

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Consumer Protection Group, LLC and In-N-Out Burgers

This Settlement Agreement is entered into by and between Consumer Protection Group, LLC (“CPG”), on the one hand, and In-N-Out Burgers, a California Corporation (“In-N-Out”), on the other hand, with CPG and In-N-Out collectively referred to as “Parties”.

1.2 General Allegations

CPG alleges that In-N-Out manufactured, distributed, and offered consumer products for sale namely, Retro Duffel Bag 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 product that is covered by this Settlement Agreement is defined as Retro Duffel Bag (“Subject Product”) that In-N-Out sold, offered for sale and/or distributed in California containing DEHP.

1.4 **Notice of Violations**

On September 5, 2023 (AG No. 2023-02740), CPG served In-N-Out 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 In-N-Out and such public enforcers with notice that In-N-Out 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 Notices.

1.5 **No Admission**

By execution of this Settlement Agreement, In-N-Out and its affiliates and subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns and each entity to whom In-N-Out directly or indirectly distributes or sells the Subject Products, including but not limited to downstream 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, 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. In-N-Out denies the material, factual, and legal allegations contained in the Notice. 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 or In-N-Out, may have against one another in any other pending legal proceeding as to allegations unrelated to the dispute or claims released herein. Notwithstanding the allegations in the Notices, Releasees maintain that they have not knowingly manufactured or distributed, or caused to be manufactured or distributed, the Subject Products 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 agreement is fully executed by the parties.

2. **INJUNCTIVE RELIEF: WARNING**

2.1 **Commitment to Reformulate or Warn**

As of 90 days after the Effective Date (“Reformulation Date”), In-N-Out 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 In-N-Out provides warnings as outlined in Section 2.3.

2.2 **Reformulation Standards**


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

2.3 **Warning**


The warning requirements set forth in this Section 2 shall apply only to Subject Products that In-N-Out distributes, markets, sells, or ships for sale in the State of California after the Reformulation 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 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, In-N-Out must have an option to provide a warning label from 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.

Or

 **WARNING:** Cancer and Reproductive Harm www.P65Warnings.ca.gov

This shall constitute compliance with Proposition 65 with respect to the chemical in the Subject Products. The provisions of Section 2 shall not apply to any of the Subject Products that are already in the stream of commerce. Where a label used for Subject Products exceed 0.1% of DEHP, includes consumer information as defined by California Code of Regulations title 27 §25600.1(c) in a language other than English, the warning must also be provided in that language in addition to English. Should In-N-Out sell or distribute any Subject Products that exceeds 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, In-N-Out shall pay a total of two thousand dollars (\$2,000.00) 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, In-N-Out shall reimburse CPG's counsel for fees and costs, incurred as a result of investigating and bringing this matter to In-N-Out attention. In-N-Out shall pay Consumer Protection's counsel thirty-seven thousand five hundred dollars (\$37,500.00) for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notices.

5. PAYMENT INFORMATION

Within ten (10) business days of the Effective Date, In-N-Out shall make a total payment of thirty-nine thousand five hundred dollars (\$39,500.00) for the civil penalties and attorney's fees/costs to Plaintiff's counsel, Blackstone Law APC by wire transfer. Plaintiff's counsel will provide In-N-Out with wire instructions and tax forms prior to payment. Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1 Release of In-N-Out, 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, 4 and 5 above, CPG, in its individual capacity, and on behalf of itself, its past and current 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, 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 (a) In-N-Out (b) each of In-N-Out downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) In-N-Out 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 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 In-N-Out and the Releasees with regards to the Subject Product. 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 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 In-N-Out.

6.2 **In-N-Out Release of Consumer Protection Group, LLC.**

In-N-Out 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, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Subject Product. In-N-Out represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind In-N-Out 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 In-N-Out shall have no further obligations pursuant to this Settlement Agreement, but shall have no recourse to claw back payments already made in accordance with Section 3, 4 and 5 of this Settlement Agreement.

8. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) first-class, (registered or certified mail) return receipt requested or (ii) overnight courier on any party by the other party at the below addresses, and additionally via email per below:

For In-N-Out: G. Allen McNamee
Deputy General Counsel
4199 Campus Drive, 9th Floor
Irvine, CA 92616
amcnamee@innout.com

Whitney Jones Roy,
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071
WRoy@sheppardmullin.com

For CPG: Jonathan M. Genish, Esq.
Blackstone Law APC
8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
jgenish@blackstonepc.com

Any 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; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, 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 SECTION 25249.7(f)

CPG agrees to comply with the reporting 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.

14. **SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

AGREED TO:	AGREED TO:
Date: <u>May 1</u> , 2024	Date: <u>MAY 2,</u> 2024
By:  On Behalf of Consumer Protection Group, LLC	By:  On Behalf of In-N-Out Burgers,