

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Consumer Protection Group, LLC and Burlington Coat Factory of Texas, Inc.**

This Settlement Agreement is entered into by and between Consumer Protection Group, LLC (“CPG”), on the one hand, and Burlington Coat Factory of Texas, Inc. (“Burlington”), on the other hand, with CPG and Burlington collectively referred to as “Parties” and individually, each a “Party.”

#### **1.2 General Allegations**

CPG alleges that Burlington manufactured, distributed, and/or offered for sale a consumer product, namely – Dog Collar in the State of California containing Di(2-ethylhexyl) phthalate (“DEHP”) and that such product did not include warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”). On October January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer and on October 24, 2003, DEHP was further listed to cause developmental toxicity and male reproductive toxicity.

#### **1.3 Product Descriptions**

The products that are covered by this Settlement Agreement are defined as dog collars, including without limitation “collar lead set” “Mossy Oak” “Collar and Rope Leash” “H Pet Accsy” “8EA 3” “ACC 09 602 666783117” “00408863321332657720” “Comp[arable Value \$9.99” “\$5.99” “Official Licensed Product of Hass Outdoors, Inc,

West Point, MS 39773 and “Distributed by Evolution Group” (“Subject Product”) that Burlington sold, offered for sale and/or distributed in California containing DEHP.

1.4 **Notice of Violations**

On April 4, 2023 (AG No. 2023-00972), CPG served Burlington, Hass Outdoors, Inc., and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with documents entitled "60-Day Notice of Violation" (the “Notice”) that provided Burlington, Hass Outdoors, Inc., 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 Subject Product exposed users in California to DEHP. 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**

By execution of this Settlement Agreement, Burlington and its affiliates and subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, licensors, suppliers, vendors, manufacturers and assigns and each entity to whom Burlington directly or indirectly distributes or sells the Subject Product and from whom Burlington directly or indirectly acquires the Subject Product from, including but not limited to upstream and downstream manufacturers, suppliers, vendors, licensors, distributors, wholesalers, customers, retailers, marketplace retailers, franchisees, cooperative members and licensees (collectively, the “Releasees”), do not admit any facts or conclusions of law, including, but not limited to, the allegations of the Notice or any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory,

regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Releasees 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 the Releasees in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CPG, on the one hand, or Burlington or any Releasee, on the other hand, may have against each another in any other pending legal proceeding as to allegations unrelated to the Notice, Subject Product, or the dispute or claims released herein. Notwithstanding the allegations in the Notice, Releasees maintain that they have not knowingly manufactured or distributed, or caused to be manufactured or distributed, the Subject Product 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 Settlement Agreement is executed by all Parties.

**2. INJUNCTIVE RELIEF: WARNING**

**2.1 Commitment to Reformulate or Warn**

As of 30 days after the Effective Date, Burlington shall not sell or offer the Subject Product for sale in the State of California unless they are Reformulated Product as outlined in Section 2.2 or Burlington provides warnings as outlined in Section 2.3.

**2.2 Reformulation Standards**

“Reformulated Product” is defined as Product containing DEHP in concentration no more than 0.1 percent (1,000 parts per million).

**2.3 Warning**

The warning requirements set forth in this Section 2 shall apply only to Subject Product that Burlington distributes, markets, sells, or ships for sale in the State of California after the Effective Date that have not been reformulated as set forth in Section 2.2.

**2.4 Warning Language**

Any warnings provided pursuant to this Section 2 shall be provided in such a conspicuous and prominent manner that will reasonably ensure 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. Where required, Burlington shall have an option to provide a warning label in any one of the following Proposition 65 warnings:

**⚠ WARNING:** This product can expose you to 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](http://www.P65Warnings.ca.gov).

**Or**

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

This shall constitute compliance with Proposition 65 with respect to the chemical in the Subject Product. The provisions of Section 2 shall not apply to any of the Subject Product that are already in the stream of commerce. If consumer information is provided in a foreign language, Burlington shall provide the warning in the foreign language. Should Burlington sell or distribute any Subject Products that exceed 0.1% of DEHP through the internet the warning will be posted in the manner provided for with respect to internet sales, as provided for in 27 CCR sections 25601 and 25602, as they may be subsequently amended.

**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 one thousand five hundred dollars (\$1,500.00) 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 CPG. CPG's counsel shall be responsible for delivering OEHHA's portion and CPG'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 CPG and its counsel under the Private Attorney General doctrine and principles of contract law. Under these legal principles, Burlington shall reimburse CPG's counsel for fees and costs, incurred as

a result of investigating and bringing this matter to Burlington attention. Burlington shall pay Consumer Protection's counsel thirty-two thousand five hundred dollars (\$32,500.00) for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within Twenty-one (21) business days of the Effective Date, Burlington shall make a total payment of thirty-four thousand dollars (\$34,000.00) for the civil penalties and attorney's fees/costs to Plaintiff's counsel, Blackstone Law APC, in check form made payable to "Blackstone Law APC" and tendered to CPG's counsel as mentioned in Section 8 of this agreement via priority mail. Other than this payment, each side is to bear its own attorneys' fees and costs.

Burlington's obligation to make the Settlement Payment is conditioned on CPG first providing to Burlington's counsel an executed IRS form W9 for Blackstone Law APC and a Burlington vendor information form completed by Blackstone Law APC.

**6. RELEASE OF ALL CLAIMS**

6.1 Release of Burlington and Releasees

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3, 4 and 5 above, CPG, in its individual capacity, and on behalf of itself, its past and current owners, agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Subject Product and/or the Notice, 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 (collectively "Claims"), against any and all of the Releasees including, without limitation: (a) Burlington, (b) each of Burlington's distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, suppliers, and (c) Burlington's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities.

CPG also, in its individual capacity, on behalf of itself, its past and current owners, agents, 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/or any and all of the Releasees with regards to the Subject Product and the Notice. CPG 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 RELEASING PARTY.

CPG in its individual capacity only, and on behalf of itself, its past and current owners, 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. The release in this section shall have no force or effect until payments for the full amount set forth in above Sections 3, 4 and 5 are paid in full to Blackstone Law, APC by Burlington.

6.2 **Burlington Release of Consumer Protection Group, LLC.**

Burlington waives any and all claims against CPG, its attorneys and other representatives, for any and all actions taken, or statements made (or those that could have been taken or made) by CPG and its attorneys and other representatives arising from or related to the Notice. Burlington's releases granted in this Settlement Agreement are limited to the Notice and do not extend to any other Proposition 65 notice. Burlington represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Burlington to this Settlement Agreement.

7. **GOVERNING LAW**

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 or is otherwise rendered inapplicable by reason of law generally, or as to the Subject Product, then Burlington shall have no further obligations pursuant to this





**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.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: November 21, 2023	Date: 11/22/2023
	DocuSigned by: 
By: _____ On Behalf of Consumer Protection Group, LLC	By: _____ On Behalf of Burlington Coat Factory of Texas, Inc.