

SUPREME COURT OF THE STATE OF NEW YORK
FOR THE COUNTY OF NEW YORK

STATE OF NEW YORK *ex rel.*
WILLIAM S. FRENCH,

Plaintiff,

-against-

H&M HENNES & MAURITZ, L.P., et al.

Defendants.

Index No. 101101/2016

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement”) is entered into among the State of New York (the “State”), defendant H&M Hennes & Mauritz, L.P. (“Defendant” or “H&M LP”), and relator William S. French (the “Relator”), through their authorized representatives. The above-named parties are hereinafter collectively referred to as “the Parties.”

PREAMBLE

WHEREAS, on or about July 12, 2016, Relator filed a *qui tam* action captioned *State of New York ex rel. William S. French v. H&M Hennes & Mauritz, L.P. et al.*, in the Supreme Court of the State of New York, New York County, Index 101101/2016 (the “Action”), alleging that Defendant knowingly made, used, or caused to be made or used, false records and statements that were material to their obligation to transmit unused gift card balances to the State as required by the N.Y. Abandoned Property Law (“APL”), in violation of the New York False Claims Act, N.Y. State Finance Law §§ 187-194 (“NYFCA”); and

WHEREAS, the Office of the Attorney General thereafter commenced an investigation in connection with the allegations in Relator's complaint (the "Complaint"); and

WHEREAS, as a result of that investigation, the State contends that it has certain civil claims against the Defendant under the NYFCA; and

WHEREAS, Defendant has agreed to this Agreement in settlement of the violations alleged below and to avoid the time, expense, uncertainty and distraction of litigation, and the Office of the Attorney General has agreed to accept the terms of this Agreement and discontinue its investigation of Defendant in connection with the allegations of the Complaint in the Action; and

WHEREAS, this Agreement is made in compromise of disputed claims and is neither an admission of liability or wrongdoing by Defendant nor a concession by the State that its claims are not well founded; and

WHEREAS, Relator claims entitlement under State Finance Law § 190(6) to a share of the proceeds of this Agreement and to Relator's reasonable expenses, attorney's fees and costs;

NOW THEREFORE, in consideration of the mutual promises and obligations of the Agreement, the Parties agree fully and finally to settle the claims asserted against the Defendant in this Action pursuant to the Terms and Conditions below:

BACKGROUND

1. Defendant H&M Hennes & Mauritz, L.P. is a New York limited partnership with a principal place of business in New York, New York. Defendant is wholly owned by H&M Hennes & Mauritz AB, a Sweden-based holding company ("H&M AB").

2. H&M is a global clothing retail brand. H&M LP owns and operates H&M retail and online stores in the United States.

3. H&M LP sells and distributes gift cards, including merchandise credit gift cards, for redemption in H&M retail and online stores in the United States. The gift cards sold and distributed by H&M LP do not have expiration dates. In 2016, H&M LP sold or distributed almost \$80 million in gift cards. Every year, some portion of H&M LP's gift cards go unused by consumers and H&M LP retains an amount of money corresponding to those unused balances.

4. Like many retailers, H&M LP is not required to and does not keep records of who owns its gift cards. If a gift-card issuer incorporated in New York does not know who owns a gift card and the gift card has not been used for five years, APL § 1315 requires the issuer to transfer the unused balance on that gift card to the State for deposit into the State's Abandoned Property Fund.

5. Since at least June 2008, H&M LP has known that the APL requires it to transfer unused gift card balances to the State for deposit into the State's Abandoned Property Fund. But H&M LP didn't want to give up that money, stating, "escheating hundreds of thousands [of dollars] each year to the State of NY isn't a viable option."

6. Beginning in 2008, H&M LP implemented a plan to retain possession of the unused gift card balances that were supposed to be transferred to the State's Abandoned Property Fund. H&M LP entered into a contract with a company incorporated in Ohio ("Company A"). The terms of the contract were intended to make it appear that Company A, and not H&M LP, was the issuer of H&M LP's gift cards. Because Company A was not incorporated in New York, it was not required to transfer

unused gift card balances to the State.

7. At the time the contract was signed, H&M LP knew that Company A did not intend to actually sell or distribute gift cards. Indeed, marketing materials Company A provided to H&M LP explicitly stated that the contract with Company A “will not change how you run your business.” Company A told H&M LP that “[y]our [c]ompany can sell the same gift cards it has always sold” and “use the same vendors for processing, printing and fulfillment,” and most importantly promised that H&M LP would “always manage[] the cash proceeds from gift card sales.”

8. The contract purported to deem Company A to be the issuer of H&M LP’s gift cards and claimed to transfer H&M LP’s millions of dollars of existing and future gift card liabilities to Company A in exchange for the payment of a nominal fee. But, consistent with Company A’s marketing materials, H&M LP did in fact retain total control over the manufacturing and sale of its gift cards, the money from the sale of gift cards continued to be deposited in H&M LP’s bank accounts and included in H&M LP’s internal accounting records, and H&M LP’s gift card redemption practices did not change at all.

9. In May 2011, H&M LP falsely told the State that H&M LP’s gift card liabilities had been transferred to Company A. H&M LP did not disclose that it retained in its bank accounts and accounting records the amounts corresponding to the unused balances of those gift cards, or that it remained responsible for honoring its gift cards. Around that same time, H&M LP also caused a letter to be submitted to the State falsely stating that Company A had “paid out tens of millions of dollars” in connection with the redemption of H&M LP’s gift cards, even though H&M LP knew that no such payments

had been made.

10. In November 2011, the State again asked H&M LP about its gift-card business, and H&M LP again caused false statements to be made to the State. Specifically, the State was told that H&M LP's liabilities for unused gift card balances had been transferred to an out-of-state entity that had no escheatment obligation to the State. The State was not told that H&M LP retained in its bank accounts and accounting records the amounts corresponding to the unused balances of those gift cards, or that H&M LP remained responsible for honoring its gift cards.

11. Since 2008, H&M LP has retained at least \$18,386,643 in unused gift card balances in its bank accounts that should have been transferred to the State for deposit into the State's Abandoned Property Fund.

12. Beginning in 2008, and continuing until the Effective Date, H&M LP thus knowingly made or caused to be made false statements material to its obligation under the APL to transfer to the State unused gift-card balances, in violation of the NYFCA.

13. Beginning in 2008, and continuing until the Effective Date, H&M LP thus knowingly concealed or knowingly and improperly avoided or decreased its obligation under the APL to transfer to the State unused gift-card balances, in violation of the NYFCA.

14. The conduct described in the foregoing Paragraphs 3 through 13 is hereinafter referred to as the "Covered Conduct."

15. The Defendant neither admits nor denies the conduct described in the foregoing Paragraphs 3 through 13 above.

TERMS AND CONDITIONS

Settlement Amount

16. Defendant will pay the sum of \$36 million (\$36,000,000) in U.S. dollars (the “Settlement Amount”) to resolve the claims asserted against it in the Action and the Office of the Attorney General’s investigation. The Settlement Amount represents restitution to the Abandoned Property Fund, damages and penalties being recovered by the State, the Relator’s share, *i.e.*, the share to which Relator is entitled under New York State Finance Law § 190(6), as well as the State’s attorney’s fees and costs.

17. The Settlement Amount is divided into two portions: (i) a \$28,260,000 (twenty-eight million two hundred and sixty thousand dollars) portion paid to the State (“State’s Share”), and (ii) a \$7,740,000 (seven million seven hundred and forty thousand dollars) portion paid to the Relator (“Relator’s Share”). The Relator’s Share is the portion to which the Relator is entitled under New York State Finance Law § 190(6).

18. Defendant agrees to pay or cause to be paid the State’s Share as follows:
- a. Within fifteen (15) calendar days of the Effective Date (defined below) of this Agreement, Defendant shall pay \$21,587,500 (twenty-one million five hundred and eighty-seven thousand five hundred dollars) by wire transfer pursuant to written instructions provided by the Attorney General.
 - b. Ninety (90) days after the Effective Date, Defendant shall pay \$1,668,125 (one million six hundred and sixty-eight thousand one hundred and twenty-five dollars) by wire transfer pursuant to written instructions provided by the Attorney General.
 - c. One hundred and eighty (180) days after the Effective Date, Defendant shall pay \$1,668,125 (one million six hundred and sixty-eight thousand

- one hundred and twenty-five dollars) by wire transfer pursuant to written instructions provided by the Attorney General.
- d. Two hundred and seventy (270) days after the Effective Date, Defendant shall pay \$1,668,125 (one million six hundred and sixty-eight thousand one hundred and twenty-five dollars) by wire transfer pursuant to written instructions provided by the Attorney General.
 - e. Three hundred and sixty (360) days after the Effective Date, Defendant shall pay \$1,668,125 (one million six hundred and sixty-eight thousand one hundred and twenty-five dollars) by wire transfer pursuant to written instructions provided by the Attorney General.
19. Defendant agrees to pay or cause to be paid the Relator's Share as follows:
- a. Within fifteen (15) calendar days of the Effective Date (defined below) of this Agreement, Defendant shall pay \$5,912,500 (five million nine hundred and twelve thousand five hundred dollars) by wire transfer to an attorney trust account or IOLTA account, pursuant to written instructions provided by Relator's counsel.
 - b. Ninety (90) days after the Effective Date, Defendant shall pay \$456,875 (four hundred and fifty-six thousand eight hundred and seventy-five dollars) by wire transfer to an attorney trust account or IOLTA account, pursuant to written instructions provided by Relator's counsel.
 - c. One hundred and eighty (180) days after the Effective Date, Defendant shall pay \$456,875 (four hundred and fifty-six thousand eight hundred and seventy-five dollars) by wire transfer to an attorney trust account or

IOLTA account, pursuant to written instructions provided by Relator's counsel.

- d. Two hundred and seventy (270) days after the Effective Date, Defendant shall pay \$456,875 (four hundred and fifty-six thousand eight hundred and seventy-five dollars) by wire transfer to an attorney trust account or IOLTA account, pursuant to written instructions provided by Relator's counsel.
- e. Three hundred and sixty (360) days after the Effective Date, Defendant shall pay \$456,875 (four hundred and fifty-six thousand eight hundred and seventy-five dollars) by wire transfer to an attorney trust account or IOLTA account, pursuant to written instructions provided by Relator's counsel.

20. The Defendant agrees it will not claim, assert, or apply for a tax deduction or tax credit on any New York State or New York City tax return, for any portion of the amounts paid to the State and to Relator pursuant to this Agreement.

21. To secure the payment of \$6,672,500 (six million six hundred and seventy-two thousand five hundred dollars) to the State described by Paragraph 18, subparagraphs (b) through (e), Defendant shall execute and deliver, at the time of the execution and delivery of this Agreement, an Affidavit for Judgment by Confession (attached hereto as Exhibit A) in favor of the State of New York. The State agrees not to file any Affidavit for Judgment by Confession unless and until there has been a Default under this Agreement.

22. To secure the payment of \$1,827,500 (one million eight hundred and

twenty-seven thousand five hundred dollars) to the Relator described in Paragraph 19, subparagraphs (b) through (e), Defendant shall execute and deliver, at the time of the execution and delivery of this Agreement, an Affidavit for Judgment by Confession (attached hereto as Exhibit B) in favor of the Relator. Relator agrees not to file any Affidavit for Judgment by Confession unless and until there has been a Default under this Agreement.

23. In consideration of the obligations of Defendant as set forth in this Agreement, and conditioned upon the Defendant's payment to the Relator pursuant to subparagraph a of Paragraph 19, within thirty (30) days after the Effective Date of this Agreement, the State shall serve on Defendant, pursuant to CPLR 3217(a)(1), a Notice of Discontinuance of the claims against the Defendant in the Action, subject to the exceptions set forth in this Agreement, dismissing the claims against Defendant in the Action without prejudice. The Notice of Discontinuance shall provide that upon the Defendant's compliance with the terms of Paragraph 18, subparagraph (b) through (e), and Paragraph 19 of this Agreement, the claims in the Action shall be deemed dismissed with prejudice as to H&M LP and without prejudice as to H&M AB. Such dismissal shall, however, expressly preserve the Court's jurisdiction over Defendant's obligation to pay reasonable attorney's fees, expenses and costs to Relator pursuant to State Fin. Law § 190(6).

Releases

24. Subject to the exceptions in the next Paragraph, in consideration of the obligations of Defendant set forth in this Agreement, conditioned upon the full payment by H&M LP of the Settlement Amount and subject to Paragraph 32 herein (concerning

bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment to the State under the Agreement, whichever is later), the State releases Defendant from any civil or administrative monetary claim the State has or may have for the Covered Conduct under the New York False Claims Act, N.Y. State Finance Law §§ 187-194.

25. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- a. Any civil, criminal, or administrative liability arising under state or municipal tax laws;
- b. Any criminal liability;
- c. Any civil liability that Defendant have or may have under any state statute, regulation, or rule not covered by this Agreement;
- d. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for personal injury or property damage arising from the Covered Conduct;
- h. Any liability for failure to deliver goods or services due; and
- i. Any civil or administrative liability of individuals, except as provided for

herein.

26. In consideration of the obligations of Defendant in this Agreement, conditioned upon the full payment by H&M LP of the Settlement Amount, Relator, for himself, and for his heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, releases Defendant from any civil monetary claim Relator has on behalf of the State or any local governments within the State for the Covered Conduct under the New York False Claims Act, N.Y. State Finance Law §§ 187-194; provided, however, that Relator expressly retains and does not release his rights to recover reasonable expenses, attorney's fees and costs from Defendant, pursuant to N.Y. State Finance Law § 190(6).

27. Defendant, for itself and its respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the State, its agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Defendant has asserted, could have asserted, or may assert in the future against the State, its agencies, officers, employees, servants, attorneys, agents and assigns, related to the Covered Conduct and the State's investigation and prosecution thereof.

28. Defendant, for itself and its respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns fully and finally releases Relator, his heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Defendant has asserted, could

have asserted, or may assert in the future against the Relator, his heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, related to the Covered Conduct and Relator's and the State's investigations and prosecution concerning the Action.

29. In consideration of the obligations of Defendant as set forth in this Agreement, and conditioned upon the Defendant's full payment to Relator pursuant to Paragraph 19, Relator, for himself individually, and for his heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the State, its agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Relator has asserted, could have asserted, or may assert in the future against the State, arising out of the filing of the claims against Defendant in this Action or from any other claim for a share of the settlement proceeds under this Agreement. Relator accepts the payments described in Paragraph 19 in full settlement of any claims Relator may have against the State under this Agreement or as a result of the claims against Defendant in this action. Relator expressly reserves and this Agreement does not release any claims Relator may have against the State for a share of any proceeds recovered from any individuals or entities named in the Complaint who are not Parties to this Agreement or who are not released by this Agreement. This Agreement does not resolve or in any manner affect any claims the State has or may have against Relator arising under State tax laws, or any claims arising under this Agreement.

30. Relator, and each of his respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, agrees not to object to this

Agreement and agrees and confirms that this Agreement is fair, adequate, and reasonable pursuant to New York State Finance Law § 190(5)(b)(ii).

31. The State has agreed to the terms of this Agreement based on, among other things, information and materials provided to, and representations made to, the Office of the Attorney General by Defendant and its counsel during the course of the State's investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Agreement is voidable by the Office of the Attorney General in its sole discretion. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Defendant in agreeing to this Agreement. Defendant acknowledges that it has entered this Agreement freely and voluntarily, and upon due deliberation with the advice of counsel.

Bankruptcy and Non-Payment

32. If within ninety-one (91) days of the Effective Date of this Agreement or of the date of any payment made by Defendant under this Agreement, the Defendant or a third party commences any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of its or their debts, or seeking to adjudicate the Defendant as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for the Defendant or for all or any substantial part of its or their assets, the Defendant agrees as follows:

- a. Defendant's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Defendant shall not argue or otherwise

take the position in any such case, proceeding, or action that: (i) its obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) it was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment of the Settlement Amount; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendant.

- b. If any of the Defendant's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the releases in this Agreement insofar as it affects the State and bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the releases provided above, and Defendant agrees that (i) any such claims, actions, or proceedings brought by the State are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Defendant shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay; (ii) it shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the State within 60 calendar days of written notification to Defendant that the

releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of the Agreement; and (iii) the State has a valid claim against Defendant in the amount of treble damages plus penalties under the New York False Claims Act, and may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- c. Defendant acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

33. In the event of the failure by Defendant to make any or all payments of the Settlement Amount, including the State's Share and the Relator's Share, when due according to Paragraphs 18 and 19, the State will provide written notice of the non-payment to the Defendant. Such notice shall be given to the person and address designated in Paragraph 46 by (i) delivery in person, (ii) a nationally recognized next-day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Defendant shall have an opportunity to pay the unpaid balance within five (5) business days from the effective date of the notice. If Defendant fails to pay the overdue unpaid balance of their payment obligations under this Agreement within five (5) business days from the effective date of the notice of non-payment ("Default"), the State, in its sole discretion, may declare or do any or all of the following, or may exercise, without limitation, any remedies available under law, including:

- a. The State may declare the entire Settlement Amount, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Default until payment of the remaining Settlement Amount is made in full; and/or
- b. Pursue all available remedies to enforce this Agreement and remedy violations of this Agreement. In the event of a Default as described above, Defendant agrees not to contest any action to enforce this Agreement or any other collection action undertaken by the State pursuant to this Paragraph or pursuant to law, and Defendant agrees to pay the State, without limitation, all reasonable costs of collection and enforcement of this Agreement, including attorney's fees, expenses and court costs; and/or
- c. Rescind its agreement to this Agreement as to Defendant and reinstitute an action or actions against Defendant in this Court. In the event the State reinstitutes such action, Defendant: (1) expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by the State after the written notification to Defendant of Default, and (ii) relate to the Covered Conduct, and (2) further waives and will not assert any defenses Defendant may have to any civil or administrative action relating to the Covered Conduct.
- d. File the Affidavit for Judgment by Confession described in paragraph 21

in this Court and take other appropriate actions.

34. In the event of the failure by Defendant to make any or all payments of the Relator's Share when due according to Paragraph 19, the Relator will provide written notice of the non-payment to Defendant. Such notice shall be given to the person and address designated in Paragraph 46 by (i) delivery in person, (ii) a nationally recognized next day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Defendant shall have an opportunity to pay the unpaid balance within five (5) business days from the effective date of the notice. If Defendant fails to pay the overdue unpaid balance of its payment obligations for the Relator's Share under this Agreement within five (5) business days from the effective date of the notice of non-payment ("Relator's Share Default"), the Relator, in its sole discretion, may declare or do any or all of the following:

- a. The Relator may declare the entire Relator's Share, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Relator's Share Default until payment of the remaining Relator's Share is made in full; and/or
- b. Institute an action or actions against Defendant in this Court to collect the unpaid amounts of the Relator's Share plus applicable interest. Defendant agrees not to contest any action to enforce this Agreement with respect to the Relator's Share or any other collection action undertaken by the

Relator pursuant to this Paragraph, and Defendant agrees to pay the Relator all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses.

- c. File the Affidavit for Judgment by Confession described in paragraph 22 in this Court and take other appropriate actions.

Additional Terms

35. To the extent that further investigation or litigation relating to the Covered Conduct proceeds against individuals or entities that are not Parties to, released by, or dismissed from the Action under the terms of this Agreement, H&M LP (through its officers, directors, partners or employees) agrees to be available, upon reasonable notice, and without unreasonable cost or expense, to meet with attorneys or other representatives of the State and/or Relator, either in person or by telephone, and to answer questions related to issues concerning the Action, the Covered Conduct or any conduct related thereto concerning any interactions with Company A or its affiliates or employees. The Defendant agrees that to the extent such investigation or litigation proceeds, if so requested or demanded by the State and/or Relator, H&M LP (through its officers, directors, partners or employees) will testify in any hearings, depositions, and/or at trial. H&M LP also agrees to make available to the State and/or Relator, upon reasonable notice, documents or other materials relevant to any such investigation or litigation.

36. Defendant represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly approved, and that execution of this Agreement is duly authorized.

37. The undersigned counsel and any other signatories represent and warrant

that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

38. Defendant shall not make any statement denying the propriety of this Agreement and shall refrain from making any statements or publications, oral or written, of a defamatory or disparaging nature concerning the State or this Agreement. Nothing in this Paragraph affects Defendant's testimonial obligations or its rights to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party, nor shall it affect Defendant's right to comment publicly about this Agreement or the subject thereof to the extent that such comment or statement does not disparage or defame the State.

39. This Agreement is not intended for use by any third party in any other proceeding.

40. This Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

41. Except as provided in Paragraphs 26, 33, and 34 above, each Party shall bear its own legal and other costs incurred in connection with this matter.

42. This Agreement constitutes the complete agreement between and among the Parties, and may not be amended except by an instrument in writing signed on behalf of all the Parties to this Agreement.

43. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their respective successors and assigns, provided that no Party, other than the State, may assign, delegate, or otherwise transfer any of its rights or

obligations under this Agreement without the prior written consent of the Office of the Attorney General.

44. In the event that any one or more of the provisions contained in this Agreement, other than provisions concerning payment and release, shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

45. Any failure by the State to insist upon the strict performance by Defendant and/or Relator of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by the Relator and/or Defendant. Any failure by Relator to insist upon the strict performance by Defendant of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and Relator, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed the Defendant.

46. All communications from any Party concerning the subject matter of this Agreement shall be addressed as follows:

If to the State of New York:

Laura Jereski
Assistant Attorney General
Office of the New York Attorney General
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, NY 10271
(212) 416-8943

If to Relator:

Dan Miller
Walden Macht & Haran LLP

250 Vesey Street, 27th Floor
New York, NY 10281
(267) 516-0780
dmiller@wmhlaw.com

If to Defendant:

Christian W. Habersaat
Goulston & Storrs PC
885 Third Avenue, 18th Floor
New York, NY 10022
Tel: (212) 878-5179

47. Except for written notices of Defendant's non-payment issued by the State or Relator, the sending and receipt of which shall be governed by the provisions in Paragraphs 33 and 34 respectively, all communications from any Party to another Party concerning this Agreement shall be sent by United States mail with return receipt requested or overnight delivery service with signature required to the signatory counsel for each Party, unless such communications are sent by email and a reply is written without objection to the electronic means of communication.

48. In any subsequent investigation, civil action, or proceeding by the State to enforce this Agreement, or for violations of the Agreement, Defendant expressly agrees and acknowledges that any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this Agreement, and that the State may use statements, documents or other materials produced or provided by the Defendant prior to or after the Effective Date of this Agreement.

49. If a court of competent jurisdiction determines that Defendant has breached this Agreement, other than by failing to pay amounts owed under the Agreement, the remedy for which is described in Paragraphs 33 and 34, Defendant shall pay to the Office of the Attorney General and/or to Relator the cost, if any, of obtaining

such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

50. Any headings, titles and subtitles contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement.

51. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising under this Agreement will be the Supreme Court of the State of New York, New York County.

52. This Agreement is effective on the date of signature of the last signatory of the Agreement (the “Effective Date”). Facsimiles and .pdfs of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

53. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

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IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

THE STATE OF NEW YORK

Dated: May 16, 2022

LETITIA JAMES
New York State Attorney General

BY:  _____
Laura Jereski, Esq.

Assistant Attorney General
Office of the New York Attorney General
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, New York 10271
(212) 416-8943

Attorney for the State of New York

DEFENDANT

Dated: May 13, 2022

H&M HENNES & MAURITZ, LP

By: _____


Aleksandra Filipov
Regional Controller - Americas

Dated: May __, 2022

H&M HENNES & MAURITZ, LP

By: _____

Carlos Duarte
Regional Manager - Americas

Dated: May __, 2022

H&M HENNES & MAURITZ, LP

By: _____

Adam Karlsson
Authorized Signatory

Dated: May __, 2022

H&M HENNES & MAURITZ, LP

By: _____

Nils Vinge
Authorized Signatory

Dated: May __, 2022

GOULSTON & STORRS PC

By: _____

Christian W. Habersaat, Esq.

885 Third Avenue
New York, NY 10022
Tel: (212) 878-5179

Attorneys for H&M Hennes & Mauritz L.P.

DEFENDANT

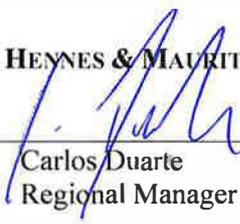
Dated: May __, 2022

H&M HENNES & MAURITZ, LP

By: _____
Aleksandra Filipov
Regional Controller - Americas

Dated: May 13, 2022

H&M HENNES & MAURITZ, LP

By: _____

Carlos Duarte
Regional Manager - Americas

Dated: May __, 2022

H&M HENNES & MAURITZ, LP

By: _____
Adam Karlsson
Authorized Signatory

Dated: May __, 2022

H&M HENNES & MAURITZ, LP

By: _____
Nils Vinge
Authorized Signatory

Dated: May __, 2022

GOULSTON & STORRS PC

By: _____
Christian W. Habersaat, Esq.

885 Third Avenue
New York, NY 10022
Tel: (212) 878-5179

Attorneys for H&M Hennes & Mauritz L.P.

DEFENDANT

Dated: May __, 2022

H&M HENNES & MAURITZ, LP

By: _____
Aleksandra Filipov
Regional Controller - Americas

Dated: May 13, 2022

H&M HENNES & MAURITZ, LP

By: ^K _____
Carlos Duarte
Regional Manager - Americas

Dated: May 13, 2022

H&M HENNES & MAURITZ, LP

By:  _____
Adam Karlsson
Authorized Signatory

Dated: May 13, 2022

H&M HENNES & MAURITZ, LP

By:  _____
~~Nils Vinge~~ Fredrik Björkstedt
Authorized Signatory

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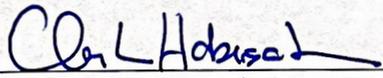
Dated: May __, 2022

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By: _____
Nils Vinge
Authorized Signatory

Dated: May 13, 2022

GOULSTON & STORRS PC

By: 
Christian W. Habersaat, Esq.

885 Third Avenue
New York, NY 10022
Tel: (212) 878-5179

Attorneys for H&M Hennes & Mauritz L.P.

RELATOR

Dated: May 6, 2022



William S. French

Dated: May 6, 2022

WALDEN MACHT & HARAN LLP

By: 

Daniel R. Miller, Esq.

250 Vesey Street, 27th Floor
New York, NY 10281
(267) 516-0780
dmiller@wmhlaw.com

MENZ BONNER KOMAR & KOENIGSBERG LLP

By: _____
David A. Koenigsberg, Esq.

1 North Lexington Avenue
Suite 1550
White Plains, New York 10601
Tel: (914) 949-0222

Attorneys for Relator

RELATOR

Dated: May __, 2022

William S. French

Dated: May **5**, 2022

WALDEN MACHT & HARAN LLP

By: _____
Daniel R. Miller, Esq.

250 Vesey Street, 27th Floor
New York, NY 10281
(267) 516-0780
dmiller@wmhlaw.com

MENZ BONNER KOMAR & KOENIGSBERG LLP

By: 
David A. Koenigsberg, Esq.

1 North Lexington Avenue
Suite 1550
White Plains, New York 10601
Tel: (914) 949-0222

Attorneys for Relator

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
FOR THE COUNTY OF NEW YORK

STATE OF NEW YORK *ex rel.* WILLIAM
S. FRENCH

Plaintiff,

-against-

H&M HENNES & MAURITZ, L.P.

Defendant.

Index No. 101101/2016

**AFFIDAVIT FOR JUDGMENT
BY CONFESSION**

STATE OF Ohio)
) ss.:
COUNTY OF Mahoning)

Adam Valko, being duly sworn, deposes and says:

1. I, Adam Valko, am Legal Counsel of H&M Hennes & Mauritz, L.P., and I am duly authorized to make and execute this Affidavit for Judgment by Confession on behalf of H&M Hennes & Mauritz, L.P.
2. H&M Hennes & Mauritz, L.P.'s principal place of business is 110 Fifth Avenue, New York, NY 10011.
3. Pursuant to New York CPLR § 3218(a)(1) and § 501, I hereby authorize entry of judgment confessed hereby in the County of New York, State of New York, and waive any objection to personal jurisdiction in the State of New York and/or to venue in New York County.
4. Pursuant to an agreement ("Settlement Agreement") dated May 16, 2022, entered into by (i) Letitia James, Attorney General of the State of New York, on behalf of the People of the State of New York ("State"), (ii) the relator William S. French (the "Relator"), and (iii) H&M Hennes & Mauritz, L.P., H&M Hennes & Mauritz, L.P.

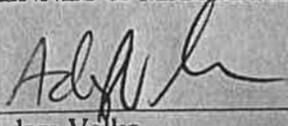
has agreed to pay a Settlement Amount, as defined in the Settlement Agreement, of \$36,000,000 (thirty-six million dollars) in installments, of which a total of \$28,260,000 (twenty-eight million two hundred and sixty thousand dollars) is payable to the State.

5. As detailed in the Settlement Agreement, the State alleges that H&M Hennes & Mauritz, L.P. violated the New York False Claims Act and the Abandoned Property Law by, among other things, making or causing to be made false statements and reports material to its obligation to transmit property to the State.
6. I hereby confess judgment, on behalf of H&M Hennes & Mauritz, L.P., for the amount of \$28,260,000 (twenty-eight million two hundred and sixty thousand dollars) pursuant to New York CPLR § 3218 in favor of the plaintiff, the People of the State of New York, under the Settlement Agreement in the above-captioned matter, the terms of which are expressly incorporated herein, and which is attached hereto as Exhibit 1.
7. By signing this Affidavit for Judgment by Confession, I understand that should H&M Hennes & Mauritz, L.P. default or otherwise fail to pay the State \$28,260,000 (twenty-eight million two hundred and sixty thousand dollars) (or any portion thereof) as provided in the Settlement Agreement, and fail to cure such default or non-payment within five (5) days of the effective date of the State's written notice thereof (as set forth in the Settlement Agreement), the State may file this Affidavit for Judgment by Confession as a judgment against H&M Hennes & Mauritz, L.P.
8. In the event that H&M Hennes & Mauritz, L.P. defaults or otherwise fails to pay the State \$28,260,000 (twenty-eight million two hundred and sixty thousand dollars) (or any portion thereof) as provided in the Settlement Agreement, and fails to cure such default or non-payment within five (5) days of the effective date of the State's written

notice thereof (as set forth in the Settlement Agreement), I hereby authorize the State to enter judgment against H&M Hennes & Mauritz, L.P. in the total sum of \$28,260,000 (twenty-eight million two hundred and sixty thousand dollars), reduced by the principal amount of any payments to the State made pursuant to the Settlement Agreement, plus collection fees of twenty-two percent of the unpaid amount, plus statutory costs of \$15.00, and I hereby authorize the State or its authorized agents and/or assigns to enter judgment against H&M Hennes & Mauritz, L.P. for that sum.

9. Upon all payments being made under the Settlement Agreement in a timely manner pursuant to the terms of the Settlement Agreement, this confession of judgment shall be null and void, and the original of Affidavit for Judgment by Confession shall be returned to H&M Hennes & Mauritz, L.P. within ten (10) business days of receipt of a letter from H&M Hennes & Mauritz, L.P. or its representative requesting such return.
10. Changes to this Affidavit for Judgment by Confession must be in writing, signed by both H&M Hennes & Mauritz, L.P. and a representative or assign of the State.
11. This confession of judgment did not arise out of a consumer transaction.
12. This confession of judgment is not for the purpose of securing the Plaintiff against a contingent liability.

H&M HENNES & MAURITZ, L.P.

By: 

Name: Adam Valko

Title: Legal Counsel

STATE OF Ohio)
COUNTY OF Muhlenberg) ss.:

On this 15 day of May, 2022, Adam Valko, known personally to me to be the Legal Counsel of H&M HENNES & MAURITZ, L.P., appeared before the undersigned and acknowledged to me that he, ~~as such officer~~^{AV} being authorized so to do, executed the within instrument for the purposes therein set forth, on behalf of H&M HENNES & MAURITZ, L.P., by his signature on the instrument ~~as such officer~~. ^{AV}

Sworn before me this 15 day of May, 2022,

Notary Public

Margaret Schwab

Commission 2015 - RE-544334

My Commission expires Sept 7, 2025

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
FOR THE COUNTY OF NEW YORK

STATE OF NEW YORK *ex rel.*
WILLIAM S. FRENCH

Plaintiff,

-against-

H&M HENNES & MAURITZ, L.P.,

Defendant.

Index No. 101101/2016

**AFFIDAVIT FOR JUDGMENT
BY CONFESSION**

STATE OF Ohio)
) ss.:
COUNTY OF Mahoning)

Adam Valko, being duly sworn, deposes and says:

1. I, Adam Valko, am Legal Counsel of H&M Hennes & Mauritz, L.P., and I am duly authorized to make and execute this Affidavit for Judgment by Confession on behalf of H&M Hennes & Mauritz, L.P.
2. H&M Hennes & Mauritz, L.P.'s principal place of business is 110 Fifth Avenue, New York, NY 10011.
3. Pursuant to New York CPLR § 3218(a)(1) and § 501, I hereby authorize entry of judgment confessed hereby in the County of New York, State of New York, and waive any objection to personal jurisdiction in the State of New York and/or to venue in New York County.

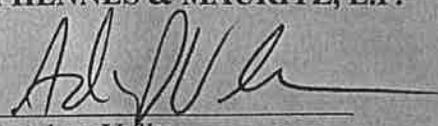
4. Pursuant to an agreement (“Settlement Agreement”) dated May 16, 2022, entered into by (i) Letitia James, Attorney General of the State of New York, on behalf of the People of the State of New York (“State”), (ii) the relator William S. French (the “Relator”), and (iii) H&M Hennes & Mauritz, L.P., H&M Hennes & Mauritz, L.P. has agreed to pay a Settlement Amount, as defined in the Settlement Agreement, of \$36 million (\$36,000,000) in installments, of which a total of \$7,740,000 (seven million seven hundred and forty thousand dollars) is payable to Relator.
5. As detailed in the Settlement Agreement, the State alleges that H&M Hennes & Mauritz, L.P. violated the New York False Claims Act and the Abandoned Property Law by, among other things, making or causing to be made false statements and reports material to its obligation to transmit property to the State.
6. I hereby confess judgment, on behalf of H&M Hennes & Mauritz, L.P., for the amount of \$7,740,000 (seven million seven hundred and forty thousand dollars) pursuant to New York CPLR § 3218 in favor of the Relator, under the Settlement Agreement in the above-captioned matter, the terms of which are expressly incorporated herein, and which is attached hereto as Exhibit 1.
7. By signing this Affidavit for Judgment by Confession, I understand that should H&M Hennes & Mauritz, L.P. default or otherwise fail to pay the Relator \$7,740,000 (seven million seven hundred and forty thousand dollars) (or any portion thereof) as provided in the Settlement Agreement, and fail to cure such default or non-payment within five (5) days of the effective date of the Relator’s written notice thereof (as set forth in the Settlement Agreement), the Relator may

file this Affidavit for Judgment by Confession as a judgment against H&M Hennes & Mauritz, L.P.

8. In the event that H&M Hennes & Mauritz, L.P. defaults or otherwise fails to pay the Relator \$7,740,000 (seven million seven hundred and forty thousand dollars) (or any portion thereof) as provided in the Settlement Agreement, and fails to cure such default or non-payment within five (5) days of the effective date of the Relator's written notice thereof (as set forth in the Settlement Agreement), I hereby authorize the Relator to enter judgment against H&M Hennes & Mauritz, L.P. in the total sum of \$7,740,000 (seven million seven hundred and forty thousand dollars), reduced by the principal amount of any payments to the Relator made pursuant to the Settlement Agreement, plus collection fees of twenty-two percent of the unpaid amount, plus statutory costs of \$15.00, and I hereby authorize the Relator or its authorized agents and/or assigns to enter judgment against H&M Hennes & Mauritz, L.P. for that sum.
9. Upon all payments being made under the Settlement Agreement in a timely manner pursuant to the terms of the Settlement Agreement, this confession of judgment shall be null and void, and the original of Affidavit for Judgment by Confession shall be returned to H&M Hennes & Mauritz, L.P. within ten (10) business days of receipt of a letter from H&M Hennes & Mauritz, L.P. or its representative requesting such return.

10. Changes to this Affidavit for Judgment by Confession must be in writing, signed by both H&M Hennes & Mauritz, L.P. and a representative or assign of the Relator.
11. This confession of judgment did not arise out of a consumer transaction.
12. This confession of judgment is not for the purpose of securing the Relator against a contingent liability.

H&M HENNES & MAURITZ, L.P.

By: 

Name: Adam Valko

Title: Legal Counsel

STATE OF Ohio)
COUNTY OF Mehoning) ss.:

On this 5 day of May 2022, Adam Valko, known personally to me to be the ~~Regional Controller~~ ^{Legal Counsel} ~~Assistant~~ ^{AV} of H&M HENNES & MAURITZ, L.P., appeared before the undersigned and acknowledged to me that he, ~~a~~ ^{AV} ~~not~~ being authorized so to do, executed the within instrument for the purposes therein set forth, on behalf of H&M HENNES & MAURITZ, L.P., by his signature on the instrument ~~attached~~ ^{AV}.

Sworn before me this 5 day of May, 2022,

Notary Public

Margaret Schwab
2015-RE-544334
My Commission expires
Sept. 1, 2025