

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Urban Expressions, Inc. (“Urban Expressions”), with Johnson and Urban Expressions each individually referred to as a “Party” and collectively as the “Parties.” Johnson is an individual residing 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 used in consumer products. Johnson alleges that Urban Expressions is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Johnson alleges that Urban Expressions manufactures, sells, and distributes for sale in California, vinyl totes containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that Urban Expressions failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

1.3 Product Description

The products covered by this Settlement Agreement are the “*Urban Expressions Vegan Vinyl Tote*” UPC 8 40611 16078; item number 21022; that were manufactured, sold, or distributed for sale in California by Urban Expression (hereinafter referred to as “Products”).

1.4 Notice of Violation

On May 16, 2019, Johnson served Urban Expressions and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Urban Expressions violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Urban Expressions denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has 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 Urban Expressions of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Urban Expressions of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Urban Expressions. This Section shall not, however, diminish or otherwise affect Urban Expressions’ obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean November 27, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any

other methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, Urban Expressions shall not sell or offer the Products for sale in the State of California unless they are Reformulated Products or carry the appropriate health hazard warnings contained in Section 2.3 below. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products.

2.3 Clear and Reasonable Warning

As of the Effective Date, all Products sold and/or distributed for sale in California which do not qualify as Reformulated Products, and which have not already entered the stream of commerce, will bear a clear and reasonable warning pursuant to this Section. Provided, however, that there shall be no obligation for Urban Expressions to provide a Proposition 65 warning for Products that entered the stream of commerce prior to the Effective Date, for which a civil fine is assessed pursuant to Section 3.1, below.

Urban Expressions further agrees that the warning will be prominently placed with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California and containing one of the following statements:

 **WARNING:** This product can expose you to chemicals, including 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

OR

 **WARNING:** Cancer and Reproductive Harm- www.P65Warnings.ca.gov

2.4 A Warning or Alternative Warning provided pursuant to section 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. A 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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Urban Expressions agrees to pay, no later than December 10, 2019, \$1,800 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Johnson, and delivered to the address in Section 3.3 herein. Urban Expressions will provide its payment, no later than December 10, 2019, in two checks as follows: (1) “OEHHA” in the amount of \$1,350; and (2) “Dennis Johnson” in the amount of \$450.

3.2 Attorneys' Fees and Costs

The Parties acknowledge that Johnson and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Urban Expressions expressed a desire to resolve Johnson's fees and costs. The Parties reached an accord on the compensation due to Johnson's counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Urban Expressions agrees to pay, no later than December 10, 2019, \$14,000, in the form of a check made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to the attention of Urban Expressions' management, and negotiating a settlement.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Johnson's Release of Proposition 65 Claims

Johnson acting on his own behalf, and *not* on behalf of the public, releases Urban Expressions, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Urban Expressions directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, licensees, including but not limited to Nordstrom, Inc., (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date

relating to unwarned exposures to DEHP in the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Urban Expressions.

4.2 Johnson's Individual Release of Claims

Johnson, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Johnson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Urban Expressions prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Urban Expressions. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Urban Expressions' Products.

4.3 Urban Expressions' Release of Johnson

Urban Expressions, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Johnson and his attorneys and other representatives, for any and all actions taken or statements made by Johnson and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

4.4 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. Johnson, on one hand, and Urban Expressions, on the other hand, acknowledge 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 §§ 4.1-4.3, 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.

The Parties acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws 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 by reason of law generally, or as to the Products, then Urban Expressions may provide written notice to Johnson of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Urban Expressions:

Milord A. Keshishian, Esq.
Milord & Associates P.C.
10517 W. Pico Blvd.
Los Angeles, CA 90064

For Johnson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

Johnson and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: December 4, 2019

Date: December __, 2019

By: 
DENNIS JOHNSON

By: _____
_____, President
URBAN EXPRESSIONS INC.

11. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: December __, 2019

By: _____
DENNIS JOHNSON

AGREED TO:

Date: December 9, 2019

By:  _____
TAREED SHAKOUR, President
URBAN EXPRESSIONS INC.

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