

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Ema Bell (“Bell”) and Nordstrom, Inc. (“Nordstrom”). Together, Bell and Nordstrom are collectively referred to as the “Parties.” Bell is an individual that 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. Bell alleges that Nordstrom 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 Nordstrom has exposed individuals to the chemical di(2-ethylhexyl) phthalate (DEHP) from its sales of French Connection Babette tote, VPN FCUK914 and VPN FCUK914RA 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 Settlement Agreement are the French Connection Babette Tote, VPN FCUK914 and VPN FCUK914RA (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Nordstrom.

**1.4 Notices of Violation.** On July 19, 2019, Bell served French Connection Group, Inc., French Connection LLC, NIHC, Inc. and Nordstrom, Inc. and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “First Notice”). On August 13, 2019, Bell served Bag Studio, LLC and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Second Notice”). The First Notice and Second Notice are referred to collectively hereinafter as the “Notices”. The Notices provided Nordstrom and such others, including public enforcers, with notice that alleged that Nordstrom 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 Notices.

**1.5 No Admission.** Nordstrom 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 Nordstrom 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 Nordstrom of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Nordstrom. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Nordstrom maintains that it has not knowingly distributed, or caused to be distributed, 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: WARNINGS**

**2.1 Reformulation of Products.** As of the Effective Date, and continuing thereafter, Products that Nordstrom directly 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, 2.4, and 2.5 below.


**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. Nordstrom may rely upon its suppliers’ test results in order to determine whether the Products are Reformulated Products.

**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 Nordstrom imports, distributes, sells or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Nordstrom to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(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](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:**

 **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://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.

If Nordstrom sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears 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.

**2.5 Compliance with Warning Regulations.** The Parties agree that Nordstrom shall be deemed to be in compliance with the warning provisions of this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with the safe harbor warning regulations promulgated by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA").

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

In settlement of all the claims referred to in this Settlement Agreement, Nordstrom 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.

**3.1 Civil Penalty.** Within fifteen (15) business days of the Effective Date, Nordstrom shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and to (b) "Brodsky & Smith, LLC in Trust for 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, LLC  
Two Bala Plaza, Suite 510  
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.** Nordstrom 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.** Nordstrom 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 to Nordstrom by the Effective Date;

(ii) “Brodsky & Smith, LLC” (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, Nordstrom shall reimburse Bell's counsel for fees and costs incurred as a result of investigating and bringing this matter to Nordstrom's attention, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Nordstrom shall issue a check payable to "Brodsky & Smith, LLC" 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 Nordstrom and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and Nordstrom, 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, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to DEHP contained in the Products, and Releasers hereby release any such claims against Nordstrom and its parents, subsidiaries, affiliated entities, shareholders, members, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Nordstrom directly or indirectly distributes or sells the Products, downstream distributors, wholesalers, customers, retailers, and licensors, and each of its 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.

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 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 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 in the Products.

**5.2 Nordstrom's Release of Bell.** Nordstrom, on behalf of itself, its past and current agents, representatives, 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 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. Bell on behalf of herself 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. Bell 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.

Bell 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 Nordstrom with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP in the Products.

**5.5. Public Benefit.** It is the Parties' understanding that the commitments Nordstrom has agreed to herein, and actions to be taken by Nordstrom 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 the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Nordstrom's failure to provide a warning concerning exposure to DEHP prior to use of the Products it has distributed, sold or offered for sale in California, or will 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 Nordstrom 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. 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, Nordstrom shall provide written notice to Bell 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 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 Nordstrom:

General Counsel



Nordstrom, Inc.  
1700 7th Avenue  
Seattle, WA 98101

With copy to:

Jeff Margulies  
Norton Rose Fulbright US LLP  
555 South Flower Street, Forty-First Floor  
Los Angeles, California 90071, United States

For Bell:

Evan J. Smith  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
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 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)**

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. 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:**

9/2/2020

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

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

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

Ema Bell

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

Nordstrom, Inc.

DocuSigned by:  
*Julie Blume*  
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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: 9/9/2020

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

By:  \_\_\_\_\_  
Emma Bell

By: \_\_\_\_\_  
Nordstrom, Inc.