

# SETTLEMENT AND RELEASE AGREEMENT

## 1. INTRODUCTION

### 1.1. Initiative for Safer Cosmetics and GS Beauty, LLC

This Settlement Agreement is entered into by and between Initiative for Safer Cosmetics ("IFSC"), on the one hand, and GS Beauty, LLC ("GS Beauty"), on the other hand, with IFSC and GS Beauty collectively referred to as the "Parties."

### 1.2. General Allegations

IFSC alleges that GS Beauty manufactured and distributed and offered for sale in the State of California "GXVE by GWEN STEFANI Can't Stop Staring Clean Lengthening & Lifting Mascara Black" containing Diethanolamine (DEA), 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.* and its implementing regulations ("Proposition 65"). California has identified and listed Diethanolamine 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 mascara cosmetics, including, but not limited to, GXVE by GWEN STEFANI Can't Stop Staring Clean Lengthening & Lifting Mascara Black, that GS Beauty has either manufactured, imported, sold, offered for sale or distributed directly or through distributors in California. All such items shall be referred to herein as the "Products."

### 1.4. Notice of Violation

On 06/11/2024 IFSC served GS Beauty, LLC, Sephora USA, Inc. and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" ("Notice") that provided GS Beauty and such public enforcers with notice that GS 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 Diethanolamine. 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 GS Beauty's compliance with Proposition 65. GS Beauty denies the material factual and legal allegations contained in IFSC's Notice and maintains that all products that it has manufactured for sale and distribution 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 GS 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 GS Beauty of any fact, binding, conclusion, issue of law, or violation of law, such being specifically denied by GS Beauty on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of GS 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 both Parties and those signatures have been exchanged through their respective counsel.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

Commencing within one hundred eighty (180) days of the Effective Date, and continuing thereafter, Products that GS Beauty directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.1, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.2 and 2.3, below. For purposes of this Settlement Agreement, a "DEA Free Reformulated Product" is a Product that is in compliance with the standard set forth in § 2.1, below. The warning requirements set forth in §§ 2.2 and 2.3 shall not apply to any DEA Free Reformulated Product or to any Product manufactured prior to the Effective Date.

### **2.1. DEA Free Reformulation Standards**

To qualify as a "DEA Free Reformulated Product," the Product must meet the following standard: DEA content that is either not detectable (i.e., zero) or below the Reporting Limit (defined herein) when the Product is analyzed pursuant to liquid chromatography/tandem mass spectrometry (LC-MS/MS), inductively coupled mass spectroscopy (ICP-MS) or other method of analysis utilized by the International Organization of Standardization (ISO) for qualitative or quantitative screening of cosmetics and cosmetic raw materials.

### 2.1.1 Reporting Limit



The “Reporting Limit” is 0.230 mg/kg in a sample of a Product tested by an accredited testing laboratory employing LC-MS/MS, ICP-MS or other reliable method of analysis utilized by the ISO for qualitative and quantitative screening of cosmetics and cosmetic raw materials.

### 2.2. Warning Option

Products that are not reformulated and/or do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning requirement shall only be required as to Products that are manufactured, distributed, marketed, imported, sold, shipped for sale or offered for sale to consumers by GS Beauty in the State of California. No Proposition 65 warning shall be required for any Products that are supplied or contracted to be supplied to third parties by GS Beauty prior to 6 months after the Effective Date, and all such Products are hereby deemed to be exempt from Proposition 65 enforcement.

### 2.3. Warning Language

(a) Where required to meet the criteria set forth in Section 2.2, GS Beauty shall display one of the following warning statements on the packaging label of the Products that do not meet the warning exemption standard set forth in Section 2.1 above:

- (1)  **WARNING:** This product can expose you to chemicals including Diethanolamine, which is [are] known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)
- (2)  **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

GS Beauty may use “cancer and” in the warning at its option. GS Beauty may include the names of additional chemicals in the warning if they are present in the Products at a level that GS Beauty reasonably believes would require a Proposition 65 warning.

(b) 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. GS Beauty shall be deemed to be in compliance with the warning requirements of this Settlement Agreement by either adhering to this Section 2.3 or by complying with the Proposition 65 warning requirements adopted by the State of California Office of Environmental Health Hazard Assessment (“OEHHA”) as of or after the Effective Date.

(c) If Proposition 65 warnings for Diethanolamine should no longer be required, GS Beauty shall have no further obligations pursuant to this Settlement Agreement.

(d) INTERNET - Product that is sold by GS Beauty, LLC on the Internet on websites or apps under GS Beauty, LLC’s sole control to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product.

(e) FOREIGN LANGUAGE – If the Product has consumer information in a foreign language, then the package must also contain the WARNING in the foreign language.

The Parties agree that GS Beauty, LLC shall be deemed in compliance with Proposition 65 and this Settlement Agreement by either adhering to Section 2 of this Settlement Agreement or by complying with warning regulations adopted by the State of California’s OEHHA applicable to the Products and the exposures at issue.

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

In full satisfaction of all potential civil penalties and attorney’s fees, costs and any other expenses incurred by IFSC or its counsel. GS Beauty shall pay the total Settlement amount of Twenty Five Thousand Dollars (\$25,000) (The “Settlement Amount”) as set forth below.

#### **3.1 Civil Penalties to Health & Safety Code 25249.7 (B):**

Two Thousand Dollars of the Settlement Amount shall be considered a “civil penalty” pursuant to California Health and Safety Code. GS Beauty shall issue two separate checks within ten (10) days of the Effective Date for a total amount of Two Thousand Dollars (\$2,000) as follows, and all payments shall be delivered to the addresses listed below.

3.1 (a) One Check made payable to the State of California’s Office of Environmental Health Hazzard Assessment (“OEHHA”) in the amount of One Thousand Five Hundred Dollars (\$1,500), representing 75% of the total civil penalty; and

3.1 (b) One check payable to “Initiative for Safer Cosmetics” in the amount of Five Hundred Dollars (\$500), representing 25% of the total civil penalty.

#### **3.2 Attorney’s Fees and Costs:**

Twenty Three Thousand Dollars (\$23,000) of the total Settlement Amount shall be paid to Cliffwood Law Firm, PC within ten (10) days of the Effective Date, as IFSC’s attorneys, for reasonable investigation fees, and costs, attorney’s fees, and any other cost incurred as a result of investigating and bringing this matter to GS Beauty’s attention.

### **4. PAYMENT PROCEDURES**

4.1 All Payments owed to OEHHA, pursuant to section 3.1(a) shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties NOV #2024-02341”) at the following address:

For United States Postal Service Delivery:

Attn: Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010

Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 "I" Street  
Sacramento, CA 95812-4010

4.2 All Payments owed to IFSC, pursuant to Section 3.1(b) shall be delivered to:

IFSC  
% Cliffwood Law Firm, PC  
Attn: Elham Shabatian  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

4.3 All Payments owed to Cliffwood Law Firm, PC pursuant to Section 4.3, shall be delivered to:

Cliffwood Law firm, PC  
Attn: Elham Shabatian  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

#### **4.4 PROOF OF PAYMENT**

A copy of each check payable to OEHHA, shall be mailed or e-mailed to Cliffwood Law firm, PC, simultaneous with payment to Cliffwood Law Firm, PC at the address set forth above, as proof of payment to OEHHA.

Each Party agrees to be responsible for determining and meeting its own tax obligations. IFSC agrees to provide IRS W-9 forms for each payee under this Settlement Agreement within 2 two of the Effective Date of this Agreement. GS Beauty, LLC has the right, but not the obligation, at its sole determination to issue completed IRS 1099s for any payments made hereunder.

### **5. RELEASE OF ALL CLAIMS**

#### **5.1. Release of GS 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, IFSC, on behalf of itself and its respective past, present and future owners, principals, shareholders, officers, directors, employees, parents, subsidiaries, managers, members, insurers, agents, representatives, attorneys, successors and/or

assignees and anyone acting by or through it on its behalf (collectively, "Releasers"), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and fully 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) GS Beauty (b) each of GS Beauty's downstream distributors in the stream of commerce (including but not limited to Sephora USA, Inc. and any other upstream or downstream entities in the distribution chain for the Products, including, but not limited to, manufacturers, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, third-party re-sellers, and users, (c) GS Beauty's parent companies, corporate affiliates, subsidiaries, affiliates, doing business as entities ("DBAs"), successor companies, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and (d) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors and assigns of any of the entities identified in subsection (a) and (c), above (collectively "Releasees"). IFSC also, 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 GS Beauty and the Releasees.

## **5.2 GS Beauty's Release of IFSC**

GS Beauty, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against IFSC, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by IFSC and/or its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

## **5.3 California Civil Code § 1542.**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. IFSC on behalf of itself only, on one hand, and GS Beauty, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action thereof. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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.

IFSC and GS Beauty each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

## **6. 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 GS 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) electronic mail; or (ii) overnight courier on any party by the other party at the following addresses:

### **For GS Beauty, LLC:**

Jonathan C. Sandler, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
2049 Century Park E Ste 3550  
Los Angeles, CA 90067

### **For Initiative for Safer Cosmetics:**

Elham Shabatian Esq.  
Cliffwood Law Firm, PC  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

Any party, from time to time, may specify in writing to the other party a change of address or electronic mail 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, pdf, Docusign 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. 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

## 10. MODIFICATION

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

## 11. 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.

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

IFSC agrees to comply with the reporting requirements referenced in Health & Safety Code Section 25249.7(f).

## 13. SEVERABILITY AND MERGER

If subsequent to the execution of this Settlement Agreement any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.**

Agreed to:

Date: November 18, 2024

Signature: Seth Lichtenstein

Name: Seth Lichtenstein

Title: Authorized Signatory, GS  
Beauty, LLC

Date: November \_\_\_\_, 2024  
11/21/2024

Signature: 

Name: DEKI YANGZOM, DIRECTOR


Title:



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