

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Public Health And Safety Advocates, LLC (“PHSA”) on the one hand and Coty Inc. (“COTY”) on the other hand, with COTY and PHSA each individually referred to as a “Party” and collectively as the “Parties.”

#### 1.2 Introduction and General Allegations.

1.2.1 PHSA is a limited liability company duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.2.2 PHSA alleges that COTY employs ten or more persons, and PHSA alleges that COTY is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2.3 PHSA alleges that COTY and/or the Releasees (as defined below) imported, sold, and/or distributed for sale in California Covered Products, as defined below, containing acetaldehyde, a chemical listed by the State of California pursuant to Proposition 65 as allegedly being known to cause cancer. PHSA further alleges that COTY failed to provide the health hazard warning required by Proposition 65 for exposures to acetaldehyde in the Covered Products.

#### 1.3 Product Description.

The products covered by this Settlement Agreement is Kylie Skin by Kylie Jenner Hand Sanitizer, which was imported, sold and/or distributed for sale in California or elsewhere by COTY (“Covered Products”).

#### 1.4 **60 Day Notice of Violation and Exchange of Information.**

On August 6, 2021, PHSA served COTY, Kylie Jenner, Inc., HFC Prestige Products, Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that the Covered Products violated Proposition 65. The Notice alleged that COTY, Kylie Jenner, Inc., and HFC Prestige Products failed to warn their customers and consumers in California of the health hazards associated with exposure to acetaldehyde from the import, sale and/or distribution of the Covered Products.

PHSA subsequently provided COTY with test results in PHSA’s possession concerning its allegations. COTY provided PHSA with sales data related to the Covered Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### 1.5 **No Admission.**

The Parties enter into this Settlement Agreement to settle disputes as set forth below concerning the Covered Products’ compliance with Proposition 65. Specifically, PHSA alleges that COTY imported, manufactured, sold or distributed for sale in the state of California, Covered Products that contained acetaldehyde without first providing the clear and reasonable exposure warning required by Proposition 65. COTY denies that such a warning is required under Proposition 65 or any otherwise applicable law as to the Covered Products.

COTY further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has imported, manufactured and/or sold and distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by COTY of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by COTY of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by COTY. This Section shall not, however, diminish or otherwise affect COTY’s obligations, responsibilities, and duties under this Settlement Agreement.

## 1.6 **Effective Date.**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date the Agreement is fully executed by all Parties.

## 2. **INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

2.1 **Reformulation Standard.** COTY has indicated that it has discontinued the manufacture, distribution and sale of the Covered Products in California. To the extent it elects to manufacture, distribute or sell the Covered Products in California after the Effective Date, any Covered Products shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to acetaldehyde if the Products meet the standard of "Reformulated Products." "Reformulated Products" shall mean Covered Products containing less than or equal to 10 parts per million when analyzed pursuant to a headspace GC-MS method, test methods described in the USP Alcohol Monograph, or equivalent methodologies utilized by federal or state agencies for the purpose of determining acetaldehyde content in hand sanitizers ("Reformulation Standard"). Covered Products, currently in the channels of distribution with distributors and retailers may continue to be sold-through after the Effective Date. However, as of the Effective Date, COTY may not distribute or sell new Covered Products in California that are not Reformulated Products or do not contain the warnings set forth in Paragraph 2.3. Should acetaldehyde be removed from the list of prohibited ingredients under Proposition 65, all future covenants made by COTY under this Settlement Agreement shall be deemed to be obviated.

2.2 **Warning Option.** Provided that acetaldehyde remains a Proposition 65 banned substance, Covered Products that are not reformulated or do not meet the Reformulation Standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to Covered Products that are sold or shipped to consumers, retailers, or distributors in California after the Effective Date. No Proposition 65 warning for acetaldehyde shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

2.3 **Warning Language.** Commencing on the Effective Date, COTY shall ensure that any un-reformulated Covered Products (containing an amount of acetaldehyde proscribed by

Proposition 65) that it ships to California retailers or for sale in California include a clear and reasonable warning. The warning shall be affixed to the packaging or labeling using language similar to the warnings below:

⚠ **WARNING:** This product can expose you to chemicals including acetaldehyde, which are known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

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

The warning shall be prominently displayed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, COTY shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Agreement

### **3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

COTY shall pay a civil penalty of \$1,000 to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to PHSA. COTY shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the amount of \$750 representing 75% of the initial civil penalty and (b) one check to "Kawahito Law Group in Trust for PHSA" in the amount of \$250, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The payment shall be delivered on or before 60 days after the Effective Date to the following address:

James Kawahito, Esq.  
Kawahito Law Group APC  
300 Corporate Pointe Ste 340  
Culver City, CA 90230

Payment may also be made by wire or ACH or wire transfer. Instructions will be provided separately upon request.

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that PHSA and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to PHSA and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. More specifically, COTY shall pay the total amount of \$19,000 for fees and costs incurred by PHSA as a result of investigating, bringing this matter to the attention of COTY, and negotiating a settlement. COTY shall wire the funds (instructions will be provided upon request) or make payment by check payable to “Kawahito Law Group APC.” The payment shall be delivered on or before 60 days after the Effective Date to the following address:

James Kawahito, Esq.  
Kawahito Law Group APC  
300 Corporate Pointe Ste 340  
Culver City, CA 90230

#### **5. RELEASE OF ALL CLAIMS**

##### **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

PHSA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, releases COTY and the Releasees (as defined below) as to any and all liabilities associated with any alleged violation of Proposition 65 that was or could have been asserted by PHSA against such parties related to their alleged or actual failure to warn about alleged exposure to acetaldehyde contained in the Covered Products. Releasees shall be deemed to include COTY, Kylie Jenner, Inc., HFC Prestige Products, and their parents, subsidiaries, joint venture partners, and any entities that are under partial or common ownership with such entities

as well as all directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, of such entities as well as downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees for any and all claims based on their alleged or actual failure to warn about alleged exposure to acetaldehyde contained in the Covered Products that were allegedly manufactured, imported, distributed, sold and/or offered for sale by COTY, Kylie Jenner, Inc., and HFC Prestige Products either directly or through the Releasees in California before the Effective Date. The Release shall also cover any Covered Products that were in the stream of commerce prior to the Effective. However, as of the Effective Date, no new Products shall be shipped to or distributed in California that are not Reformulated Products or contain the warnings set forth in Sections 2.2 and 2.3. This release is provided in PHSA's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, PHSA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims against the Releasees that PHSA have or may have including, without limitation, all actions, and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigative fees, expert fees, and attorneys' fees for any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to acetaldehyde in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date.

## **5.2 COTY'S Release of PHSA.**

COTY on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against PHSA, its attorneys and other representatives, for any and all actions taken or statements made by PHSA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against Coty in this matter with respect to acetaldehyde in the Covered Products.

**5.3 Public Benefit.**

It is COTY's contention that the commitments it has agreed to herein, and actions to be taken by COTY under this Settlement Agreement, would 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 COTY that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to COTY and/or the Releasees relating to the Covered Products they have manufactured, distributed, sold, or offered for sale in California and that are subject to this Settlement, such private party action would not confer a significant benefit on the general public provided that COTY is in material compliance with this Settlement Agreement.

**5.4 Enforcement of Settlement Agreement.**

Any party may file suit before the Superior Court of the County of Los Angeles to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

**6. SEVERABILITY**

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

**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.

**8. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; (c) a recognized overnight courier; or (d) by email to designated agent of Party indicated below, to the other Party at the following addresses:

For Notices to COTY:

Whitney Jones Roy

Sheppard Mullin Richter & Hampton LLP  
333 South Hope Street  
43<sup>rd</sup> Floor  
Los Angeles, CA 90071

For Notices to PHSA:

PHSA, LLC  
10249 Eastborne Ave.  
Los Angeles, CA 90049

with a copy to:

James K. Kawahito, Esq.  
Kawahito Law Group APC  
Attn. PHSA v. COTY  
300 Corporate Pointe Ste 340  
Culver City, CA 90230  
[jkawahito@kawahitolaw.com](mailto:jkawahito@kawahitolaw.com)

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, 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 § 25249.7(f)**

PHSA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.



**12. AUTHORIZATION**

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

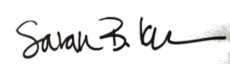
**AGREED TO:**

Date: June 24, 2022

By:   
Public Health and Safety Advocates, LLC

**AGREED TO:**

Date: July 25, 2022

By:   
Coty Inc.