

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Green Initiative, LLC and Gina Concepts, LLC

This Settlement Agreement is entered into by and between Green Initiative, LLC (“Green”), on the one hand, and Gina Concepts, LLC (“Gina Group”), on the other hand, with Green and Gina Group collectively referred to as the “Parties.”

#### 1.2. Green Allegations

Green alleges that Gina Group manufactured and distributed and offered for sale in the State of California makeup brush sets 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 section 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 and birth defects or other reproductive harm.

#### 1.3. Product Description

The products that are covered by this Settlement Agreement are defined as Gina Group’s makeup brush sets, including, but not limited to, their cases, covers, and accompanying accessories, that Gina Group has manufactured, sold, offered for sale, or distributed in California, whether directly or indirectly, that contain DEHP. All such items shall be referred to herein as the “Products.”

#### 1.4. Notice of Violation

On August 8, 2022, Green served Gina Group & Five Below, Inc. and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the

State of California with a document entitled "60-Day Notice of Violation" ("Notice") that provided Gina Group and such public enforcers with notice that Gina Group 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 Gina Group's compliance with Proposition 65. Specifically, Gina Group denies the material factual and legal allegations contained in Green'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 Gina Group of any fact, finding, concession, issue of law, or violation of any statutory, regulatory, common law, or equitable requirements and/or doctrines; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Gina Group of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Gina Group on their behalf. However, nothing in this Section shall diminish or otherwise affect the obligations, responsibilities, and duties of Gina Group 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: REFORMULATION AND WARNINGS**

### **2.1. Warning**

As of the Effective Date, Gina Group shall manufacture, import, or otherwise source for sale in California only Reformulated Products, as defined pursuant to Section 2.2 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.3 below.

### **2.2. Reformulation Standards**

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

### **2.3. Warning Language**

Where required, Gina Group shall provide Proposition 65 warnings as follows:

- (a) Gina Group may use any of the following warning statements in full compliance with this Section:
  - (1) **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (“DEHP”), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information 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 Gina Group uses either of the above warning statements to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

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

(d) If Proposition 65 warnings for DEHP/BBP/DBP/DIDP/DINP/DnHP should no longer be required, Gina Group shall have no further obligations pursuant to this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Gina Group 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 the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Green. Green’s

counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Green and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Gina Group shall reimburse Green's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Gina Group's attention. Gina Group shall pay Green's counsel \$6,800 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

By March 10, 2023, Gina Group shall make a total payment of Seven Thousand Dollars (\$7,000) for the civil penalties and attorneys' fees/costs by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325149324377

Beneficiary: Custodio & Dubey LLP

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

**6. RELEASE OF ALL CLAIMS**

**6.1. Release of Gina Group, 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 4 and 5 above, Green, on behalf of itself and 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, against (a) Gina Group, (b) each of Gina Group's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers (including but not limited to Five Below, Inc., and its respective parents, subsidiaries, and affiliates), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users, and (c) Gina Group's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

Green also, in its capacity, on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein that shall be effective as a full and final accord and satisfaction and 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 Gina Group and the Releasees. Green 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.

Green, in its capacity only, and on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that it may have under or that 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. Gina Group's Release of Green**

Gina Group waives any and all claims against Green and its attorneys and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Green 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. DEEMED COMPLIANCE WITH PROPOSITION 65**

Compliance by Gina Group with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to the chemicals identified in Section 2.2 from use of the Products.

**8. PUBLIC BENEFIT**

It is the Parties' understanding that the commitments it has agreed to herein, and actions to be taken by Gina Group under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in California Code of Civil Procedure section 1021.5 and California Administrative Code title 11, section 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Gina Group's failure to provide a warning concerning exposure to the chemicals

identified in Section 2.2 from use of the Products Gina Group 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 Gina Group is in material compliance with this Settlement Agreement.

**9. 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 Gina Group shall have no further obligations pursuant to this Settlement Agreement.

**10. 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 Gina Group:	Bao M. Vu Stoel Rives LLP Three Embarcadero Center, Suite 1120 San Francisco, CA 94111
-----------------	---

For Green:	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.



**11. 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.

**12. COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.7(f)**

Green agrees to comply with the reporting form requirements referenced in California Health & Safety Code section 25249.7(f).

**13. ENTIRE AGREEMENT**


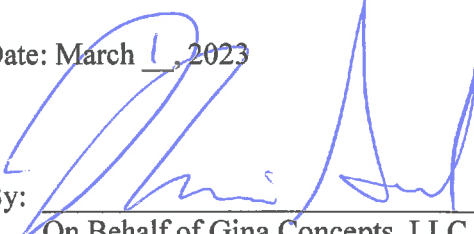
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**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.

<p><b>AGREED TO:</b></p> <p>Date: March <u>1</u>, 2023</p> <p>By: <u></u></p> <p>On Behalf of Green Initiative, LLC</p>	<p><b>AGREED TO:</b></p> <p>Date: March <u>1</u>, 2023</p> <p>By: <u></u></p> <p>On Behalf of Gina Concepts, LLC</p>
--	--