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12 Attorneys for Defendant  
13 BETTER SLEEP, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 CONSUMER ADVOCACY GROUP, INC., in the  
17 public interest,

18 Plaintiff,

19 v.

20 BETTER SLEEP, INC., a New Jersey Corporation,  
BURLINGTON COAT FACTORY WAREHOUSE  
21 CORPORATION, a Delaware Corporation, and  
DOES 1-20,

22 Defendants.  
23

Case No. BC497063

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.*)

Complaint Filed: December 7, 2012

24  
25 **1. INTRODUCTION**

26 **1.1 Parties**

27 This Consent Judgment is entered into by and between plaintiff Consumer Advocacy Group,  
28 Inc. (“CAG”), Better Sleep, Inc., aka Better Bath (“Better Sleep”), and Burlington Coat Factory

1 Warehouse Corporation (“Burlington”), with Better Sleep and Burlington collectively referred to as  
2 the “Defendants,” and CAG and Defendants collectively referred to as the “Parties.”

3 **1.2 CAG**

4 CAG is a California corporation that serves as a private enforcer of Proposition 65, as  
5 described in Proposition 65 and the regulations of the Attorney General of California at 11 Cal. Code  
6 Regs. § 3000 *et seq.*

7 **1.3 Better Sleep, Inc. and Burlington Coat Factory Warehouse Corporation**

8 Defendants each employ ten or more persons and are each a person in the course of doing  
9 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
10 Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

11 **1.4 General Allegations**

12 CAG alleges that Defendants have manufactured, imported, distributed and/or sold vinyl or  
13 PVC bath mats that contain di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65  
14 warnings. Defendants deny CAG’s allegations.

15 **1.5 Notice of Violation**

16 On July 12, 2012, CAG served Defendants, and various public enforcement agencies, with a  
17 document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with  
18 notice of alleged violations of California Health & Safety Code § 25249.6 based on Defendants’  
19 alleged failure to warn consumers and employees in the workplace that certain Covered Products  
20 exposed users in California to DEHP. To the best of the Parties’ knowledge, no public enforcer has  
21 prosecuted the allegations set forth in the Notice.

22 **1.6 Complaint**

23 On December 7, 2012, CAG filed a complaint in the Superior Court in and for the County of  
24 Los Angeles against Defendants and Does 1 through 20, entitled *CAG v. Better Sleep, Inc., et al.*,  
25 Case No. BC497063, alleging violations of California Health & Safety Code § 25249.6, based on the  
26 alleged exposures to DEHP contained in certain vinyl or PVC bath mats sold by Defendants in  
27 California (the “Complaint”).

28 ///

1           **1.7 No Admission**

2           Defendants deny the material, factual and legal allegations contained in the Notice and  
3 Complaint and maintain that all Covered Products sold in California have been and are in  
4 compliance with all applicable California laws and regulations. Nothing in this Consent Judgment  
5 shall be construed as an admission by Defendants of any fact, finding, issue of law, or violation of  
6 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by  
7 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this section  
8 shall not diminish or otherwise affect Defendants' obligations, responsibilities, and duties under this  
9 Consent Judgment.

10           **1.8 Consent to Jurisdiction**

11           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
12 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper in  
13 the County of Los Angeles and that this Court has jurisdiction to enter and enforce the provisions of  
14 this Consent Judgment.

15           **2. DEFINITIONS**

16           **2.1 Covered Products**

17           For purposes of this Consent Judgment, the term "Covered Products" shall mean vinyl or  
18 PVC bath mats manufactured, imported, distributed and/or sold by Better Sleep that are sold or  
19 offered for sale in the State of California, including, but not limited to "Better Bath Non-Slip  
20 Bathmat, #48CLR" and "Better Bath Non-Slip Bathmat, BCF#48".

21           **2.2 Effective Date**

22           For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that  
23 this Consent Judgment is approved by the Court.

24           **2.3 Reformulated Products**

25           Reformulated Products are defined as Covered Products containing DEHP in concentrations  
26 not to exceed 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental  
27 Protection Agency testing methodologies 3550 and 8270.

28           ///

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 3.1.1 Better Sleep has implemented processes to comply with the reformulation  
4 standards recited in this Consent Judgment. As of sixty (60) days following the Effective  
5 Date (the "Reformulation Date"), all Covered Products manufactured, imported, distributed  
6 or acquired for sale in the State of California by Better Sleep shall be Reformulated Products.

7 3.1.2 Burlington agrees that it shall remove from stock all existing Better Sleep  
8 Style BCF48 bathmats presently in its California stores until it receives Reformulated  
9 Products from Better Sleep.

10 **4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

11 **4.1 Civil Penalty**

12 In settlement of all the claims referred to in this Consent Judgment, Better Sleep shall pay a  
13 civil penalty in the amount of \$1,000 within five days of the Effective Date, to be allocated in  
14 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds  
15 remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the  
16 remaining 25% of the penalty remitted to CAG as follows: Better Sleep shall issue two separate  
17 checks to: (a) "OEHHA" in the amount of \$750.00; and (b) "Yeroushalmi & Associates in Trust for  
18 Consumer Advocacy Group, Inc." in the amount of \$250.00. All penalty payments shall be  
19 delivered to the addresses listed in Section 4.3 below.

20 **4.2 Payment in Lieu of Civil Penalty**

21 Better Sleep also shall separately pay \$1,000 to CAG as a payment in lieu of civil penalty  
22 pursuant to Health & Safety Code §25249.7(b) and California Code of Regulations, Title 11 §  
23 3203(b). CAG will use this payment for investigation of the public's exposure to Proposition 65  
24 listed chemicals through various means, laboratory fees for testing for Proposition 65 listed  
25 chemicals, expert fees for evaluating exposures through various mediums, including but not limited  
26 to consumer product, occupational, and environmental exposures to Proposition 65 listed chemicals,  
27 and the cost of hiring consulting and retained experts who assist with the extensive scientific  
28 analysis necessary for those files in litigation, as well as administrative costs incurred during the

1 litigation, in order to reduce the public's exposure to Proposition 65 listed chemicals by notifying  
2 those persons and/or entities believed to be responsible for such exposures and attempting to  
3 persuade those persons and/or entities to reformulate their products or the source of exposure to  
4 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing the  
5 same public harm as allegedly in the instant Action.

6 **4.3 Payment Procedures**

7 **4.3.1 Issuance of Payments.** Payments shall be delivered as follows:

8 (a) All payments owed to CAG pursuant to this Consent Judgment shall  
9 be delivered to the following payment address:

10 Reuben Yeroushalmi  
11 Yeroushalmi & Associates  
12 9100 Wilshire Blvd., Suite 240 W  
13 Beverly Hills, CA 90212

14 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to this  
15 Consent Judgment shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at  
16 the following addresses:

17 For United States Postal Service Delivery:

18 Mike Gyurics  
19 Fiscal Operations Branch Chief  
20 Office of Environmental Health Hazard Assessment  
21 P.O. Box 4010  
22 Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

24 Mike Gyurics  
25 Fiscal Operations Branch Chief  
26 Office of Environmental Health Hazard Assessment  
27 1001 I Street  
28 Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to Yeroushalmi & Associates, at the  
address set forth above in 4.3.1(a), as proof of payment to OEHHA.

**4.3.2 Issuance of 1099 Forms.** After each penalty payment, Better Sleep shall  
issue separate 1099 forms for each payment to (a) CAG, to be mailed to CAG at 9000

1 Wilshire Blvd. Los Angeles, CA 90211, and (b) OEHHA, which shall be identified as  
2 "California Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the  
3 1099 form, to be mailed to OEHHA, P.O. Box 4010, Sacramento, CA 95814.

4 **5. REIMBURSEMENT OF FEES AND COSTS**

5 Better Sleep shall pay \$113,000 to Yeroushalmi & Associates for fees and costs incurred as a  
6 result of investigating, bringing this matter to Defendants' attention, and enforcing this matter,  
7 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the  
8 Court's approval of this Consent Judgment in the public interest. Defendant shall issue a separate  
9 1099 for fees and costs, shall make the check payable to "Yeroushalmi & Associates", and shall  
10 deliver payment within fifteen days of the Effective Date, to the address listed in Section 4.3.1(a)  
11 above.

12 **6. RELEASE OF ALL CLAIMS**

13 **6.1 CAG's Public Release of Proposition 65 Claims**

14 CAG acting on its own behalf and in the public interest releases Defendants, all companies  
15 and persons named in the Notice, their parents, subsidiaries, affiliated entities under common  
16 ownership, directors, officers, employees, licensors, licensees, attorneys, and each entity to whom  
17 Defendants directly or indirectly distribute or sell Covered Products, including, but not limited, to  
18 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and  
19 licensees, and all of their parents, subsidiaries, affiliated entities under common ownership,  
20 directors, officers, employees, attorneys ("Releasees") from all claims for violations of Proposition  
21 65 based on exposure to DEHP from Covered Products as set forth in the Notice, manufactured,  
22 imported, acquired for distribution, distributed or sold by Defendants prior to the Effective Date.  
23 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
24 with respect to DEHP in Covered Products, as set forth in the Notice, manufactured, imported,  
25 distributed or sold by Defendants.

26 **6.2 CAG's Individual Release of Claims**

27 CAG, in its corporate capacity only and *not* in its representative capacity, provides a release  
28 herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions,

1 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and  
2 demands of plaintiff of any nature, character or kind, whether known or unknown, suspected or  
3 unsuspected, limited to and arising out of alleged or actual exposures to DEHP from Covered  
4 Products manufactured, distributed or sold by Defendants before the Effective Date.

5 **6.3 Defendants' Release of CAG**

6 Defendants on behalf of themselves, their past and current agents, representatives, attorneys,  
7 successors, and/or assignees, hereby waive any and all claims against CAG, its attorneys and other  
8 representatives, for any and all actions taken or statements made by CAG and its attorneys and other  
9 representatives, whether in the course of investigating claims or otherwise seeking to enforce  
10 Proposition 65 against them in this matter with respect to Covered Products.

11 **6.4 CAG's Dismissal of Burlington**

12 Promptly after this Consent Judgment is approved by the Court, CAG shall cause a Request  
13 for Dismissal With Prejudice to be entered by the Court as to defendant Burlington Coat Factory  
14 Warehouse Corporation. By way of this Consent Judgment, the Parties stipulate that the Complaint  
15 relates only to bathmats manufactured, imported, distributed and/or sold by Better Sleep.

16 **6.5 No Other Known Claims or Violations**

17 CAG and CAG's counsel affirm that they are not presently aware of any actual or alleged  
18 violations of Proposition 65 by Better Sleep or for which Better Sleep bears legal responsibility other  
19 than those that are fully resolved by this Consent Judgment, and as to Burlington that they are not  
20 presently aware of any actual or alleged violations of Proposition 65 relative to Covered Products by  
21 Burlington or for which Burlington bears legal responsibility other than those that are fully resolved  
22 by this Consent Judgment.

23 **7. COURT APPROVAL**

24 7.1 By this Consent Judgment and upon its approval by the Court, the Parties waive their  
25 right to trial on the merits, and waive rights to seek appellate review of any and all interim rulings,  
26 including all pleading, procedural, and discovery orders.

27 7.2 The Parties acknowledge that, pursuant to California Health & Safety Code §25249.7,  
28 a noticed motion is required to obtain judicial approval of this Consent Judgment, which CAG shall

1 File. Defendants shall support the entry of this Consent Judgment. If this Consent Judgment is not  
2 approved by the Court, (a) this Consent Judgment and any and all prior agreements between the  
3 Parties merged herein shall terminate and become null and void, and the action shall revert to the  
4 status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent  
5 Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the  
6 Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in  
7 evidence for any purpose in this action, or in any other proceeding; and (c) the Parties agree to meet  
8 and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for  
9 approval.

10 **8. ENFORCEMENT OF CONSENT JUDGMENT**

11 Any Party may, by motion, application for an order to show cause before the Los Angeles  
12 Superior Court, or any other appropriate action, enforce the terms and conditions contained in this  
13 Consent Judgment. A Party may file such a motion, action or application only after that Party first  
14 provides 30 days' notice to the Party allegedly failing to comply with the terms and conditions of  
15 this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good  
16 faith manner for a period of no less than 30 days.

17 **9. GOVERNING LAW**

18 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
19 California and apply within the State of California. In the event that Proposition 65 is repealed,  
20 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the  
21 provisions of this Consent Judgment are rendered inapplicable or no longer required as a result of  
22 any such repeal or preemption or rendered inapplicable by reason of law generally as to the  
23 Products, then Defendants shall provide written notice to CAG of any asserted change in the law,  
24 and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
25 extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall be  
26 interpreted to relieve Defendants from any obligation to comply with any pertinent state or federal  
27 toxics control law.

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1           9.2     This Consent Judgment contains the sole and entire agreement and understanding of  
2 the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and  
3 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are  
4 deemed merged. There are no warranties, representations, or other agreements between the Parties  
5 except as expressly set forth in this Consent Judgment. No representations, oral or otherwise,  
6 express or implied, other than those specifically referred to in this Consent Judgment have been  
7 made by any party. No other agreements not specifically contained or referenced in this Consent  
8 Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No  
9 supplementation, modification, waiver or termination of this Consent Judgment shall be binding  
10 unless executed in writing by the party to be bound. No waiver of any of the provisions of this  
11 Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions  
12 whether or not similar, nor shall such waiver constitute a continuing waiver.

13           9.3     The Parties, including their counsel, have participated in the preparation of this  
14 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
15 Consent Judgment was subject to revision and modification by the Parties and has been accepted and  
16 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
17 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of  
18 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
19 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
20 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this  
21 regard, the Parties hereby waive California Civil Code § 1654.

## 22     **10.     NOTICES**

23           Unless specified herein, all correspondence and notices required to be provided pursuant to  
24 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
25 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
26 other party at the following addresses:

27     ///

28     ///

1 To Better Sleep:

2 William H. Emery  
3 President  
4 Better Sleep, Inc.  
100 Readington Road  
Branchburg, NJ 08876

To CAG:

Michael Marcus  
Director  
Consumer Advocacy Group, Inc.  
9000 Wilshire Blvd.  
Los Angeles, CA 90211

5 With a copy on behalf of Better Sleep to:

6 Paul S. Rosenlund, Esq.  
7 Duane Morris LLP  
8 One Market Plaza  
Spear Tower, Suite 2200  
San Francisco, CA 94105-1127

With a copy on behalf of CAG to

Reuben Yeroushalmi  
Yeroushalmi & Associates  
9100 Wilshire Blvd., Suite 240W  
Beverly Hills, CA 90212

9 To Burlington:

10 Stacy Haigney  
11 Vice President, Assistant General  
12 Counsel  
13 Burlington Coat Factory Warehouse  
Corporation  
1400 Broadway, 11th Floor  
New York, NY 10018

14 With a copy on behalf of Burlington to:

15 Jeffrey B. Margulies, Esq.  
16 Norton Rose Fulbright  
555 South Flower Street, 41st Floor  
Los Angeles, CA 90071

17  
18 Any party, from time to time, may specify in writing to the other party a change of address to  
19 which all notices and other communications shall be sent.

20 **11. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,  
22 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
23 one and the same document. A facsimile or pdf signature shall be as valid as the original.

24 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

25 CAG and its attorneys shall comply with the reporting form requirements referenced in  
26 California Health & Safety Code § 25249.7(f).

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1 **13. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
3 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
4 of any party and entry of a modified Consent Judgment by the Court.

5 **14. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their  
7 respective parties and have read, understood, and agree to all of the terms and conditions of this  
8 Consent Judgment.

9 AGREED TO:

10 Date: 01/27/14

AGREED TO:

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

11 By: Michael Marcus

12 Michael Marcus, Director  
13 Plaintiff, Consumer Advocacy Group,  
14 Inc.

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

15 William H. Emery, President  
16 Defendant, Better Sleep, Inc.

17 AGREED TO:

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

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

20 Stacy Haigney  
21 Vice President, Assistant General  
22 Counsel  
23 Defendant, Burlington Coat Factory  
24 Warehouse Corporation  
25  
26  
27  
28

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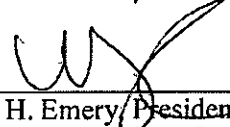
9 **AGREED TO:**

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

11  
12 By: \_\_\_\_\_  
13 Michael Marcus, Director  
14 Plaintiff, Consumer Advocacy Group,  
Inc.

**AGREED TO:**

10 Date: JANUARY 28, 2014

11  
12 By:   
13 William H. Emery, President  
14 Defendant, Better Sleep, Inc.

**AGREED TO:**

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

16  
17  
18 By: \_\_\_\_\_  
19 Stacy Haigney  
20 Vice President, Assistant General  
21 Counsel  
22 Defendant, Burlington Coat Factory  
23 Warehouse Corporation  
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25  
26  
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9 **AGREED TO:**

**AGREED TO:**

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

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

11  
12 By: \_\_\_\_\_


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

13 Michael Marcus, Director  
14 Plaintiff, Consumer Advocacy Group,  
Inc.

William H. Limery, President  
Defendant, Better Sleep, Inc.

15 **AGREED TO:**

16 Date: 1/28/14

17  
18 By:  \_\_\_\_\_

19 Stacy Haigncy  
20 Vice President, Assistant General  
21 Counsel  
22 Defendant, Burlington Coat Factory  
23 Warehouse Corporation  
24  
25  
26  
27  
28