

1 MIGUEL A. CUSTODIO, JR., STATE BAR NO. 248744
VINEET DUBEY, STATE BAR NO. 243208
2 CUSTODIO & DUBEY LLP
445 S. Figueroa St., Suite 2520
3 Los Angeles, CA 90071
Telephone: (213) 593-9095
4 Facsimile: (213) 785-2899

5 Attorneys for Plaintiff Green Initiative, LLC

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES
9 (Unlimited Jurisdiction)

10
11 GREEN INITIATIVE, LLC, a California
limited liability company,

12
13 Plaintiff,

14 v.

15 PROFUSION COSMETICS CORP., a
16 California corporation,

17 Defendant.

Case No.: 23STCV13335

**AMENDED [PROPOSED]
STIPULATED CONSENT
JUDGMENT**

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

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

12 WHEREAS: On or about December 21, 2022, Plaintiff, through Plaintiff's counsel,
13 served 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,
15 and the City Attorneys for every City in the State of California with a population greater than
16 750,000 (collectively, "Public Prosecutor(s)") alleging that Defendant violated California's Safe
17 Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §
18 25249.6, et seq., and its implementing regulations (collectively, "Proposition 65") and that
19 Plaintiff intended to file 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

1 Warning”);

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

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

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

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


10 **1. INTRODUCTION**

11 1.1. On December 15, 2022 and on December 21, 2022, Plaintiff served the Notice
12 upon Defendant, upon Burlington Coat Factory of Texas, Inc., and on Public Prosecutors. No
13 Public Prosecutors commenced an enforcement action. No Public Prosecutor having
14 commenced an enforcement action, Plaintiff proceeded to file its Complaint against Defendant in
15 the present action.

16 1.2. Defendant employs ten (10) or more persons.

17 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
18 “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation contained
19 in the Complaint, and personal jurisdiction over Defendant as to the acts alleged in the
20 Complaint; 2) venue is proper in the County of Los Angeles; and 3) this Court has jurisdiction to
21 enter this Consent Judgment as a full and final resolution of all claims which were or could have
22 been raised in the Complaint based on the facts alleged therein with respect to the Covered
23 Products, and of all claims which were or could have been raised by any person or entity based
24 in whole or in part, directly or indirectly, on the facts alleged in the Notice, in the present action,
25 or arising therefrom or related thereto, with respect to Covered Products, including any
26 Proposition 65 claim arising out of an exposure to Covered Products (collectively, “Proposition
27 65 Claims”).
28

1 of the Covered Products, or affixed to the Covered Products, displayed in a reasonably
2 conspicuous manner:

3 (1)  **WARNING:** This product can expose you to [chemicals including] Di(2-
4 ethylhexyl)phthalate (“DEHP”), which is [are] known to the State of California to cause
5 cancer and birth defects or other reproductive harm. For more information go to
6 www.P65Warnings.ca.gov.

7 or

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

9
10 1.4. Triangle Symbol. The warnings set forth in (1) or (2) above shall also include a
11 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
12 outline. Where the sign, label or shelf tag for the product is not printed using the color yellow,
13 the symbol may be printed in black and white. The symbol shall be placed to the left of the text
14 of the warning, in a size no smaller than the height of the word “WARNING”.

15 1.5. Online Warnings. Warnings compliant with this Section 3 shall be posted on
16 websites where Defendant offers the Covered Products for sale to consumers in California. The
17 requirements of this section shall be satisfied if warnings, or a clearly marked hyperlink using the
18 word “WARNING,” appears on the product display page, or by otherwise prominently
19 displaying the warning to the purchaser prior to completing the purchase.

20 1.6. Foreign Languages. Additionally, if a Covered Product’s labeling is provided in a
21 language other than English, the warning will be provided in that language in addition to
22 English.

23 4. MONETARY RELIEF

24 4.1. Within thirty (30) days of the Effective Date, Defendant shall pay the total sum of
25 \$25,000 which includes \$7,000 in civil penalties and \$18,000 in payment of Plaintiff’s costs and
26 reasonable attorney’s fees. The \$7,000 civil penalty shall be apportioned pursuant to Health and
27 Safety Code section 25249.12 (d), with 75%, or \$5,250, paid to the State of California’s Office
28 of Environmental Health Hazard Assessment and 25%, or \$1,750, payable to Plaintiff.

1 Products sold through ninety (90) days after the Effective Date of the Consent Judgment.
2 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
3 by Defendant with respect to any alleged failure to warn about DEHP in Covered Products sold
4 or distributed by Defendant after the Effective Date.

5 5.2. Plaintiff, acting in its individual capacity only, and in consideration of the
6 promises and monetary payments contained herein, hereby releases Defendant Releasees and
7 Released Parties from any alleged claim of failure to provide Proposition 65 warnings for the
8 Covered Products that Defendant has sold or caused to be sold in California up to and including
9 the Effective Date.

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

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

23 5.4. Plaintiff understands and acknowledges that the significance and consequence of
24 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising
25 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
26 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
27 to, chemicals in or from the Covered Products, Plaintiff will not be able to make any claim for
28 those damages against any of the Defendant Releasees or the Released Parties.

1 5.5. Compliance by Defendant with the terms of this Consent Judgment shall
2 constitute compliance with Proposition 65 with respect to exposure to DEHP in the Covered
3 Products as set forth in the Notice and/or the Complaint. If the California Office of
4 Environmental Health Hazard Assessment promulgates regulations affecting the warning
5 provisions set forth in Section 3 herein. Defendant may comply with those regulations without
6 being deemed in breach of this Consent Judgment.

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

8 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
9 referenced in California Health and Safety Code § 25249.7(I).

10 **7. PROVISION OF NOTICE**

11 7.1. When any Party is entitled to receive any notice or writing under this Consent
12 Judgment, the notice or writing shall be sent by first class certified mail with return receipt
13 requested, or by electronic mail, as follows:

14 To Defendant:
15 Greg Sperla, Esq.
16 DLA Piper LLP (US)
17 1415 L Street Suite 270
18 Sacramento, CA 95814-3976
19 Greg.Sperla@us.dlapiper.com

20 To Plaintiff:
21 Vineet Dubey, Esq.
22 Custodio & Dubey LLP
23 445 S. Figueroa St., Ste 2520
24 Los Angeles, CA 90071
25 dubey@cd-lawyers.com

26 7.2. Any party may modify the person and address to whom the notice is to be sent by
27 sending the other Party notice that is transmitted in the manner set forth in section 7.1.

28 **8. COURT APPROVAL**

 8.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and
file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant
shall not oppose. This Consent Judgment shall not become effective until approved and entered
by the Court. If this Consent Judgment is not entered by the Court, it shall be of no force or

1 effect, and shall not be introduced into evidence or otherwise used in any proceeding for any
2 purpose.

3 **9. GOVERNING LAW AND CONSTRUCTION**

4 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
5 California, and shall apply only to Covered Products sold in California.

6 **10. ENTIRE AGREEMENT**

7 10.1. This Consent Judgment contains the sole and entire agreement and understanding
8 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
9 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
10 and therein.

11 10.2. There are no warranties, representations, or other agreements between the Parties
12 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
13 other than those specifically referred to in this Consent Judgment have been made by any Party
14 hereto.

15 10.3. No other agreements not specifically contained or referenced herein, oral or
16 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
17 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
18 any of the Parties hereto only to the extent that they are expressly incorporated herein.

19 10.4. No supplementation, modification, waiver, or termination of this Consent
20 Judgment shall be binding unless executed in writing by the Party to be bound thereby, and
21 approved and ordered by the Court.

22 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
23 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
24 such waiver constitute a continuing waiver.

25 **11. RETENTION OF JURISDICTION**

26 11.1. This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

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

Date: November 2, 2023

By: Hailey Olsen

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Profusion Cosmetics Corp.

Date: 10/31/, 2023

By:  Efan Wang

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