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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

12 ENVIRONMENTAL HEALTH
13 ADVOCATES, INC., a California corporation,

14 Plaintiff,

15 v.

16 ZOEVA US, LLC, a Delaware limited
17 liability company, ULTA BEAUTY, INC., a
18 Delaware corporation, ULTA BEAUTY
19 CREDIT SERVICES CORPORATION, a
20 Delaware corporation, and DOES 1 through
21 100, inclusive,

22 Defendants.

Case No. 21CV001125

[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 Zoeva US, LLC (“Defendant” or “Zoeva”) with EHA and Zoeva each
5 individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 EHA alleges that Zoeva is a “person in the course of doing business” for purposes of the Safe
12 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq.
13 (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that Zoeva manufactured, imported, sold, or distributed for sale Zoeva Spice of
16 Life Voyager Eyeshadow Palettes that contain asbestos. EHA further alleges that Zoeva did so without
17 providing a sufficient health hazard warning as required by Proposition 65 and related Regulations.
18 Pursuant to Proposition 65, asbestos is listed as a chemical known to cause cancer.

19 **1.5 Notices of Violation**

20 On or around May 27, 2021, EHA served Zoeva, Ulta Beauty, Inc., Ulta Beauty Credit Services
21 Corporation, the California Attorney General, and all other required public enforcement agencies with
22 a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Zoeva had violated
23 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated
24 with exposures to asbestos contained in Zoeva Spice of Life Voyager Eyeshadow Palette.

25 On or around December 9, 2021, EHA served Zoeva, Ulta Beauty, Inc., Ulta Beauty Credit
26 Services Corporation, Ulta Salon Cosmetics & Fragrance, Inc., the California Attorney General, and
27 all other required public enforcement agencies with an amended 60-Day Notice of Violation of
28 Proposition 65 (“Amended Notice”). The Amended Notice added the retailer Ulta Salon Cosmetics &

1 Fragrance, Inc.

2 On or around February 3, 2022, EHA served Zoeva, Ulta Beauty, Inc., Ulta Beauty Credit
3 Services Corporation, Ulta Salon Cosmetics & Fragrance, Inc., the California Attorney General, and
4 all other required public enforcement agencies with a second amended 60-Day Notice of Violation of
5 Proposition 65 (“Second Amended Notice”). The Second Amended Notice added supplemental
6 supporting documents for the named products.

7 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
8 violations alleged in the Notice, Amended Notice, or Second Amended Notice (hereinafter, the
9 “Notices”).

10 **1.6 Product Description**

11 The products covered by this Consent Judgment are Zoeva eyeshadow and face powders
12 including but not limited to Zoeva Spice of Life Voyager Eyeshadow Palettes manufactured or
13 processed by Zoeva that allegedly contain asbestos and are imported, sold, shipped, delivered, or
14 distributed for sale to consumers in California by Releasees (as defined in section 4.1) (“Covered
15 Products”).

16 **1.7 State of the Pleadings**

17 On or around October 26, 2021, EHA filed a Complaint against Zoeva for the alleged violations
18 of Proposition 65 that are the subject of the Notices (“Complaint”).

19 **1.8 No Admission**

20 Zoeva denies the material factual and legal allegations of the Notices and Complaint and
21 maintains that all of the Covered Products it has manufactured, imported, sold, and/or distributed for
22 sale in California, including Covered Products, have been, and are, in compliance with all laws, and
23 specifically that Zoeva has not violated Proposition 65. Zoeva further maintains that the Covered
24 Products do not contain asbestos. Nothing in this Consent Judgment shall be construed as an admission
25 of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
26 Consent Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law,
27 or violation of law. This Consent Judgment is the product of negotiation and compromise and is
28 accepted by Zoeva solely for purposes of settling, compromising, and resolving issues disputed in this

1 action. This Section shall not, however, diminish or otherwise affect Zoeva’s obligations,
2 responsibilities, and duties under this Consent Judgment.

3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
5 Court has jurisdiction over Zoeva as to the allegations in the Complaint, that venue is proper in the
6 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
7 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
10 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

11 **2. INJUNCTIVE RELIEF**

12 **2.1 Cessation of Sale of Covered Products in California**

13 Following the Effective Date, Zoeva shall no longer sell or distribute for sale the Covered
14 Products in California.

15 **2.2 Sell-Through Period**

16 Covered Products that Zoeva sells or distributes for sale in California on or prior to the Effective
17 Date shall be subject to the release of liability pursuant to this Settlement Agreement, regardless of
18 when such Covered Products are sold to consumers. As a result, Zoeva, and any Releasees are released
19 for liability for Covered Products sold, or distributed for sale, in California on or prior to the Effective
20 Date.

21 **3. MONETARY SETTLEMENT TERMS**

22 **3.1 Settlement Amount**

23 Zoeva shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all the
24 claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes civil
25 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
26 25249.7(b) and attorneys’ fees and costs in the amount of forty-five thousand dollars (\$45,000.00)
27 pursuant to Code of Civil Procedure section 1021.5.

1 **3.2 Civil Penalty**

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

6 All payments owed to EHA and OEHHA (EIN: 68-0284486) shall be delivered via SWIFT
7 wire transfer.

8 Zoeva agrees to provide EHA’s counsel with written confirmation of the wire transfer directed
9 to OEHHA, simultaneous with its penalty payments to EHA.

10 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.
11 Relevant information is set out below:

- 12 • “Entorno Law, LLP” (EIN:68-0284486) at address provided in section 3.2(a)(i); and
- 13 • “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

14 **3.3 Attorney’s Fees and Costs**

15 The portion of the settlement attributable to attorneys’ fees and costs shall be paid to EHA’s
16 counsel, who are entitled to attorneys’ fees and costs incurred by it in this action, including but not
17 limited to investigating potential violations, bringing this matter to Zoeva’s attention, as well as
18 litigating and negotiating a settlement in the public interest.

19 Zoeva shall provide their payment to EHA’s counsel by way of a single SWIFT wire transfer
20 in the amount of forty-five thousand dollars (\$45,000.00) directed to Entorno Law, LLP.

21 **3.4 Timing**

22 The above-mentioned wire transfers will be initiated within fourteen (14) days of the Effective
23 Date and are contingent on receiving applicable wire instructions from EHA.

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 EHA’s Public Release of Proposition 65 Claims**

26 Plaintiff acting on its own behalf and in the public interest releases Zoeva and its parents,
27 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,
28 employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant

1 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
2 Products including but not limited to downstream distributors, wholesalers, customers, and retailers
3 (including but not limited to Ulta Salon Cosmetics & Fragrance, Inc.), franchisees, franchisors,
4 cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities’ owners,
5 directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives,
6 predecessors, successors, and assigns (collectively referred to as the “Releasees”) from all claims for
7 violations of Proposition 65 based on exposure to asbestos from Covered Products sold or distributed
8 for sale through the Effective Date. Compliance with the terms of this Consent Judgment constitutes
9 compliance with Proposition 65 with respect to exposures to asbestos from Covered Products as set
10 forth in the Notices.

11 **4.2 EHA’s Individual Release of Claims**

12 EHA, in its individual capacity, also provides a release to Zoeva and/or Releasees, which shall
13 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
14 costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every nature,
15 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
16 actual exposures to asbestos in Covered Products manufactured, imported, sold, or distributed by Zoeva
17 or Releasees before the Effective Date.

18 EHA specifically waives any and all rights and benefits related to the Covered Product which
19 it now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the
20 California Civil Code, which reads as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
22 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
23 THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
24 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
25 OR RELEASED PARTY.

26 **4.3 Zoeva’s Release of EHA**

27 Zoeva on its own behalf, and on behalf of Releasees as well as its past and current agents,
28 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA

1 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
2 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
3 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

4 **5. COURT APPROVAL**

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

8 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

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

18 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
19 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
20 requirements of Proposition 65; or if asbestos cases are permanently enjoined by a court of competent
21 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First
22 Amendment rights with respect to asbestos in Covered Products or Covered Products substantially
23 similar to Covered Products, then Zoeva shall be relieved of its obligation to comply with Section 2
24 herein.

25 **8. ENFORCEMENT**

26 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
27 to its reasonable attorneys' fees and costs.

1 **9. NOTICE**

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

5 If to Zoeva:

6 Susan E. Smith
7 Beveridge & Diamond PC
8 456 Montgomery Street, STE 1800
9 San Francisco, CA 94104

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101

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

11 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

15 **11. POST EXECUTION ACTIVITIES**

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

25 In the event Zoeva receives a future notice for asbestos in a talc-based product not defined as a
26 “Covered Product” herein, EHA agrees to amend this consent judgment to cover the additional
27 product(s), provided Zoeva agrees to comply with the injunctive terms herein. No additional
28 consideration shall be paid to EHA or its counsel in this event.

1 **12. MODIFICATION**

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

5 **13. FUTURE CALIFORNIA SALES**

6 Should Zoeva choose to resume selling the Covered Products in California in the future, it must
7 either (1) include a warning in compliance with 27 CCR §26501 *et. seq.*, and/or (2) comply with all
8 injunctive measures identified in any court-approved consent judgments between EHA and any
9 cosmetics manufacturers identified in the Notice or Related Cases filed in EHA v. Zoeva US, LLC, et
10 al., Case No. 21CV001125 in the Superior Court of California, County of Alameda, covering asbestos
11 in talc-based cosmetics (and such compliance shall be deemed compliance with the terms of this
12 Consent Judgment).

13 **14. AUTHORIZATION**

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

16 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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


21 **16. ENTIRE AGREEMENT**

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

27 [Remainder of this page intentionally left blank.]
28

1 **AGREED TO:**

2 Date: 3/24/2022

3
4 By: 
5 ENVIRONMENTAL HEALTH
6 ADVOCATES, INC.

AGREED TO:

Date: 24th March, 2022

By: Barbara Boikou, Director 
ZOEVA US, LLC

7 **IT IS SO ORDERED.**

8
9 Date: _____

10 _____
11 JUDGE OF THE SUPERIOR COURT
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