

CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT

This Confidential Settlement and Release Agreement (the “Agreement”) is made between Smashbox Beauty Cosmetics, Inc., an affiliate of The Estée Lauder Companies, Inc. (“the Company”), on the one hand, and Andrea Sachs, Noah Cruz, David Gonzales, Tim Shinkle, and Karla Marie Wilson (collectively, “Plaintiffs”), on the other hand, who are collectively referred to as “the Parties.”

This Agreement is entered into with respect to the following facts:

WHEREAS, Plaintiffs each provided production services to the Company on or around March 13, 2020;

WHEREAS, on March 29, 2021, Plaintiffs, under the named plaintiff Andrea Sachs, filed a wage and hour class action complaint against the Company, Estee Lauder Inc [sic], and The Estee Lauder Companies, Inc [sic] in the Superior Court for the State of California, County of Los Angeles, Case Number: 21STCV11928 (the “Action”) alleging claims for (1) continuing wages; (2) failure to provide compliant pay stubs; (3) failure to pay overtime; (4) failure to pay minimum wages; (5) failure to provide meal breaks; (6) failure to provide rest breaks; (7) unfair competition; (8) failure to provide employment records under Cal. Labor Code section 226(b); and (9) failure to provide employment records under Cal. Labor Code section 1198.5, and an amended complaint on June 8, 2021 adding a claim for penalties under the Private Attorneys General Act of 2004, Cal. Labor Code sections 2698 et seq. (“PAGA”) (the “Complaint”);

WHEREAS, the Company disputes and denies the claims as asserted in the Complaint and denies that it has any liability to Plaintiff or engaged in any willful or wrongful conduct whatsoever with respect to Plaintiffs, such that a *bona fide* dispute exists between the Parties;

WHEREAS, regardless, the Parties now desire to fully settle and finally resolve, on an individual basis as opposed to representative class claims, any and all claims Plaintiffs have, could have had, or may have with respect to the work they provided to the Company, including but not limited to the above-referenced claims in the Complaint, without the further expenditure of time or the expense of litigation and a formal trial; and

WHEREAS, Plaintiffs understand that they are waiving legal rights or claims by signing this Agreement and further acknowledge that they are voluntarily entering into this Agreement with a full and complete understanding of its terms and with the full intent to be bound thereby.

THEREFORE, in consideration of the promises, covenants, representations and warranties contained herein, and for good and valuable consideration given hereunder, the adequacy of which is hereby acknowledged by the signatories to this Agreement, the Parties hereby agree as follows:

TERMS, COVENANTS, AND CONDITIONS

1. Consideration. In exchange for Plaintiffs’ full execution of this Agreement and the releases and promises contained herein, the Company shall pay the total gross sum of One Hundred

and Fifty Thousand Dollars and Zero Cents (\$150,000.00) ("Settlement Payment"). The Settlement Payment shall be allocated as follows:

- 1.1 Wages. five Hundred Dollars (\$500.00) of the Settlement Payment shall be allocated as wages and shall be subject to all payroll deductions and withholdings as required by law. This portion of the Settlement Payment will be divided equally between Plaintiffs (\$100.00 each), made payable to each Plaintiff, and reported on an IRS Form W-2. Plaintiffs shall each provide a properly-executed IRS Form W-4 to Defendants prior to issuance of payment.
- 1.2 Non-Wages. \$149,500 Dollars (\$149,500.00) of the Settlement Payment shall be allocated as alleged statutory penalties, interest and attorneys' fees. This portion of the Settlement Payment shall be made payable to HARRIS & RUBLE Client Trust Account and reported on an IRS Form 1099. Plaintiffs and Plaintiffs' counsel shall each provide a properly-executed IRS Form W-9 to Defendants prior to issuance of payment.

2. Timing and Delivery of Payments. If Plaintiffs do not exercise their right to revoke this Agreement pursuant to Section 12 below, the Company shall make the Settlement Payment set forth in Section 1 via a bank ACH transfer to Plaintiffs and Plaintiffs' counsel within thirty (30) days following the Company's receipt of each of the following: (1) each Plaintiff's full execution of this Agreement; (2) bank ACH information for each Plaintiff and Plaintiffs' counsel; and (3) properly executed W-4 and W-9 IRS tax forms, as applicable from each Plaintiff and a W-9 IRS tax form from Plaintiffs' counsel.

3. Withdrawal and Request for Dismissal of the Class Complaint. No later than March 8, 2022, as set forth by the Court, Plaintiff Andrea Sachs shall file a Motion to Dismiss the class and PAGA claims contained in the Complaint in accordance with CRC 3.770.

4. No Admission of Liability. Plaintiffs specifically acknowledge that the Company is not required by its policies, its practices or otherwise to enter into this Agreement or provide the consideration set forth in Section 1 above and that the payment described in this Agreement exceeds that to which Plaintiffs would have been entitled had they not signed the Agreement. Plaintiffs specifically acknowledge that this Agreement does not constitute an admission of any wrongdoing or liability on the part of the Company with respect to any matter whatsoever. The Company denies any liability with respect to the matters herein and this agreement shall not be construed as an admission of liability.

5. Tax Treatment and Indemnity. The Parties (i) make no representation or warranty regarding any tax issues as a result of this Agreement and the Settlement Payment set forth in Section 1 above; (ii) agree that they are not relying on representations made by any other Party or any other Party's counsel regarding any applicable tax laws; (iii) agree that this Agreement will remain effective regardless of the application of current tax laws or any changes in such tax laws; and (iv) agree that Plaintiffs shall be solely liable for and pay any and all additional taxes, to the extent applicable. Plaintiffs agree not to seek or make any claim or claims against the Company for contribution, indemnity, compensation, recompense, damages, costs, or penalties if a determination is made by the

taxing authorities that the treatment accorded to Plaintiffs, under the terms of this Agreement, is inappropriate or unacceptable to the taxing authorities. Plaintiffs agree that if the tax treatment accorded to Plaintiffs is different than the treatment allowed by the taxing authorities, Plaintiffs shall be financially responsible for any costs, interest, assessments, penalties, damages, attorneys' fees or other losses.

6. Release and Waiver of Claims. In consideration of the terms and provisions of this Agreement, Plaintiffs, on their own behalf and on behalf of anyone acting through them or on their behalf, irrevocably and unconditionally release, acquit and forever discharge the Company and its current and former parents, subsidiaries, affiliated entities, divisions, predecessors, insurers, officers, directors, managers, employees, attorneys, agents and representatives, including, but not limited to, Estée Lauder Inc., The Estée Lauder Companies Inc. and their respective divisions, parent companies, subsidiaries, related companies, affiliates, insurers and reinsurers, predecessors, successors, assigns, agents, shareholders, employees, officers, directors, trustees, attorneys, representatives, and administrators, and their current and former employees, both individually and in their business capacities (collectively referred to along with the Company throughout this Agreement as "Releasees"), from any and all claims, debts, liabilities, demands, damages, obligations, actions and causes of actions, of any nature whatsoever, whether known or unknown, or suspected or unsuspected, from the beginning of time until this Agreement is executed by the Parties, pertaining to the following: (a) the claims asserted, or which could have been asserted, in the Complaint; (b) all claims for failure to pay wages or overtime premiums, failure to pay vacation wages/personal paid time off, failure to timely pay wages, failure to provide accurate itemized wage statements, failure to maintain accurate records, failure to provide meal periods and rest breaks, failure to post notice of paydays and time and place of payment, misclassification, and any claim for violations of the California Labor Code, California's Business and Professions Code § 17200 et seq., and the applicable California Industrial Welfare Commission Wage Order; (c) all claims for violation of any federal, state or local statute, ordinance or regulation relating to employment benefits, leaves of absence, or discrimination or harassment or retaliation in employment, specifically including, without limitation, the California Fair Employment and Housing Act, the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act, the Age Discrimination in Employment Act, the Older Worker's Benefit Protection Act, the National Labor Relations Act, and further including any regulation of any administrative agency or governmental authority relating to employment benefits or discrimination or harassment or retaliation in employment; (d) all claims for breach of oral, implied or written contract; (e) all claims for wrongful termination of employment; (f) all claims for breach of the implied covenant of good faith and fair dealing; (g) all claims for negligent or intentional infliction of mental or emotional distress; (h) any non-statutory tort or contractual claim; (i) all claims for conversion (constructive or actual); (j) all claims for wages, penalties and/or benefits; and (k) all claims for attorneys' fees and costs. No other claim of any sort is reserved, except those referenced in Section 8 below.

7. Release of Unknown Claims. Plaintiffs each understand that the General Release set forth in Section 5 above extends to all of the aforementioned claims and potential claims to the fullest extent permissible by law, whether now known or unknown, suspected or unsuspected, and that this constitutes an essential term of this Agreement. Plaintiffs expressly waive any right or benefit available

to them in any capacity under the provisions of 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.

8. Excluded Claims. Notwithstanding the broad scope of the above releases, this Agreement is not intended to bar any claims that, as a matter of law, whether by statute or otherwise, may not be waived, such as claims for workers' compensation benefits or unemployment insurance benefits. Nothing in this Agreement is intended to limit Plaintiffs' ability to participate in any investigation or proceeding conducted by the Equal Employment Opportunity Commission or any similar federal, state, or local commission or agency; provided, however, that Plaintiffs expressly release and waive their right to recovery of any type from the Company, including damages, reinstatement or any other benefit, in any administrative or court action, whether federal, state, or local, and whether brought by Plaintiffs or on their behalf, related in any way to the matters released herein.

9. No Claims, Legal Actions or Arbitrations Filed. Plaintiffs warrant and represent that, other than the Complaint and the PAGA notice filed by Andrea Sachs, they have not filed any complaints, lawsuits, charges and/or other claims of any nature whatsoever against the Company with any court or government agency or entity, including but not limited to complaints, lawsuits, charges and/or other claims based upon or arising out of or in any way related to Plaintiffs' services provided to the Company, or any acts or events which occurred prior to their execution of this Agreement. Plaintiffs further warrant and represent that they will not, individually or as a member of a group of employees, file any complaints, lawsuits, charges and/or other claims whatsoever against the Company or any Releasees with any court or government agency or entity, including but not limited to complaints, lawsuits, charges and/or other claims based upon or arising out of or in any way connected with the claims released herein. If any of the Plaintiffs, without their prior knowledge and consent, are made a member of a class in any such proceeding, whether in court or in arbitration, Plaintiffs will opt out of the class at the first opportunity afforded to them after learning of their inclusion. In this regard, Plaintiffs agree that they will execute, without objection or delay, an "opt-out" form presented to them by the court or the arbitral forum in which such proceeding is pending or by counsel for the Company. The Parties agree that this Agreement and the consideration exchanged in this Agreement are contingent upon these promises.

10. Confidentiality. Plaintiffs agrees that the existence, facts, terms, or provisions of or information concerning this Agreement shall remain strictly confidential and shall not be disclosed to any person, firm, corporation, or other entity with the sole and exclusive exceptions of (a) any governmental agency or court as required by law; (b) Plaintiffs' attorneys as required only for the rendition of such professional services, so long as any such attorneys are informed of this confidentiality agreement and agree to abide by its terms; (c) Plaintiffs' financial advisor(s) as required for the rendition of such professional services, so long as any such financial advisor is informed of this

confidentiality agreement and agrees to abide by its terms; or (d) spouses of any Plaintiff, so long as they are informed of this confidentiality agreement and agrees to abide by its terms. Plaintiffs agree and acknowledge that if and when asked by other persons about the Complaint, they shall only state that “the matter has been resolved,” and “I can’t talk about it,” unless otherwise required by law.

11. Non-Disparagement. Plaintiffs agree that they will not, directly or indirectly, in any manner, disparage the Company, its officers, directors, shareholders, employees or products in any manner, forum or form, whether written, oral, electronic or otherwise. As used in this paragraph, the term “disparage” includes, without limitation, comments or statements to the press or any individual or entity which could adversely affect the Company’s business or the reputation or interests of any of the Releasees, as well as any statements or postings on any social networking or other internet website (including, but not limited to, Twitter, Facebook, LinkedIn, Snapchat and Instagram), or any statements on any reality or other television, video, film or other program of any kind which could adversely affect the Company’s business or reputations or interests of any of the Releasees; provided, however, that nothing in this Agreement prevents Plaintiffs from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination, acts of retaliation against a person for reporting or opposing harassment or discrimination in the workplace, or any other conduct that Plaintiffs have reason to believe is unlawful.

12. Older Workers Benefit Protection Act. The Parties intend for this Agreement to comply with the Older Workers’ Benefit Protection Act of 1990 (29 U.S.C. Section 626), as amended. Accordingly, Plaintiffs each acknowledge and represent as follows: (a) Plaintiffs acknowledge and understand that they are each waiving and releasing any rights they may have under the Age Discrimination in Employment Act of 1967 (“ADEA”) and that their waiver and release is knowing and voluntary; (b) Plaintiffs and the Company agree that this waiver and release do not apply to any rights or claims that may arise under the ADEA after the effective date of this Agreement; (c) Plaintiffs and the Company also understand that nothing in this Agreement shall restrict Plaintiffs’ right under the ADEA to challenge the validity of this Agreement in a court of law; (d) Plaintiffs acknowledge that the consideration given for this waiver and release is in addition to anything of value to which they were already entitled; (e) Plaintiffs further acknowledge that they have been advised by this writing that they should consult with an attorney prior to executing this Agreement; (f) Plaintiffs have been given a period of at least twenty-one (21) days within which to consider this Agreement, although Plaintiffs understand and acknowledge that, at each of their option alone, this Agreement may be executed prior to the expiration of the twenty-one (21) day period; and (g) Plaintiffs have been informed by the Company that they may revoke this Agreement during a period of seven (7) days after signing it by providing written notice of such revocation to Natalie Alameddine at Blank Rome, 2029 Century Park East, 6th Floor, Los Angeles, CA 90067 which is e-mailed to natalie.alameddine@blankrome.com or post-marked prior to the end of the seven (7) day revocation period. The Agreement shall not become effective or enforceable until the revocation period has expired without any of the Plaintiffs having exercised this right of revocation.

13. Fees and Costs. Except as specifically provided herein, the Parties shall each bear their

own attorneys' fees and costs associated with the Complaint and the negotiation and execution of this Agreement.

14. Disputes. In the event of any breach of the Agreement, either by Plaintiffs or the Company, whichever is the non-breaching party, may only institute an action for specific enforcement of the terms of the Agreement and seek damages resulting from that breach, with a reservation of jurisdiction pursuant to Code of Civil Procedure §664.6. Plaintiffs may not institute before any court any proceeding based on the claims related to their services with the Company because of a breach of the Agreement by the Company. The prevailing party in any such action shall be entitled to an award of attorney's fees and costs in addition to any other legal or equitable relief.

15. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior agreements or understandings with respect to the subject matter hereof. The Parties acknowledge that in signing this Agreement, they do not rely upon and have not relied upon any representation or statement made by any of the parties or their agents with respect to the subject matter, basis or effect of this Agreement, other than those specifically stated in this written Agreement.

16. Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties.

17. Severability. The Parties agree that if any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid or unenforceable, the remaining provisions, or the application of such provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected. However, if the General Release contained in Section 6 of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, Plaintiffs agree, promptly upon the request of the Company, to execute a new release that is valid and enforceable. In the absence of a valid, enforceable release, this Agreement shall be null and void.

18. Knowing and Voluntary Agreement. Plaintiffs, by signing this Agreement, represent and warrant that they each have carefully read and fully understand this Agreement and its final and binding effect, that they has been afforded sufficient opportunity to review this Agreement with advisors of their choice, that they are fully competent to manage their own business affairs and to enter into this Agreement, and that they have signed this Agreement knowingly, freely, and voluntarily.

19. Later Discovery of Facts. Plaintiffs acknowledge that they may hereafter discover facts different from, or in addition to, those which they now know or believe to be true with respect to the releases herein made and agree that every such release made by them is now and will remain effective notwithstanding the existence or the discovery of such additional facts.

20. Non-Assignment of Claims. Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person, firm, or corporation whatsoever, any of

the matters released in this Agreement.

21. Execution in Counterparts; Electronic Signature. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and said counterparts shall constitute but one of the same instrument which may be sufficiently evidenced by one counterpart signed by the party who is to be charged with it. The Parties agree that the counterparts of this Agreement may be executed and delivered by email PDF or other electronic transmission or signature, including via DocuSign, Inc.®, which shall be given the same force and effect as a written signature.

22. Integration. The Parties agree that this Agreement contains their entire agreement and supersedes all other agreements and understandings, whether written or oral, covering the subject matter hereof. The Parties warrant that there were no representations, agreements, arrangements or understandings, whether written or oral, between them relating to the subject matter contained in this Agreement which are not fully expressed herein.

23. Modifications. No modification, amendment, or waiver of any of the provisions contained in this Agreement, or any future representations, promises, or conditions in connection with the subject matter of this Agreement, shall be binding upon any party to this Agreement unless made in writing and signed by such party or by a duly authorized officer, partner, or agent of such party.

24. California Law. This Agreement is made and entered into in the State of California and the Parties agree that it shall in all respects be interpreted, enforced and governed under the laws of the State of California.

IN WITNESS WHEREOF, THE PARTIES, ACKNOWLEDGING THAT THEY ARE ACTING KNOWINGLY, VOLUNTARILY AND OF THEIR OWN FREE WILL, HAVE CAUSED THE EXECUTION OF THIS AGREEMENT AS OF THIS DAY AND YEAR WRITTEN BELOW.

Andrea Sachs

DATE: _____, 2022

Noah Cruz

DATE: _____, 2022

David Gonzales

DATE: _____, 2022

Tim Shinkle

DATE: _____, 2022

Karla Marie Wilson

DATE: _____, 2022

Title:
Smashbox Beauty Cosmetics, Inc.

DATE: _____, 2022