

## CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Green Initiative, LLC and Better Not Younger

This Settlement Agreement is entered into by and between Green Initiative, LLC ("Initiative"), Custodio & Dubey LLP ("Initiative's Counsel"), and Better Not Younger Corporation ("Better"), with Initiative, Initiative's Counsel, and Better collectively referred to as the "Parties."

#### 1.2. General Allegations

Initiative alleges that Better manufactured and/or distributed and/or offered for sale in the State of California Discovery 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"). Initiative contends that 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 Discovery Hair Kits with cases that contain DEHP that Better 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

On June 13, 2022, Initiative through Initiative's Counsel, served Better, 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 Better and such public enforcers with notice that Better 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 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 Better's compliance with Proposition 65. Specifically, Better 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 and any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Better 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 Better of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Better. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Better under this Settlement Agreement.

**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: WARNING

### 2.1. Warning

Products shall be accompanied by a warning as described in Section 2.2 below, no later than 120 days after the Effective Date unless the Products contain no more than 1000 ppm DEHP. The warning requirements set forth in Section 2.2 below shall apply only to Products that are distributed, marketed, sold or shipped 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 Better places into the stream of commerce within 120 days of the Effective Date.

### 2.2. Warning Language

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

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

(1) **WARNING:** This product can expose you to 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](http://www.P65Warnings.ca.gov).

(2) **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) If Better elects to use the warning statements identified in either 2.2(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, Better shall have no further obligations pursuant to this Settlement Agreement.

(e) 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, Better 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, Better 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 Initiative. Initiative'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**

Better and Initiative reached an accord on the compensation due to Initiative and its Initiative's Counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Better shall reimburse Initiative's Counsel for fees and costs, incurred as a result of investigating and bringing this matter to Better's attention. Better shall pay Initiative's Counsel \$8,400 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

By no later than three weeks after the Effective Date, Better shall make a total payment of Eight Thousand Five Hundred Dollars (\$8,500) for the civil penalties and attorney's fees / costs by wire transfer to Initiative's Counsel:

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 Better, 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) Better, (b) each of Better's downstream distributors (including but not limited to Ulta Salon, Cosmetics & Fragrance, Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, marketers, customers, owners, purchasers, users, and (c) Better's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

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, 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 Better and the Releasees. Initiative 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.

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.

Initiative shall not, on or after the Effective Date, initiate any demand, lawsuit, or other legal proceeding (such as arbitration) against any Releasees relating to the matters released by this Agreement including the Claims.

**6.2. Better's Release of Initiative**

Better 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.

**7. REPRESENTATIONS AND WARRANTIES**

7.1. Initiative's Counsel and Initiative each represents and warrants that it does not have the present intention to bring any further demands or claims against Better or any of the Releasees, and that each is not aware of any person or entity, including any putative class member, who is investigating or has currently expressed an intent to assert or file any claim against Better or any of the Releasees.

7.2. Neither Initiative nor Initiative's Counsel have assigned, released, or settled (other than via this Agreement), in whole or in part, any claim relating to Better or any

Releasee, or any claim involving the subject matter of the Notice, or any of the other claims or other matters released by this Agreement.

- 7.3. Initiative is the sole owner of the claims released pursuant to Section 6 of this Agreement.
- 7.4. Neither Initiative nor Initiative's Counsel have disclosed the existence or subject matter of Initiative's claims against Better, the Notice, or any other matter released by this Agreement, to any other potential plaintiff, putative class member, or attorney other than government attorneys if required when issuing the Notice.
- 7.5. None of the representations or warranties in this section are intended, or shall be construed, to violate rule 5.6 of the American Bar Association's Rules of Professional Conduct or any state law equivalent.
- 7.6. Initiative and Initiative's Counsel each acknowledges that the representations and warranties in this section are essential and material terms of this Agreement, and that Better would not have entered into this Agreement if it had known that any such representations and warranties were false.

**8. 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 by reason of law generally, or as to the Products, then Better shall have no further obligations pursuant to this Settlement Agreement.



9. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and via email, 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 physical and email addresses:

For Better:

Better Not Younger Corp.  
3594 Rockerman Road  
Miami, FL 33133  
sonsoles@better-notyounger.com

with a copy to (which shall not constitute notice):

Ari N. Rothman, Esq.  
Venable, LLP  
2049 Century Park East, Suite 2300  
Los Angeles, CA 90067  
anrothman@venable.com

For Initiative and Initiative's Counsel:

Vineet Dubey, Esq.  
Custodio & Dubey LLP  
445 S. Figueroa St., Suite 2520  
Los Angeles, CA 90071  
dubey@cd-lawyers.com

Any Party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent. Initiative shall immediately provide updated contact information for purposes of this provision upon disengagement by Custodio & Dubey LLP.

10. **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.

**11. 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).

**12. 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. No other agreements, oral or otherwise, exist to bind the Parties.

**13. CONFIDENTIALITY**

**13.1.** The Parties agree to keep the terms and existence of this Agreement, and all documents and things exchanged during settlement negotiations leading up to this Agreement that have not been disclosed prior to the Effective Date, (collectively “Confidential Information,”) strictly confidential, and shall not reveal Confidential Information to any other person or entity, except: (a) as required by law or order of a court or any other government authority; (b) as is reasonably necessary to be disclosed to the Parties’ accountants, tax advisors, investors, potential investors, attorneys, employees, representatives, bankers, or bondholders; (c) as is reasonably necessary to the defense or enforcement of any action to which the terms of this Agreement apply; (d) for Better to assist any Releasee in defending or resolving any complaint, demand or claim concerning the matters released by this Agreement; (e) for Better to negotiate, seek to negotiate, or consummate any business transaction that would be affected by any term of this Agreement; (f) for Better to pursue claims, whether in litigation,

informally, or otherwise, against any person or entity related to the Claims; (g) in connection with any purchase, acquisition, or potential purchase of Better's assets or liabilities; (h) as Better determines is necessary with respect to disclosure to insurers and/or with the court or arbitrator in any legal proceedings against any insurer; (i) as Better determines necessary to defend or respond to any demand or claim similar to those set forth in the Notice, or the claims released by this Agreement; (j) or in response to a valid subpoena or as otherwise compelled by a court of competent jurisdiction or governmental agency.

- 13.2.** If any Party to this Agreement receives an informal request, discovery request or subpoena for the disclosure of Confidential Information, then that Party must first notify the other Party hereto within ample time to seek a protective order or other relief before the requested Party or its counsel produces Confidential Information.
- 13.3.** Initiative must refrain from posting any reference to anything released by this agreement, including the Notice (and anything therein), on any website, blog, or other publicly accessible media unless required by law.
- 13.4.** Initiative agrees to refrain from making or causing to make any publication, oral, written or by implication, of a defamatory, disparaging or otherwise derogatory matter pertaining to Better, its employees, owners, agents, or affiliates. This prohibition is specifically meant to be broader than defamation and includes contacting employees, customers, clients, or vendors and stating or implying anything negative about Better.
- 13.5.** The Parties expressly acknowledge and agree that any breach of the obligations of Section 13 of this Agreement would cause the other party to suffer immediate,

*Sonsoles Gonzalez*

irreparable injury for which money damages would be an inadequate remedy, and that the non-violating party will be entitled to injunctive relief, as provided for under applicable law or equity, without being required to post any bond or other security, in the event of any such breach. Injunctive relief will not be deemed the exclusive remedy for any such breach, but will be in addition to all other remedies available under applicable law.

**14. MODIFICATION**

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

**15. 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.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: October <u>28</u> 2022	Date: Oct <del>1</del> <u>Nov 2</u> 2022
By: <u><i>Hailey Olson</i></u> On Behalf of Green Initiative, LLC	By: <u><i>Sonsoles Gonzalez</i></u> On Behalf of Better Not Younger Corporation

**AGREED TO:**

Date: October   ?  , 2022

By: 

\_\_\_\_\_  
On Behalf of Custodio & Dubey LLP

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