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17 Attorneys for Plaintiff  
18 Environmental Health Advocates, Inc.

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **IN AND FOR THE COUNTY OF ALAMEDA**

21 ENVIRONMENTAL HEALTH  
22 ADVOCATES, INC.,

23 Plaintiff,

24 v.

25 ULBP INC., a California corporation,  
26 UPROOTED, INC., a California corporation,  
27 UPROOTED LM LLC, a California limited  
28 liability company, FLUIDS  
MANUFACTURING INC., a California  
corporation, BANANA LLC, a California  
limited liability company, and DOES 1 through  
100, inclusive,

Defendants.

Case No. RG21097909

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.  
4 (“EHA” or “Plaintiff”) and ULBP Inc., Uprooted, Inc., Uprooted LM LLC, and Banana LLC (together,  
5 “Urbn Leaf” or “Defendants”) with EHA and Urbn Leaf each individually referred to as a “Party” and  
6 collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

8 EHA is a corporation organized in the state of California, acting in the interest of the general  
9 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by  
10 reducing or eliminating hazardous substances contained in consumer products.

11 **1.3 Defendants**

12 Urbn Leaf employs ten or more individuals and is a “person in the course of doing business”  
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
14 section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 EHA alleges that Urbn Leaf exposes consumers to cannabis (marijuana) smoke and/or Δ<sup>9</sup>-  
17 Tetrahydrocannabinol (also known as Delta-9-Tetrahydrocannabinol or “THC”) by manufacturing,  
18 importing, selling, and distributing for sale marijuana and related products on the website  
19 <https://urbnleaf.com> without first providing a clear and reasonable Proposition 65 warning to  
20 consumers before purchase. EHA further alleges that Urbn Leaf intends that customers use its  
21 marijuana and related products in a reasonably foreseeable manner, leading to exposure to cannabis  
22 (marijuana) smoke and THC.

23 Urbn Leaf denies that online warnings are required under Proposition 65 for any actual or  
24 alleged exposures to cannabis (marijuana) smoke and/or THC through the reasonably foreseeable use  
25 of Covered Products, and maintains that it has complied with all applicable federal and state laws  
26 including, but not limited to, Proposition 65.

27 ///

28 ///

1           **1.5 Notices of Violation**

2           On or around February 11, 2021, EHA served Urbn Leaf, Fluids Manufacturing Inc., the  
3 California Attorney General, and all other required public enforcement agencies with a Notice of  
4 Violation of Proposition 65 (“Initial Notice”). Initial Notice alleged that Urbn Leaf violated Proposition  
5 65 by failing to sufficiently warn consumers in California of the health hazards associated with  
6 exposures to THC through the reasonably foreseeable use of marijuana and related products sold on its  
7 website.

8           On or around February 26, 2021, EHA served Urbn Leaf, Fluids Manufacturing Inc., the  
9 California Attorney General, and all other required public enforcement agencies with a Notice of  
10 Violation of Proposition 65 (“First Amended Notice”). First Amended Notice included an additional  
11 product (Blue Dream – 1g) and chemical (Cannabis [Marijuana] Smoke).

12           On or around October 29, 2021, EHA served Urbn Leaf, Fluids Manufacturing Inc., the  
13 California Attorney General, and all other required public enforcement agencies with a Notice of  
14 Violation of Proposition 65 (“Second Amended Notice”). Second Amended Notice added the  
15 distributor/retailer Banana LLC.

16           No public enforcer has commenced or is otherwise prosecuting an action to enforce the  
17 violations alleged in the Initial Notice, First Amended Notice, or Second Amended Notice  
18 (hereinafter, the “Notices”).

19           **1.6 “Covered Products” Description**

20           As used in this Consent Judgment, “Covered Products” is defined as marijuana and related  
21 products including, but not limited to, flower, edibles, vape pens, concentrates, pre-rolls, hash, rosins,  
22 shatters, live resins, crystals, wax, kief, topicals, and paraphernalia (e.g., water bongs, smoking pipes,  
23 rolling papers, blunts, and vaporizers) that are manufactured, sold, imported, shipped, delivered, or  
24 distributed for sale to consumers in California by Urbn Leaf and Releasees (as defined in Section 4.1)  
25 via the website <https://urbnleaf.com>.

26           **1.7 Complaint**

27           On May 4, 2021, EHA filed a Complaint against Urbn Leaf for the alleged violations of  
28 Proposition 65 that are the subject of the Notices (“Complaint”).

1           **1.8     No Admission**

2           Urbn Leaf denies the material, factual, and legal allegations of the Notices and Complaint and  
3 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in  
4 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing  
5 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,  
6 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
7 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
8 not, however, diminish or otherwise affect Urbn Leaf’s obligations, responsibilities, and duties under  
9 this Consent Judgment.

10           **1.9     Jurisdiction**

11           For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
12 Court has jurisdiction over Urbn Leaf as to the allegations in the Complaint, that venue is proper in the  
13 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
14 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

15           **1.10    Effective Date**

16           For purposes of this Consent Judgment, the term “Effective Date” means the date on which the  
17 Court grants the motion for approval of this Consent Judgment.

18           **2.     INJUNCTIVE RELIEF**

19           **2.1     Clear and Reasonable Online Warnings**

20           Commencing thirty (30) days after the Effective Date, and continuing thereafter, Urbn Leaf  
21 agrees to engage in online sales into California of Covered Products only with a clear and reasonable  
22 warning as provided for in Section 2.2.

23           **2.2     General Warning Requirements**

24           For purposes of this Consent Judgment, a clear and reasonable warning shall consist of one of  
25 the alternate forms of warning shown below, displayed with such conspicuousness, as compared with  
26 other words, statements, designs, or devices as to render it likely to be seen, read, and understood by  
27 an ordinary individual under customary conditions prior to completing an online purchase. The  
28 warning shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle

1 with a bold black outline. The symbol shall be placed to the left of the text of the warning, in a size no  
2 smaller than the height of the word “WARNING”, as follows:

3  
4 **⚠WARNING:** This product can expose you to chemicals  
5 including cannabis (marijuana) smoke and/or THC, which  
6 are known to the State of California to cause cancer and  
7 birth defects or other reproductive harm. For more  
8 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

9 Or (alternate form of warning):

10 **⚠WARNING:** Cancer and Reproductive Harm –  
11 [www.P65Warnings.cs.gov](http://www.P65Warnings.cs.gov)

12 For Covered Products sold online to customers located in California, the warning requirements  
13 of this Section shall be satisfied if the foregoing warning appears: (a) on the same web page on which  
14 a Covered Product is displayed and/or described; (b) on the same page as the price for the Covered  
15 Product; or (c) on one or more web pages displayed to a purchaser prior to completing an online  
16 purchase. Alternatively, a symbol consisting of a black exclamation point in a yellow or white  
17 equilateral triangle may appear adjacent to or immediately following the display, description, price, or  
18 checkout listing of the Covered Product, if the warning statement appears elsewhere on the same web  
19 page in a manner that clearly associates it with the product(s) to which the warning applies.

### 20 **2.3 Grace Period for Existing Inventory of Covered Products**

21 The injunctive requirements of Section 2 shall not apply to Covered Products that are already  
22 in the stream of commerce as of the Effective Date, which Covered Products are expressly subject to  
23 the releases provided in Section 4.

## 24 **3. MONETARY SETTLEMENT TERMS**

### 25 **3.1 Settlement Amount**

26 Urbn Leaf shall pay seventy-five thousand dollars (\$75,000.00) in settlement and total  
27 satisfaction of all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This  
28 includes civil penalties in the amount of seven thousand dollars (\$7,000.00) pursuant to Health and

1 Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of sixty-eight thousand  
2 dollars (\$68,000.00) pursuant to Code of Civil Procedure section 1021.5.

3 **3.2 Civil Penalty**

4 The portion of the settlement attributable to civil penalties shall be allocated according to Health  
5 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty  
6 (\$5,250.00) paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"),  
7 and the remaining twenty-five percent (25%) of the penalty (\$1,750.00) paid to EHA individually.

8 All payments owed to EHA shall be delivered to the following address:

9 Environmental Health Advocates  
10 225 Broadway, Suite 1900  
11 San Diego, CA 92101

12 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA  
(Memo Line "Prop 65 Penalties") at the following addresses:

13 For United States Postal Service Delivery:

14 Mike Gyurics  
15 Fiscal Operations Branch Chief  
16 Office of Environmental Health Hazard Assessment  
17 P.O. Box 4010  
18 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics  
21 Fiscal Operations Branch Chief  
22 Office of Environmental Health Hazard Assessment  
23 1001 I Street  
24 Sacramento, CA 95814

25 Urbn Leaf agrees to provide EHA's counsel with a copy of the check payable to OEHHA,  
26 simultaneous with its penalty payments to EHA.

27 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.

28 Relevant information is set out below:

- "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);

and

- 1 • “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA  
2 95814.

3 **3.3 Attorneys’ Fees and Costs**

4 The portion of the settlement attributable to attorney’s fees and costs shall be paid to EHA’s  
5 counsel, who are entitled to attorney’s fees and costs incurred by it in this action, including but not  
6 limited to investigating potential violations, bringing this matter to Urbn Leaf’s attention, as well as  
7 litigating and negotiating a settlement in the public interest.

8 Urbn Leaf shall provide their payment to EHA’s counsel in two checks, divided equally,  
9 payable to Glick Law Group, PC (\$34,000.00) and Nicholas & Tomasevic, LLP (\$34,000.00)  
10 respectively. The addresses for these two entities are:

11  
12 Noam Glick  
13 Glick Law Group  
14 225 Broadway, 19<sup>th</sup> Floor  
15 San Diego, CA 92101

16  
17 Craig Nicholas  
18 Nicholas & Tomasevic, LLP  
19 225 Broadway, 19<sup>th</sup> Floor  
20 San Diego, CA 92101

21 **3.4 Timing**

22 The above-mentioned checks will be issued within fourteen (14) days of the Effective Date.

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 EHA’s Public Release of Proposition 65 Claims**

25 For any claim or violation arising under Proposition 65 alleging a failure to warn about  
26 exposures to cannabis (marijuana) smoke and/or THC from the reasonably foreseeable use of Covered  
27 Products manufactured, imported, sold, or distributed by Urbn Leaf prior to the Effective Date, EHA,  
28 acting for the general public, releases Urbn Leaf of any and all liability arising under Proposition 65.  
This includes Urbn Leaf’s owners, parents, subsidiaries, affiliated entities under common ownerships,  
its directors, officers, agents, employees, attorneys, and each entity to whom Urbn Leaf directly or  
indirectly distributes or sells Covered Products, including but not limited to downstream distributors,

1 wholesales, customers, retailers, franchisees, cooperative members and licensees, (collectively, the  
2 “Releasees”). Releasees include defendants, their parents, and all subsidiaries and affiliates thereof and  
3 their respective employees, agents, and assigns that sell Covered Products. Compliance with the terms  
4 of this Consent Judgment constitutes compliance with Proposition 65 with respect to the alleged or  
5 actual failure to warn about exposures to cannabis (marijuana) smoke and/or THC from the reasonably  
6 foreseeable use of Covered Products manufactured, imported, sold, or distributed by Urbn Leaf after  
7 the Effective Date. This Consent Judgment is a full, final, and binding resolution of all claims that were  
8 or could have been asserted against Urbn Leaf and/or Releasees for failure to warn of alleged exposure  
9 to cannabis (marijuana) smoke and/or THC through the reasonably foreseeable use of Covered  
10 Products.  
11

#### 12 **4.2 EHA’s Individual Release of Claims**

13 EHA, in its individual capacity, also provides a release to Urbn Leaf and/or Releasees, which  
14 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,  
15 obligations, costs, expenses, attorney’s fees, damages, losses, claims, liabilities, and demands of every  
16 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of  
17 alleged or actual exposures to cannabis (marijuana) smoke and/or THC through the reasonably  
18 foreseeable use of Covered Products manufactured, imported, sold, or distributed by Urbn Leaf before  
19 the Effective Date.  
20

#### 21 **4.3 Urbn Leaf’s Release of EHA**

22 Urbn Leaf on its own behalf, and on behalf of Releasees as well as its past and current agents,  
23 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA  
24 and its attorneys and other representatives, for any and all actions taken or statements made by EHA  
25 and its attorneys and other representatives, whether in the course of investigating claims, otherwise  
26 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.  
27

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1       **5. COURT APPROVAL**

2           This Consent Judgment is not effective until it is approved by the Court and shall be null and  
3 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or  
4 by such additional time as the Parties may agree to in writing.

5       **6. SEVERABILITY**

6           Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held  
7 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.  
8

9       **7. GOVERNING LAW**

10          The terms of this Consent Judgment shall be governed by the laws of the state of California as  
11 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
12 rendered inapplicable for reasons, including but not limited to changes in the law, then Urbn Leaf may  
13 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations  
14 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so  
15 affected.

16       **8. NOTICE**

17          Unless otherwise specified herein, all correspondence and notice required by this Consent  
18 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified  
19 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

20       If to Urbn Leaf:

21       Whitney Roy  
22       Sheppard Mullin  
23       333 South Hope St., 43<sup>rd</sup> Floor  
24       Los Angeles, CA 90071

20       If to EHA:

21       Crag Nicholas  
22       Nicholas & Tomasevic LLP  
23       225 Broadway, 19th Floor  
24       San Diego, CA 92101

25          Any Party may, from time to time, specify in writing to the other, a change of address to which  
26 notices and other communications shall be sent.

27       ///

28       ///

1 **9. COUNTERPARTS; DIGITAL SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile signature, each of  
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and the  
4 same document.

5 **10. POST EXECUTION ACTIVITIES**

6 EHA agrees to comply with the reporting form requirements referenced in Health and Safety  
7 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
8 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which  
9 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually  
10 employ their best efforts, including those of their counsel, to support the entry of this agreement as  
11 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this  
12 Section, “best efforts” shall include, at a minimum, supporting the motion for approval, responding to  
13 any objection that any third-party may make, and appearing at the hearing before the Court if so  
14 requested.

15 **11. MODIFICATION**

16 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of  
17 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any  
18 Party, and the entry of a modified consent judgment thereon by the Court.

19 **12. AUTHORIZATION**

20 The undersigned are authorized to execute this Consent Judgment and acknowledge that they  
21 have read, understand, and agree to all of the terms and conditions contained herein.

22 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

23 If a dispute arises with respect to either Party’s compliance with the terms of this Consent  
24 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in  
25 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed  
26 in the absence of such a good faith attempt to resolve the dispute beforehand.

27 ///

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1 **14. ENTIRE AGREEMENT**


2 This Consent Judgment contains the sole and entire agreement and understanding of the Parties  
3 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,  
4 commitments, and understandings related hereto. No representations, oral or otherwise, express or  
5 implied, other than those contained herein have been made by any Party. No other agreements, oral or  
6 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

7  
8 **AGREED TO:**

**AGREED TO:**

9 Date: 11/03/2021

Date: 11.3.21

10  
11 By: 

By: 

12 ENVIRONMENTAL HEALTH  
13 ADVOCATES, INC.

URBN LEAF

14  
15  
16 **IT IS SO ORDERED.**

17 Date: \_\_\_\_\_

18 \_\_\_\_\_  
19 JUDGE OF THE SUPERIOR COURT