

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Precila Balabbo (“Balabbo”), and IWorld, LLC d/b/a Posh Paws (“I World”). Balabbo and I World are collectively referred to as the “Parties.” Balabbo is each an individual that resides in the State of California, and who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Balabbo alleges that I World is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Balabbo alleges that I World has manufactured, imported, distributed and/or sold in the State of California Dwell Studio Pet Carriers – Mesh that contain di(2-ethylhexyl) phthalate (DEHP) without providing a requisite Proposition 65 exposure warning. I World disputes these allegations. On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed DEHP as a chemical known to cause reproductive toxicity.

1.3 Product Description. The product covered by this Settlement Agreement is Dwell Studio Pet Carrier - Mesh in all colors and styles (the “Products”) that have been manufactured, imported, distributed, offered for sale, re-sale and/or sold in California by I World or any of its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees (including but not limited to I World’s affiliate, downstream distributors, wholesalers, customers, retailers, including but not limited to Burlington Stores, Inc. (on behalf of itself and its subsidiaries), Burlington Stores, Inc., Burlington Coat Factory Holdings, LLC and Burlington Coat Factory Warehouse Corporation, and each of their respective subsidiaries, affiliates and parents, sister entities, downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers,

owners, purchasers, users, officers, directors, attorneys, representatives, shareholders, agents, and employees that contain DEHP.

1.4 Notices of Violation. On October 1, 2018 and January 9, 2019 Balabbo, caused to be served on I World and various public enforcement agencies documents entitled "Notice of Violation of California Health & Safety Code § 25249.5, et seq." (collectively, the "Notices"). The Notices provided I World and such others, including public enforcers, with notice that alleged that I World was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notices. The Notice period in each case has been extended by mutual agreement of the Parties during settlement negotiations.

1.5 No Admission. I World denies the material factual and legal allegations contained in the Notices and maintains that, to the best of its knowledge, all products that are being or have been sold and distributed by I World in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by I World of any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by I World of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by I World. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission against interest or evidence of fault, wrongdoing, or liability by I World, its officers, directors, employees, or parents, subsidiaries, or affiliated corporations, or any person acting for I World, or any direct or indirect customer of I World who sold or sells the Products, in any administrative or judicial proceeding or litigation in any court, agency, or forum. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, I World maintains that it has not

knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

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

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that I World directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product. Products sold by I World before the Effective Date may sell through without a warning even if they contain DEHP in excess of 0.1% (1,000 ppm).


2.2 Reformulation Standard. “Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that I World manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for I World to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

⚠ WARNING: This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** I World may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2.4 A **Warning** or **Alternative Warning** provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If I World sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

2.5 Compliance with Warning Regulations. I World shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“**OEHHA**”) after the Effective Date. In the event that

OEHHA promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, I World shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement. If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Settlement Agreement, I World may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations. If Proposition 65 warnings for DEHP should no longer be required, I World shall not have any further obligations pursuant to this Settlement Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, I World shall pay \$750.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Balabbo. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, I World shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d).

3.1 Civil Penalty. Within ten (10) days of the Effective Date, I World shall issue three (3) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$562.50; (b) "Brodsky & Smith, LLC in Trust for Precilla Balabbo" in the amount of \$187.50. The Civil Penalty payments shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

(a) Issuance of Payments. Payments shall be delivered as follows:

(i) All payments owed to Balabbo, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC

Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

(b) **Copy of Payments to OEHHA.** I World agrees to provide Balabbo' counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Balabbo, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** I World agrees to provide a completed IRS 1099 for its payments, and Brodsky & Smith agrees to provide IRS W-9 forms for each of the following payees under this Settlement Agreement:

(ii) "Precila Balabbo" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(iii) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in § 3.2(a)(i); and

(iv) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

4. **REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that the Balabbo and their counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Balabbo and their counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, I World shall reimburse Balabbo' counsel for fees and costs incurred as a result of investigating and bringing this matter to I World's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, I World shall issue a check payable to "Brotsky & Smith, LLC" in the amount of \$2,250.00 for delivery to the address identified in § 3.2(a)(i), above. Within forty five (45) days of the Effective Date, I World shall issue a check payable to "Brotsky & Smith, LLC" in the amount of \$2,250.00 for delivery to the address identified in § 3.2(a)(i), above. Within ninety (90) days of the Effective Date, I World shall issue a check payable to "Brotsky & Smith, LLC" in the amount of \$2,250.00 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of I World and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Balabbo, each acting on her own behalf, and I World, of any violation of Proposition 65 that was or could have been asserted by Balabbo or on behalf of their past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to DEHP contained in the Products. Without limiting the generality of the foregoing, Releasers hereby release any such claims against I World and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, including but not limited to I World's affiliate, and each entity to whom I World directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Burlington Stores, Inc. (on behalf of itself and its subsidiaries), Burlington Stores, Inc., Burlington Coat Factory Holdings, LLC and Burlington Coat Factory Warehouse Corporation, and

each of their respective subsidiaries, affiliates and parents, sister entities, downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to the chemical DEHP.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Balabbo, each on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all suits, claims, obligations, costs, fines, penalties, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, fixed or contingent, limited to and arising out of the alleged or actual exposure to the chemical DEHP in the Products, including any and all claims arising under Proposition 65, or any other statutory or common law claims that were or could have been asserted in respect of any Products sold up to the Effective Date, including without limitation to the extent that such claims relate to I World and/or Releasee's alleged or actual failure to warn about exposures to DEHP in the Products allegedly manufactured, sold, or distributed for sale before the Effective Date by I World or Releasees. Balabbo, each on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against I World and the Releasees.

5.2 I World's Release of Balabbo. I World, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against

Balabbo, their attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Balabbo and/or their attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Balabbo each on behalf of herself only, on one hand, and I World, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Balabbo and I World each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. Compliance by I World with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Products.

5.5. Public Benefit. It is I World's understanding that the commitments it has agreed to herein, and actions to be taken by I World under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of I World that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to I World's failure (or failure of any Releasee) to provide a warning concerning exposure to DEHP with respect to the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the

general public as to those Products addressed in this Settlement Agreement, provided that I World is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, I World shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected. This Settlement Agreement shall have no application to Products which are not sold to California consumers.

8. NOTICES

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

For I World:

Steven W. Gold
Ryan W. Lawler
MINTZ & GOLD LLP
600 Third Avenue
25th Floor
New York, New York 10016
Not Admitted in California

For Balabbo:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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

9. COUNTERPARTS: SIGNATURES

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

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

Balabbo agree to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

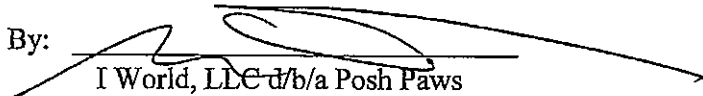
AGREED TO:

AGREED TO:

Date: _____

Date: 4/3/2019

By: _____
Precila Balabbo

By: 
I World, LLC d/b/a Posh Paws

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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13. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 4/2/2019

Date: _____

By: 
Precila Balabbo

By: _____
I World, LLC d/b/a Posh Paws