

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and Eye Candy LA, Inc. (“Settling Entity”). CEH and Settling Entity are together referred to herein as “the Parties.” The effective date of this Agreement is the date on which it is fully executed by the Parties (the “Effective Date”).

1. INTRODUCTION

1.1. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation. This Agreement covers jewelry manufactured, supplied, or provided by Settling Entity, including but not limited to such jewelry that is sold, offered for sale or distributed by Settling Entity or Nordstrom, Inc. (“Nordstrom”).

1.2. On or about September 18, 2018, CEH provided a 60-day Notice of Violation (“Notice”) under Proposition 65 to Settling Entity, the California Attorney General, the District Attorneys of every county in California and the City Attorneys of every California city with a population greater than 750,000, alleging that Settling Entity violated Proposition 65 by exposing persons to cadmium in jewelry without first providing a clear and reasonable Proposition 65 warning.

1.3. Settling Entity enters into this Agreement pursuant to its obligation to indemnify and defend Nordstrom with respect to the Notice.

1.4. By executing this Agreement, the Parties do not admit any facts or conclusions of law. Nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in this or any other future legal proceedings, except as otherwise provided herein.

2. DEFINITIONS

2.1. The term “Cadmium Limit” means a concentration of 0.01 percent (100 parts per million (“ppm”)) by weight cadmium in any component of a Covered Product, or in any material used in a Covered Product.

2.2. The term “Covered Products” means jewelry manufactured, supplied, or provided by Settling Entity to or for Nordstrom, Inc., including but not limited to necklaces, that is sold, offered for sale or distributed by Settling Entity.

3. INJUNCTIVE RELIEF

3.1. **Reformulation of Covered Products.** Settling Entity shall comply with the following requirements to achieve expeditious reformulation of the Covered Products to reduce or eliminate exposures to cadmium arising from the Covered Products:

3.1.1. **Specification Compliance Date.** To the extent it has not already done so, no more than 30 days after the Effective Date, Settling Entity shall provide the Cadmium Limit to each of its suppliers of Covered Products and Covered Product components (“Covered Product Suppliers”) and shall instruct each such Covered Product Supplier to only deliver Covered Products and Covered Product components that are below the Cadmium Limit. If in the future Settling Entity purchases Covered Products and Covered Product components from a Covered Products Supplier that Settling Entity has not previously provided with instructions to only deliver Covered Products and Covered Product components that are below the Cadmium Limit, Settling Entity shall provide such instructions to such Covered Products Supplier prior to placing an initial order for Covered Products and Covered Products Components. Settling Entity shall retain and make available to CEH upon reasonable written request records of communications sent to and received from Covered Products Suppliers that are related to the requirement of this Section 3.1.1 for a period of two (2) years from the Effective Date.

3.1.2. **Reformulation Date.** As of the Effective Date, Settling Entity shall not manufacture, purchase, import, supply, sell or offer to sell Covered Products that are sold or

offered for sale in California that exceed the Cadmium Limit or contain a component that exceeds the Cadmium Limit.

3.2. **Market Withdrawal of Covered Products.** To the extent not already done, on or before the Effective Date, Settling Entity shall have: (i) ceased shipping the following specific products (“Recall Products”):

- Eye Candy LA Gold June Necklace with Pink Beads, Nordstrom Rack SKU No. 842073116628;
- Eye Candy LA Gold Necklace with Crystals, Nordstrom Rack SKU No. 439083877184;
- Eye Candy LA Gold Chandelier Necklace with Blue Stones, Nordstrom Rack SKU No. 842073102386;

to the extent identifiable to stores and/or customers in California, (ii) withdrawn the Recall Products from the market in California to the extent identifiable. Any destruction of the Recall Products shall be in compliance with all applicable laws. Settling Entity represents and certifies that to its knowledge the Recall Products, to the extent identifiable, have been withdrawn or recalled from all retailers that sold the Products in the State of California.

4. ENFORCEMENT OF SETTLEMENT AGREEMENT

4.1. The Parties agree that any action based on a violation of this Agreement shall be brought in the Superior Court of California in Alameda County. For purposes of this Agreement, notwithstanding Section 1.3 above, the Parties agree that the Superior Court of California in Alameda County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of Alameda.

4.2. Should a Party to this Agreement prevail on any action, motion, or application to enforce this Agreement, it shall be entitled to reasonable attorneys’ fees and costs associated with such enforcement.

5. PAYMENTS

5.1. **Payments by Settling Entity.** Within thirty (30) business days of the Effective Date, Settling Entity shall be liable for payment of the total sum of \$32,500 as a settlement payment as further set forth in this Section, pursuant to its agreement to indemnify and defend Nordstrom with respect to the Notice.

5.2. **Allocation of Payments.** The total settlement amount shall be paid in four (4) separate checks in the amounts specified below and delivered as set forth below. The funds paid by Settling Entity shall be allocated as set forth below between the following categories and made payable as follows:

5.2.1. Settling Entity shall pay \$5,180 as a civil penalty pursuant to Health & Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, Settling Entity shall pay the OEHHA portion of the civil penalty payment for \$3,885 by check made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:
Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:
Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

Settling Entity shall pay the CEH portion of the civil penalty payment for \$1,295 by check made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero

Street, San Francisco, CA 94117.

5.2.2. Settling Entity shall pay \$27,320 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) \$21,000 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$6,320 payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3. To summarize, Settling Entity shall deliver checks made out to the payees and in the amounts set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$3,885	OEHHA per Section 4.2.1
Center For Environmental Health	Penalty	\$1,295	LLG
Center For Environmental Health	Fees and Costs	\$6,320	LLG
Lexington Law Group	Fees and Costs	\$21,000	LLG

6. MODIFICATION OF AGREEMENT

6.1. This Agreement may be modified from time to time by express written agreement of the Parties.

7. APPLICATION OF SETTLEMENT AGREEMENT

7.1. This Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions, and subsidiaries, and the successors or assigns of any of them.

8. CLAIMS COVERED AND RELEASE

8.1. Provided that Settling Entity complies in full with its obligations under Section 5 hereof, CEH, on behalf of itself and its successors and assigns, discharges, waives, and releases Settling Entity and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, assigns and attorneys (collectively, the

“Settling Entity Releasees”), and all entities to whom they distribute or sell Covered Products, including but not limited to Nordstrom, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream Settling Entity Releasees”) from all claims under Proposition 65 regarding the failure to warn about exposures to cadmium arising in connection with Covered Products manufactured, distributed, or sold by Settling Entity prior to the Effective Date.

8.2. Provided that Settling Entity complies in full with its obligations under Section 5 hereof, compliance with the terms of this Agreement by Settling Entity constitutes compliance with Proposition 65 by Settling Entity, Settling Entity Releasees and Downstream Settling Entity Releasees for purposes of exposure to cadmium from the Covered Products manufactured, distributed, or sold by Settling Entity after the Effective Date.

9. SPECIFIC PERFORMANCE

9.1. The Parties expressly recognize that Settling Entity’s obligations under this Agreement are unique. In the event that Settling Entity is found to be in breach of this Agreement for failure to comply with the provisions of Section 3, the Parties agree that it would be extremely impracticable to measure the resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and Settling Entity expressly waives the defense that a remedy in damages will be adequate.

10. GOVERNING LAW

10.1. The terms of this Agreement shall be governed by the laws of the State of California.

11. PROVISION OF NOTICE

11.1. When CEH is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail to:

Eric S. Somers
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
esomers@lexlawgroup.com

11.2. When Settling Entity is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail to:

Cheryl S. Chang
Blank Rome
2029 Century Park East, 6th Floor
Los Angeles, CA 90067
chang@blankrome.com

11.3. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

12. ENTIRE AGREEMENT

12.1. This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. Other agreements that are not specifically contained or referenced herein, oral or otherwise, shall be deemed neither to exist nor to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

13. AUTHORITY TO STIPULATE TO AGREEMENT

13.1. Each signatory to this Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the Party represented and to legally bind that Party. The undersigned have read, understood, and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each Party is to bear its own fees and costs.

14. NO EFFECT ON OTHER SETTLEMENTS

14.1. Nothing in this Agreement shall preclude CEH from resolving any claim against an entity that is not Settling Entity on terms that are different than those contained in this Agreement.

15. EXECUTION IN COUNTERPARTS

15.1. The stipulations to this Agreement may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

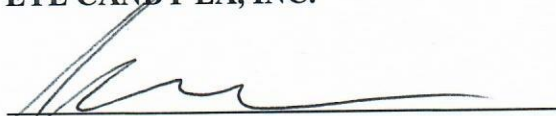
Signature

Printed Name

Title

Date

EYE CANDY LA, INC.


Signature

Saad Sazegar
Printed Name

President
Title

9-27-2019
Date