

# SETTLEMENT AND RELEASE AGREEMENT

## 1. INTRODUCTION

### 1.1. Ecological Alliance, LLC and Burlington Coat Factory Direct Corporation

This Settlement and Release Agreement (“Settlement Agreement”) is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Burlington Coat Factory Direct Corporation ("Burlington"), on the other hand, with Ecological and Burlington collectively referred to as the "Parties" and individually, each as a “Party.”

### 1.2. General Allegations

Ecological alleges that Burlington manufactured and distributed and offered for sale in the State of California Vital Super Blend and Barebeauty Superfood Blend containing lead, and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

### 1.3. Product Description

The products that are covered by this Settlement Agreement are defined as Vital Super Blend and Barebeauty Superfood Blend that Burlington has sold, offered for sale or distributed in California. All such items shall be referred to herein as the "Products."

### 1.4. Notice of Violation

On March 19, 2021, Ecological served Burlington and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" ("Notice") that provided Burlington and such public enforcers with notice that Burlington was allegedly in violation of

California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.5. No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Burlington's compliance with Proposition 65. Burlington denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has manufactured for sale and distribution 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 Burlington of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Burlington of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Burlington on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Burlington under this Settlement Agreement.

**1.6. Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed by all Parties.

**2. INJUNCTIVE RELIEF: WARNINGS**

No later than six (6) months after the Effective Date, Burlington may, in its sole discretion, either cease selling, offering for sale or distributing the Products in California, or may

manufacture, import, or otherwise source for authorized sale in California only Products labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.1 below. Products that were manufactured, supplied or contracted to be supplied to third parties by Burlington prior to 6 months after the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

**2.1. Warning Language**

If Burlington shall continue to authorize for sale the Products in California, it will provide Proposition 65 warnings on the Product's label as follows:

(a) Burlington may use either of the following warning statements in full compliance with this Section:

(1) **WARNING:** Consuming this product can expose you to chemicals including lead, 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/food](http://www.P65Warnings.ca.gov/food)

(2) **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

(b) The requirements for warnings, set forth in subsection (a) above, are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(c) If Proposition 65 warnings for lead should no longer be required, Burlington shall have no further obligations pursuant to this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Burlington shall pay a total of \$100 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Ecological. Ecological's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Burlington shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Burlington's attention. Burlington shall pay Ecological's counsel \$9,400 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within 30 days of the Effective Date of this Agreement, Burlington shall make a total payment of Nine Thousand Five Hundred Dollars (\$9,500) for the civil penalties and attorney's fees / costs by check payable to Plaintiff's counsel “Custodio & Dubey LLP” to the address set forth in Section 8 below. Burlington’s obligation to make this payment is conditioned on Ecological first providing to Burlington an executed IRS W-9 Form for the recipient(s) of the \$9,500 payment and an executed Burlington Supplier Information form.

Other than this payment, each side is to bear its own attorneys' fees and costs.

**6. RELEASE OF ALL CLAIMS**

**6.1. Release of Burlington, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ecological, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby releases, discharges and waives all rights arising from or relating to its purchase and use of the Products, including without limitation all rights to file, prosecute, institute or participate in, directly or indirectly, any form of legal action and releases all claims including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent including without limitation those arising from the Notice (collectively "Claims"), against (a) Burlington, (b) Burlington's manufacturers, (c) each of Burlington's distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, (d) Burlington's parent companies, corporate affiliates, subsidiaries, doing business as entities ("DBAs"), successor companies, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and (e) any third-party re-seller(s) who sold, offered for sale or distributed the Products in California, whether such actions were authorized by Burlington or unauthorized (all of the foregoing persons and entities identified in categories (a)-(d), collectively "Releasees").

Ecological also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, 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 Burlington and the Releasees. Ecological acknowledges that it is familiar with California Civil Code section 1542, 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.

Ecological, in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

**6.2. Burlington's Release of Ecological**

Burlington waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological and its attorneys and other representatives, in the course of investigating claims and seeking enforcement of Proposition 65 against it in this matter with respect to the Products.



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

Ecological agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. ENTIRE AGREEMENT**

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 either of the Parties.

**12. MODIFICATION**

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

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: June <u>17</u>, 2021</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: June <u>23</u>, 2021</p> <p>By:  On Behalf of Burlington Coat Factory Direct Corporation</p>
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