

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Ecological Alliance, LLC and Beauty Plus Global, Inc.**

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Beauty Plus Global, Inc. ("Beauty"), on the other hand, with Ecological and Beauty collectively referred to as the "Parties."

1.2. **General Allegations**

Ecological alleges that Beauty has sold and/or distributed for sale in the State of California Beauty Novel pressed pigment palettes & Tropic makeup palettes containing Titanium dioxide (airborne, unbound particles of respirable size) [TiO₂], 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 TiO₂ under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3. **Product Description**

The products that are covered by this Settlement Agreement are defined as Beauty Novel pressed pigment palettes & Tropic makeup palettes containing TiO₂, that Beauty has sold, offered for sale, or distributed for sale in California or will sell, offer for sale, or distribute for sale in California. All such items shall be referred to herein as the "Products."

1.4. **Notice of Violation**

On January 6, 2023, Ecological served Beauty and Burlington Coat Factory of Texas, 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 Beauty and such public enforcers with notice that Beauty 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 TiO₂. To 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 Beauty's compliance with Proposition 65. Specifically, Beauty denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has sold or distributed for sale 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 Beauty 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 Beauty of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Beauty. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Beauty 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 by the Parties.

2. **INJUNCTIVE RELIEF: WARNING**

2.1. **Warning**

Products shall be accompanied by a warning as described in Section 2.2 below, no later than 180 days after the Effective Date. 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 Beauty places into the stream of commerce within 180 days of the Effective Date, including but not limited to Products in distribution centers, in inventory or at retail locations.

2.2. **Warning Language**

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

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

(1) **WARNING:** This product can expose you to Titanium Dioxide (Airborne, Unbound Particles of Respirable Size), which is known to the State of California to cause cancer. For more info go to www.P65Warnings.ca.gov.

(2) **WARNING:** Cancer – www.P65Warnings.ca.gov.

(b) If Beauty 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 TIO2 should no longer be required, Beauty shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Beauty shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Beauty 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 Ecological. Ecological's counsel shall be responsible for delivering Ecological's and OEHHA's portion of the civil penalty payments made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law as codified at and consistent with California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Settlement Agreement. Under these legal principles, Beauty shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Beauty's attention. Beauty shall pay Ecological's counsel \$7,400 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, Beauty shall make a total payment of Seven Thousand Five Hundred Dollars (\$7,500) 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

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

6. RELEASE OF ALL CLAIMS

6.1. Release of Beauty, 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, Ecological, 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) Beauty, (b) each of Beauty's downstream customers (including but not limited to Burlington Coat Factory of Texas, Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users (collectively, "Downstream Releasees"), and (c) Beauty's and Downstream Releasees' parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

Ecological 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 Beauty and the Releasees arising out of the alleged or actual exposure or failure to warn of exposure to TiO₂ from use of the Products. Ecological 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.

Ecological, 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. Beauty's Release of Ecological

Beauty waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological 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 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 Beauty shall have no further obligations pursuant to this Settlement Agreement.

7. 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 Beauty: Tommy SF Wang
Wang IP Law Group, P.C.
18645 E. Gale Ave., Suite 205
City of Industry, CA 91748

For Ecological: Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Suite 2520
Los Angeles, CA 90013

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.

8. 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.

9. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

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

10. 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.

11. MODIFICATION

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

12. **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.

AGREED TO: Date: March 7, 2023 By:  On Behalf of Ecological Alliance, LLC	AGREED TO: Date: March 7, 2023 By:  On Behalf of Beauty Plus Global, Inc.
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