

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Green Initiative, LLC and Drunk Elephant, LLC

This Settlement Agreement is entered into by and between Green Initiative, LLC ("Initiative") and Shiseido Americas Corporation (Drunk Elephant, LLC having merged into Shiseido Americas Corporation) ("Elephant"). Together, Initiative and Elephant are collectively referred to as the "Parties."

1.2. General Allegations

Initiative alleges that Elephant manufactured and/or distributed and/or offered for sale in the State of California hair & body kits with cases containing Di(2-ethylhexyl)phthalate [DEHP] 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 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 products that are covered by this Settlement Agreement are defined as hair & body kits with cases that contain DEHP, manufactured or distributed in California by Elephant. All such items shall be referred to herein as the "Products."

1.4. Notice of Violation

On December 20, 2021, Initiative issued to Elephant, Ulta Salon, Cosmetics & Fragrance, Inc., and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled "60-Day Notice of

Violation" ("Notice") that provided Elephant and such public enforcers with notice that Elephant was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn California consumers that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the 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 Elephant's compliance with Proposition 65. Specifically, Elephant denies the material factual and legal allegations contained in Initiative's Notice and maintains that all products that 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 doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Elephant 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 Elephant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Elephant. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Elephant under this Settlement Agreement. Notwithstanding the allegations in the Notice, Elephant 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

2.1. Reformulation

As of the Effective Date, and continuing thereafter, Products that Elephant directly manufactures or imports for sale in California shall either: (a) be Reformulated Products, or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.2 and 2.3, below.

“Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance. The Parties agree that Reformulated Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirement.

2.2. Warning

Products that are not Reformulated Products shall be accompanied by a warning as described in Section 2.2 below, no later than 120 days after the Effective Date. The warning requirements set forth in Section 2.2 below shall apply only to Products that are manufactured or imported for sale in the State of California. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that Elephant places into the stream of commerce within 120 days of the Effective Date.

2.3. Warning Language

Where required, Elephant shall provide Proposition 65 warnings as follows:

- (a) Elephant may use any of the following warning statements in full compliance with this Section:

- (1) **WARNING:** This product can expose you to chemicals including DEHP, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more info go to www.P65Warnings.ca.gov.
- (2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.
- (b) If Elephant elects to use the warning statements identified in either 2.3(a)(1) or (2), it may also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product 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) If Proposition 65 warnings for DEHP should no longer be required, Elephant shall have no further obligations pursuant to this Settlement Agreement.
- (e) In the event that the Office of Environmental Health Hazard Assessment ("OEHHA") promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Elephant

shall be entitled to use, at their discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Elephant shall pay a total of \$200 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 OEHHA and the remaining 25% of the penalty remitted to Initiative. Initiative's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement. Payment shall be delivered in accordance with § 5, below.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Initiative and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Elephant shall reimburse Initiative's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Elephant's attention. Elephant shall pay Initiative's counsel \$8,800.00 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. Payment shall be delivered in accordance with § 5, below.

5. PAYMENT INFORMATION

Within twenty (20) business days of the Effective Date, Elephant shall make a total payment of Nine Thousand Dollars (\$9,000.00) 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

This is the exclusive and only payment due under the Settlement Agreement. Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1. Release of Elephant, 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, Initiative, 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) Elephant, (b) each of Elephant's downstream distributors (including but not limited to Ulta Salon, Cosmetics & Fragrance, Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, suppliers, customers, owners, purchasers, users, and (c) Elephant's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"), from all claims for violations of Proposition 65 through the Effective Date.

Initiative also, in its capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorney's fees, expert fees, and investigation fees, and costs), damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Elephant and the Releasees of any nature, character, or kind whether known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65 from use of the Products. Initiative acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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.

Initiative, 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. Elephant's Release of Initiative

Elephant waives any and all claims against Initiative, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been

taken or made) by Initiative 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 Products.

6.3. Deemed Compliance with Proposition 65.

The Parties agree that compliance by Elephant with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Products.

6.4. Public Benefit.

It is Parties' understanding that the commitments it has agreed to herein, and actions to be taken by Elephant 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, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Elephant's failure to provide a warning concerning the 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 Products addressed in this Settlement Agreement, provided that Elephant is in material compliance with this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Elephant shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

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 Elephant: Will Wagner
Arnold & Porter
Three Embarcadero Center | 10th Floor
San Francisco, CA 94111-4024

For Initiative: 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)

Initiative 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 prior discussions, negotiations, commitments and understandings related hereto shall be deemed to have been merged within it. 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.

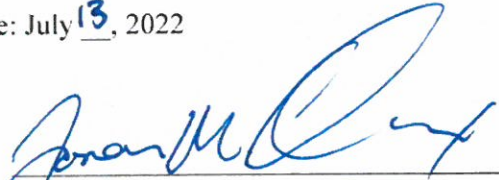
<p style="text-align: center;">AGREED TO:</p> <p>Date: July <u>6</u>, 2022</p> <p>By: <u></u></p> <p>On Behalf of Green Initiative, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: July __, 2022</p> <p>By: _____</p> <p>On Behalf of Shiseido Americas Corporation</p>
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