

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Green Initiative LLC and F21 Opco, LLC

This Settlement Agreement is entered into by and between Green Initiative LLC ("Initiative"), on the one hand, and F21 Opco, LLC doing business as Forever 21 ("F21"), on the other hand, with Initiative and F21 collectively referred to as the "Parties."

#### 1.2. General Allegations

Initiative alleges that F21 manufactured and/or distributed and/or offered for sale in the State of California mini tweezer sets, curlers, and slides that allegedly contain Di(2-ethylhexyl) phthalate [DEHP] and/or Di-n-butyl Phthalate [DBP](collectively, the "Product") 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 DEHP and DBP 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 covered by this Settlement Agreement are defined as mini tweezer sets, curlers, and slides that allegedly contain DEHP and/or DBP that F21 has sold, offered for sale or distributed in California.

#### 1.4. Notice of Violation

On June 5, 2023, Initiative served F21 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 F21 and such public enforcers with notice that F21 was allegedly in violation of California Health & Safety Code

section 25249.6 for failing to warn consumers and customers that the Product 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 F21's compliance with Proposition 65. Specifically, F21 denies the material factual and legal allegations contained in Initiative's Notice and maintains that all products that it has manufactured, distributed or sold in California, including the Product, 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 F21 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 F21 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by F21. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of F21 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**

Product shall be accompanied by a warning as described in Section 2.2 below, no later than the sixty (60) days after the Effective Date unless the Product is reformulated.


"Reformulated Products" are defined as those Products containing DEHP or DBP in


concentrations less than or equal to 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 or DBP content in a solid substance. The warning requirements set forth in Section 2.2 below shall apply only to Product that are not Reformulated Products and are distributed, marketed, sold or shipped for sale in the State of California. The warning requirement shall not apply to Product that are already in the stream of commerce as of the Effective Date or that F21 places into the stream of commerce as of the Effective Date.

## 2.2. Warning Language

Where required, F21 shall provide Proposition 65 warnings as follows:

- (a) F21 may use either 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] / Di-n-butyl Phthalate [DBP], which is known to the State of California to cause cancer and 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) 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/DBP should no longer be required, F21 shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that the Office of Environmental Health Hazard Assessment has promulgated or will promulgate one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, F21 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.

(f) Foreign Languages. Additionally, if a Covered Product's labeling is provided in a language other than English, the warning will be provided in that language in addition to English.

(g) Online Sales. If F21 sells Products via an internet website it controls to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; (c) on one or more web pages displayed to a California purchaser prior to purchase during the checkout process; or (d) via a hyperlink taking the customer to a separate page containing the warning language, provided that the hyperlink appears on the same page as either the product description or product

price are displayed, or appears prior to completion of the sale at checkout.

Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

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

In settlement of all the claims referred to in this Settlement Agreement, F21 shall pay a total of \$500 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 to Initiative and OEHHA their respective portions of the penalty payment to be made under this Settlement Agreement.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Initiative and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, F21 shall reimburse Initiative's counsel for fees and costs, incurred as a result of investigating and bringing this matter to F21's attention. F21 shall pay Initiative's counsel \$16,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. **PAYMENT INFORMATION**

Within ten (10) business days of the Effective Date, F21 shall make a total payment of Sixteen Thousand Five Hundred Dollars (\$16,500) 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 F21, 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 Product, 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) F21, (b) each of F21's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) F21'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 F21 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.

**6.2. F21's Release of Initiative**

F21 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 Product.

**6.3 Deemed Compliance with Proposition 65.**

The Parties agree that compliance by F21 with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP/DBP from use of the Products.

**6.4 Public Benefit.**

It is F21's understanding that the commitments it has agreed to herein, and actions to be taken by it under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of F21 that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to its failure to provide a warning concerning exposure to lead prior to use of the Products it has manufactured, imported, 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 F21 is in material compliance with this Settlement Agreement.

**7. 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 Product, then F21 shall have no further obligations pursuant to this Settlement Agreement.



**8. 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; (ii.) email; or (iii) overnight courier on any party by the other party at the following addresses:

For F21:                    John J. Allen, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
865 South Figueroa Street, Suite 2800  
Los Angeles, CA 90017-2543

For Initiative:            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.

**9. 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.

**10. 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).

**11. 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.

**12. MODIFICATION**

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

**13. 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> Date: <sup>Nov</sup> <del>December</del> <u>30</u> , 2023 By: <u><i>Hailey Olsen</i></u> On Behalf of Green Initiative, LLC	<b>AGREED TO:</b> Date: December <sup>14</sup> <u>  </u> , 2023 By: <u><i>Scott Hampton</i></u> On Behalf of Forever 21 Inc.
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