

SETTLEMENT AGREEMENT AND RELEASE

1. INTRODUCTION

1.1 Consumer Protection Group, LLC and Austin Bazaar Inc.

This Settlement Agreement and Release (“Agreement”) is entered into by and between Consumer Protection Group, LLC (“CPG”), on the one hand, and Austin Bazaar, Inc. (“Austin Bazaar”), on the other hand, with CPG and Austin Bazaar collectively referred to as the “Parties”.

1.2 General Allegations

CPG alleges that Austin Bazaar manufactured, distributed, sold and/or offered for sale a type of consumer product for sale in the State of California containing Di(2-ethylhexyl) phthalate (“DEHP” or the “Listed Chemical”), without first providing a “clear and reasonable warning” 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 DEHP 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 type of products covered by this Agreement are guitar cases, including but not limited to “Gearlux” “Rectangular Electric Guitar Hard Case for Standard Electric Guitars”, that Austin Bazaar manufactured, distributed, sold and/or offered for sale in California containing DEHP at 1,000 parts per million or greater (“Subject Product(s)").

1.4 Notice of Violation

CPG served Austin Bazaar, Amazon.com, the California Attorney General, and certain other public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with a “60-Day Notice of Violation” of Proposition 65 dated December 14, 2023, AG No. 2024-00614 (“Notice”). The Notice alleged that Austin Bazaar

was allegedly in violation of California Health & Safety Code section 25249.6 *et seq.* for failing to sufficiently warn consumers and customers in California of harm that may potentially result from exposures to DEHP from the Subject Products.

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**

Austin Bazaar denies the material, factual, and legal allegations in the Notice and maintains that all of the products it manufactured, distributed, sold and/or offered for sale in California, including the Subject Products, have been, and are, in compliance with all laws, including Proposition 65. By executing this Agreement, Austin Bazaar and its affiliates and subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns and each entity to whom Austin Bazaar directly or indirectly distributes or sells the Subject Product, including but not limited to downstream distributors, wholesalers, customers, retailers, marketplace retailers, franchisees, cooperative members and licensees, including but not limited to Amazon.com (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 Agreement shall be construed as an admission by any Releasees of any fact, conclusion of law, issue of law, or violation of law. Nothing in this 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 Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CPG or Releasees, 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 Product for sale in California in violation of Proposition 65.

1.6 **Effective Date**

For purposes of this Agreement, the term “Effective Date” shall mean the date this agreement is fully executed by the Parties.

2. **INJUNCTIVE RELIEF: REFORMULATION OR WARNING**

2.1 **Commitment to Reformulate or Warn**

As of 75 days after the Effective Date, Austin Bazaar shall not directly manufacture, distribute, sell, or offer for sale the Subject Products in the State of California unless they are Reformulated Products as outlined in Section 2.2, or, alternatively, Austin Bazaar provides a warning as outlined in Section 2.3. As used in this Section 2.1, “directly manufacture, distribute, sell, or offer for sale” means to directly ship Subject Products into California or to sell Subject Products to a distributor that Austin Bazaar knows will sell the Subject Products in California.

2.2 **Reformulation Standards**

“Reformulated Products” are defined as containing DEHP in concentration of no more than 0.1 percent (1,000 parts per million), as determined by a quality controlled test results using Environmental Protection Agency testing 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances.


2.3 **Warning**

The warning requirements set forth in this Section 2 shall apply only to Subject Products that Austin Bazaar directly manufactures 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 Requirements**

Commencing on the Effective Date, Austin Bazaar agrees any Subject Product directly distributed, sold or offered for sale in California shall contain a Proposition 65 warning. Any warnings provided pursuant to this Section 2 must be provided in such a conspicuous and prominent manner, as compared with other words, statements, or designs, that will allow the message to be seen and understood by an ordinary individual under customary conditions prior to exposure.

For purposes of this Agreement, a clear and reasonable warning for the Subject Products shall consist of a warning affixed to the packaging, label, or tag of each Subject Product sold in California by Austin Bazaar, or on a placard, shelf tag, sign or electronic device or automatic process, that contains either of the following statements:

 **WARNING:** This product can expose you to di(2-ethylhexyl) phthalate, 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

(a) Where a placard, sign, label, tag, or shelf tag for the Subject Product is not printed using the color yellow, the warning symbol may be printed in black and white. The warning symbol shall be placed to the left of the warning's text.

- (b) If the Subject Product's packaging contains consumer information in a foreign language, a warning statement in that language, in addition to English, is required.
- (c) The warning shall be posted on any websites under the exclusive control of Austin Bazaar where Subject Products are sold into California or alternatively, Austin Bazaar must ensure California purchasers receive the warning prior to checkout, as provided for in 27 Cal. Code of Regulations sections 25601 *et seq.*, or as the regulations may be subsequently amended.
- (d) The Parties recognize that the warning methods above are not the exclusive methods of providing a "clear and reasonable" warning under Proposition 65 and its implementing regulations, and agree that other warnings that comply with Proposition 65 may be used.
- (e) If Proposition 65 warnings for DEHP should no longer be required, Austin Bazaar shall have no further obligations pursuant to this Agreement.
- (f) The use of warnings consistent with this Agreement shall constitute compliance with Proposition 65 with respect to the Subject Products and for any Subject Product in existing inventory that had not been reformulated and which were distributed and/or sold by Austin Bazaar or any of the Releasees after the Effective Date. There shall be no obligation for Austin Bazaar to provide a warning for Covered Products that entered the stream of commerce prior to the Effective Date, and the Section 6 release applies to all such Subject Products.

2.5 Changes in Warning Regulations or Statutes

In the event that the California Office of Environmental Health Hazard Assessment ("OEHHA") promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Subject Products or the chemical

at issue, which are different than those set forth above, Austin Bazaar shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted that modify the current safe harbor regulations, Austin Bazaar is and will be considered in compliance with Proposition 65 if the warning meets the provisions of this Agreement. Moreover, if regulations or legislation are enacted providing that a Proposition 65 warning is no longer required, a lack of warning by Austin Bazaar will not thereafter be a breach of this Agreement.

2.6 **Grace Period for Existing Inventory of Subject Products**

The injunctive requirements of Section 2 shall not apply to Subject Products that are already in the stream of commerce as of sixty (60) days after the Effective Date, which Subject Products are expressly subject to the releases provided in Section 6.

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

In settlement of all the claims alleged in the Notice or referred to in this Agreement, Austin Bazaar shall pay a total of two thousand five hundred dollars (\$2,500.00) in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code sections 25249.12(c)(1) & (d), with 75% of the funds (\$1,875.00) remitted to OEHHA and the remaining 25% of the penalty (\$625.00) 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 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, Austin Bazaar shall reimburse CPG's counsel for fees and costs incurred as a result

of investigating and bringing this matter to Austin Bazaar attention. Austin Bazaar shall pay CPG's counsel thirty thousand dollars (\$30,000.00) for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice, subject to Section 5 provisions re tax documentation.

5. PAYMENT INFORMATION

Within thirty (30) days of the Effective Date, Austin Bazaar shall make a total payment of thirty-two thousand, five hundred dollars (\$32,500.00) for the civil penalties and attorneys' fees/costs to Plaintiff's counsel, Blackstone Law APC by wire transfer. Plaintiff's counsel will provide Austin Bazaar with wire instructions and tax forms prior to payment. The Parties acknowledge that Austin Bazaar cannot issue any settlement payments pursuant to Sections 3, 4 and 5 until after Austin Bazaar receives the requisite tax forms from CPG's counsel. Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1 Release of Austin Bazaar, 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) Austin Bazaar; (b) each of Austin Bazaar's upstream and downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers,

retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users, including but not limited to Amazon.com; and (c) Austin Bazaar's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, based on the alleged failure to warn about exposures under Proposition 65 in the Subject Product manufactured, distributed, sold or offered for sale in California by Austin Bazaar and Releasees before the Effective Date, as alleged in the Notice, or for any other reason.

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, hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and 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 Austin Bazaar and 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 Austin Bazaar.

6.2 **Austin Bazaar Release of CPG**

Austin Bazaar, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby 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.

7. **PUBLIC BENEFIT**

It is Austin Bazaar's understanding that the commitments it is agreeing to herein, and the actions to be taken by Austin Bazaar under this Agreement, 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 Austin Bazaar that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Austin Bazaar's alleged failure to provide a warning concerning actual or alleged exposure to the Listed Chemical prior to use of the Subject 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 Subject Products addressed in this Agreement, provided that Austin Bazaar is in material compliance with this Agreement.

8. SEVERABILITY

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

9. GOVERNING LAW

The terms of this 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 Austin Bazaar shall have no further obligations pursuant to this Agreement, but shall have no recourse to claw back payments already made in accordance with Section 3, 4 and 5 of this Agreement.

10. ENFORCEMENT

If CPG alleges that Austin Bazaar has failed to comply with this Agreement, prior to filing an action or a notice of violation as to Austin Bazaar or any Releasee, CPG shall first provide Austin Bazaar sixty (60) days' advance written notice of the alleged violation(s). CPG shall provide testing results, lot numbers, and photographs of the Subject Product packaging for the Subject Product at issue. The Parties shall meet and confer during such 60-day period in an effort to resolve the matter informally without the need for a new 60-day notice of violation or litigation. If the matter is not resolved within 60 days, CPG may file a new notice of violation.

11. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or 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 following addresses:

For Austin Bazaar: Malcolm C. Weiss, Esq.
Jennifer MikoLevine, Esq.
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
mweiss@hunton.com
jmikolevine@hunton.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.

12. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This 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.

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

CPG and its attorneys agree to comply with the reporting requirements referenced in California Health & Safety Code § 25249.7(f).

14. ENTIRE AGREEMENT


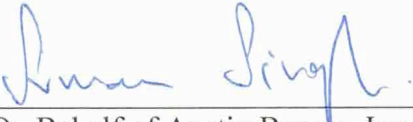
This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

15. MODIFICATION

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

16. AUTHORIZATION

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

<p style="text-align: center;">AGREED TO:</p> <p>Date: October 10, 2024</p> <p>By:  On Behalf of Consumer Protection Group, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <i>10/10/2024</i></p> <p>By:  On Behalf of Austin Bazaar, Inc.</p>
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