

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Green Initiative, LLC and American Eagle Outfitters, Inc.**

This Settlement Agreement is entered into by and between Green Initiative, LLC ("Initiative"), on the one hand, and American Eagle Outfitters Inc. ("AEO"), on the other hand, with Initiative and AEO collectively referred to as the "Parties."

1.2. **General Allegations**

Initiative alleges that AEO manufactured and/or distributed and/or offered for sale in the State of California hair essential kits and gel eye pads, both with cases that allegedly contain Di(2-ethylhexyl)phthalate [DEHP] (the "Covered Products") 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 under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. **Product Description**

The Covered Products covered by this Settlement Agreement are defined as hair essential kits and gel eye pads, both with cases that allegedly contain DEHP that AEO has sold, offered for sale or distributed in California.

1.4. **Notice of Violation**

On January 5, 2024, Initiative served AEO, 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 AEO and such public enforcers with notice that AEO was allegedly in violation of California Health & Safety Code

section 25249.6 for failing to warn consumers and customers that the Covered 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 AEO's compliance with Proposition 65. Specifically, AEO denies all 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 Covered Products, have been and are in compliance with Proposition 65 and all other applicable laws and regulations. Nothing in this Settlement Agreement shall be construed as an admission by AEO 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 AEO of any fact, finding, conclusion, issue of law, or violation of law, all such being specifically denied by AEO. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of AEO under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean thirty (30) days after the date this Settlement Agreement is fully executed.

1.7 Compliance Date

For purposes of this Settlement Agreement, the term "Compliance Date" shall mean thirty (30) days following the Effective Date.

2. **INJUNCTIVE RELIEF: WARNING OR REFORMULATION**


2.1. **Warning or Reformulation**


No later than the sixty (60) days after the Compliance Date (“the Compliance Date”), AEO will not offer Covered Products for sale into California unless (1) the Covered Products are accompanied by a warning as described in Section 2.2 below, or (2) contain no more than 1,000 parts per million (“ppm”) DEHP. The requirements set forth in this Section 2 shall apply only to Covered Products that are distributed, marketed, sold or shipped for sale in the State of California, and shall not apply to any Covered Products that are already in the stream of commerce as of the Compliance Date or that AEO places into the stream of commerce as of the Compliance Date.

2.2. **Warning Language**

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

- (a) AEO 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 info go to www.P65Warnings.ca.gov.

(2)  **WARNING:** Cancer and Reproductive Harm – 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 in the Covered Products should no longer be required, AEO shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that the Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, AEO 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 AEO sells Covered 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 Covered Product is displayed and/or described; (b) on the same page as the price for the Covered Product; (c) on one or more web pages displayed to a California purchaser prior to purchase or 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 Covered Products, 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.

(h) The injunctive requirements of Section 2, including both the reformulation and warning requirements, shall not apply to Covered Products that are already in the stream of commerce as of the Compliance Date, which Covered Products are expressly subject to the releases provided in Section 7.1, or that AEO places into the stream of commerce within one hundred twenty (120) days of the Compliance Date. Covered Products that were supplied to third parties by AEO prior to the Compliance Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactures, packaged, and labeled. For the avoidance of doubt, Covered Products in the stream of commerce specifically include, but are not limited to, Covered Products in the process of manufacture. Additionally, the injunctive requirements of Section 2 shall not apply to Covered Products that are distributed or sold outside of the State of California. Nothing in this Settlement Agreement is intended to apply to any of AEO's products other than the Covered Products sold in California, or "distributed for sale in California."

(i) The Parties agree and intend for compliance with the terms of this Section 2 to constitute compliance with Proposition 65 with respect to exposures to DEHP from the Covered Products. The requirements for warnings, set forth 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. The Parties agree that AEO and Releasees (as defined herein) shall be deemed to be in compliance with Proposition 65 and this Agreement as it relates to Covered Products by adhering to this Section 2 or by complying with warning requirements set forth under California Health & Safety Code §25249.5, et seq. and/or adopted by OEHHA applicable to the product and the exposure at issue that are in effect after the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, AEO shall pay a total of one hundred (100) dollars 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 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 Initiative and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles,

AEO shall reimburse Initiative's counsel for fees and costs, incurred as a result of investigating and bringing this matter to AEO's attention. AEO shall pay Initiative's counsel \$9,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

Within fifteen (15) days of executing this Agreement, AEO shall make a total payment of nine thousand one hundred dollars (\$9,100) for the civil penalties and attorneys' fees by check and sent 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. Custodio & Dubey LLP shall be solely responsible for dispersing the payments as required by Sections 3 and 4 of this Agreement.

6. Tax Documentation

AEO agrees to provide a completed IRS 1099 for its payments to, and Initiative agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that AEO cannot issue any settlement payments pursuant to Section 3 and 4 above until after AEO receives the requisite W-9 forms from Initiative's counsel. Initiative will produce the necessary documentation prior to any payment due under this Settlement Agreement, and AEO shall be forgiven for any late payment caused by Initiative's failure to timely produce such documentation.

7. RELEASE OF ALL CLAIMS

7.1. Release of AEO

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 Covered 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) AEO, (b) each of AEO's upstream suppliers and manufacturers, (c) AEO's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (d) AEO's parent companies, affiliates, subsidiaries, and their respective officers, owners, directors, attorneys, representatives, shareholders, agents, employees, and sister and parent entities,(collectively "Releasees").

In consideration of the promises and agreements herein contained, 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, suits, demands, fines, penalties, losses and expenses, including but not exclusively, investigation fees,

and attorneys' fees and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against AEO and the Releasees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP required under Proposition 65 in the Covered Products manufactured, distributed, sold, or offered for sale by AEO, before the Compliance Date. 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.

7.2. Release of Initiative

AEO 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) against 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, with respect to the Covered Products as relates to Proposition 65 only.

8. 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, either as a whole or as specifically applicable to the Covered Products or listed chemicals, is repealed or federally preempted, or if new or different safe harbor levels are established as applicable to the Covered Products, or if Proposition 65 is otherwise rendered inapplicable to the Covered Products or listed chemicals, all by any regulation or statute, or by a decision of the California Supreme Court, or if any of the provisions of this Settlement Agreement are specifically rendered inapplicable or no longer required as to the Covered Products as a result of any such regulatory or statutory change, repeal or preemption or decision of the California Supreme Court, or due to federal laws or regulations, then AEO may provide written notice to Initiative of any asserted change in the law, and it shall have no further obligations pursuant to this Settlement Agreement with respect to the Covered Products, to the extent that the Covered Products are so affected.

9. 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 AEO: Hazel Ocampo, Esq.
 Greenberg Traurig, LLP
 12760 High Bluff Drive, Suite 240
 San Diego, CA 92130

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.

10. 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.

11. 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).

12. 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.

13. ENFORCEMENT

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

14. FORCE MAJEURE


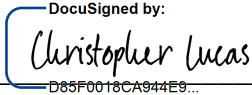
The inability of AEO to comply with any deadline set forth in this Settlement Agreement due to an act of terrorism, fire, earthquake, civil disorder, war, or Act of God that is beyond the reasonable control of AEO shall be grounds to modify the deadlines set forth in this Settlement Agreement.

15. MODIFICATION

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

16. 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:	AGREED TO:
Date: August <u>3</u> , 2024	Date: August 1, 2024
By: <u></u> On Behalf of Green Initiative, LLC	By: <u></u> On Behalf of American Eagle Outfitters, Inc.