

1 Evan J. Smith, Esquire (SBN 242352)  
Ryan P. Cardona, Esquire (SBN 302113)  
2 BRODSKY SMITH  
9595 Wilshire Blvd., Ste. 900  
3 Beverly Hills, CA 90212  
Telephone: (877) 534-2590  
4 Facsimile: (310) 247-0160

5 *Attorneys for Plaintiff*

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**11/16/2023**  
Clerk of the Court  
BY: EDWARD SANTOS  
Deputy Clerk

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF SAN FRANCISCO

8  
9 PRECILA BALABBO,

10 Plaintiff,

11 vs.

12 BURLINGTON STORES, INC.,  
BURLINGTON COAT FACTORY OF  
13 TEXAS, INC.,

14 Defendants.

Case No.: CGC-23-609001

**FIRST AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et  
seq.)**

15 Plaintiff Precila Balabbo (“Plaintiff”), by and through her attorneys, alleges the following  
16 cause of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

18 1. Plaintiff brings this representative action on behalf of all California citizens to  
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
20 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,  
21 “[n]o person in the course of doing business shall knowingly and intentionally expose any  
22 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
23 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

24 2. This first amended complaint is a representative action brought by Plaintiff in the  
25 public interest of the citizens of the State of California to enforce the People’s right to be informed  
26 of the health hazards caused by exposure to lead, diethanolamine (DEA), and/or bisphenol A  
27 (BPA), toxic chemicals found in products sold and/or distributed by defendants Burlington Stores,  
28

1 Inc. and/or Burlington Coat Factory of Texas, Inc. (collectively, “Burlington” or “Defendants” and  
2 each a “Defendant”) in California.

3 3. DEA<sup>1</sup> is a harmful chemical known to the State of California to cause cancer. BPA<sup>2</sup>  
4 is harmful chemical known to the State of California to cause birth defects or other reproductive  
5 harm. Lead<sup>3</sup> is a harmful chemical known to the State of California to cause cancer and birth  
6 defects or other reproductive harm.

7 4. Proposition 65 requires all businesses with ten (10) or more employees that operate  
8 within California or sell products therein to comply with Proposition 65 regulations. Included in  
9 such regulations is the requirement that businesses must label any product containing a Proposition  
10 65-listed chemical that will create an exposure above safe harbor levels with a “clear and  
11 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed  
12 chemical.

13 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
14 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
15 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
16 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
17 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
18 25249.7.

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<sup>1</sup> On June 22, 2012, the State of California listed DEA as a chemical known to the State to cause  
22 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code  
23 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

24 <sup>2</sup> On May 11, 2015, the State of California listed BPA as a chemical known to the State to cause  
25 birth defects or other reproductive harm and BPA has come under the purview of Proposition 65  
26 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8  
27 & 25249.10(b).

28 <sup>3</sup> On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and  
it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.  
27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27, 1987, the State  
of California listed lead as a chemical known to cause birth defects or other reproductive harm.



1 course of doing business within the meaning of Health & Safety Code sections 25249.6 and  
2 25249.11.

3 13. Defendant Burlington Coat Factory of Texas, Inc., through its business, effectively  
4 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it  
5 implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use  
6 in the State of California. Plaintiff alleges that defendant Burlington Coat Factory of Texas, Inc.  
7 is a “person” in the course of doing business within the meaning of Health & Safety Code sections  
8 25249.6 and 25249.11.

### 9 VENUE AND JURISDICTION

10 14. Venue is proper in the County of San Francisco because one or more of the  
11 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
12 Defendants conducted, and continue to conduct, business in the County of San Francisco with  
13 respect to the Products.

14 15. This Court has jurisdiction over this action pursuant to California Constitution  
15 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
16 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement  
17 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
18 jurisdiction over this lawsuit.

19 16. This Court has jurisdiction over Defendants because each Defendant is either a  
20 citizen of the State of California, has sufficient minimum contacts with the State of California, is  
21 registered with the California Secretary of State as foreign corporations authorized to do business  
22 in the State of California, and/or has otherwise purposefully availed itself of the California market.  
23 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
24 and permissible with traditional notions of fair play and substantial justice.

### 25 STATUTORY BACKGROUND

26 17. The people of the State of California declared in Proposition 65 their right “[t]o be  
27 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
28 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

1 18. To effect this goal, Proposition 65 requires that individuals be provided with a  
2 “clear and reasonable warning” before being exposed to substances listed by the State of California  
3 as causing cancer and birth defects or other reproductive harm. H&S Code § 25249.6 states, in  
4 pertinent part:

5 No person in the course of doing business shall knowingly and intentionally expose any  
6 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
7 first giving clear and reasonable warning to such individual...

8 19. An exposure to a chemical in a consumer product is one “which results from a  
9 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
10 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
11 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
12 shall provide a warning to any person to whom the product is sold or transferred unless the product  
13 is packaged or labeled with a clear and reasonable warning.”

14 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
15 more of the following methods individually or in combination:<sup>4</sup>

16 a. A warning that appears on a product’s label or other labeling.

17 b. Identification of the product at the retail outlet in a manner which provides  
18 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
19 thereof.

20 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
21 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet  
22 with such conspicuousness, as compared with other words, statements, designs, or devices  
23 in the label, labeling or display as to render it likely to be read and understood by an  
24 ordinary individual under customary conditions of purchase or use.

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27 <sup>4</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,  
2016, and operative on August 30, 2018.

1 d. A system of signs, public advertising identifying the system and toll-free  
2 information services, or any other system that provides clear and reasonable warnings.

3 21. Proposition 65 provides that any “person who violates or threatens to violate” the  
4 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
5 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
6 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil  
7 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
8 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

9 **FACTUAL BACKGROUND**

10 22. On October 1, 1992, the state of California listed lead as a chemical known to cause  
11 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code  
12 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,  
13 1987, the State of California listed lead as a chemical known to cause birth defects or other  
14 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the  
15 State to cause cancer and birth defects or other reproductive harm.

16 23. On June 22, 2012, the State of California listed DEA as a chemical known to the  
17 State to cause cancer and it has come under the purview of Proposition 65 regulations since that  
18 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

19 24. On May 11, 2015, the State of California listed BPA as a chemical known to the  
20 State to cause birth defects or other reproductive harm and BPA has come under the purview of  
21 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety  
22 Code §§ 25249.8 & 25249.10(b).

23 25. The exposures that are the subject of the Notices result from the purchase,  
24 acquisition, handling, and recommended use of the Products. The primary route of exposure to  
25 lead, DEA, and/or BPA is through dermal absorption directly through the skin when consumers  
26 use, touch, or handle the Products. Exposure through ingestion will occur by touching the Products  
27 with subsequent touching of the user’s hand to mouth. No clear and reasonable warning is provided  
28 with the Products regarding the health hazards of exposure.



1 Chemical Test Reports findings determined the *Sunshine Squad*® Product exposes users to BPA;  
2 The *Nicka K New York*® Product and the *Absolute New York*® Product exposes users to DEA; and  
3 the *Ivy Houseware*® Product exposes users to lead.

4 32. Plaintiff provided each Chemical Test Report and each Product to an analytical  
5 chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable  
6 and foreseeable use of the Products, exposure to lead, DEA, and/or BPA will occur at levels that  
7 require Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title  
8 27 of the California Code of Regulations.

9 33. On September 14, 2022, Plaintiff received from the analytical chemist exposure  
10 assessment reports for the *Sunshine Squad*® Product that concluded that persons in California who  
11 use the *Sunshine Squad*® Product will be exposed to levels of BPA that require a Proposition 65  
12 exposure warning. On April 6, 2023, Plaintiff received from the analytical chemist an exposure  
13 assessment report for the *Nicka K New York*® Product and the *Absolute New York*® Product that  
14 concluded that persons in California who use the *Nicka K New York*® Product and the *Absolute*  
15 *New York*® Product will be exposed to levels of DEA that require a Proposition 65 exposure  
16 warning. On May 18, 2023, Plaintiff received from the analytical chemist an exposure assessment  
17 report for the *Ivy Houseware*® Product that concluded that persons in California who use the *Ivy*  
18 *Houseware*® Product will be exposed to levels of lead that require a Proposition 65 exposure  
19 warning.

20 34. On September 14, 2022 (*Sunshine Squad*® 3 pc. beach sets), April 6, 2023 (*Nicka*  
21 *K New York*® mascara sets and the *Absolute New York*® brows and lashes growth serums), and  
22 May 18, 2023 (*Ivy Houseware*® “Pray More Worry Less” spoon rests), Plaintiff gave notice of  
23 alleged violation of Health and Safety Code § 25249.6 (collectively, the “Notices”) to Defendant  
24 concerning the exposure of California citizens to lead, DEA and/or BPA contained in the Products  
25 without proper warning, subject to a private action to Defendants and to the California Attorney  
26 General’s office and the offices of the County District attorneys and City Attorneys for each city  
27 with a population greater than 750,000 persons wherein the herein violations allegedly occurred.  
28 See attached at Exhibits “A” – “D” a true and correct copy of the Notices.





1           43.     The exposures that are the subject of the Notices result from the purchase,  
2 acquisition, handling and recommended use of the Products. The primary route of exposure to  
3 lead, DEA, and/or BPA is through dermal absorption directly through the skin when consumers  
4 use, touch, or handle the Products. Exposure through ingestion will occur by touching the Products  
5 with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided  
6 with the Products regarding the health hazards of exposure.

7           44.     Plaintiff, based on her best information and belief, avers that such exposures will  
8 continue every day until clear and reasonable warnings are provided to purchasers and users or  
9 until these known toxic chemicals are removed from the Products.

10          45.     Defendants have knowledge that the normal and reasonably foreseeable use of the  
11 Products expose individuals to lead, DEA, and/or BPA, and Defendants intend that exposures to  
12 lead, DEA, and/or BPA will occur by its deliberate, non-accidental participation in the importation,  
13 distribution, sale and offering of the Products to consumers in California.

14          46.     Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
15 first amended complaint.

16          47.     Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
17 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.

18          48.     Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
19 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
3 relief:

- 4 A. That the court assess civil penalties against each Defendant in the amount of \$2,500  
5 per day for each violation for up to 365 days (up to a maximum civil penalty amount per  
6 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);
- 7 B. That the court preliminarily and permanently enjoin Defendants mandating  
8 Proposition 65 compliant warnings on the Products;
- 9 C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the  
10 amount of \$50,000.00.
- 11 D. That the court grant any further relief as may be just and proper.

12 Dated: November 16, 2023

BRODSKY SMITH

13 By:   
14 Evan J. Smith (SBN242352)  
15 Ryan P. Cardona (SBN302113)  
16 9595 Wilshire Boulevard, Suite 900  
17 Beverly Hills, CA 90212  
18 Telephone: (877) 534-2590  
19 Facsimile: (310) 247-0160

*Attorneys for Plaintiff*

# EXHIBIT “A”

LAW OFFICES  
**BRODSKY & SMITH**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

September 14, 2022

President/CEO Idea Nuova, Inc. 302 Fifth Avenue 4 Corporate Place Piscataway, NY 10001	President/CEO Idea Nuova, Inc. 302 Fifth Avenue, 5 <sup>th</sup> Floor New York, NY 10001
President/CEO Burlington Stores, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Burlington Coat Factory of Texas, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

1. **Enforcer:** Precila Balabbo, 285 6<sup>th</sup> Street, Unit 209, San Pedro, CA 90731; (Ph) 818.434.4023.
2. **Alleged Violator(s):** Idea Nuova, Inc.; Burlington Stores, Inc.; Burlington Coat Factory of Texas, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least September 14, 2022 and are continuing to this day.
4. **Listed Chemical:** Bisphenol A (BPA). BPA is listed under Proposition 65 as a chemical known to the State to cause reproductive toxicity.
5. **Product:**

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Water Bottle	Sunshine Squad 3 pc. Beach Set – Water Bottle UPC# 784857962628

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to BPA is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user’s hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

## **II. PROPOSITION 65 INFORMATION**

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

## **III. RESOLUTION OF THE CLAIMS**

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Balabbo’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

**Balabbo has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



Evan J. Smith

**Attachments**

**Certificate of Merit**

**Certificate of Service**

**The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary**

# EXHIBIT “B”



LAW OFFICES  
**BRODSKY & SMITH**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

April 6, 2023

President/CEO Proxima, Inc. 109-15 178 <sup>th</sup> St., Jamaica, NY 11433	President/CEO Proxima, Inc. dba Nicka K Cosmetics 109-15 178 <sup>th</sup> St., Jamaica, NY 11433
President/CEO Nicka K New York c/o Sundoc Filings 7801 Folsom Blvd., Ste. 202 Sacramento, CA 95826	President/CEO Nicka K New York Inc. c/o Diversified Corporate Service Int'l, Inc. 18560 North Bay Rd., Sunny Isles Beach, FL 33160
President/CEO Burlington Coat Factory Warehouse Corporation c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Burlington Coat Factory of Texas, Inc. c/o CT Corporation System 28 Liberty Street New York, NY 10005
President/CEO Burlington Coat Factory of Texas, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Burlington Stores, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801

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Brodsky & Smith ("Brodsky Smith") represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s)

<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer without first providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

1. **Enforcer:** Precila Balabbo, 285 W. 6<sup>th</sup> Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
2. **Alleged Violator(s):** Proxima, Inc.; Proxima, Inc. dba Nicka K Cosmetics; Nicka K New York; Nicka K New York Inc.; Burlington Coat Factory Warehouse Corporation; Burlington Stores, Inc.; Burlington Coat Factory of Texas, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least April 6, 2023 and are continuing to this day.
4. **Listed Chemical:** Diethanolamine (DEA) is listed under Proposition 65 as a chemical known to the State to cause cancer.
5. **Product:**

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Mascara Set	Nicka K New York Mascara Set UPC# 6 07203 05306 4

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal exposure. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user’s hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

**II. PROPOSITION 65 INFORMATION**

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

---

<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Balabbo’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

### **III. RESOLUTION OF THE CLAIMS**

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Balabbo has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



\_\_\_\_\_  
Evan J. Smith

#### **Attachments**

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

# EXHIBIT “C”

LAW OFFICES  
**BRODSKY & SMITH**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

April 6, 2023

President/CEO Absolute Hot New York Corp. c/o Diversified Corporate Services Int'l, Inc. 18560 N. Bay Road, Sunny Isles Beach, FL 33160	President/CEO Absolute Hot New York Corp. c/o Hyon-Chung Kim 19 Harbor Park Drive Port Washington, NY 11050
President/CEO Absolute Hot New York Corp. c/o Sundoc Filings 7801 Folsom Blvd., #202 Sacramento, CA 95826	President/CEO ABSNY GmbH Alfredstrasse 356, 45133 Essen, Nordhein-Westfalen Germany
President/CEO Burlington Coat Factory Warehouse Corporation c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Burlington Stores, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO Burlington Coat Factory of Texas, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Burlington Coat Factory of Texas, Inc. c/o CT Corporation System 28 Liberty Street New York, NY 10005

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the

<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

Product in California. Health & Safety Code § 25249.6 provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer without first providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

1. **Enforcer:** Precila Balabbo, 285 W. 6<sup>th</sup> Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
2. **Alleged Violator(s):** Absolute Hot New York Corp.; ABSNY GmbH; Burlington Store, Inc.; Burlington Coat Factory Warehouse Corporation; Burlington Coat Factory of Texas, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least April 6, 2023 and are continuing to this day.
4. **Product: Listed Chemical:** Diethanolamine (DEA) is listed under Proposition 65 as a chemical known to the State to cause cancer.
5. **Product:**

<b>Product<sup>2</sup></b>	<b>Non- Exclusive Examples of the Product</b>
Growth Serum	Absolute New York Brows and Lashes Growth Serum UPC# 8 88432 94470 9

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal exposure. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user’s hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

**II. PROPOSITION 65 INFORMATION**

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

**III. RESOLUTION OF THE CLAIMS**

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a

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<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Balabbo’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Balabbo has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com).**

Sincerely,



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Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

# EXHIBIT “D”



LAW OFFICES  
**BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

May 18, 2023

President/CEO Burlington Stores, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Burlington Coat Factory of Texas, Inc. c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203
President/CEO Burlington Coat Factory of Texas, Inc. c/o CT Corporation 1200 South Pine Island Road Plantation, FL 33324	President/CEO Burlington Coat Factory of Texas, Inc. 1830 Route 130 North Burlington, NJ 08016
President/CEO Ivy Houseware Co., Ltd. 6 <sup>th</sup> Bldg. 2# Shui Ku Road Nankeng Bantian Shenzhen Guangdong CHINA	

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith, LLC ("Brodsky Smith") represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on

<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

### **I. DESCRIPTION OF THE VIOLATION**

1. **Enforcer:** Precila Balabbo, 285 6<sup>th</sup> Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
2. **Alleged Violator(s):** Burlington Stores, Inc.; Burlington Coat Factory of Texas, Inc.; Ivy Houseware Co. Ltd.
3. **Time Period of Exposure:** Violations have been occurring since at least May 18, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

<b>Product<sup>2</sup></b>	<b>Non- Exclusive Examples of the Product</b>
Spoon Rest	Ivy Houseware "Pray More Worry Less" Spoon Rest 16181333209224

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion and dermal absorption exposure. When used for its intended purpose, the Product will be in contact with foods. The Listed Chemical will leach into the foods it comes into contact with. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

### **II. PROPOSITION 65 INFORMATION**

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

### **III. RESOLUTION OF THE CLAIMS**

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health &

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Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Balabbo has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



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Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary