

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

GOPRO, INC.

Consumer Advocacy Group, Inc. (“CAG”) and GoPro, Inc. (“GOPRO”) (CAG and GOPRO collectively referred to herein as the “Parties”) enter into this agreement (the “Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation and to fully resolve CAG’s allegations that GOPRO violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

**1.0 Introduction**

1.1 CAG is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 GOPRO has manufactured and sold, at various times, Plastic Suction Cup Camera Mounts that include but are not limited to one or more of the following statements: “SUCTION CUP;” “GOPRO;” “Made in China;” “GoPro, Inc.,” “gopro.com/ patents;” “3000 Clearview Way, San Mateo, CA 94402;” “SKU#: AUCMT-302;” “120119P;” “120519P;” “8 18279 01069 5; and “Suction Cup;” “GoPro Be a HERO;” “C0514A;” “gopro.com;” “GoPro, HERO and their respective logos are trademarks of Woodman Labs, Inc. in the United States and other countries;” “AUCMT-302;” “Made in China;” “130-03261-000 REVB;” “8 18279

01069 5;” (referred to throughout as the “Covered Products”). The Covered Products are limited to those manufactured and distributed for sale by GOPRO only.

CAG alleges that Covered Products contain Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate (“DEHP”) and that GOPRO did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“Proposition 65”)).

1.3 On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)) and, on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to the State to cause reproductive toxicity, DEHP became subject to Proposition 65 warning requirements and discharge prohibitions.

1.4 DEHP is referred to hereafter as the “Listed Chemical”.

1.5 On or about September 11, 2019 (Attorney General Notice #AG2019-01751), CAG served GOPRO, Best Buy Co., Inc., Best Buy Stores, L.P., BBY Solutions, Inc. and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” alleging that the Covered Products contain the Listed Chemical.

1.6 On or about March 17, 2020 (Attorney General Notice #AG2020-00731), CAG served GOPRO, GoPro Media, Inc., Best Buy Co., Inc., Bestbuy.com, LLC., Best Buy Stores, L.P., BBY Solutions, Inc. and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” alleging that the Covered Products contain the Listed Chemical.

1.7 On or about March 20, 2020 (Attorney General Notice #AG2020-00789), CAG served GOPRO, Woodman Labs, Inc., Gopro, Inc. dba Gopro Media, Inc., Walmart Apollo, LLC, Walmart Inc. and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” alleging that the Covered Products contain the Listed Chemical.

1.8 On or about July 7, 2020 (Attorney General Notice #AG2020-01698), CAG served GoPro Media, Inc., Amazon.com, Inc., Amazon.com Services, Inc. and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” alleging that the Covered Products contain the Listed Chemical.

1.9 The Sixty-Day Notices listed in Paragraphs 1.5 to 1.8 above (referred to as the “Notices”) alleged that GOPRO, the various retailers and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes consumers to the Listed Chemical. GOPRO denies the claims and/or penalties alleged in the Notices.

1.10 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute").

1.11 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65 or any other statutory, regulatory, common law or equitable rule or doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties or any of them of any fact, conclusion of law, issue of law or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by GOPRO, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, agents, distributors or retailers in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations and claims settled and compromised herein, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or GOPRO may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute, the Covered Products or claims released herein.

**2.0 Release**

This Settlement Agreement is a full, final, and binding resolution between (a) CAG, acting in its individual capacity, on the one hand, and (b) GOPRO, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, agents,

indemnitees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively “Releasees”) and (c) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including, but not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Downstream Releasees”), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Products are limited to those manufactured and distributed for sale by GOPRO or which are directly sold by GOPRO to consumers.

CAG and its past and current agents, representatives, attorneys, successors, and/or assignees hereby waive and release with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions and causes of action, in law or in equity, suits, proceedings, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, filing fees, and attorneys’ fees) (collectively the “Claims”), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted with respect to any

Covered Products to the extent that such Claims relate to the alleged exposure of persons to the Listed Chemical in the Covered Products or any failure by Releasees or Downstream Releasees to warn about exposures to the Listed Chemical in the Covered Products.

CAG acknowledges that it is familiar with section 1542 of Civil Code, which provides as follows:

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

CAG and its past and current agents, representatives, attorneys, successors and/or assignees understand the rights afforded by section 1542 and expressly waive and relinquish any and all rights and benefits that they may have under, or which may be conferred by, the provisions of Civil Code section 1542 and under any other state or federal statute or common law principle of similar effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the released matters.

The release in this section shall have no force or effect until the payments set forth in Section 5.0 below are paid in full.


### **3.0 GOPRO's Duties**

3.1 GOPRO agrees, promises, and represents that GOPRO shall reformulate any Covered Products manufactured after the Effective Date and offered for sale in


California to a point where the level of DEHP in the Covered Products does not exceed 0.1% by weight.

3.2 GOPRO agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products in existing inventory that have not been reformulated, it will provide warnings on such Covered Products that comply with Proposition 65. The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase.

The Parties agree that product labeling stating that:

 **WARNING:** This product can expose you to chemicals including DEHP, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or

 **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov). shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in existing inventory that have not been reformulated and are distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

#### **4.0 CAG's Duties**

4.1 CAG agrees, promises and represents that, within ten (10) days after the receipt of all payments outlined in Section 5.0 below, CAG shall voluntarily dismiss all claims in the pending lawsuits against Downstream Releasees alleging violations of Proposition 65 with respect to the Listed Chemical in the Covered Products.

## 5.0 Payments

5.1 GOPRO agrees to pay a total of one hundred and ninety thousand dollars (US\$190,000) by October 26, 2020, through separate checks apportioned as follows:

5.1.1 Penalty: GOPRO shall issue two separate checks for a total amount of one hundred and thirty thousand dollars (\$130,000) as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of ninety-seven thousand five hundred dollars, (\$97,500), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of thirty-two thousand five hundred dollars (\$32,500), representing 25% of the total penalty. OEHHA's check shall be delivered to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95812-4010, Attn: Mike Gyurics. CAG's check shall be delivered to Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95812-4010, Attn: Mike Gyurics (EIN: 68-0284486) reflecting the amount of \$97,500. The second 1099 reflecting the amount of \$32,500 shall be issued to CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

5.1.2 Attorneys' Fees and Costs: Sixty thousand dollars (\$60,000) shall be paid to Yeroushalmi & Yeroushalmi, as CAG's attorneys, for reasonable and



necessary investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to GOPRO's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Yeroushalmi shall provide GOPRO with its Employer Identification Number.

**6.0 Authority to Enter Into Settlement Agreement**

6.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

6.2 GOPRO represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind GOPRO to this Settlement Agreement.

**7.0 Report of the Settlement Agreement to the Office of the Attorney General of California**

7.1 CAG shall report this Settlement Agreement to the California Attorney General's Office within five (5) days of the Effective Date.

**8.0 Execution in Counterparts and Facsimile**

8.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

**9.0 Entire Agreement**

9.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all

related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties.

**10.0 Modification of Settlement Agreement**

10.1 Any modification of this Settlement Agreement shall be in a writing that is signed by the Parties.

**11.0 Application of Settlement Agreement**

11.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, CAG and the Releasees and Downstream Releasees identified in Section 2 above. Nothing in this Settlement Agreement shall alter the Parties' obligations to be liable for their own taxes or impose any obligations relating to taxes due on the payments made under this Settlement Agreement. CAG, Yeroushalmi & Yeroushalmi and OEHHA shall remain responsible for any taxes due or owing by them on any payments received under this Settlement Agreement.

**12.0 Enforcement of Settlement Agreement**

12.1 Notwithstanding the above, CAG may bring an action to enforce any breach of the monetary settlement terms in Section 5.0, above, upon five (5) days written notice by CAG to GOPRO of the alleged breach in accordance with the notification requirements set forth in Section 13.0, below. GOPRO may bring an action to enforce any breach of the terms of this Settlement Agreement by CAG upon five (5) days written notice by GOPRO to CAG of the alleged breach in accordance with the notification requirements set forth in Section 13.0, below. In case of any action to

enforce the terms of the Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

**13.0 Notification Requirements**

13.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi, Esq.  
YEROUSHALMI & YEROUSHALMI  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

For GOPRO:

Mark C. Goodman  
BAKER & MCKENZIE LLP  
2 Embarcadero Center, Suite 1100  
San Francisco, CA 94111, USA

Any party may change its designee for purposes of notification by providing written notice of such change pursuant to this section.

**14.0 GOVERNING LAW**

14.1 The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Products, GOPRO shall provide written notice to CAG of any asserted change in the law and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to

the extent that, the Covered Products are so affected.

CONSUMER ADVOCACY GROUP, INC.

Dated: 09/29/20

By: Michael Marcus

Printed Name: Michael Marcus

Title: Director

GOPRO, INC.

Dated: 9/29/2020

By: 

Printed Name: Eve T. Saltman

Title: General Counsel and Secretary