

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement (“Settlement Agreement”) is entered into by and between Ema Bell (“Bell”) and Cracker Barrel Old Country Store, Inc. and CBOCS Distribution, Inc. (collectively, “Cracker Barrel”). Together, Bell and Cracker Barrel are collectively referred to as the “Parties.” Bell alleges that she is an individual who resides in the State of California, who 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 Cracker Barrel 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 Cracker Barrel has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) (“Listed Chemical”) from its sales of RA brown crossbody bags, # 790759, 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 birth defects or other reproductive harm.

**1.3 Product Description.** The products covered by this Settlement Agreement are RA brown crossbody bags, # 790759 containing the Listed Chemical (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Cracker Barrel.

**1.4 Notice of Violation.** On June 22, 2022, Bell served Cracker Barrel 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 Cracker Barrel and such others, including public enforcers, with notice that alleged that Cracker Barrel was 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 DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Cracker Barrel 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 have been and are in compliance with all laws. Each of the Parties hereto acknowledges that nothing contained or referred to in this Settlement Agreement (including, without limitation, the payments being made pursuant hereto) shall be construed as an admission by Cracker Barrel of any fact, finding, issue of law, or violation of law or other culpability, impropriety or liability of any nature whatsoever; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Cracker Barrel of any fact, finding, conclusion, issue of law or violation of law or other culpability, impropriety or liability of any nature whatsoever, such being specifically denied by Cracker Barrel. Each of the Parties understands and acknowledges that the payments, agreements, and actions referred to in this Settlement Agreement are being made, entered into and taken solely for the purpose of compromising any and all claims by Bell with respect to the Notice and the Products. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties of the Parties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Cracker Barrel 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 Settlement Agreement is last executed by the Parties.

**2. INJUNCTIVE RELIEF:**

**2.1 Cease Sale.** Cracker Barrel has ceased sale of the Products and does not intend to sell the Products in the future.

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

In settlement of all the claims referred to in this Settlement Agreement, Cracker Barrel shall pay \$500.00 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, Cracker Barrel 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, Cracker Barrel shall issue two (2) separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$375.00; and to (b) “Ema Bell” in the amount of \$125.00. 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:

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.** Cracker Barrel 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.** Cracker Barrel 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**

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, Cracker Barrel agrees to reimburse Bell's counsel for attorney fees and costs incurred in this matter as follows: Within ten (10) days of the Effective Date, Cracker Barrel 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.

#### 5. **RELEASE OF ALL CLAIMS**

**5.1 Release of Cracker Barrel and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and Cracker Barrel, 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, suppliers, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures to DEHP, or any other chemical known to the State of California to cause cancer and birth defects or other reproductive harm, from use of the Products, and Releasers hereby release any and all claims against Cracker Barrel and its parents, subsidiaries, suppliers, affiliated entities, shareholders, marketplaces, directors, officers, members, representatives, agents, employees, attorneys, successors and assignees, and each entity to whom Cracker Barrel directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Cracker Barrel, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Cracker Barrel Releasees”), for violations of Proposition 65 through the Effective Date based on exposure to DEHP from use of the Products and for any and all actions that could have been taken or made by Releasers in connection with exposure to DEHP from us of 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 agrees and 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 Cracker Barrel 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 DEHP from use of the Products.

**5.2 Cracker Barrel’s Release of Bell.** Cracker Barrel, on behalf of itself, its past and current agents, representatives, suppliers 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 exposure to DEHP from use of 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. Bell on behalf of herself only, on one hand, and Cracker Barrel, on the other hand, acknowledge that this Settlement 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 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 EXIST IN HIS OR HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HIS, WOULD HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Bell and Cracker Barrel each acknowledge and understand 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 Cracker Barrel with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Products.

**5.5. Public Benefit.** It is Cracker Barrel's understanding that the commitments it has agreed to herein, and actions to be taken by Cracker Barrel 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 Cracker Barrel that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Cracker Barrel's failure to provide a warning concerning exposure to DEHP, or any other chemical known to the State of California to cause cancer and birth defects or other reproductive harm, 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 Cracker Barrel 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 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.

**7. 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.

**8. 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 Cracker Barrel:

Cracker Barrel Old Country Store, Inc.  
305 Hartmann Drive  
Lebanon, Tennessee 37087  
Attn: General Counsel

with a copy to:

George Dowell Lange  
Kim & Dowell, LLP 6849  
Old Dominion Road, Suite 225 McLean  
Virginia 22101

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 by the Parties in counterparts each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. The Parties agree that this Settlement Agreement and signatures pages may be transmitted between them by electronic mail, or other electronic transmission method, and that signatures created or transmitted by electronic means, including DocuSign (or any other signature complying with the federal ESIGN Act of 2000 or any applicable Uniform Electronic Transactions Act or Electronic Signatures and Records Act), .pdf or jpeg signature, shall constitute original signatures, shall be deemed to have been duly and validly created and delivered, and shall be valid and binding for all purposes.

**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. 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.

**13. CONFIDENTIALITY**

This Settlement Agreement, its terms, and the discussions, including all written demands, responses and other communications, whether written or oral and whether or not designated as confidential, that led to this Settlement Agreement are confidential. Except as set forth herein, the Parties may disclose the existence of the Settlement Agreement but shall not disclose its terms or



discussions, including all written demands, responses and other communications, whether written or oral and whether or not designated as confidential, that led to this Settlement Agreement, and each Party agrees that it shall not, except as may be required by law, or in connection with a legal proceeding, or as may be disclosed to a Party's affiliates, accountants, legal counsel, tax advisors and other financial and legal advisors, disclose such information to any third party without the prior written consent of the other Party. The Parties shall not publicize the matter, the settlement of the matter, or the terms of the Settlement Agreement.

Notwithstanding the foregoing, Cracker Barrel may disclose the scope of the releases and covenants not to sue to any Cracker Barrel Releasees.

Notwithstanding the foregoing, the Parties may make any statement or file any disclosures or forms as reasonably necessary to comply with any legal or regulatory disclosure requirement.

**14. SUCCESSORS AND ASSIGNS**

No assignment by either Party, with or without the consent of the other Party, will relieve or release the Party making the assignment from any of its obligations or liabilities under this Settlement Agreement. Thus, this Settlement Agreement will be binding upon, inure to the benefit of, and be enforceable by each of the Parties and their respective successors and assigns.

**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:**

**CRACKER BARREL OLD COUNTRY  
STORE, INC.**

Date: \_\_\_\_\_

9/27/23

By: \_\_\_\_\_

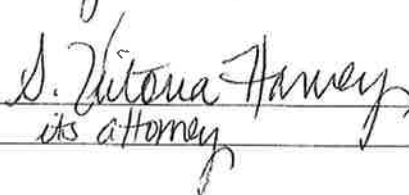
  
Elna Bell

Date: \_\_\_\_\_

August 28, 2023

By: \_\_\_\_\_

Title: \_\_\_\_\_

  
D. Victoria Harvey  
its attorney

**AGREED TO:**  
**CBOCS DISTRIBUTION, INC.**

Date: August 28, 2023

By: S. Victoria Harney

Title: its attorney