

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ema Bell (“Bell”) and Gabriel Espinoza (“Espinoza”) (collectively, “Enforcers” and each an “Enforcer”) on the one hand, and SF Mercantile (“SFM”) on the other hand. Together, Enforcers and SFM are collectively referred to as the “Parties.” Enforcers are individuals who resides in the State of California, and seek to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Enforcers allege that SFM 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. Enforcers allege that SFM has exposed individuals to lead and/or di (2-ethylhexyl) phthalate (DEHP) from its sales of (a) SF Mercantile poppy mugs, UPC # 657284475378 (lead), and (b) SF Mercantile California bear hug luggage tags, UPC # 657284306924 (DEHP), without first providing users and consumers of the products with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Lead and DEHP are listed pursuant to Proposition 65 as chemicals 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 (a) SF Mercantile poppy mugs, UPC # 657284475378 (lead), and (b) SF Mercantile California bear hug luggage tags, UPC # 657284306924 (DEHP) (collectively, the “Products” and each a “Product”) that have been imported, distributed, offered for sale and/or sold in California by SFM.

1.4 Ema Bell Notices of Violation. On October 20, 2023, Bell served Pacific Market International, LLC, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Bell Notice”). The Bell Notice provided Pacific Market International, LLC and such others, including public enforcers, with notice that alleged that Pacific Market International, LLC was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the SF Mercantile

poppy mugs, UPC # 657284475378 will expose them to lead. No public enforcer has diligently prosecuted the allegations set forth in the Bell Notice.

On February 29, 2024, Bell served SFM, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Revised Bell Notice”). The Revised Bell Notice provided SFM and such others, including public enforcers, with notice that alleged that SFM was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the SF Mercantile poppy mugs, UPC # 657284475378 will expose them to lead. No public enforcer has diligently prosecuted the allegations set forth in the Revised Bell Notice.

1.5 Gabriel Espinoza Notices of Violations. On November 29, 2023, Espinoza served Pacific Market International, LLC, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Espinoza Notice”). The Espinoza Notice provided Pacific Market International, LLC and such others, including public enforcers, with notice that alleged that Pacific Market International, LLC was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the SF Mercantile California bear hug luggage tags, UPC # 657284306924 will expose them to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Espinoza Notice.

On February 29, 2024, Espinoza served SFM, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Revised Espinoza Notice”). The Revised Espinoza Notice provided SFM and such others, including public enforcers, with notice that alleged that SFM was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the SF Mercantile California bear hug luggage tags, UPC # 657284306924 will expose them to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Revised Espinoza Notice.

1.6 The Bell Notice, the Revised Bell Notice, the Espinoza Notice, and the Revised Espinoza Notice are collectively referred to herein as, the “Notices.”

1.7 No Admission. SFM denies the material factual and legal allegations contained in the Notices 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 SFM 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 SFM of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by SFM. However, this § 1.7 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, SFM maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.8 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: REFORMULATION AND/OR WARNINGS


2.1 Reformulation of Products. Commencing within sixty (60) days after the Effective Date, and continuing thereafter, Products that SFM 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 exposure warning pursuant to §§ 2.3 - 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 - 2.4 shall not apply to any Reformulated Products.

2.2 Reformulation Standard. With respect to the SF Mercantile poppy mugs, “Reformulated Products” shall mean such Products that produce a wipe test result no higher than 1 microgram (μg) of lead when analyzed pursuant to NIOSH method no. 9100. With respect to the SF Mercantile California bear hug luggage tags, “Reformulated Products” shall mean such 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. Commencing within 90 days after 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 SFM manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for SFM to provide an exposure warning for Products that entered the stream of commerce within 60 days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) - (c):

(a) **Lead Warning.** With respect to the SF Mercantile poppy mugs, the “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including lead, 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) **DEHP Warning.** With respect to the SF Mercantile California bear hug luggage tags, the “Warning” shall consist of the statement:

 **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.

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

 **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** or **Alternative 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, provided that the **Warning** or **Alternative 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** or **Alternative 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 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, SFM shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where SFM offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word “**WARNING**,” appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, SFM shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

2.5 Compliance with Warning Regulations. The Parties agree that SFM shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning regulations adopted by the State of California’s OEHHA applicable to the Product and the exposure at issue 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, SFM 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 Enforcers. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below

3.1 Civil Penalty. Within fifteen (15) business days of the Effective Date, SFM shall issue three (3) separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; to (b) “Ema Bell” in the amount of \$250.00; and to “Gabriel Espinoza” in the amount of \$250.00. 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 Enforcers, 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.** SFM agrees to provide Enforcers' counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Enforcers, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** SFM agrees to provide a completed IRS 1099 for its payments to, and Enforcers agree 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) "Gabriel Espinoza" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(iii) "Brodsky Smith" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iv) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

4. **REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Enforcers and their 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 Enforcers and their 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, SFM shall reimburse Enforcers' counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of SFM, and negotiating a settlement in the public interest. Within fifteen (15) business days of the

Effective Date, SFM shall issue a check payable to “Brodsky Smith” in the amount of \$20,000.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of SFM and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Enforcers, on the one hand, acting on their own separate behalf, and SFM, on the other hand, of any violation of Proposition 65 that was or could have been asserted by Enforcers or on behalf of their respective past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures to lead and/or DEHP from use of the Products, and Releasers hereby each release any such claims against SFM and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom SFM directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers (including Kinokuniya Bookstores of America Company Limited and Hudson Booksellers), including but not limited to their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 occurring prior to 60 days after the Effective Date based on exposure to lead and/or DEHP from use 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, Enforcers, each on behalf of themselves, their respective past and current agents, representatives, attorneys, successors and/or assignees, hereby covenant not to sue and waive any right to institute, participate in, directly or indirectly, any form of legal action and release all claims that they each 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 lead and/or DEHP from use of the Products.

5.2 SFM's Release of Enforcers. SFM, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Enforcers, their attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Enforcers and/or their respective attorneys and other representatives in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to actual or alleged exposure to lead and/or DEHP from 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 Notices and relating to the Products will develop or be discovered. Enforcers on behalf of themselves only, on one hand, and SFM, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through 60 days after 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 HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Enforcers and SFM 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 SFM with this Settlement Agreement constitutes compliance by SFM with Proposition 65 with respect to exposure to lead and/or DEHP from use of the Products.

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. 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, SFM shall provide written notice to Enforcers 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 specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing, and sent by email 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 SFM:

Robert Emmons
SF Mercantile
1770 Yosemite Ave.
San Francisco, CA 94124
remmons@sfmercantile.com

Ann Grimaldi
Grimaldi Law Offices
1160 Battery St. E., Ste. 100
San Francisco, CA 94111
Ann.grimaldi@grimaldilawoffices.com

For Enforcers:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004
esmith@brodskysmith.com

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)

Enforcers agree 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. **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: _____

Date: 6-3-24

By: _____

Ema Bell

By:  _____

SF Mercantile

AGREED TO:

Date: 7/10/24

By:  _____

Gabriel Espinoza

13. 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.

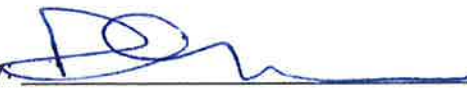
AGREED TO:

AGREED TO:

Date: 7 | 10 | 24

Date: 6-3-24

By: 
Erna Bell

By: 
SF Mercantile

AGREED TO:

Date: _____

By: _____
Gabriel Espinoza