

## SETTLEMENT AGREEMENT AND RELEASE

### **1. INTRODUCTION**

#### **1.1 Ema Bell and Sweet Water Décor**

This Settlement Agreement and Release (“Agreement”) is entered into by and between Ema Bell (“Ema Bell”), on the one hand, and Sweet Water Décor (“SWD”), on the other hand, with Ema Bell and SWD collectively referred to as the “Parties”. Bell is an individual who resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals in consumer products. Bell alleges that SWD 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**

Ema Bell alleges that SWD has exposed individuals to lead from its manufacturing, distribution, sales and/or offering for sale Sweet Water Décor Sweater Weather mugs in the State of California without first providing a “clear and reasonable warning” pursuant to Proposition 65. California has identified and listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, or other reproductive harm.

#### **1.3 Product Description**

The type of products covered by this Agreement are Sweet Water Décor Sweater Weather mugs, all colors and sizes, containing lead that SWD manufactured, distributed, sold and/or offered for sale in California containing lead (“Subject Product(s)”).

#### **1.4 Notice of Violation**

Ema Bell served SWD, Nordstrom, Inc., NIHC, Inc., the California Attorney General, and certain other public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with a “60-Day Notice of

Violation” of Proposition 65 dated February 12, 2024, AG No. 2024-00611 (“Notice”). The Notice alleged that SWD, Nordstrom, Inc., and NIHC, Inc. were allegedly in violation of California Health & Safety Code section 25249.6 *et seq.* for failing to sufficiently warn consumers and customers in California of harm that may potentially result from exposures to lead from the Subject Products.

To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5 **No Admission**

SWD denies the material, factual, and legal allegations in the Notice and maintains that all of the products it manufactured, distributed, sold and/or offered for sale in California, including the Subject Products, have been, and are, in compliance with all laws, including Proposition 65. By executing this Agreement, SWD and its affiliates and subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns and each entity to whom SWD directly or indirectly distributes or sells the Subject Product, including but not limited to downstream distributors, wholesalers, customers, retailers, marketplace retailers, franchisees, cooperative members and licensees, including but not limited to Nordstrom, Inc. and NIHC, Inc. (collectively, the “Releasees”), do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Agreement shall be construed as an admission by any Releasees of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by the Releasees in any administrative or judicial proceeding or

litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Ema Bell or Releasees may have against one another in any other pending legal proceeding as to allegations unrelated to the dispute or claims released herein. Notwithstanding the allegations in the Notices, Releasees maintain that they have not knowingly manufactured or distributed, or caused to be manufactured or distributed, the Subject Product for sale in California in violation of Proposition 65.

1.6 **Effective Date**

For purposes of this Agreement, the term “Effective Date” shall mean the date this agreement is fully executed by the Parties.

2. **INJUNCTIVE RELIEF: REFORMULATION OR WARNING**

2.1 **Commitment to Reformulate or Warn**

As of 60 days after the Effective Date, SWD shall not directly manufacture, distribute, sell, or offer for sale the Subject Products in the State of California unless they are Reformulated Products as outlined in Section 2.2, or, alternatively, SWD provides a warning as outlined in Section 2.4. As used in this Section 2.1, “directly manufacture, distribute, sell, or offer for sale” means to directly ship Subject Products into California or to sell Subject Products to a distributor that SWD knows will sell the Subject Products in California.

2.2 **Reformulation Standards**


“Reformulated Products” shall mean Subject Products whose exterior produce a wipe test result no higher than 1 microgram ( $\mu\text{g}$ ) of lead when analyzed pursuant to NIOSH method no. 9100.

### 2.3 **Warning**

The warning requirements set forth in this Section 2 shall apply only to Subject Products that SWD directly manufactures, distributes, markets, sells, or ships for sale in the State of California after the Effective Date that have not been reformulated as set forth in Section 2.2. As of 60 days after the Effective Date, SWD shall not directly manufacture, distribute, sell, or offer for sale the Subject Products in the State of California unless SWD provides a warning as outlined in Section 2.4.

### 2.4 **Warning Requirements**

Any warnings provided pursuant to this Section 2 must be provided in such a conspicuous and prominent manner, as compared with other words, statements, or designs, that will allow the message to be seen and understood by an ordinary individual under customary conditions prior to exposure. For purposes of this Agreement, a clear and reasonable warning for the Subject Products shall consist of a warning affixed to the packaging, label, or tag of each Subject Product sold in California by SWD, or on a placard, shelf tag, sign or electronic device or automatic process, that contains either of the following statements:

 **WARNING:** This product can expose you to lead, which is 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)

**or**

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

- (a) Where a placard, sign, label, tag, or shelf tag for the Subject Product is not printed using the color yellow, the warning symbol may be printed in black and white. The warning symbol shall be placed to the left of the warning's text.

- (b) If the Subject Product's packaging contains consumer information in a foreign language, a warning statement in that language, in addition to English, is required.
- (c) The warning shall be posted on any websites under the exclusive control of SWD where Subject Products are sold into California or alternatively, SWD must ensure California purchasers receive the warning prior to checkout, as provided for in 27 Cal. Code of Regulations sections 25601 *et seq.*, or as the regulations may be subsequently amended.
- (d) The Parties recognize that the warning methods above are not the exclusive methods of providing a "clear and reasonable" warning under Proposition 65 and its implementing regulations, and agree that other warnings that comply with Proposition 65 may be used.
- (e) If Proposition 65 warnings for lead should no longer be required, SWD shall have no further obligations pursuant to this Agreement.
- (f) The use of warnings by SWD consistent with this Agreement shall constitute compliance with Proposition 65 by SWD with respect to the Subject Products and for any Subject Product in existing inventory that had not been reformulated and which were distributed and/or sold by SWD or any of the Releasees after the Effective Date. There shall be no obligation for SWD to provide a warning for Covered Products that entered the stream of commerce prior to the Effective Date, and the Section 6 release applies to all such Subject Products.

2.5 **Changes in Warning Regulations or Statutes**

In the event that the California Office of Environmental Health Hazard Assessment ("OEHHA") promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Subject Products or the

chemical at issue, which are different than those set forth above, SWD shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted that modify the current safe harbor regulations, SWD is and will be considered in compliance with Proposition 65 if the warning meets the provisions of this Agreement. Moreover, if regulations or legislation are enacted providing that a Proposition 65 warning is no longer required, a lack of warning by SWD will not thereafter be a breach of this Agreement.

2.6 **Grace Period for Existing Inventory of Subject Products**

The injunctive requirements of Section 2 shall not apply to Subject Products that are already in the stream of commerce as of sixty (60) days after the Effective Date, which Subject Products are expressly subject to the releases provided in Section 6.

3. **CIVIL PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims alleged in the Notice or referred to in this Agreement, SWD shall pay a total of one thousand dollars (\$1,000.00) in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code sections 25249.12(c)(1) & (d), with 75% of the funds (\$750.00) remitted to OEHHA and the remaining 25% of the penalty (\$250.00) remitted to Ema Bell. Ema Bell's counsel shall be responsible for delivering OEHHA's portion and Ema Bell's portion of any penalty payment made under this Agreement.

4. **REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Ema Bell and her counsel under the Private Attorney General doctrine and principles of contract law. Under these legal principles, SWD shall reimburse Ema Bell's counsel for fees and costs incurred as a result

of investigating and bringing this matter to SWD attention. SWD shall pay Ema Bell's counsel sixteen thousand five hundred dollars (\$16,500.00) for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice, subject to Section 5 provisions re tax documentation.

**5. PAYMENT INFORMATION**

Within fourteen (14) days of the Effective Date, SWD shall make a total payment of seventeen thousand five hundred dollars (\$17,500.00) for the civil penalties and attorneys' fees/costs to Plaintiff's counsel, Brodsky Smith by wire transfer. Plaintiff's counsel will provide SWD with wire instructions and tax forms prior to payment. The Parties acknowledge that SWD cannot issue any settlement payments pursuant to Sections 3, 4 and 5 until after SWD receives the requisite tax forms from Ema Bell's counsel. Other than this payment, each side is to bear its own attorneys' fees and costs.

**6. RELEASE OF ALL CLAIMS**

**6.1 Release of SWD, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3, 4 and 5 above, Ema Bell, in her individual capacity, and on behalf of herself, her past and current agents, representatives, successors and/or assignees, hereby waives any and all rights she may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to failing to provide warnings for alleged exposure to lead from use of the products, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) SWD; (b) each

of SWD's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users, including but not limited to Nordstrom, Inc. and NIHC, Inc.; and (c) SWD's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, based on the alleged failure to warn about exposures under Proposition 65 for products manufactured, distributed, sold or offered for sale in California by SWD and Releasees before the Effective Date, as alleged in the Notice.

Ema Bell also, in her individual capacity, on behalf of herself, her past and current agents, successors, and/or assignees and *not* in her representative capacity, hereby waives any and all rights she may have to institute or participate in, directly or indirectly, any form of legal action and 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 any nature, character or kind, known or unknown, suspected or unsuspected, against SWD and Releasees for claims relating to failing to provide warnings for alleged exposure to lead from use of the products. Ema Bell acknowledges that she is familiar with California Civil Code section 1542, 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.



Ema Bell in her individual capacity only, and on behalf of herself, her past and current agents, representatives, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her by the provisions of California Civil Code section 1542 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. The release in this section shall have no force or effect until payments for the full amount set forth in above Sections 3, 4 and 5 are paid in full to Brodsky Smith by SWD.

**6.2 SWD Release of Ema Bell**

SWD, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Ema 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 Ema Bell and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter.

**7. PUBLIC BENEFIT**

It is SWD's understanding that the commitments it is agreeing to herein, and the actions to be taken by SWD under this Agreement, 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 SWD that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to SWD's alleged failure to provide a warning concerning actual or alleged exposure to lead prior to use of the product it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, 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 Agreement, provided that SWD is in material compliance with this Agreement.

**8. SEVERABILITY**

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

**9. GOVERNING LAW**

The terms of this 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 Subject Product, then SWD shall have no further obligations pursuant to this Agreement, but shall have no recourse to claw back payments already made in accordance with Section 3, 4 and 5 of this Agreement.

**10. ENFORCEMENT**

If Ema Bell alleges that SWD has failed to comply with this Agreement, prior to filing an action or a notice of violation as to SWD or any Releasee, Ema Bell shall first provide SWD sixty (60) days' advance written notice of the alleged violation(s). Ema Bell shall provide testing results, lot numbers, and photographs of the packaging for the product at issue. The Parties shall meet and confer during such 60-day period in an effort to resolve the matter informally without the need for a new 60-day notice of violation or litigation. If the matter is not resolved within 60 days, Ema Bell may file a new notice of violation.

**11. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (i) first-

class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For SWD: Malcolm C. Weiss, Esq.  
Jennifer MikoLevine, Esq.  
Hunton Andrews Kurth LLP  
550 South Hope Street, Suite 2000  
Los Angeles, CA 90071  
[mweiss@hunton.com](mailto:mweiss@hunton.com)  
[jmikolevine@hunton.com](mailto:jmikolevine@hunton.com)

For EMA BELL: Evan J. Smith, Esq.  
Ryan Cardona, Esq.  
Brodsky Smith  
9465 Wilshire Blvd., Suite 300  
Beverly Hills, CA 90212  
[esmith@brodskysmith.com](mailto:esmith@brodskysmith.com)  
[rcardona@brodskysmith.com](mailto:rcardona@brodskysmith.com)

Any 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.

**12. COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

Ema Bell and her attorneys agree to comply with the reporting requirements referenced in California Health & Safety Code § 25249.7(f); however, Ema Bell and her attorneys agree to not promote this settlement via mediums including but not limited to the press and social media.

**14. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions,


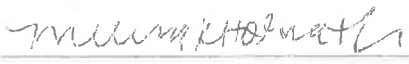
negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

15. **MODIFICATION**

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

16. **AUTHORIZATION**

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

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: 9 / 30 / 24	Date: 9-18-24
By:  On Behalf of Ema Bell	By:  On Behalf of Sweet Water Décor