

EXHIBIT A

AMENDED SETTLEMENT AGREEMENT

This Amended Settlement Agreement (“Agreement”) is made by and between James Horosny and Jennifer Price (“Plaintiffs”), on behalf of themselves and the Class Members, as defined below, on the one hand, and Burlington Coat Factory of California, LLC (“Defendant”), on the other hand. Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.” This Agreement is subject to the approval of the United States District Court for the Central District of California.

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the original lawsuit and subsequent amended complaints entitled *James Horosny, et al, vs. Burlington Coat Factory of California, LLC* pending in the United States District Court for the Central District of California, Case No. 2:15-cv-05005-SJO-MRW.
- B. “Merchandise Certificate and Post-Card Notice” means a notice in substantially the same form of the Summary Notice and Merchandise Certificate attached hereto as **Exhibit A**. The Merchandise Certificate is redeemable for up to seven dollars and fifty cents (\$7.50) credit at one of Defendant’s Stores in California or online, or may be redeemed for \$5.00 in cash as described herein. Additional terms and conditions applicable to Merchandise Certificates are listed in Section III(C) of the Agreement.
- C. “Merchandise Certificate” means a certificate redeemable for up to seven dollars and fifty cents (\$7.50) credit at one of Defendant’s Stores in California or online, or may be redeemed for \$5.00 in cash as described herein. Additional terms and conditions applicable to Merchandise Certificates are listed in Section III(C) of the Agreement.
- D. “Claim Deadline” means ninety (90) days after Notice to the Class is disseminated pursuant to Section III(N) of this Agreement.
- E. “Class” or “Class Members” means all persons who purchased one or more product(s) that were advertised with a “Compare at” price and an “Our Low” price or simply a lower price at one of Defendant’s stores in California and/or on its e-commerce website and had product(s) shipped to a California address between July 1, 2011, and the date Preliminary Approval of this Settlement is granted [estimated to be January 23, 2017].

Excluded from the Class are: (a) officers and directors of Defendant and its corporate parents, subsidiaries, affiliates, or any entity in which Defendant has a controlling interest, and the legal representatives, successors, or assignees of any such excluded persons or entities; and (b) the Court.

- F. "Class Counsel" means Douglas Caiafa, A Professional Corporation and Christopher J. Morosoff, Law Office of Christopher J. Morosoff.
- G. "Claims Administrator" means KCC, LLC.
- H. "Claim Form" means the form Unknown Class Members must complete in order to receive a Merchandise Certificate under this Agreement. The Claim Form must be substantially in the form of **Exhibit D** attached hereto.
- I. "Class Counsel Fees and Litigation Expenses Payment" means the amounts awarded to Class Counsel by the Court to compensate them for their fees and costs/expenses in connection with the Action.
- J. "Class Notice" means the long form Notice to Unknown Class Members Re: Pendency of Class Action Settlement and Notice of Hearing on Proposed Settlement which will be posted in Defendant's California retail stores substantially in the form as evidenced by **Exhibit B** to this Agreement. It also means the Summary In-Store Notice which shall be published in the form as evidenced by **Exhibit C** to this Agreement.
- K. "Class Period" means the period of time from July 1, 2011 through the date Preliminary Approval of this Settlement is granted [estimated to be January 23, 2017].
- L. "Class Representative Payments" means the incentive payment made to Plaintiffs in their capacity as "Class Representatives" to compensate them for initiating the Action and performing work in support of the Action.
- M. "Court" means the United States District Court for the Central District of California.
- N. "Effective Date" means the date by which all of the following have occurred:
1. Defendant has not voided this Settlement pursuant to Section III(N.8) of this Agreement;
 2. This Agreement is finally approved by the Court; and
 3. The Judgment becomes Final.
- O. "Final" means the date upon which the latest of the following events occurs: (1) the expiration of the time for filing an appeal; (2) the conclusion of any appeal taken if there are any objections filed by any Class Member and an appeal has been taken; or (3) the withdrawal of the last objection to the Settlement. When the Judgment becomes Final, all claims which were made and/or could have been made in the Action shall be dismissed.

- P. "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement.
- Q. "Final Approval Order" means the Court's order granting final approval of the terms of this Agreement.
- R. "Settlement Amount" means the maximum gross amount of twenty-seven million seven hundred and fifty thousand dollars (\$27,750,000.00) that could be paid to an estimated 3.7 million Class Members in the form of Merchandise Certificates and/or cash by Defendant as provided by this Agreement. In addition, Defendant will pay the Claims Administrator up to one million, one hundred thirty-seven thousand dollars (\$1,137,000.00) in claims administration fees, pay Plaintiffs up to ten thousand dollars (\$10,000.00) (up to five thousand dollars (\$5,000.00) each) in incentive fees, and up to nine hundred twenty-seven thousand five hundred dollars (\$927,500.00) in reasonable fees and costs.
- S. "Defendant's Counsel" means Munger, Tolles & Olson LLP.
- T. "Judgment" means the Judgment entered by the Court following the final approval of this Agreement.
- U. "Known Class Members" means all Class Members for whom Defendant has a name and valid home and/or e-mail address and whose Merchandise Certificate and Post-Card Notice is not returned as undeliverable.
- V. "Unknown Class Members" means all Class Members for whom Defendant does not have a valid home address and/or e-mail address or whose Merchandise Certificate and Post-Card Notice is returned as undeliverable.
- W. "Participating Class Member" means a Class Member, Known or Unknown, who does not submit a valid and timely Election Not to Participate in Settlement.
- X. "Non-Participating Class Member" means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- Y. "Preliminary Approval of the Settlement" means the Court's Order preliminarily approving the Settlement.
- Z. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement.
- AA. "Settlement Tasks" means the administration task of reviewing claims for completeness and sending the class benefit.
- BB. "Cash Redemption Form" means a form by which a Class Member may elect to receive a \$5.00 check from the Claims Administrator by surrendering the Merchandise Certificate, and shall be substantially in the form attached hereto as **Exhibit H**.

II. RECITALS

- A. Through this Action, Plaintiffs allege that Defendant violated California Business and Professions Code sections 17200 *et seq.* and 17500 *et seq.*, California Civil Code sections 1770 and 1750 *et seq.* (the "California Consumer Legal Remedies Act", and the Federal Trade Commission Act ("FTCA")) by using false, deceptive, or misleading comparative reference prices on the price tags of products sold in California and by failing to disclose its pricing practices to consumers. Plaintiffs seek actual damages, restitution and/or other equitable relief, injunctive relief and attorneys' fees and costs. Defendant denies these allegations and wrongdoing of any kind associated with the claims alleged and contends that this Action is not suitable for class treatment.
- B. Since filing the Action, the Parties have engaged in meaningful exchanges of information, documents and discovery, and Defendant has provided Class Counsel with extensive documents and data regarding the claims in the Action, which were thoroughly analyzed by Plaintiffs.
- C. On February 10, 2016, the Parties participated in mediation presided over by Jeffrey L. Krivis, Esq. of First Mediation.
- D. The Parties hereto have reached an agreement to settle this case fully and finally. In that regard, Defendant does not admit any liability or that it has in any way violated Business and Professions Code sections 17200 *et seq.* and 17500 *et seq.*, Civil Code sections 1770 and 1750 *et seq.* (the "California Consumer Legal Remedies Act", and the Federal Trade Commission Act ("FTCA")) and/or any other provision of law.

Based on these Recitals, which are incorporated herein below, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Certification of the Settlement Class.** For the purposes of the Settlement only and the proceeding contemplated herein, the Parties stipulate and agree that: (1) the Class shall be certified in accordance with the definition contained in Section I(E) above; (2) Plaintiffs shall represent the Class for settlement purposes and shall be the Class representatives; and (3) Plaintiffs' Counsel shall be appointed as Class Counsel.
- B. **Decertification of the Settlement Class if Settlement Not Approved.** Defendant does not consent to certification of the Class for any purpose other than to effectuate settlement of the Action. If the Court does not enter Final Approval of the Settlement reflected in this Agreement, or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into. In the event that Final Approval of the

Settlement is not achieved: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

C. **Merchandise Certificate Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Merchandise Certificate Settlement Amount that Defendant can pay under this Settlement is twenty-seven million seven hundred and fifty thousand (\$27,750,000.00) dollars, which shall be paid solely in the form of Merchandise Certificates in the amount of seven dollars and fifty cents (\$7.50) each. The Merchandise Certificates are subject to the following terms and conditions: (a) they do not expire; (b) each Class Member is entitled to receive only one Merchandise Certificate regardless of the number of alleged violations; (c) they may only be used once, but may be used on more than one product in the same visit to a retail store in California or online at BurlingtonCoatFactory.com; (d) they are redeemable for in-store purchases of merchandise at California retail stores or online at BurlingtonCoatFactory.com only and may not be used on telephone orders; (e) they are fully transferable; (f) no monetary refund, cash, or change of any kind shall be provided for all or any unused portion of the Merchandise Certificate's value except as described below; (g) they are not gift cards or gift certificates under California law and thus, it is the Parties' belief and intent that the Merchandise Certificates are not subject to the restrictions and terms found under California law or any similar state or federal law regarding gift cards or gift certificates; (h) they are not valid for past purchases; (i) they will not be replaced if lost, stolen, or damaged; (j) Class Members are responsible for any applicable sales tax; (k) they may be used on sale item(s), and may be combined with other discount program, promotional coupon or voucher but only one Merchandise Certificate can be used during each visit to a store in California; (l) they may not be used to purchase gift cards or certificates; (m) no minimum or maximum purchase amount is required to use them; and (n) they must be surrendered at time of purchase, and (o) copies will not be accepted.

D. **Cash Redemption.** Class Members may, at their election, redeem the Merchandise Certificate for \$5.00 in cash by presenting the original Merchandise Certificate at any Burlington retail store in California. Upon presentation of the original Merchandise Certificate and surrender thereof, the surrendering Class Member shall receive \$5.00. A Class Member may elect a cash redemption at a Burlington store in California at any time. In the alternative, a Class Member may elect to mail the original Merchandise Certificate to the Claims Administrator, postmarked no later than 60 days after the Effective Date, accompanied by a fully completed and signed Cash Redemption Form

(substantially in the form of **Exhibit H**). The Claims Administrator shall, not less than 15 days after the last date by which Cash Redemption Forms must be postmarked, and not more than 30 days after that date, send to Defendant a statement setting forth the number of timely and valid Cash Redemption Forms received. (A form is valid if it was postmarked in a timely manner, filled out completely, is in the name of a Class Member, and is accompanied by the original Merchandise Certificate.) Defendant may, within 5 days after receiving that information, request that the Claims Administrator forward to Defendant the timely and completed forms it received to enable Defendant to determine whether to object to any such forms. Any objection shall be made within 15 days of Defendant's receipt of the forms. No later than 30 days after the Claims Administrator has informed Defendant of the number of timely and valid forms received, Defendant shall deposit with the Claims Administrator \$5.00 for each such timely and valid claim to which Defendant has not objected. (Any objections shall be reviewed by the Claims Administrator and Plaintiffs' counsel and, if the Parties cannot agree upon the proper resolution of any such objection, then the objection shall be submitted to the Court for resolution.) Within 15 days of receipt of Defendant's payment, the Claims Administrator will distribute a check for \$5.00 to each Class Member who submitted a timely and valid form. In the event that the Claims Administrator obtains an untimely or invalid form, the Claims Administrator will return the Merchandise Certificate to the Class Member who submitted the untimely or invalid form. Such a Class Member may still present the Merchandise Certificate for \$5.00 in cash at a Burlington retail store in California at any time.

- E. **Settlement Distribution.** Given the expected size of the Settlement Class, the Parties agree that direct distribution of the Merchandise Certificate and Post-Card Notice is the best practicable manner to distribute the Settlement and the Notice for Known Class Members. No later than thirty (30) days after the Court enters its Order granting Preliminary Approval of the Settlement, Known Class Members will be sent via the United States mail a Merchandise Certificate and Post-Card Notice valued at seven dollars and fifty cents (\$7.50) each (substantially in the form of **Exhibit A**). The Merchandise Certificate shall become effective and redeemable no later than thirty (30) days after the Effective Date, but in no event sooner than January 10, 2017, due to the peak retail holiday season. Unknown Class Members who submit a valid and timely Claim Form, shall also receive a Merchandise Certificate.
- F. **Payments to Plaintiffs and Class Counsel.** Subject to the terms and conditions of this Agreement, Defendant will make the following payments as follows:
1. **To Named Plaintiffs:** In addition to their respective Merchandise Certificates, each Plaintiff will apply to the Court for an incentive award of not more than five thousand dollars (\$5,000.00) as a Class Representative Payment.

2. **To Class Counsel:** Class Counsel will apply to the Court for an award of attorneys' fees and actual Litigation Expenses of up to nine hundred twenty-seven thousand five hundred dollars (\$927,500.00). Class Counsel shall not seek Class Counsel Fees or Litigation Expenses in excess of these amounts.
- G. **Claims Administrator and Settlement Implementation Costs.** Defendant will pay reasonable claims administration costs and the cost of providing notice of the proposed Settlement to the Class as set forth in this Agreement not to exceed one million, one hundred thirty-seven thousand dollars (\$1,137,000.00).
- H. **Customer Notice – In-Store Signage.** Defendant agrees that no later than thirty (30) days after entry of a Final Approval Order, it shall post in its California stores a notice, visible to its customers in each of its California locations, disclosures concerning its "Compare at" or similar pricing practices for so long as it uses "Compare at" or similar pricing practices that offer a comparison price to consumers.
- I. **Customer Notice – Website Posting.** Defendant agrees that no later than thirty (30) days after entry of a Final Approval Order, it shall publish on its e-commerce website disclosures concerning its "Compare at" or similar pricing practices for so long as it uses "Compare at" or similar pricing practices that offer a comparison price to consumers.
- J. **Existing Employee Training.** Defendant agrees that no later than ninety days (90) days after entry of a Final Approval Order, it will hold at least one training session for its existing Buyers for its California locations for purposes of reviewing Defendant's pricing policies. Defendant will also train new Buyers for its California locations on its pricing practices, for so long as it uses "Compare at" or similar pricing practices that offer a comparison price to consumers.
- K. **Auditing of California Pricing Practices.** No later than sixty (60) days after entry of a Final Approval Order, Defendant will implement a program of auditing pricing practices for goods sold in its California stores.
- L. **Auditing of In-Store Signage and Website Posting.** No later than sixty (60) days after entry of a Final Approval Order, Defendant will implement a program auditing the in-store signage in its California retail stores and website posting agreed to pursuant to Sections III. H and I of this Agreement.

M. No Obligation to Report/Notify. Nothing contained in this Agreement requires Defendant to notify Plaintiffs and/or Class Counsel of any future changes to in-store signage, training, website posting, polic(ies), practice(s), and/or procedure(s) and/or report such changes to any third party.

N. Procedure for Approving Settlement.

1. Unopposed Motion for Preliminary Approval of the Settlement by the Court.

a. Plaintiffs have already filed an unopposed motion for an order conditionally certifying the Class, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice, and Claim Forms (the "Unopposed Motion for Preliminary Approval"). Plaintiffs shall file a Renewed Unopposed Motion for Preliminary Approval to address those aspects of the Settlement with which the Court took issue. The Parties shall file a joint request for a hearing on the Settlement.

b. At the hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Motion, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement; appointing Class Representatives and Class Counsel, approving the forms of notice to the Class of the Settlement, Claim Form, and setting the Final Approval Hearing.

c. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition contained above, that Plaintiffs shall be conditionally appointed class representatives for the Class, and that Plaintiffs' Counsel shall be conditionally appointed as counsel for the Class. Should the Court decline to preliminarily approve any material aspect of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

2. Notice to Known Class Members. After the Court enters its order granting Preliminary Approval of the Settlement, a Merchandise Certificate and Post-Card Notice informing Known Class Members of their rights will be distributed as follows:

a. **Direct Notice:** No later than thirty (30) days after the Court enters its order granting Preliminary Approval of the Settlement, the Claims Administrator will send the Merchandise Certificate and

Post-Card Notice to all Known Class Members via email where Defendant has valid e-mail address(es) in its databases for the Known Class Members. Where Defendant has valid mailing address information but no valid email address, the Claims Administrator will mail the Merchandise Certificate and Post-Card Notice via U.S. Mail using the mailing address information from Defendant's databases. The Post-Card Notice (substantially in the form of **Exhibit A**) and Email Notice (substantially in the form of **Exhibit F**) shall provide Known Class Members with instructions regarding how they can elect not to participate or object.

3. **Notice to Unknown Class Members.** After the Court enters its order granting Preliminary Approval of the Settlement, the following means of notice will be utilized to provide notice to Unknown Class Members:

- a. **In-Store Notice:** No later than thirty (30) days after the Court enters its order granting Preliminary Approval of the Settlement, Defendant will post in each of its California stores, a clear and conspicuous copy of the Summary In-Store Notice (substantially in the form attached as **Exhibit C**) containing instructions for Unknown Class Members to submit a claim, elect not to participate or object. These tear-away notices shall remain posted in Defendant's stores for at least thirty (30) days.
- b. **Published Notice:** No later than thirty (30) days after the Court enters its order granting Preliminary Approval of the Settlement, the Claims Administrator will run a Summary Publication Notice (substantially in the form attached as **Exhibit C**) in a quarter (1/4) page advertisement in USA Today San Francisco and Los Angeles regional editions containing instructions for Unknown Class Members to submit a claim, elect not to participate, or object.

As part of its weekly status report, the Claims Administrator will inform Class Counsel and Defendant's Counsel of the timely Elections Not to Participate in Settlement it receives. The Claims Administrator will provide to Defendant and Class Counsel the names of the Non-Participating Class Members.

- c. **Settlement Website.** No later than thirty (30) days after the Court enters its order granting Preliminary Approval of the Settlement, the Claims Administrator shall establish a toll-free number and create and maintain a settlement website containing the Class Notice (substantially in the form of **Exhibit B**), Claim Form (substantially in the form of **Exhibit D**), Opt-Out Form (substantially in the form of **Exhibit G**) and Cash Redemption Form (substantially in the form of **Exhibit H**), which website shall be maintained until the Effective Date. Claim Forms and Cash

Redemption Forms can be downloaded from this website, but they cannot be submitted online.

d. No later than fourteen (14) days prior to the Final Approval Hearing, the Claims Administrator will serve on Class Counsel and Defendant's and file with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Claims Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

4. **Class Action Fairness Act Notice.** Defendant shall serve upon all applicable governmental officials notice of the proposed Settlement in accordance with 28 U.S.C. section 1715 *et seq.*

5. **Claim Process for Unknown Class Members:**

Completing Claim Forms: Unknown Class Members shall have ninety (90) days after Class Notice is disseminated pursuant to Section III(N) of this Agreement to complete a Claim Form (substantially in the form attached as **Exhibit D**). Information on the location of the transaction and the product purchased shall be listed by the Unknown Class Member on the Claim Form for each of the respective transactions at issue for that Unknown Class Member.

The date of the postmark on the envelope containing the completed Claim Form shall be the exclusive means used to determine whether a Class Member has "timely" returned the Claim Form on or before the Claim Deadline.

The Claims Administrator may review all submitted Claim Forms for completeness, validity, accuracy and timeliness, and may contact any Class Member to request additional information and/or documentation to determine the validity of any claim. The Claims Administrator also may review the submitted Claim Forms and other information from Defendant to confirm that each Class Member has received only one Merchandise Certificate.

For purposes of this Settlement, a Claim Form shall be deemed valid only if the Unknown Class Member has (a) provided any requested information on the Claim Form, and (b) signed the Claim Form under penalty of perjury. If a Claim Form is timely returned to the Claims Administrator but defective as to any of the above, the Class Member shall be given one opportunity to cure the defect(s). The Claims Administrator shall mail a notice of deficiency with a copy of the defective Claim Form to the Class Member who submitted the Claim. The Class Member shall be given

fourteen (14) days from the date the notice of deficiency was mailed to cure the defect(s) and return the corrected Claim Form to the Claims Administrator. If the corrected Claim Form is not completely corrected and postmarked no later than the fourteen (14) day period, it shall be deemed untimely and rejected.

Confirmation and Objections by Defendant

No later than ten (10) days after the conclusion of the claims period, the Claims Administrator shall provide Defendant's counsel with copies of all Claim Forms submitted by Class Members, so that Defendant also may have an opportunity to confirm that information submitted by the Class Member for at least one (1) transaction is consistent with the information in Defendant's databases. Defendant shall notify the Claims Administrator and Class Counsel no later than ten (10) days thereafter of any objections to any Claims Forms submitted by Class Members, and the basis for such objection.

An Unknown Class Member who does not file a timely Claim Form and does not file a timely Election Not to Participate in Settlement as set forth below in Section III(N)(6)(b) shall not be eligible to receive a benefit under this Settlement, but shall be a Participating Class Member who is bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment.

6. **Objections to Settlement; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and Class Members who decide to opt-out of the Settlement shall submit an Election Not to Participate in Settlement form pursuant to the following procedures:

- a. **Objections to Settlement.** The Class Notice will provide that Participating Class Members who wish to object to the Settlement must file with the Court and serve on Class Counsel, Defendant's Counsel, and Claims Administrator not later than ninety (90) days after Notice is disseminated pursuant to Section III(N) of this Agreement, a written objection to the Settlement. Participating Class Members who fail to serve timely written objections as set forth above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

It shall be the objector's responsibility to ensure receipt of any objection by the Court, Class Counsel, Defendant's Counsel and Claims Administrator. Written objections must include: (a) the name and case number of the Action, "*James Horosny, et al, vs. Burlington Coat Factory of California, LLC* pending in the United

States District Court for the Central District of California, Case No. 2:15-cv-05005-SJO-MRW; (b) the full name, address, and telephone number of the person objecting; (c) a statement of each objection; and (d) the specific reasons for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection(s). Any Class Member who files and serves a written objection, as described in this Section, has the option to appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of attorneys' fees. However, Settlement Class Members (with or without their attorneys) intending to make an appearance at the Fairness Hearing must also deliver to Class Counsel, Defendant's Counsel, and Claims Administrator and file with the Court a "Notice of Intention to Appear" no later than ninety (90) calendar days after Notice is disseminated pursuant Section III(M) of this Agreement. If the objecting Class Member intends to appear at the Fairness Hearing through counsel, he or she must also identify the attorney(s) representing the objector who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. If the objecting Class Member intends to request the Court to allow the Class Member to call witnesses at the Fairness Hearing, such request must be made in the Class Member's written objection, which must also contain a list of any such witnesses. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorney's fees and costs.

- b. **Election Not to Participate in Settlement.** The Merchandise Certificate and Post-Card Notice and the Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Claims Administrator, not later than ninety (90) days after Notice is disseminated pursuant Section III(N) of this Agreement, a signed Election Not to Participate in Settlement. A Class Member who submits a valid Election Not to Participate in Settlement form shall be considered a Non-Participating Class Member. The Election Not to Participate in Settlement form must be in substantially the same form as the Opt-Out Form attached as **Exhibit G**. A Non-Participating Class Member will not participate in or be bound by the Settlement and Judgment nor have any right to object to, comment on, or appeal the Settlement and/or Judgment.

A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.

Class Members may elect not to be part of the Class and not to be bound by this Agreement. To make this election, Class Members must send a letter or postcard to the Claims Administrator stating: (a) the name and case number of the Action, "*James Horosny, et al, vs. Burlington Coat Factory of California, LLC* pending in the United States District Court for the Central District of California, Case No. 2:15-cv-05005-SJO-MRW"; (b) the full name, address, and telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the Settlement, postmarked no later than ninety (90) calendar days after Notice is disseminated pursuant Section III(N) of this Agreement .

- c. **Reporting.** Not later than fourteen (14) days after the deadline for submission of Elections Not to Participate in Settlement, the Claims Administrator will provide Class Counsel with a complete and accurate list of all Non-Participating Class Members.
- d. **Blow-up Clause.** Despite this Agreement, if more than five thousand (5,000) Class Members request exclusion, then Defendant may, in its sole discretion, at any time before the Fairness Hearing, notify Class Counsel in writing that it has elected to terminate this Agreement. If this Agreement is terminated, it will be deemed null and void *ab initio*. In that event: (i) the Preliminary Approval and Provisional Class Certification Order and all of their provisions will be vacated by its own terms; (ii) the Action will revert to the status that existed before the Agreement's execution date; and (iii) no term or draft of this Agreement, or any part or aspect of the Parties' settlement discussions, negotiations, or documentation will have any affect or be admissible into evidence, for any purpose, in this Action or any other proceeding.

- 7. **No Solicitation of Comment, Objection, or Election Not to Participate.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to elect not to participate in the Settlement, comment on or object to the Settlement, or appeal from the Judgment.

8. **Right to Void Settlement.** Defendant will have the right, but not the obligation, to void the Settlement if any of the following occurs:
- (a) If five thousand (5,000) or more Class Members timely opt-out of the Settlement, Defendant will have the right, but not the obligation, to void the Settlement and, in that event, Defendant will have no further obligations under the Settlement;
 - (b) If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the terms of the Settlement with respect to the payments to be made to Participating Class Members, or the scope of the release of claims, then Defendant will have the right, but not the obligation, to void the Settlement. If that occurs, Defendant will have no further obligations under the Settlement, including any obligation to pay the Settlement Amount or any amounts that otherwise would have been owed under the Settlement. Furthermore, this Agreement will be deemed null and void *ab initio*. In that event, (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, including, but not limited to, vacating conditional certification of the Class, conditional appointment of named Plaintiffs as class representatives and conditional appointment of named Plaintiffs' counsel as Class Counsel, (b) the Action will revert to the status that existed before the Agreement's execution date, and (c) no term or draft of this Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the Settlement or enter the Final Order and Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Defendant shall retain all its rights to object to the maintenance of the Action as a class action, and nothing in this Agreement or other papers or proceedings related to the settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action. Defendant also will remain responsible for any administration costs incurred; or
 - (c) If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then Defendant will have the right to void the Settlement. If that occurs, Defendant will have no further obligations under the Settlement, including any obligation to pay the Settlement Amount or any amounts that

otherwise would have been owed under the Settlement. Defendant will remain liable for any incurred administration expenses. A vacation, reversal, or modification of the Court's award of the Class Representatives' Payments, the Class Counsel Fees and Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment.

9. Effect of An Award of Lower Fees and/or Costs than Plaintiffs Request.

- (a) An award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Class Representatives' Payments, the Class Counsel Fees and Litigation Expenses Payment will not constitute a material change to the Settlement and shall not affect Plaintiffs or Class Counsel's rights and/or obligations under the Agreement.

10. Additional Briefing and Final Approval.

- a. Not later than twenty-eight (28) days before the Final Approval Hearing, Plaintiffs will file with the Court and serve on Defendant a supporting memorandum of points and authorities, and any necessary supporting declarations for final approval of the Settlement.
- b. Not later than twenty-eight (28) days before the Final Approval Hearing, Plaintiffs will file with the Court and serve on Defendant a supporting memorandum of points and authorities, and any necessary supporting declarations for final approval for the awards of the Class Representatives' Payments, and the Class Counsel Fees and Litigation Expenses Payment pursuant to this Settlement.
- c. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present the proposed Final Approval Order and Judgment, respectively, to the Court for approval and entry. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

11. Waiver of Right to Appeal. Except as otherwise provided herein, and provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs, Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the

Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become nonappealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude the parties from appealing a refusal by the Court to award the requested Class Representatives' Payments or the Class Counsel Fees and Litigation Expenses Payment in the amounts set forth above in Section III(F).

12. **Timing of Provision of Payments.** No later than fifteen (15) days after the Judgment is entered, Defendant shall deliver the Court-approved Class Representatives' Payments to Plaintiff and the Court-approved Class Counsel Fees and Litigation Expenses Payment to a qualified settlement trust fund of Class Counsel's choice established for the benefit of Plaintiff and Class Counsel. These payments will not be made if there have been any objections or appeals filed by any party or Class Member.
13. **Final Report by the Claims Administrator Regarding Settlement Tasks.** No later than thirty (30) days of the disbursement of the Settlement Amount and Payments set forth above, the Claims Administrator will serve on the Parties and file with the Court, and serve on Class Counsel, a declaration confirming the disbursements of all funds required under the Settlement.

O. Release of Claims.

1. **Release by Plaintiffs and the Class.** As of the Effective Date of this Agreement, Plaintiffs and all Class Members shall be deemed to hereby fully and irrevocably release, waive, and discharge Defendant and each of its respective past, present and future owners, stockholders, parent corporations, including but not limited to Burlington Coat Factory, Inc., related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest (the "Released Parties"), from any and all past, present, and future liabilities, claims, causes of action (whether in contract, tort, or otherwise, including statutory, common law, property, and equitable claims), damages, costs, attorneys' fees, losses, or demands, whether known or unknown, existing or potential, or suspected or unsuspected, which were or could have been asserted in the Action based on the facts alleged therein including but not limited to claims under California Business and Professions Code sections 17200 *et seq.* and 17500 *et seq.*, California Civil Code sections 1770 and 1750 *et seq.* (the "California Consumer Legal Remedies Act", and/or under the Federal Trade Commission Act ("FTCA") (the "Released

Claims”) and claims for failure to disclose information, false advertising, fraud, unjust enrichment, and any additional constitutional, common law and/or statutory claims.

2. **California Civil Code Section 1542 Waiver.** Plaintiffs and the Class Members also expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of California Civil Code section 1542, or any other similar provision under Federal and/or other states’ law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs and the Class Members are deemed to understand and acknowledge the significance of this waiver of California Civil Code section 1542 and/or of any other applicable law relating to limitations on releases. Plaintiffs, the Class Members, and/or Plaintiffs’ Counsel may hereafter discover facts in addition to or different from those which any of them now know or believe to be true with respect to the subject matter of the released claims, but Plaintiffs, upon the Effective Date, shall have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts.

3. **Release by Defendant.** As of the Effective Date of this Agreement, Defendant releases and forever discharges the Plaintiffs, and their attorneys, from any claims of abuse of process, malicious prosecution, or any other claims arising out of the institution, prosecution, assertion, or resolution of the claims in the Action, including, but not limited to, sanctions of any kind.

P. Miscellaneous Terms.

1. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

2. **Change of Time Periods.** All time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Class. If notice is delayed, the corresponding time periods for Class Members to respond, etc. shall likewise be extended.
3. **Modifications and Amendments.** Except as set forth in Section III(P.2), above, no amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel.
4. **No Admission of Liability.** This Agreement reflects the compromise and settlement of disputed claims among the Parties. Its constituent provisions, and any and all drafts, communications, and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person, including Defendant, and shall not be offered or received in evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Defendant does not admit to any liability and this Agreement, and any Judgment entered based thereon, shall not be considered or operate as a finding of wrongdoing.
5. **Voluntary Agreement.** This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm or entity.
6. **Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.
7. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases all such documents, supplemental provisions and assistance of the Court will be consistent with this Agreement.

8. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
9. **Parties in Interest.** In executing this Agreement, the Parties warrant and represent that they, including Plaintiffs in their individual capacity, are the only persons having any interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Action, and, except as provided herein, neither said claims nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.
10. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
11. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. This Agreement has been, and shall be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter shall have no force or effect.
12. **Inadmissibility.** This Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Agreement and any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.
13. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
14. **Plaintiffs' Waiver of Right to be Excluded and Object.** Plaintiffs agree that by signing this Agreement they become bound by the terms herein stated and further agrees not to opt-out of the Settlement or object to any of the terms of the Settlement. Thus, any non-compliance with this

paragraph (*e.g.*, request for exclusion or objection) shall be void and of no force or effect.

15. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
16. **Exhibits.** The exhibits to this Agreement are integral parts of the Agreement and the Settlement and are incorporated into this Agreement as though fully set forth in the Settlement Agreement.
17. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third (3rd) business day after mailing by United States mail, addressed as follows:

To the Plaintiffs and Class:

Douglas Caiafa
DOUGLAS CAIAFA, A PROFESSIONAL CORPORATION
11845 West Olympic Boulevard, Suite 1245
Los Angeles, California 90064
Telephone: (310) 444-5240
Facsimile: (310) 312-8260
Email: dcaiafa@caiafalaw.com

Christopher J. Morosoff
THE LAW OFFICES OF CHRISTOPHER J. MOROSOFF
77-760 Country Club Drive, Suite G
Palm Desert, California 92211
Telephone: (760) 469-5986
Facsimile: (760) 345-1581
Email: cjmorosoff@morosofflaw.com

To Defendant:

Janet Dhillon
Executive Vice President, General Counsel, & Corporate Secretary
Burlington Stores, Inc.
2006 Route 130 North
Burlington, New Jersey 08016
Telephone: (609) 387-7800
Email: jdhillon@burlingtonstores.com

Mark H. Epstein
MUNGER, TOLLES & OLSON LLP
355 S. Grand Ave.
Los Angeles, California 90071
Telephone: (213) 683-9118
Facsimile: (213) 683-5118
Email: mark.epstein@mto.com

18. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided no later than seven (7) days. Any executed counterparts will be admissible as evidence to prove the existence and contents of this Agreement.

A. **List of Exhibits:** The following exhibits are attached to this Agreement:

Exhibit A Merchandise Certificate and Post-Card Notice

Exhibit B Class Notice

Exhibit C Summary In-Store Notice

Exhibit D Claim Form

Exhibit E Summary Publication Notice

Exhibit F E-Mail Notice

Exhibit G Opt Out Notice

Exhibit H Cash Redemption Form

[CONTINUED ON FOLLOWING PAGE]

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: December __, 2016

James Horosny

James A. Horosny

Dated: December 3, 2016

Jennifer Price

Jennifer Price

Dated: December 2, 2016

Burlington Coat Factory of California, LLC

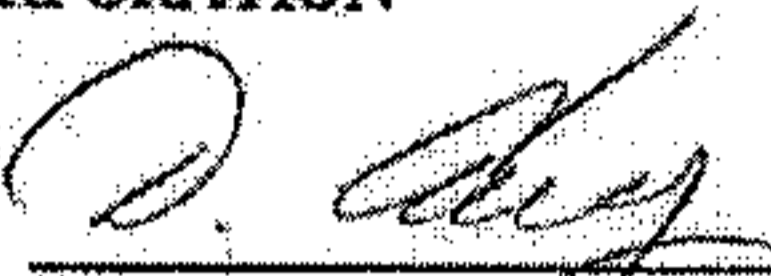
Janet Ohlman

By: *Janet Ohlman*
Its: *Executive Vice President/
General Counsel*

AGREED AS TO FORM:

Dated: December 5, 2016

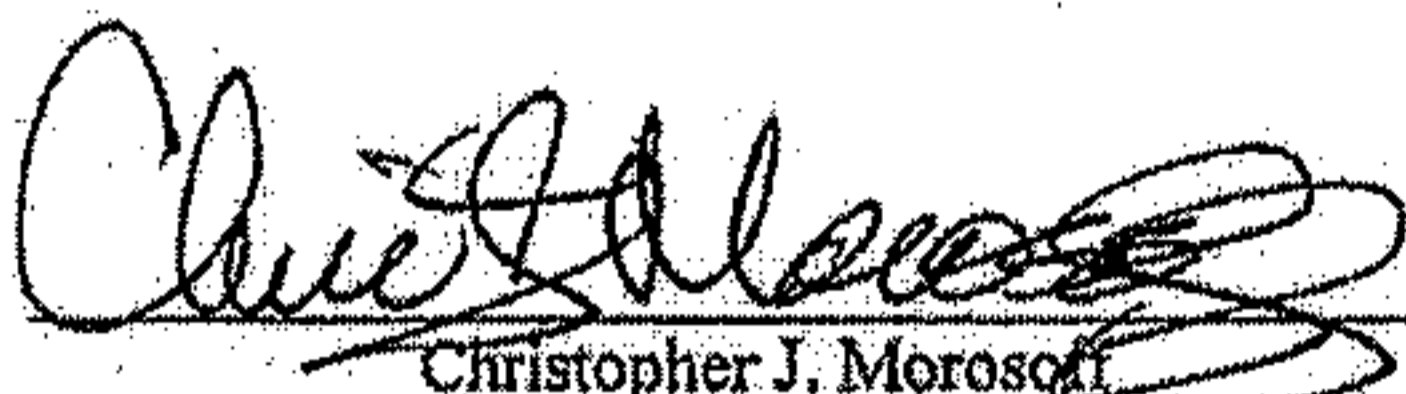
DOUGLAS CAIAFA, A PROFESSIONAL CORPORATION

By: 

Douglas Caiafa
Class Counsel

Dated: December 5, 2016


THE LAW OFFICES OF CHRISTOPHER J. MOROSOFF

By: 

Christopher J. Morosoff
Class Counsel

Dated: December 2, 2016

MUNGER, TOLLES & OLSON LLP

By: 

Mark H. Epstein
Counsel for Defendant