

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Ecological Alliance LLC and Absolute New York

This Settlement Agreement is entered into by and between Ecological Alliance LLC (“Alliance”), on the one hand, and Absolute New York (“Absolute NY”), on the other hand, with Alliance and Absolute NY collectively referred to as the (“Parties.”)

#### 1.2. Absolute NY Allegations

Alliance alleges that Absolute NY manufactured and distributed and offered for sale in the State of California: standing beauty fans containing Di-n-butyl Phthalate [DBP] and that such sales have not included warnings 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 DBP under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

#### 1.3. Product Description

The products that are covered by this Settlement Agreement are defined as standing beauty fans that Absolute NY has sold, offered for sale or distributed in California. All such items shall be referred to herein as the “Products”.

#### 1.4. Notice of Violation

By letter dated August 23, 2024, Alliance served Absolute NY, Burlington Coat Factory of Texas, Inc. (“Burlington”), and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Absolute NY and such public enforcers with notice that Absolute NY was allegedly in violation of California Health & Safety Code

section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DBP. 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**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Absolute NY's compliance with Proposition 65. Absolute NY denies the material factual and legal allegations contained in Alliance's Notice and maintains that all products it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrines. Nothing in this Settlement Agreement shall be construed as an admission by Absolute NY of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Absolute NY of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Absolute NY on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Absolute NY under this Settlement Agreement. Notwithstanding the allegations in the Notice, Absolute NY maintains that it has not knowingly manufactured, or caused to be manufactured, the 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 Settlement Agreement is fully executed.

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

### **2.1. Reformulation of Products**

Commencing within ninety (90) days of the Effective Date, and continuing thereafter, Absolute NY shall manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.2 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. Products that were placed into the stream of commerce supplied to third parties by Absolute NY within 90-days of the Effective Date including, without limitation, Products in distribution centers, in inventory, or at retail locations, shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.


### **2.2. Reformulation Standards**

“Reformulated Products” are defined as those Products containing DBP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DBP content in a solid substance.

### **2.3. Clear and Reasonable Warning Language**


Where required, Absolute NY shall provide Proposition 65 warnings on the Product’s label as follows:

(a) Absolute NY may use of the following warning statements in full compliance with this Section:

- (1)  **WARNING:** This product can expose you to chemicals including Di-n-butyl Phthalate [DBP], which are known to the State



of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

(2)  **WARNING:** Reproductive Harm – Risk of Can expose you to Di-n-butyl Phthalate [DBP], a reproductive toxicant. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov). If this “short-form” warning is used, the text type size shall be at least 6-point type.

(3) In lieu of Option 1 or Option 2 set forth in above, the Products may be labeled with any safe harbor warning authorized by regulation applicable to the Products and DBP in effect on or after the Effective Date.

(b) If Absolute NY uses either of the above warning statements to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING.”

(c) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(d) Foreign Languages. Additionally, if a Product’s labeling is provided in a language other than English, the warning will be provided in that language in addition to English.

(e) Online Sales. If Absolute NY sells Products via an internet website it controls to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Products is displayed; (b) on the same page as the price for the Products; (c) on one or more web pages displayed to a California purchaser prior to purchase during the checkout process; or (d) via a hyperlink taking the customer to a separate page containing the warning language, provided that the hyperlink appears on the same page as either the Products display or Products price are displayed, or appears prior to completion of the sale at checkout. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Products, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the Products to which the warning applies.

(f) If Proposition 65 warnings for DBP should no longer be required, Absolute NY shall have no further obligations pursuant to this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Absolute NY shall pay a total of \$100 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 Alliance. Alliance's counsel shall

be responsible for delivering OEHHA'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 Alliance and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Absolute NY shall reimburse Alliance's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Absolute NY's attention. Absolute NY shall pay Alliance's counsel \$10,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

By January 15, 2024, Absolute NY shall make a total payment of Eleven Thousand One Hundred Dollars (\$11,100) for the civil penalties and attorney's fees / costs by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325149324377

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

**6. RELEASE OF ALL CLAIMS**

**6.1. Release of Absolute NY, 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 and 4 above, Alliance, 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 Products, 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) Absolute NY, (b) each of Absolute NY's upstream or downstream distributors (including but not limited to Burlington Coat Factory of Texas, Inc., and its parent, subsidiary, and affiliate companies), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Absolute NY's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and each of them (collectively "Releasees").

Alliance also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides Absolute NY and the Releasees a 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 Absolute NY and the Releasees. Alliance 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 released party.

Alliance, in its 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.

**6.2. Absolute NY's Release of Alliance**

Absolute NY waives any and all claims against Alliance, its attorneys and other representatives, for any and all actions taken, or statements made (or those that could have been taken or made) by Alliance and its attorneys and other representatives, whether in the course of investigating claims against Alliance or otherwise seeking enforcement of Proposition 65 against Alliance in this matter, and/or with respect to the Products.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California exclusive of its conflicts of law rules. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law, or as to the Products, then Absolute NY shall have no further obligations pursuant to 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 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 Absolute NY: Stephen T. Holzer, Esq.  
Lewitt Hackman  
16633 Ventura Boulevard, 11<sup>th</sup> Floor  
Encino, CA 91436 – 1865

For Alliance: Vineet Dubey, Esq.  
Custodio & Dubey LLP  
445 S. Figueroa St., Suite 2520  
Los Angeles, CA 90071

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)**

Alliance agrees to comply with the reporting form 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 discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

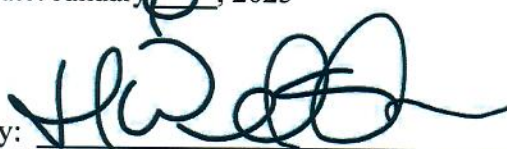
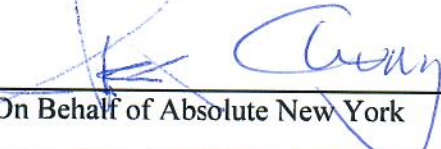
**12. MODIFICATION**

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.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: January <u>6</u>, 2025</p> <p>By:  On Behalf of Ecological Alliance LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: January <u>8<sup>th</sup></u>, 2025</p> <p>By:  On Behalf of Absolute New York</p>
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