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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 (Unlimited Jurisdiction)

12 GREEN INITIATIVE, LLC, a California
13 limited liability company,

14 Plaintiff,

15 v.

16 PROFUSION COSMETICS CORP., a
17 California corporation,

18 Defendant.

19 Case No.: 23STCV13335

20 **[PROPOSED] STIPULATED**
21 **CONSENT JUDGMENT**

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2 Plaintiff Green Initiative, LLC (“Plaintiff”), and Profusion Cosmetics Corp. (“Defendant”)
3 hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

4 WHEREAS: On or about December 15, 2022, Plaintiff, through Plaintiff’s counsel, served
5 a 60 Day Notice (the “Notice”) to Defendant, Burlington Coat Factory of Texas, Inc., the
6 California Attorney General, the District Attorneys of every County in the State of California, and
7 the City Attorneys for every City in the State of California with a population greater than 750,000
8 (collectively, “Public Prosecutor(s)”) alleging that Defendant violated California’s Safe Drinking
9 Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq.,
10 and its implementing regulations (collectively, “Proposition 65”) and that Plaintiff intended to file
11 an enforcement action in the public interest; and

12 WHEREAS: On or about December 21, 2022, Plaintiff, through Plaintiff’s counsel, served
13 a 60 Day Notice (the “Notice”) to Defendant, Burlington Coat Factory of Texas, Inc., the
14 California Attorney General, the District Attorneys of every County in the State of California, and
15 the City Attorneys for every City in the State of California with a population greater than 750,000
16 (collectively, “Public Prosecutor(s)”) alleging that Defendant violated California’s Safe Drinking
17 Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq.,
18 and its implementing regulations (collectively, “Proposition 65”) and that Plaintiff intended to file
19 an enforcement action in the public interest; and

20 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed cases and
21 bags, including brow kits and brush sets with cases or bags, containing Di(2-ethylhexyl)phthalate
22 (“DEHP”), (collectively the “Covered Products”) that were sold or distributed for sale in
23 California and further alleges that those Covered Products expose consumers in the State of
24 California to DEHP, which is listed by the State of California pursuant to California Health and
25 Safety Code § 25249.8; and

26 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
27 to DEHP in Covered Products without being provided the Proposition 65 warning set out at
28 California Health and Safety Code § 25249.6 and its implementing regulations (“Proposition 65

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2 Warning”);

3 WHEREAS: Defendant denies the allegations of the Notice, and denies that it has violated
4 Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

5 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and
6 believes that this objective is achieved by the actions described in this Consent Judgment; and

7 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
8 and expense of litigation.

9 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
10 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

11 **1. INTRODUCTION**

12 1.1. On December 15, 2022 and on December 21, 2022, Plaintiff served the Notice
13 upon Defendant, upon Burlington Coat Factory of Texas, Inc., and on Public Prosecutors. No
14 Public Prosecutors commenced an enforcement action. No Public Prosecutor having commenced
15 an enforcement action, Plaintiff proceeded to file its Complaint against Defendant in the present
16 action.

17 1.2. Defendant employs ten (10) or more persons.

18 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
19 “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation contained
20 in the Complaint, and personal jurisdiction over Defendant as to the acts alleged in the
21 Complaint; 2) venue is proper in the County of Los Angeles; and 3) this Court has jurisdiction to
22 enter this Consent Judgment as a full and final resolution of all claims which were or could have
23 been raised in the Complaint based on the facts alleged therein with respect to the Covered
24 Products, and of all claims which were or could have been raised by any person or entity based in
25 whole or in part, directly or indirectly, on the facts alleged in the Notice, in the present action, or
26 arising therefrom or related thereto, with respect to Covered Products, including any Proposition
27 65 claim arising out of an exposure to Covered Products (collectively, “Proposition 65 Claims”).
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2 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
3 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
4 resolving the issues raised therein both as to past and future conduct. By execution of this
5 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any fact,
6 conclusion of law, or violation of law, nor shall Defendant's compliance with the Consent
7 Judgment constitute or be construed as an admission by Defendant of any fact, conclusion of law,
8 or violation of law. Defendant denies the material, factual, and legal allegations in the Notice and
9 the Complaint and expressly denies any wrongdoing whatsoever.

10 2. DEFINITIONS

11 2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date the
12 Consent Judgment has been approved and entered by the Court.

13 3. INJUNCTIVE RELIEF


14 3.1. Commencing 90 days after the Effective Date, Defendant shall not sell or
15 distribute for sale to consumers in California, or sell directly to consumers in California any
16 Covered Product unless, either (a) the Covered Product complies with the Proposition 65
17 exemption identified in Section 3.2 below, or (b) the Covered Product is labeled with a warning
18 as prescribed in Sections 3.3-3.4 below. Compliance with this Section 3.1 will constitute
19 compliance by Defendant with all requirements of Proposition 65 relating to DEHP exposure in
20 the Covered Products.

21 3.2. Proposition 65 Exemption for the Covered Products. Covered Products shall be
22 deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning
23 requirements with respect to DEHP if such Covered Product contains no more than 0.1 percent
24 (1,000 parts per million) of DEHP.

25 3.3. Warning Option. Covered Products that do not meet the warning
26 exemption standard set forth in Section 3.2 above shall be accompanied by a warning as
27 described in Section 3.4 below.

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2 3.4. Warning Language. Where required to meet the criteria set forth in Section
3 3.3, Defendant shall provide one of the following warning statements on or within the unit
4 packaging of the Covered Products, or affixed to the Covered Products, displayed in a reasonably
5 conspicuous manner:

6 (1)  **WARNING:** This product can expose you to [chemicals including] DEHP,
7 which is [are] known to the State of California to cause cancer and birth defects or
8 other reproductive harm. For more information go to www.P65Warnings.ca.gov.

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10 (2)  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

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12 3.5. The warnings set forth in (1) or (2) above shall also include a symbol consisting of
13 a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the
14 sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be
15 printed in black and white. The symbol shall be placed to the left of the text of the warning, in a
16 size no smaller than the height of the word “WARNING”.

17 4. MONETARY RELIEF

18 4.1. Within thirty (30) days of the Effective Date, Defendant shall pay the total sum of
19 \$25,000 which includes \$7,000 in civil penalties and \$18,000 in payment of Plaintiff’s costs and
20 reasonable attorney’s fees. The \$7,000 civil penalty shall be apportioned pursuant to Health and
21 Safety Code section 25249.12 (d), with 75%, or \$5,250, paid to the State of California’s Office of
22 Environmental Health Hazard Assessment and 25%, or \$1,750, payable to Plaintiff.

23 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff’s
24 counsel Custodio & Dubey LLP as set forth below. Plaintiffs’ counsel will remit the portions due
25 to the State of California Office of Environmental Health Hazard Assessment and to Plaintiff.

26 4.3. Bank: Bank of America, N.A.

27 Routing Transit No.: 026009593

28 Account No.: 325149324377

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2 Beneficiary: Custodio & Dubey LLP

3 **5. CLAIMS COVERED AND RELEASE**

4 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
5 behalf of itself, and acting on behalf of the public interest, and Defendant, and all of Defendant's
6 officers, directors, members, shareholders, employees, representatives, attorneys, agents, parent
7 companies, subsidiaries, divisions, affiliates, and the predecessors, successors, and assigns of any
8 of them (collectively the "Defendant Releasees"), as well as all other upstream and downstream
9 entities in the distribution chain for the Covered Products, including but not limited to Burlington
10 Coat Factory of Texas, Inc., manufacturers, retailers, suppliers, distributors, marketplace hosts,
11 wholesalers, customers, private label customers, franchisees, licensees, licensors, and cooperative
12 members, and all of their officers, directors, members, shareholders, employees, representatives,
13 attorneys, agents, parent companies, subsidiaries, divisions, affiliates, predecessors, successors,
14 and assigns (collectively, the "Released Parties"), for any alleged violation of Proposition 65 and
15 its implementing regulations, for failure to provide Proposition 65 warnings for the Covered
16 Products with respect to DEHP, and fully resolves all claims that have been brought, or which
17 could have been brought in this action up to and including the Effective Date. Plaintiff on behalf
18 of itself, and in the public interest, hereby discharges the Defendant Releasees and Released
19 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
20 penalties, obligations, debts, losses, fees, costs and expenses asserted with respect to any alleged
21 violation of Proposition 65 arising from the failure to provide Proposition 65 warnings about
22 exposures to DEHP for any or all of the Covered Products sold through ninety (90) days after the
23 Effective Date of the Consent Judgment. Compliance with the terms of this Consent Judgment
24 constitutes compliance with Proposition 65 by Defendant with respect to any alleged failure to
25 warn about DEHP in Covered Products sold or distributed by Defendant after the Effective Date.

26 5.2. Plaintiff, acting in its individual capacity only, and in consideration of the
27 promises and monetary payments contained herein, hereby releases Defendant Releasees and
28 Released Parties from any alleged claim of failure to provide Proposition 65 warnings for the

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2 Covered Products that Defendant has sold or caused to be sold in California up to and including
3 the Effective Date.

4 5.3. It is possible that other claims not known to the Parties arising out of the facts
5 contained in the Notice or alleged in the Complaint relating to the Covered Products will hereafter
6 be discovered or developed. Plaintiff on behalf of itself only, on the one hand, and Defendant, on
7 the other hand, acknowledge that this Consent Judgment is expressly intended to cover and
8 include all such claims through and including the Effective Date, including all rights of action
9 thereon. Plaintiff and Defendant acknowledge that the claims released in Sections 5.1 and 5.2
10 may include unknown claims, and nevertheless intend to release such claims, and in doing so
11 waive California Civil Code § 1542 which reads as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
13 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
14 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
15 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
16 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

17 5.4. Plaintiff understands and acknowledges that the significance and consequence of
18 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising
19 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
20 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
21 to, chemicals in or from the Covered Products, Plaintiff will not be able to make any claim for
22 those damages against any of the Defendant Releasees or the Released Parties.

23 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute
24 compliance with Proposition 65 with respect to exposure to DEHP in the Covered Products as set
25 forth in the Notice and/or the Complaint. If the California Office of Environmental Health
26 Hazard Assessment promulgates regulations affecting the warning provisions set forth in Section
27 3 herein, Defendant may comply with those regulations without being deemed in breach of this
28 Consent Judgment.

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2 **6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)**

3 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
4 referenced in California Health and Safety Code § 25249.7(f).

5 **7. PROVISION OF NOTICE**

6 7.1. When any Party is entitled to receive any notice or writing under this Consent
7 Judgment, the notice or writing shall be sent by first class certified mail with return receipt
8 requested, or by electronic mail, as follows:

9 To Defendant:

10 Greg Sperla, Esq.
11 DLA Piper LLP (US)
12 1415 L Street Suite 270
13 Sacramento, CA 95814-3976
14 Greg.Sperla@us.dlapiper.com

15 To Plaintiff:

16 Vineet Dubey, Esq.
17 Custodio & Dubey LLP
18 445 S. Figueroa St., Ste 2520
19 Los Angeles, CA 90071
20 dubey@cd-lawyers.com

21 7.2. Any party may modify the person and address to whom the notice is to be sent by
22 sending the other Party notice that is transmitted in the manner set forth in section 7.1.

23 **8. COURT APPROVAL**

24 8.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and
25 file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant
26 shall not oppose. This Consent Judgment shall not become effective until approved and entered
27 by the Court. If this Consent Judgment is not entered by the Court, it shall be of no force or
28 effect, and shall not be introduced into evidence or otherwise used in any proceeding for any
purpose.

9. GOVERNING LAW AND CONSTRUCTION

9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
California, and shall apply only to Covered Products sold in California.

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10. ENTIRE AGREEMENT

10.1. This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

10.2. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

10.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein.

10.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby, and approved and ordered by the Court.

10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11. RETENTION OF JURISDICTION

11.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

12. NO EFFECT ON OTHER SETTLEMENTS

12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

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13. EXECUTION IN COUNTERPARTS

13.1. This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute the same document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic means, shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the same force and effect as the original.

14. AUTHORIZATION

14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

15. SEVERABILITY

15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions shall continue in full force and effect to the extent they implement the Parties' intent.

AGREED TO:

Green Initiative LLC

August 31
Date: ~~July~~ , 2023

By: 


Hailey Olsen, Managing Member

AGREED TO:

Profusion Cosmetics Corp.

Date: July , 2023

By:


Eton Wang

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT