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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 FRUIT OF THE EARTH, INC., FIVE BELOW,
15 INC.,

16 Defendants.

Case No.: CGC-22-602637

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: November 22, 2024

Hearing Time: 9:30 AM

Complaint Filed: October 28, 2022

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and Fruit of the Earth, Inc. (“FOTE”
4 or “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of
5 them as a “Party.” Balabbo is an individual residing in California that seeks to promote awareness
6 of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. FOTE is alleged to be a person in the course of doing
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 **1.2 Allegations and Representations.** Balabbo alleges that Defendant has exposed
10 individuals to diethanolamine (DEA) and/or benzene from its sales of topical and lathering
11 lotions/creams/gels/liquids/foams used to prevent and/or reduce skin irritation including those that
12 protect the skin from sun exposure and/or repair the skin from sun exposure including, but not
13 limited, to (a) *Up + Up*® aloe vera gels/moisturizers, including UPC # 071661826131, (b)
14 *Walgreens*® after sun gels/liquids, including UPC # 049022507326, and (c) *Fruit of the Earth*®
15 sun and after sun lotions/creams/foams, including UPC # 071661612208, without providing a clear
16 and reasonable exposure warning pursuant to Proposition 65. DEA is listed pursuant to Proposition
17 65 as a chemical known to the State of California to cause cancer. Benzene is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or
19 other reproductive harm.

20 **1.3 Notices of Violation/Action.**

21 **1.3.1** On or about June 2, 2021, Balabbo served FOTE and various public
22 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
23 Safety Code §25249.7(d) (the “June Notice”), alleging that Defendant violated Proposition 65 for
24 failing to warn consumers and customers that use of *Fruit of the Earth*® sun and after sun
25 lotions/creams/foams, including UPC # 071661612208, expose users in California to DEA. No
26 public enforcer has brought and is diligently prosecuting the claims alleged in the June Notice.
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1 1.3.2 On or about July 19, 2022, Balabbo served Walgreen Co. (“Walgreen”) and
2 various public enforcement agencies with documents entitled “60-Day Notice of Violation”
3 pursuant to Health & Safety Code §25249.7(d) (the “First July Notice”), alleging that Defendant
4 violated Proposition 65 for failing to warn consumers and customers that use of *Walgreens*® after
5 sun gels/liquids, including UPC # 049022507326, expose users in California to DEA. No public
6 enforcer has brought and is diligently prosecuting the claims alleged in the July Notice.

7 1.3.3 On or about October 28, 2022, Balabbo filed the Complaint in the above-
8 captioned case, filed in the Superior Court of California, County of San Francisco, and docketed to
9 Case No. CGC-22-602637 (the “Complaint”). The Complaint brings claims regarding the
10 allegations found in the June Notice.

11 1.3.4 On or about February 21, 2023, Balabbo served Target Corporation
12 (“Target”), and various public enforcement agencies with documents entitled “60-Day Notice of
13 Violation” pursuant to Health & Safety Code §25249.7(d) (the “February Notice”), alleging that
14 Defendant violated Proposition 65 for failing to warn consumers and customers that use of *Up +*
15 *Up*® aloe vera gels/moisturizers, including UPC# 071661826131, expose users in California to
16 DEA. No public enforcer has brought and is diligently prosecuting the claims alleged in the
17 February Notice.

18 1.3.5 On or about May 17, 2023, Balabbo revised the First July Notice. The First
19 July Notice was revised for the purpose of providing FOTE as manufacturer of the *Walgreens*®
20 after sun gels, and various public enforcement agencies with documents entitled “60-Day Notice
21 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “First May Notice”), alleging that
22 Defendant violated Proposition 65 for failing to warn consumers and customers that the use of
23 *Walgreens*® after sun gels, including UPC # 049022507326, expose users in California to DEA.
24 No public enforcer has brought and is diligently prosecuting the claims alleged in the First May
25 Notice.

26 1.3.6 On or about May 17, 2023, Balabbo revised the February Notice. The
27 February Notice was revised for the purpose of providing FOTE as manufacturer of the *Up + Up*®
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1 aloe vera gels/moisturizers, and various public enforcement agencies with documents entitled “60-
2 Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Second May
3 Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
4 customers that use of *Up + Up*® aloe vera gels/moisturizers, including UPC # 071661826131,
5 expose users in California to DEA. No public enforcer has brought and is diligently prosecuting
6 the claims alleged in the Second May Notice.

7 1.3.7 On or about July 7, 2023, Balabbo served FOTE and various public
8 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
9 Safety Code §25249.7(d) (the “Second July Notice”), alleging that Defendant violated Proposition
10 65 for failing to warn consumers and customers that the use of *Fruit of the Earth*® sun and after
11 sun lotions/gels/creams/foams, including UPC # 071661612208, expose users in California to DEA
12 and benzene. No public enforcer has brought and is diligently prosecuting the claims alleged in the
13 Second July Notice.

14 1.3.8 The June Notice, First May Notice, Second May Notice, February Notice,
15 First July Notice and Second July Notice are collectively referred to herein, as the “Notices.”

16 1.3.9 On October 27, 2023, Balabbo filed a First Amended Complaint (the “First
17 Amended Complaint”) setting forth alleged violations of Proposition 65 as alleged in the Notices.

18 1.3.10 The Complaint and the First Amended Complaint are collectively referred
19 to herein as, the “Action.”

20 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendant as to the allegations contained in the Complaint and/or First Amended
22 Complaint filed in this matter, that venue is proper in the County of San Francisco, and that this
23 Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as
24 a full and final binding resolution of all claims which were or could have been raised in the Action
25 based on the facts alleged therein and in the Notices.

26 1.5 Defendant expressly denies the material allegations contained in the Notices,
27 Complaint, and First Amended Complaint and maintains that it has not violated Proposition 65 or
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1 any other law or legal duty. Defendant expressly denies any liability of any of the claims asserted
2 and the facts alleged in the Action and the Notices. Nothing in this Consent Judgment shall be
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
4 shall compliance with this Consent Judgment constitute or be construed as an admission by
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by Defendant. This Consent Judgment is the product of negotiation and compromise and is
7 accepted by the Parties solely for the purpose of settling, compromising, and resolving the issues
8 in dispute in this Action.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means the category of topical and
11 lathering lotions/creams/gels/liquids/foams used to prevent and/or reduce skin irritation including
12 those that protect the skin from sun exposure and/or repair the skin from sun exposure including,
13 but not limited to: (a) *Up + Up*® aloe vera gels/moisturizers, UPC # 071661826131, (b)
14 *Walgreens*® after sun gels/liquids, UPC # 049022507326, and (c) *Fruit of the Earth*® sun and after
15 sun lotions/gels/creams/foams, UPC # 071661612208, that are manufactured by FOTE and
16 distributed, shipped into California, and offered for sale in California.

17 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
18 entered as a Judgment of the Court and all Parties have been provided with a copy.

19 2.3 **Compliance Date.** “Compliance Date” shall mean ninety (90) days after the
20 Effective Date.

21 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

22 3.1 **Reformulation Standard for Covered Products.**

23 3.1.1 **DEA Free Reformulated Product.** “DEA Free Reformulated Products”
24 shall mean Covered Products that meet the following standard: DEA content that is either not
25 detectable (i.e., zero) or below the Reporting Limit (defined herein) when analyzed pursuant to
26 liquid chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-
27 spectroscopy (ICP-MS) or other methods of analysis utilized by a laboratory accredited by the state
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1 of California, a federal agency, or the International Organization for Standardization (ISO) for
2 qualitative and quantitative screening of cosmetics and cosmetic raw materials. If a new or distinct
3 test method is developed to test for DEA in Covered Products that more accurately measures
4 consumer exposure, FOTE may request a modification to this Section of the Consent Judgment
5 pursuant to Section 10.

6 **3.1.2 Reporting Limit.** “Reporting Limit” shall mean the lowest concentration at
7 which DEA can be detected in a sample of a Covered Product by an accredited testing laboratory
8 employing LC/MS/MS analysis or other method of analysis utilized by the ISO for qualitative and
9 quantitative screening of cosmetics and cosmetic raw materials. The Reporting Limit’s for the
10 exemplar products referenced in § 2 are as follows:

- 11 (a) The Reporting Limit for *Up + Up*® product is 100 mg/kg;
- 12 (b) The Reporting Limit for *Walgreens* ® product is 100 mg/kg; and
- 13 (c) The Reporting Limit for *Fruit of the Earth*® product is 100 mg/kg.


14 **3.1.3 Benzene Free Reformulated Product.** “Benzene Free Reformulated
15 Products” shall mean Covered Products with no detectable benzene when analyzed pursuant to the
16 United States Pharmacopeia and the National Formulary (USP-NF) methods. or other methods of
17 analysis utilized by a laboratory accredited by the state of California, a federal agency, or the
18 International Organization for Standardization (ISO) for qualitative and quantitative screening of
19 cosmetics and cosmetic raw materials. If a new or distinct test method is developed to test for
20 benzene in Covered Products that more accurately measures consumer exposure, FOTE may
21 request a modification to this Section of the Consent Judgment pursuant to Section 10.

22 **3.2 Commitment to Warn.**

23 **3.2.1 Clear and Reasonable Warning.** Commencing as of the Compliance Date,
24 and continuing thereafter, a clear and reasonable exposure warning as set forth in § 3.2.1 must be
25 provided for all Covered Products that Defendant manufactures, imports, distributes, sells, or offers
26 for sale in California that is not a DEA Free Reformulated Product or a Benzene Free Reformulated
27 Product, hereafter, collectively “Reformulated Products”. There shall be no obligation for
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1 Defendant to provide a warning for Reformulated Products or for Covered Products that were
2 manufactured or enter the stream of commerce prior to the Compliance Date¹. A warning shall
3 consist of either the **Warning** or **Alternative Warning** described in §§ 3.2.1 (a) - (f):


4 (a) **Warning.** If a Covered Product creates an exposure to benzene only,
5 the “**Warning**” shall consist of the statement:

6  **WARNING:** This product can expose you to chemicals including benzene,
7 which is known to the State of California to cause cancer and birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

8 (b) **Alternative Warning:** If a Covered Product creates an exposure to
9 benzene only FOTE may, but is not required to, use the alternative short-form warning as
10 set forth in this § 3.2.1(b) (“**Alternative Warning**”) as follows:

11  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov

12 (c) **Warning.** If a Covered Product creates an exposure to DEA only,
13 the “**Warning**” shall consist of the statement:

14  **WARNING:** This product can expose you to chemicals including
15 diethanolamine (DEA), which is known to the State of California to cause cancer.
For more information go to www.P65Warnings.ca.gov

16 (d) **Alternative Warning:** If a Covered Product creates an exposure to
17 DEA only FOTE may, but is not required to, use the **Alternative Warning** as set forth in
18 this § 3.2.1(d) as follows:

19  **WARNING:** Cancer - www.P65Warnings.ca.gov

20 (e) **Warning.** If a Covered Product creates an exposure to DEA *and*
21 benzene, the “**Warning**” shall consist of the statement:

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24 ¹ Covered Products supplied to third parties by FOTE prior to the Compliance Date that
25 FOTE no longer has possession of and/or control of are exempt from the requirements of this
26 Section 3 and shall be permitted to be sold through. Additionally, the injunctive requirements of
27 Section 3 shall not apply to Covered Products that are distributed or sold exclusively outside of
28 the State of California. Section 3 of this Consent Judgment shall only apply to Covered Products
sold in California, manufactured for sale in California, or “distributed for sale in California.”
FOTE products distributed for sale, offered for sale, and/or sold outside the State of California are
not required to conform with Section 3 of this Agreement.

1 ⚠ **WARNING:** This product can expose you to chemicals including
2 [diethanolamine (DEA) / benzene]², which is [are] known to the State of California
3 to cause [cancer] [and] [birth defects or other reproductive harm]. For more
4 information go to www.P65Warnings.ca.gov.

5 (f) **Alternative Warning:** If a Covered Product creates an exposure to
6 DEA *and* benzene, and FOTE opts to use an **Alternative Warning**, the **Alternative**
7 **Warning** shall consist of the statement:

8 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

9 3.2.2 The **Warning** or **Alternative Warning** must comply with the regulations
10 set forth in §§ 25601 and 25603. A **Warning** or **Alternative Warning** provided pursuant to §§
11 3.2.1 (a) - (f) must print the word “**WARNING:**” in all capital letters and in bold font, followed by
12 a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation
13 point in a yellow equilateral triangle with a black outline, except that if the sign or label for the
14 Covered Product does not use the color yellow, the symbol may be in black and white. The symbol
15 must be in a size no smaller than the height of the word “**WARNING:**”. The **Warning** or
16 **Alternative Warning** shall be affixed to or printed on the Covered Product’s packaging or labeling,
17 or on a placard, shelf tag, sign or electronic device or automatic process, providing that the
18 **Warning** or **Alternative Warning** is displayed with such conspicuousness, as compared with other
19 words, statements, or designs as to render it likely to be read and understood by an ordinary
20 individual under customary conditions of purchase or use. The **Warning** or **Alternative Warning**
21 may be contained in the same section of the packaging, labeling, or instruction booklet that states
22 other safety warnings, if any, concerning the use of the Covered Product and shall be at least the
23 same size as those other safety warnings. If consumer information is provided in a foreign language,
24 FOTE shall provide the **Warning** or **Alternative Warning** in the foreign language.

25 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
26 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where

27 ² In accordance with 27 Cal. Code Regs., §§ 25601 and 25603, the long-form warning
28 must expressly identify at least one of the chemicals to which a consumer might be exposed per
toxicological endpoint, and the content of the warning shall include the endpoint (e.g., cancer,
reproductive harm, or both). Benzene is listed as known to cause cancer and birth defects or other
reproductive harm; DEA is listed as known to cause cancer.

1 FOTE offers Covered Products for sale to consumers in California. The requirements of this Section
2 shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the
3 word “**WARNING**,” appears on the Covered Product display page, or by otherwise prominently
4 displaying the warning to the purchaser prior to completing the purchase. To comply with this
5 Section, FOTE shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it
6 has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have
7 the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet
8 sellers, provide such sellers with written notice in accordance with Title 27, California Code of
9 Regulations, § 25600.2. Third-party internet sellers of Covered Products that have been provided
10 with written notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not
11 released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

12 3.3 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
13 compliance with this Consent Judgment by adhering to §3 of this Consent Judgment or by
14 complying with warning requirements adopted by OEHHA applicable to the Covered Product and
15 exposures at issue after the Effective Date.

16 4. **MONETARY TERMS**

17 4.1 **Civil Penalty.** FOTE shall pay \$10,000.00 as a Civil Penalty pursuant to Health and
18 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
19 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
20 Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

21 4.1.1 Within thirty (30) days of the Effective Date, FOTE shall issue two
22 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$7,500.00; and
23 to (b) “Brodsky Smith in Trust for Balabbo” in the amount of \$2,500.00. Payment owed to
24 Balabbo pursuant to this Section shall be delivered to the following payment address:

25 Evan J. Smith, Esquire
26 Brodsky Smith
27 Two Bala Plaza, Suite 805
28 Bala Cynwyd, PA 19004

1 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
2 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

3 For United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

15 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
16 above as proof of payment to OEHHA.

17 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, FOTE shall pay
18 \$95,000.00 to "Brodsky Smith" as complete reimbursement for Balabbo's attorneys' fees and costs
19 incurred as a result of investigating, bringing this matter to the attention of FOTE, litigating and
20 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
21 of Civil Procedure § 1021.5. Payment owed to Brodsky Smith pursuant to this Section shall be
22 delivered to c/o Evan Smith at the payment address identified in §4.1.1.

23 **5. CLAIMS COVERED AND RELEASED**

24 5.1 The Parties have entered this Consent Judgment as a full and final settlement of all
25 claims arising under Proposition 65 relating to alleged exposure to DEA and/or benzene from
26 Covered Products ("Released Products"), and as to all claims pursuant to Health and Safety Code
27 §25249.7(d) that were raised or could have been raised in the Notices or Action, arising from the failure
28 to warn under Proposition 65 regarding the presence of DEA and/or benzene in such Released Products.
Provided that FOTE has complied with terms of this Agreement, this Consent Judgment is a full,
final, and binding resolution between Balabbo on behalf of herself and the public interest, and
FOTE and its parents, shareholders, members, directors, officers, managers, employees,

1 representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies,
2 and affiliates, and their predecessors, successors and assigns and attorneys (“Defendant
3 Releasees”), and all entities from whom they directly or indirectly obtain and to whom they directly
4 or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
5 suppliers, distributors, wholesalers, customers, franchisees, licensors, licensees retailers, including
6 but not limited to, Five Below, Inc., CVS Pharmacy, Inc., Target Corporation, Target Brands, Inc.,
7 Walgreens, and each of their respective parents, subsidiaries, and affiliates, franchisees, and
8 cooperative members (“Downstream Releasees”), of all claims for violations of Proposition 65
9 based failure to warn about alleged exposure to DEA and/or benzene from use of the Covered
10 Products manufactured by FOTE prior to the Compliance Date.

11 5.2 It is the Parties’ intention that this Consent Judgment shall have preclusive effect
12 such that no other actions by private enforcers, whether purporting to act in his, her, or its interests
13 or the public interest shall be permitted to pursue and take any action with respect to any violation
14 of Proposition 65 based on exposure to DEA and/or benzene from use of the Covered Products that
15 was alleged in the Action, or that could have been brought pursuant to the Notices against FOTE
16 and the Downstream Releasees (“Proposition 65 Claims”). FOTE’s compliance with the terms of
17 this Consent Judgment constitutes compliance with Proposition 65 by FOTE with regard to
18 exposure to DEA and/or benzene from use of the Covered Products.

19 5.3 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
20 agents, representatives, attorneys, and successors and assignees, and not in her representative
21 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
22 legal action and releases FOTE, Defendant Releasees, and Downstream Releasees from any and all
23 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
24 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
25 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
26 future, with respect to any alleged violations of Proposition 65 or any other statutory or common
27 law claims related to or arising from Covered Products manufactured, distributed, or sold by FOTE,
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1 Defendant Releasees or Downstream Releasees that have been or could have been asserted by
2 Plaintiff regarding the failure to warn about exposure to DEA or benzene arising in connection with
3 the Released Products manufactured, distributed, sold or offered for sale by FOTE prior to the
4 Compliance Date. With respect to the foregoing waivers and releases in this paragraph, Balabbo
5 hereby specifically waives any and all rights and benefits which she now has, or in the future may
6 have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides
7 as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
13 DEBTOR OR RELEASED PARTY.

14 5.4 FOTE waives any and all claims against Balabbo, her attorneys and other
15 representatives, for any and all actions taken, or statements made (or those that could have been
16 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
17 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
18 and with respect to Covered Products.

19 5.5 Nothing in this Consent Judgment is intended to apply to any occupational or
20 environmental exposures arising under Proposition 65, nor shall it apply to any of FOTE's products
21 other than the Covered Products sold in California, manufactured for sale in the State of California,
22 or distributed into the State of California.

23 6. INTEGRATION

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein exist
27 or have been made by any Party with respect to the other Party or the subject matter hereof.

28 7. GOVERNING LAW

7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
California and apply within the State of California.

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses:

6 For Defendant:

7 Hazel Ocampo
8 Greenberg Traurig, LLP
9 12760 High Bluff Dr., Ste. 240
 San Diego, CA 92130

10 And

11 For Balabbo:

12 Evan Smith
13 Brodsky Smith
 9595 Wilshire Blvd., Ste. 900
 Beverly Hills, CA 90212

14 Any party, from time to time, may specify in writing to the other party a change of address to
15 which all notices and other communications shall be sent.

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

17 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
18 which shall be deemed an original, and all of which, when taken together, shall constitute one and
19 the same document.

20 **10. MODIFICATION AND ENFORCEMENT**

21 10.1 This Consent Judgment may be modified from time to time by express written
22 agreement of the Parties to which any such modification would apply, with the approval of the
23 Court, or by an order of this Court upon motion and in accordance with law. Notwithstanding the
24 foregoing, if a California court enters judgment in the Action or another Proposition 65 enforcement
25 action over exposure to DEA or benzene in Covered Products or product substantially similar to
26 Covered Products that imposes different injunctive relief than what is set forth in this Consent
27 Judgment, Defendant may seek to modify Section 3 of this Consent Judgment to conform with the
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1 injunctive relief provided in such judgment. Plaintiff has a right to oppose any such modification,
2 but it shall not withhold its approval without good cause shown.

3 10.2 Only Plaintiff may enforce the terms of this Consent Judgment. If a dispute arises
4 with respect to either Party's compliance with the terms of this Consent Judgment, the Parties shall
5 meet and confer in writing and endeavor to resolve the dispute in an amicable manner. No action
6 may be filed in the absence of such good faith attempt to resolve the dispute beforehand. Should an
7 exceedance of the reformulation standard(s) in Section 3.1 be alleged, FOTE must be provided with
8 written notice and data supporting such an allegation and thirty (30) days to address the allegations
9 before an enforcement motion may be filed. No violation of this Consent Judgment shall be deemed
10 to occur if FOTE demonstrates that its own testing of the Covered Product at issue is in accordance
11 with Section 3.1. In any action to enforce the terms of this Consent Judgment, the prevailing party
12 shall be entitled to its reasonable attorneys' fees and costs.

13 10.3 The inability of Defendant to comply with any deadline set forth in this Consent
14 Judgment due to an act of terrorism, fire, earthquake, civil disorders, war, or act of God that is
15 beyond the reasonable control of Defendant shall be grounds to move for modification of the
16 deadlines set forth in this Consent Judgment.

17 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
18 **APPROVAL**

19 11.1 Balabbo agrees to comply with the requirements set forth in California Health &
20 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
21 Defendant agrees it shall support approval of such Motion.

22 11.2 This Consent Judgment shall not be effective until it is approved and entered by the
23 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
24 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
25 days, the case shall proceed on its normal course.

26 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
27 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
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1 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
2 its normal course on the trial court's calendar.

3 **12. ATTORNEY'S FEES**

4 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
5 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

6 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
7 pursuant to law.

8 **13. RETENTION OF JURISDICTION**

9 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
10 Consent Judgment.

11 **14. SUCCESSORS AND ASSIGNS**

12 14.1 This Consent Judgment shall apply to and be binding upon Balabbo and each Settling
13 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns
14 of any of them.

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15. AUTHORIZATION

15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: _____

Date: October 3, 2024

By: _____
PRECILA BALABBO

By:  _____
FRUIT OF THE EARTH, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

1 **15. AUTHORIZATION**

2 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

AGREED TO:

8
9 Date: 10 / 4 / 24

Date: _____

10 By: 
11 PRECILA BALABBO

By: _____
FRUIT OF THE EARTH, INC.

12
13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

14
15 Dated: _____

Judge of Superior Court