

**PROPOSITION 65 SETTLEMENT AGREEMENT  
(Susan Davia AG Notices 2021-00688)**

**1. INTRODUCTION**

**1.1 The Parties**

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between noticing party Susan Davia (“Davia”) and noticed party Nordstrom, Inc. (hereafter, “Nordstrom”), with Davia and Nordstrom each referred to as a “Party” and collectively referred to as the “Parties.”

**1.2 Davia**

Davia is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

**1.3 Nordstrom**

**1.4** For the sole purpose of this agreement and the resolution of the subject claims, and without admitting any liability, Nordstrom is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

**1.5 General Allegations**

Davia alleges that Nordstrom is responsible for the design, manufacture, distribution and/or sale, in the State of California, of Nordstrom vinyl travel case products made with vinyl components that exposed users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and reasonable warning” under Proposition 65. Pursuant to Proposition 65, DEHP is listed as a carcinogen and reproductive toxin. DEHP shall be referred to hereinafter as the “Listed Chemical.”

**1.6 Notices of Violation**

On March 19, 2021, Davia served Nordstrom and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic chemical found in the Nordstrom vinyl travel case products sold in California (AG Notice 2021-00688).

This March 19, 2021, Notice of Violation from Davia to Nordstrom shall hereafter be referred to as "Notice." Nordstrom represents that, as of the date it executes this Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in the vinyl travel case products, as identified in the Notice.

### **1.7 No Admission**

This Agreement resolves claims that are denied and disputed by Nordstrom. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Nordstrom denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws and regulations, including Proposition 65. Nothing in this 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 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, notwithstanding the foregoing, this section shall not diminish or otherwise affect Nordstrom's obligations, responsibilities, and duties under this Agreement.

### **1.8 Consent to Jurisdiction**

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Nordstrom as to this Agreement, that venue for any action to enforce this Agreement is proper in County of Marin, that this Agreement shall be construed as made pursuant to Code of Civil Procedure Section 664.6 and the Marin County Superior Court shall be considered to have jurisdiction to enforce the provisions of this Agreement until performance in full of the terms of the settlement.

## **2. DEFINITIONS**

**2.1** "Covered Product" shall mean all Nordstrom distributed 3-1-1 Toiletry Case with VPN number MA425870NS.

**2.2** “Phthalate Free” Covered Products shall mean any accessible component of any Covered Product contains less than or equal to 1,000 parts per million (“ppm”) of DEHP, DINP, DBP, di-isodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”) as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances.

**2.3** “Effective Date” shall mean November 15, 2021.

### **3. INJUNCTIVE-TYPE RELIEF**

#### **3.1 Covered Products in Nordstrom California Stores**

As a material term of this Agreement, Nordstrom represents that as of June 2021, it placed a stop sale instruction for Covered Products for all California retail stores and ecommerce sites and Nordstrom si no longer selling Covered Products in California or to California customers. As a further material term, Nordstrom represents that as of June 2021, no inventory of Covered Products is available for sale through Nordstrom in California or to California customers. Consequent to these material terms, and for so long as they remain true, Nordstrom shall have no warning obligation with respect to Covered Products.

#### **3.2 Product Reformulation Commitment**

**3.2.1** As of the Effective Date, should Nordstrom resume California sales of Covered Product, Nordstrom shall not manufacture, cause to be manufactured, purchase or otherwise obtain any Covered Product unless such Covered Product meets the Phthalate Free concentration standards of this Agreement.

### **4. MONETARY PAYMENTS**

#### **4.1 Civil Penalty**

As a condition of settlement of all the claims referred to in this agreement, Nordstrom shall pay a total of \$1,200 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHHA”) and the remaining 25% of the penalty remitted to Davia.

## **4.2 Augmentation of Penalty Payments**

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Nordstrom for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents evidence to counsel for Nordstrom that the Covered Products have been distributed in California in sales volumes materially different (greater than 25%) than those identified by Nordstrom prior to execution of this Agreement, and Nordstrom does not provide Davia with competent and credible evidence to dispute this claim, then Nordstrom shall be liable for an additional penalty amount of \$10,000.00. Davia agrees to provide counsel for Nordstrom with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Nordstrom shall have thirty (30) days to either present evidence to counter this claim or to agree to the amount of fees and penalties owing by Nordstrom and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for the additional civil penalties pursuant to this Section and the prevailing party to such action shall be entitled to all reasonable attorney fees and costs relating to such claim.

## **4.3 Reimbursement of Davia's Fees and Costs**

The Parties acknowledge that Davia and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Nordstrom expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Nordstrom shall pay Davia's counsel the amount of \$20,000 for fees and costs incurred investigating, litigating and enforcing this matter.

## **4.4 Payment Procedures**

Nordstrom shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of

a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2021-00185, 2021-00688"), in the amount of \$900 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2021-00688") in the amount of \$300.

Nordstrom shall satisfy its obligation to pay attorney fees and costs pursuant to Section 4.3 by delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2021-00688") in the amount of \$20,000.

All civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel at the following address within 10 business days after execution of this Agreement or receipt of W-9 forms for Davia and Sheffer Law Firm, whichever is later:

Sheffer Law Firm  
Attn: Proposition 65 Controller  
232 E. Blithedale Ave., Suite 210  
Mill Valley, CA 94941

Davia and her counsel Sheffer Law Firm shall be responsible for distributing the civil penalty payment to OEHHA.

Nordstrom shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under this Section that are not received by Sheffer Law Firm within five business days of the due date for such payment.

While the obligations of this agreement are binding upon execution, the Release of Nordstrom shall not become effective until after all monetary payments have been made by Nordstrom and all funds have cleared.

Nordstrom shall also pay any augmented civil penalties pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with civil penalty checks payable to "OEHHA" (Memo line "Prop 65 Penalties, 2021-00688") and "Susan Davia" (Memo line "Prop 65 Penalties, 2021-00688") in the amount agreed to by the Parties or ordered by the Court pursuant to Section 4.2 and as divided pursuant to California Health & Safety Code § 25249.12(c)(1) & (d).

Nordstrom shall also pay attorney fees and costs pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with a check payable to "Sheffer Law Firm" (Memo line "2021-00688") in the amount agreed upon by the Parties or ordered by the Court pursuant to Section 4.2.

All Section 4.2 payments shall be delivered to plaintiff's counsel at the following address:

Sheffer Law Firm  
Attn: Proposition 65 Controller  
232 E. Blithedale Ave., Suite 210  
Mill Valley, CA 94941

Nordstrom shall also be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under Section 4.2 that are not received by Sheffer Law Firm within ten (10) business days of the due date for such payment.

#### **4.5 Issuance of 1099 Forms**

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, Nordstrom shall issue three separate 1099 forms, as follows:

- (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and 4.2;
- (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and tax identification number shall be furnished upon request; and
- (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.2 and 4.3.

## **5. RELEASES**

### **5.1 DAVIA'S RELEASE OF NORDSTROM**

5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and Nordstrom of any violation of Proposition 65 that was or could have been asserted by Davia, individually and on behalf of herself and her past and current representatives, agents, attorneys, successors and/or assigns ("Releasers") against Nordstrom, and its directors, officers, employees, attorneys, agents, parents, and subsidiaries ("Releasees"), based on their failure to warn about alleged exposures to DEHP, DINP, DBP, DIDP, DNHP, and BBP contained in the Covered Products that were manufactured, distributed, sold or offered for sale by Nordstrom before the Effective Date. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 by Nordstrom with regard

to the alleged or actual failure to warn about exposure to DEHP, DINP, DBP, DIDP, DNHP, and BBP from Covered Products manufactured, sold or distributed for sale after the Effective Date.

5.1.2 In further consideration of the promises and agreements herein contained, and for so long as Nordstrom remains in compliance with the terms of this Agreement, Davia on behalf of herself, her past and current representatives, agents, attorneys, successors and/or assigns hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Davia may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys' fees,-- limited to and arising under Proposition 65 with respect to the DEHP, DINP, DBP, DIDP, DNHP, and BBP in the Covered Products manufactured, distributed, sold and/or offered for sale by Nordstrom before the Effective Date (collectively "claims"), against Nordstrom and Releasees.

5.1.3 Davia also, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns, provides a general 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 Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by Nordstrom or Releasees before the Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil code, which provides 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.

Davia, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the

released matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.1.4 This section 5.1 release shall not extend upstream to any entities, other than Nordstrom, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the covered products or any component parts thereof to Nordstrom.

## **5.2 Nordstrom's Release of Davia**

The Release by Davia is mutual. Nordstrom, each on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Davia and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products. Nordstrom acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides 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 RELEASING PARTY.

Nordstrom expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

## **6. ENFORCEMENT**

Prior to bringing any motion, order to show cause, or other proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any Covered Product



without a warning or which is alleged to not be Phthalate Free, in actual or alleged violation of this Agreement, Davia shall provide a Notice of Violation ("NOV") to Nordstrom. The NOV shall include, for each Covered Product alleged to be violation of this Agreement: the date of alleged violations(s), place of sale, date and proof of purchase (if relevant), and any test data obtained by Davia regarding each such Covered Product. Davia shall take no further action regarding any alleged violation nor seek any monetary recovery for herself, her agents or her counsel if, within 30 days of receiving such NOV, Nordstrom demonstrates (1) that the Covered Product was manufactured distributed, sold or offered for sale by Nordstrom before the Effective Date; or (2) that Nordstrom took corrective action by placing an appropriate warning on the Covered Product(s) compliant with Section 3.3 of this Agreement following service of the NOV; or (3) that the Covered Products are Phthalate Free.

## **7. SEVERABILITY**

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining, after express agreement of the Parties, shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

## **8. GOVERNING LAW**

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

## **9. NOTICES**

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by certified mail or electronic mail to the following:

For Nordstrom:

General Counsel  
Nordstrom, Inc.  
1617 Sixth Avenue  
Seattle, WA 98101

With a copy to its counsel:

Jeffrey Margulies, Esq.  
Norton Rose Fulbright US LLP  
555 South Flower Street, Forty-First Floor  
Los Angeles, CA 90071  
lauren.shoor@nortonrosefulbright.com

For Davia to:

Proposition 65 Coordinator  
Sheffer Law Firm  
232 E. Blithedale Ave., Suite 210  
Mill Valley, CA 94941

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

Davia agrees to comply with the reporting form requirements referenced, in California Health & Safety Code §25249.7(f).

**11. MODIFICATION**

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

**12. ENTIRE AGREEMENT**

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, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

**13. ATTORNEY'S FEES**

**13.1** Should either Party prevail on any motion, application for order to show cause, or other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. §§ 1021 and 1021.5.

**13.2** Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notice.

13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

#### 14. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.


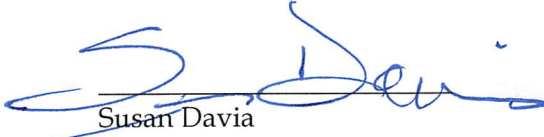
#### 15. COUNTERPARTS, FACSIMILE SIGNATURES

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

#### 16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: March <u>24</u>, 2022</p>  <p>Nordstrom, Inc.</p>	<p>Dated: March <u>23</u>, 2022</p>  <p>Susan Davia</p>
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