in §§ 2.3, 2.4, and 2.6 shall not apply to any Reformulated Product. Products in the stream of commerce prior to the Effective Date may be sold through as is, and there shall be no obligation for Levinsohn or any of its retail customers to provide exposure warnings for such Products.

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 DEHP 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 Levinsohn manufactures, imports, distributes, sells or offers for sale in California that are not Reformulated Products. The exposure warning shall consist of either of the following **Warning** or **Alternative Warning**:

(a) **Warning:**

⚠ 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:**

⚠ WARNING: Cancer and Reproductive Harm - 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.

2.5 Levinsohn shall notify Macy’s in writing if Products it sells to Macy’s have a warning pursuant to § 2 of this Agreement.

2.6 If Levinsohn or Macy's sells Products that have a warning pursuant to § 2 of this Agreement via an internet website to customers located in California, they shall provide the foregoing warning 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.

2.7 In addition to using the Section 2.3 Warning or Alternative Warning in the English language, Levinsohn and Macy's may issue the Section 2.3 Warning or Alternative Warning in other languages, including, but not limited to, Spanish and French.

2.5 Compliance with Warning Regulations. The Parties agree that Levinsohn and Macy's shall be deemed to be in compliance with this Agreement by either adhering to §§ 2.3 and 2.4 of this 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 Agreement, Levinsohn shall pay \$500.00 and Macy's shall pay \$1,500 as Civil Penalties 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 Ferreiro. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing by Levinsohn that are not received within the payment dates set forth below, Levinsohn 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). For all amounts due and owing by Macy's that are not received within the payment dates set forth below, Macy's 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, Levinsohn shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and to (b) "Brodsky & Smith in Trust for Ferreiro" in the amount of \$125.00 and shall deliver said Civil Penalty payment(s) to the addresses identified in § 3.2, below. Within ten (10) days of the Effective Date, Macy's shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,125.00; and to (b) "Brodsky & Smith in Trust for Ferreiro" in the amount of \$375.00 and shall deliver said Civil Penalty payments 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 Ferreiro, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith
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.** Levinsohn and Macy's agree to provide Ferreiro's counsel with copies of the checks payable to OEHHA, simultaneous with their penalty payments to Ferreiro, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Levinsohn and Macy's agree to provide to Ferreiro completed IRS 1099's for their payments, and Ferreiro agrees to provide to Levinsohn and Macy's IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Anthony Ferreiro" 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**

The Parties acknowledge that Ferreiro and his 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 Ferreiro and his 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, Levinsohn and Macy's shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to Levinsohn's and Macy's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Levinsohn shall issue a check payable to "Brodsky & Smith" in the amount of \$4,500.00 for delivery to the address identified in § 3.2(a)(i), above and Macy's shall issue a check

payable to "Brodsky & Smith" in the amount of \$13,500.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Levinsohn and Macy's and their Downstream Customers and Entities.

This Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and Levinsohn and Macy's, of any violation or alleged violation of Proposition 65 that was or could have been asserted by Ferreiro or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to DEHP from use of the Products, and Releasers hereby release any such claims against Levinsohn and Macy's and their parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Levinsohn or Macy's has directly or indirectly distributed or sold the Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, 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, Ferreiro, on behalf of himself, his 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 he 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 chemical DEHP from use of the Products.

5.2 Levinsohn's and Macy's Release of Ferreiro. Levinsohn and Macy's, on behalf of themselves, their past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Ferreiro, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ferreiro and/or his 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 Notice and relating to the Products will develop or be discovered. Ferreiro on behalf of himself 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. Ferreiro acknowledges that the claims released in § 5.1 , above, may include unknown claims, and nevertheless waives 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.

Ferreiro 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 Levinsohn and Macy's with this Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Products.

5.5. Public Benefit. It is Levinsohn's and Macy's understanding that the commitments they have agreed to herein, and actions to be taken by Levinsohn and Macy's under this 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 Levinsohn and Macy's that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to

Levinsohn's or Macy's failure to provide a warning concerning exposure to DEHP prior to use of the Products they have 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 Agreement, provided that Levinsohn or Macy's are in material compliance with this Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Agreement, any of the provisions of this 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 Agreement being contrary to the intent of the Parties in entering into this Agreement.

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 or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Levinsohn or Macy's shall provide written notice to Ferreiro 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, a Product is so affected.

8. 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 Levinsohn:

Gil Paul
Executive Vice President
Levinsohn Textile Company, Inc.
230 Fifth Avenue
New York, New York 10001

With a copy to:

John E. Dittoe
Law Office of John E. Dittoe
70 Hazel Lane
Piedmont, CA 94611

For Macy's:

Christine Brandt
Senior Principal – Senior Counsel
Law Department
Macy's, Inc.
170 O'Farrell Street
San Francisco, CA 94102-2202

For Ferreiro:

Evan J. Smith
Brodsky & Smith
Two Bala Plaza, Suite 805
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.

9. **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.

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

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

11. **MODIFICATION**

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

12. **ENTIRE AGREEMENT**

This 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.

13. **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:

AGREED TO:

Date: 8/2/22

Date: July 27, 2022

By: *Anthony Ferreira*
Anthony Ferreira

By: *Martin Baron*
Levinsohn Textile Company, Inc.

Date: July 26, 2022

By: *Christine L Brandt*
Macy's, Inc.