

## RELEASE AND SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Release and Settlement Agreement is entered into by and between Donatus McCoy (“McCoy”) and The Outdoor Recreation Group (“TORG”). Together, McCoy and TORG are collectively referred to as the “Parties.” McCoy is an individual who resides in the State of California and who holds himself out as someone 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. McCoy alleges that TORG 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.** McCoy alleges that TORG has exposed individuals to the chemical Bisphenol A (BPA) from its sales of Outdoor Products tablet cases without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. BPA is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

**1.3 Product Description.** The products covered by this Release and Settlement Agreement are Outdoor Products tablet cases (the “Products”), product number 159283, that have been imported, marketed, manufactured, promoted, distributed, offered for sale and/or sold or otherwise used in California by TORG.

**1.4 Notice of Violation.** On August 16, 2021, McCoy served TORG, TJX, and various public enforcement agencies with documents entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided TORG and TJX and such others, including public enforcers, with notice that alleged that TORG and TJX were in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to BPA. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** TORG denies the material factual and legal allegations contained in the Notice and this Agreement and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Release and Settlement Agreement shall be construed as an admission by TORG of any fact, finding, issue of law, or violation of law; nor shall compliance with this Release and Settlement Agreement constitute or be construed as an admission by TORG of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by TORG. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Release and Settlement Agreement. Notwithstanding the allegations in the Notice, TORG maintains that it has not knowingly manufactured, promoted, marketed, offered for sale or sold or caused to be manufactured, promoted, manufactured, marketed, offered for sale or sold the Products in California in violation of Proposition 65.



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

## **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

**2.1 Reformulation of Products.** As of the Effective Date, and continuing thereafter, Products which are the subject of this Release and Settlement Agreement that TORG 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 Release and Settlement Agreement, “Reformulated Products” are Products that are 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 Products.

**2.2 Reformulation Standard.** “Reformulated Products” shall mean any Products which are the subject of this Release and Settlement Agreement that are intended for retail sale in California that contains BPA on any component to which consumers are *not* exposed to in excess of 3 micrograms per day of dermal exposure from solid materials.

**2.3 Clear and Reasonable Warning.** As to products which are the subject of this Release and Settlement Agreement, as of the Effective Date, TORG agrees to manufacture, import, or purchase for sale in California only (a) Reformulated Products pursuant to § 2.2, or (b) Products that are accompanied by either of the following warnings.

- (a)  **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).
- (b)  **WARNING:** This product can expose you to chemicals including Bisphenol A (BPA), 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](http://www.P65Warnings.ca.gov).

The indented text may, but is not required to be used. TORG shall have no obligation to reformulate or label Products that entered the stream of commerce prior to the Effective Date. For purposes of this Release and Settlement Agreement, a “Reformulated Products” are Products that meet the standard set forth in Section 2.2, above.

**2.4 Compliance with Warning Regulations.** The warning provided pursuant to § 2.3 above shall be affixed to or printed on the Products’ packaging or labeling. The warning shall be prominently affixed to or printed on the packaging or labeling and 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 Products and shall be at least the same size as those other safety warnings.

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

In settlement of all the claims referred to in this Release and Settlement Agreement, TORG shall pay \$2,000.00 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 McCoy. 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, TORG 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, TORG shall issue two (2) separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b) “Brodsky & Smith in Trust for McCoy” in the amount of \$500.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. No monetary payment shall be required from TJX in satisfaction of this Release and Settlement Agreement.

**3.2 Payment Procedures.**

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

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

Evan J. Smith, Esquire  
Brodsky & Smith  
Two Bala Plaza, Suite 805  
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.** TORG agrees to provide McCoy's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to McCoy, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

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

(i) "Donatus McCoy" whose address and tax identification number shall be provided within five (5) days after this Release and Settlement Agreement is fully executed by the Parties;

(ii) "Brodsky & Smith" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

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

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

The Parties acknowledge that McCoy and his 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 him. The Parties thereafter reached an accord on the compensation due to McCoy and his 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, TORG shall reimburse McCoy's counsel for fees and costs incurred as a result of investigating and bringing this matter to TORG's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, TORG shall issue a check payable to "Brodsky & Smith" in the amount of \$23,000.00 for delivery to the address identified in § 3.2(a)(i), above.

#### 5. **RELEASE OF ALL CLAIMS**

**5.1 Release of TORG and Downstream Customers and Entities.** This Release and Settlement Agreement is a full, final and binding resolution between McCoy, acting on his own behalf,

and TORG for any violation of Proposition 65 that was or could have been asserted by McCoy or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures to BPA from use of the Products, or otherwise, and Releasers hereby release any such claims against TORG and each of its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom TORG directly or indirectly distributes or sells the Products, including but not limited to downstream distributors, wholesalers, customers, retailers, including but not limited to, The TJX Companies, Inc., and its parents, subsidiaries, and affiliated entities, respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 through the Effective Date for the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, McCoy, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives and releases any right to institute, participate in, directly or indirectly, any form of legal action and waives and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, 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, limited to and arising out of the alleged or actual exposure to the chemical BPA from promotion, marketing, distribution, sale or use of the Products.

**5.2 TORG’s Release of McCoy.** TORG, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against McCoy, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by McCoy and/or his 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. McCoy, on behalf of himself only, on one hand, and TORG, 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, 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 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.

McCoy and TORG each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5.4 Deemed Compliance with Proposition 65.** The Parties agree that compliance by TORG with this Release and Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to BPA from use of the Products.

**5.5. Public Benefit.** It is TORG's understanding that the commitments it has agreed to herein, and actions to be taken by TORG under this Release and 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 TORG that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to TORG's failure to provide a warning concerning exposure to BPA prior to use of 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 Release and Settlement Agreement, provided that TORG is in material compliance with this Release and Settlement Agreement.

**6. SEVERABILITY**

If, subsequent to the execution of this Release and Settlement Agreement, any of the provisions of this Release and 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 Release and Settlement Agreement being contrary to the intent of the Parties in entering into this Release and Settlement Agreement.

**7. GOVERNING LAW**

The terms of this Release and 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, TORG may provide written notice to McCoy of any asserted change in the law, and shall have no further obligations pursuant to this Release and Settlement Agreement with respect to, and to the extent that, a Product is so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Release and 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 TORG:

Bruce M. Cohen, Esq.  
BMCA LAW GROUP  
A Professional Corporation  
11693 San Vicente Blvd., #804  
Los Angeles, CA 90049

For McCoy:

Evan J. Smith  
Brodsky & Smith  
Two Bala Plaza, Suite 805



Bala Cynwyd, PA 19004

Either 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 Release and 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)**

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

**11. MODIFICATION**

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

**12. ENTIRE AGREEMENT**

This Release and 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 Release and Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Release and Settlement Agreement.

**AGREED TO:**

Date: 2-14-2022  
By: Donatus McCoy  
Donatus McCoy

**AGREED TO:**

Date: 2/11/22  
By: [Signature]  
The Outdoor Recreation Group