

SETTLEMENT AGREEMENT AND RELEASE

CA Citizen Protection Group, LLC (“CCPG”) and Ground Up International LLC (“Ground Up”) enter into this Settlement Agreement and Release (this “Agreement”). This Agreement is effective on the date on which it is fully executed (“Effective Date”). CCPG and Ground Up are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. The “Matter” arises out of the Sixty-Day Notice of Intent to Sue for Violations of the Safe Drinking Water and Toxic Enforcement Act of 1986, codified under California Health & Safety Code (“HSC”) §§25249.5, *et seq.* (referred to as “Proposition 65”), that CCPG served on Ground Up, and other parties referred to collectively herein as the “Noticed Entities”, namely: Burlington Coat Factory Warehouse Corporation, Burlington Merchandising Corporation, Burlington Distribution Corp., and Burlington Stores, Inc., on August 30, 2022 (filed as AG No. 2022-02023) (the “Notice”), with respect to a product allegedly manufactured, imported, distributed, and/or sold by Ground Up into California. The Notice claims that Proposition 65 warnings are required for alleged Diisononyl Phthalate (“DINP”) exposures from that product. Specifically, the Notice relates to the following product manufactured, imported, distributed, and/or sold by Ground Up, and referred to as the “Covered Product” under this Agreement:

- **Coca-Cola Slides Sandals by Ground Up, red and silver, Style: BNCC8029**

2. Ground Up and the Noticed Entities dispute each and every material allegation in the Notice. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Matter and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law including but not limited to Proposition 65. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing, or liability. This Section 2 shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. DINP Standards; Warnings.


3.1 On and after the date that is ninety (90) days after the Effective Date, Ground Up shall not manufacture, import, or distribute for sale, nor sell into the State of California any Covered Product which does not qualify as a Reformulated Covered Product under Section 3.3, unless such Covered Product complies with the warning requirements of Section 3.2.

3.2 On and after ninety (90) days after the Effective Date, Ground Up shall provide on the Covered Product (to the extent it does not constitute a Reformulated Covered Product) sold in California, a warning that complies with the requirements of Sections 3.2.1, 3.2.2, or 3.2.3. The warning shall be displayed on the packaging of such Covered Product with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Product.

Respecting the warnings defined in Sections 3.2.1 or 3.2.2, the warning must be in a type size no smaller than the largest type size used for other consumer information on the products. In no case shall the warning appear in a type size smaller than 6-point type.


3.2.1 Option 1.

For the Covered Product, the warning may state:

 **WARNING: This product can expose you to chemicals, including Diisononyl Phthalate, which are known to the State of California to cause cancer. For more information, go to www.P65Warnings.ca.gov.**

3.2.2 Option 2.

For the Covered Product, the warning may state:

 **WARNING: Cancer – www.P65Warnings.ca.gov.**

The pictogram specified in Section 3.2.1 and 3.2.2 shall be in yellow with a black exclamation mark; *provided however*, the pictogram may be in white instead of yellow if the Covered Product label does not contain the color yellow. Ground Up may also add a reproductive toxicity warning, if required under Proposition 65 or its implementing regulations.

3.2.3 Option 3.

The Covered Product may also be affixed with any warning authorized by any Proposition 65 law or regulation in effect on or after the Effective Date.

3.3 Reformulated Covered Product. A Reformulated Covered Product is one for which the concentration of DINP, Butyl benzyl phthalate (BBP), Di-n-butyl phthalate (DBP), Di-isodecyl phthalate (DIDP), Diisononyl phthalate (DINP), or Di-n-hexyl phthalate (DnHP) is less than 0.1% by weight (1,000 parts per million (ppm)) as tested by an approved laboratory and methods in compliance with Section 3.4 below. For a Covered Product that contains (any part of the product/packaging) more than 0.1% by weight (1,000 ppm) the phthalates listed in this Section 3.3, Ground Up shall provide the warnings set forth in Section 3.2.

3.4. Formula, Testing and Quality Control Methodology.

3.4.1 For purposes of this Agreement, exposure levels shall be measured in parts per million (milligrams/kilogram or mg/kg) by generally accepted scientific standards. The testing requirements do not apply to any of the Covered Product for which Ground Up has provided a warning as specified in Section 3.2.

3.4.2 Ground Up shall not be required to engage in testing pursuant to this Agreement unless Ground Up sells into California the Covered Product without a warning. All testing pursuant to this Agreement shall be performed using a laboratory method that complies with any U.S. Environmental Protection Agency (“USEPA”) approved testing method.

3.4.3 Unless warnings are affixed consistent with the requirements of Section 3.2, all testing pursuant to this Agreement shall be performed by an independent third-party laboratory approved by, accredited by, or registered with the USEPA. Testing shall be performed prior to

Ground Up's "first sale" in California of any Covered Product ordered for production after the Effective Date, and testing shall continue thereafter at least once per year for three (3) consecutive years after the Effective Date (the "**Testing Period**"), after which time, no further testing shall be required unless, after the Testing Period, Ground Up changes suppliers for any Covered Product, then Ground Up shall test the Covered Product at least once after such change is made.

3.5 Ground Up and the Releasees (as defined in Section 5.1 below) shall have no obligation or liability with respect to Covered Product that is sold or distributed in California after the date of the Notice, except as otherwise set forth in this Agreement.

4. Ground Up shall pay the total settlement amount of \$18,500 (the "**Settlement Amount**") to be paid within ten (10) days of the Effective Date. Ground Up shall pay the Settlement Amount payment by wire transfer (via account wire instructions provided by CCPG upon request), or check made payable to "*Khansari Law Corporation – Client Trust Account*" and sent to the mailing address below:

Khansari Law Corporation
11845 W. Olympic Blvd., Suite 1000
Los Angeles, CA 90064

CCPG shall be solely responsible for allocating the payment pursuant to Sections 4.1 and 4.2. Upon request, CCPG or its counsel shall supply Ground Up with a completed W9 form. The Settlement Amount shall be allocated as follows:

4.1. \$500 shall be considered a "civil penalty", of which CCPG shall remit seventy-five percent (75%) to the "Safe Drinking Water and Toxic Enforcement Fund" managed by the State of California's Office of Environmental Health Hazard Assessment. The twenty-five percent (25%) balance shall be remitted to CCPG.

4.2 \$18,000 shall be considered reimbursement of CCPG's attorneys' fees and costs related to the Matter.

4.3 Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys' fees related to this Matter.

5. Binding Effect; Claims Covered and Released.

5.1. CCPG, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, successors, assigns, and legal representatives (collectively referred to as "**CCPG Releasers**") fully releases and waives any right to participate (directly or indirectly) in any litigation against (a) Ground Up, and its respective equity owners, parents, subsidiaries, affiliates, sister and related companies, (b) its upstream suppliers and all downstream entities in the stream of commerce including but not limited to distributors, wholesalers, customers, retailers (including but not limited to each of the Noticed Entities), franchisees, cooperative members, and licensees (the entities identified in this subsection (b) are collectively referred to as "**Downstream Releasees**"), and (c) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors, and assigns of any of the entities identified in subsections (a) and (b), above (the entities identified in subsections (a), (b) and (c), above, are collectively referred to as "**Releasees**")

from all claims, actions, suits, demands, liabilities, damages, penalties, fees (including but not limited to attorneys' fees, investigator fees, and expert fees), costs, and expenses (collectively referred to as "**Claims**") that were asserted, or that could have been asserted, for any alleged violations of Proposition 65, or any other alleged violation of statutory or common law, arising from the Covered Product.

5.2. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Product will develop or be discovered. CCPG on behalf of itself and the CCPG Releasors, acknowledges that this Agreement is expressly intended to cover and include all such claims, including all rights of action therefore, and further acknowledges that the Claims released in this Section 5 may include unknown claims, and nevertheless waives California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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.

CCPG acknowledges and understands the significance and consequences of this specific waiver of California Civil Code Section 1542.

5.3. The Parties agree that compliance with the terms of this Agreement shall constitute compliance by any Releasee with Proposition 65 regarding alleged exposures to DINP in the Covered Product.

5.4 It is the Parties' position that the commitments they have agreed to herein, and actions to be taken by Ground Up under this Agreement, confer a significant benefit to the general public, as set forth in California Civil Procedure Code section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Ground Up or any Releasee's failure to provide a warning concerning exposures to DINP with respect to the Covered Product they have respectively imported, manufactured distributed, sold, or offered for sale in California, or will import, 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 the Covered Product addressed in this Agreement, provided that Ground Up is in compliance with this Agreement. This Section does not constitute a release by CCPG under this Agreement.

6. Resolution of Disputes.

6.1 If CCPG alleges that Ground Up has failed to comply with this Agreement, prior to filing an action or motion relating to enforcement, CCPG shall first provide Ground Up thirty (30) days' advance written notice of the alleged violation(s). CCPG shall provide testing results, lot numbers, photographs of the Covered Product packaging, and purchase receipts for the Covered Product at issue in the alleged violation, as applicable. The Parties shall meet and confer during such thirty (30) day period in an effort to reach agreement on an appropriate cure for the alleged violation without the need for litigation.

6.2 Notwithstanding the provisions of Section 3, CCPG may not issue any notice under Section 6.1 if the packaging of the Covered Product is marked or labeled with the statement “Not for Sale in California” or substantially similar language, such statement is prominently placed upon such Covered Product’s label or other labeling as compared with other words or statements on the label or labeling as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. If Ground Up marks or labels a Covered Product with such a statement, Ground Up shall additionally notify its customers/distributors by letter that the Covered Product shall not be sold in California.

6.3 In the event any litigation, arbitration, mediation, or other proceeding is initiated by either party to enforce this Agreement, and one Party prevails in such proceeding, the prevailing Party shall be entitled to recover from the other Party all costs, expenses, reasonable attorneys’ fees and expert witness fees, relating to or arising out of (i) such proceeding, and (ii) any post judgment or post-award proceeding including without limitation to enforce any judgment or award resulting from any such proceeding.

8. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties. Notwithstanding the foregoing, Ground Up shall be entitled, at its option, to modify any warning that it provides under Section 3.2 to conform with any change in the Proposition 65 warning regulations currently set forth in Title 27 of the California Code of Regulations that may be adopted after the Effective Date. CCPG shall cause this Agreement to be reported to the State of California Attorney General as required and applicable under Proposition 65 statutes, including specifically HSC § 25249.7.

9. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns.

10. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties’ attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

11. This Agreement shall be deemed to have been entered into in the State of California and governed and interpreted by the laws of the State of California, regardless of the place of incorporation, place of business, domicile of any of the Parties or physical locations of the individuals executing this Agreement at the time of execution.

12. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

13. Any legal action to enforce this Agreement or related to this Matter shall be brought in either the County of Alameda or the County of Los Angeles, of the State of California.

14. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail (.pdf), copy of this Agreement, or any other counterpart, shall be deemed to be an original.

15. All notices required to be given to either Party under this Agreement shall be in writing and sent to the following recipients by (a) first-class mail or (b) overnight delivery, with a courtesy copy via email as indicated below.

For CCPG:

CA Citizen Protection Group, LLC
c/o Khansari Law Corporation
11845 W. Olympic Blvd., Suite 1000
Los Angeles, California 90064
Fax: (424) 248-6689
Email: andre@khansarilaw.com

For Ground Up:

Ground Up International
c/o Jack Gindi
148 West 37th Street, 2nd Floor
New York, NY 10018
Email: jack@groundupintl.com

With a copy to:

Bao M. Vu
Stoel Rives LLP
1 Montgomery St., Suite 3230
San Francisco, CA 94104
Email: bao.vu@stoel.com

16. Each of the individuals who executes this Agreement represents and warrants he/she has the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and has read, understood, and agreed to all the terms and conditions in this Agreement.

[Signatures Appear on the Following Pages]

DATED: August 11, 2023

CA CITIZEN PROTECTION GROUP, LLC

By: Tal Ohana

Name: Tal Ohana

Title: Manager

DATED: August 9, 2023

GROUND UP INTERNATIONAL LLC

By: 

Name: Jack Gindi

Title: CEO