

1 **ENTORNO LAW, LLP**
Noam Glick (SBN 251582)
2 Jake W. Schulte (SBN 293777)
Craig M. Nicholas (SBN 178444)
3 225 Broadway, Suite 1900
San Diego, California 92101
4 Tel: (619) 629-0527
Email: noam@entornolaw.com
5 Email: jake@entornolaw.com
Email: craig@entornolaw.com
6

7 Attorneys for Plaintiff
Environmental Health Advocates, Inc.
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

11 ENVIRONMENTAL HEALTH
ADVOCATES, INC.,

12 Plaintiff,

13 v.

14 SUN BUM SUNCARE LLC, a Michigan
15 limited liability company, ULTA BEAUTY
CREDIT SERVICES CORPORATION, a
16 Delaware corporation, ULTA BEAUTY, INC.,
a Delaware corporation, and DOES 1 through
17 100, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. 22CV005117

[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”), on the one hand, and Sun Bum Suncare LLC (“Defendant” or “Sun Bum”),
5 on the other hand, with EHA and Sun Bum each individually referred to as a “Party” and collectively
6 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
10 by reducing or eliminating hazardous substances contained in consumer products.

11 **1.3 Defendant**

12 Sun Bum 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 Sun Bum manufactures, imports, sells, and distributes for sale Sun Bum
17 Cool Down Aloe Gel that contains benzene. EHA further alleges that Sun Bum does so without
18 providing a sufficient health hazard warning as required by Proposition 65 and related regulations
19 pursuant to Proposition 65; benzene is listed as a chemical known to cause cancer and reproductive
20 toxicity.

21 **1.5 Notice of Violation**

22 On or around July 23, 2021, EHA served Sun Bum, Ulta Beauty Credit Services Corporation,
23 Ulta Beauty, Inc., the California Attorney General, and all other required public enforcement agencies
24 with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Sun Bum
25 had violated Proposition 65 by failing to sufficiently warn consumers in California of the health
26 hazards associated with exposures to benzene contained in Sun Bum Cool Down Aloe Gel.

27 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
28 violations alleged in the Notice.

1 **1.6 Product Description**

2 The products covered by this Consent Judgment are Sun Bum Cool Down Aloe Gel
3 manufactured, distributed, sold or processed by Sun Bum that allegedly contain benzene and are
4 imported, sold, shipped, delivered, or distributed for sale to consumers in California by Releasees (as
5 defined in section 4.1) (“Covered Products”).

6 **1.7 State of the Pleadings**

7 On or around January 6, 2022, EHA filed a Complaint against Sun Bum for the alleged
8 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

9 **1.8 No Admission**

10 Sun Bum denies the material factual and legal allegations of the Notice and Complaint and
11 maintains that all of the Covered Products it has manufactured, imported, sold, or distributed for sale
12 in California, including Covered Products, have been, and are, in compliance with all laws. Nothing
13 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
14 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
15 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
16 not, however, diminish or otherwise affect Sun Bum obligations, responsibilities, and duties under
17 this Consent Judgment.

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
20 Court has jurisdiction over Sun Bum as to the allegations in the Complaint, that venue is proper in the
21 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
22 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
25 notice of entry of this Consent Judgment is served on Sun Bum.

26 ///

27 ///

28 ///

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of Products**

3 Any Products that are manufactured or sold by or for Sun Bum on and after the Effective Date
4 that are thereafter sold or distributed for sale in California by Sun Bum without a warning shall not
5 exceed 2 parts per million (ppm) benzene on average (the Average Level), as set forth in this Section
6 2. As used in this Section 2.1, “distributed for sale in California” means to directly ship a Covered
7 Product in to California or to sell a Covered Product to a distributor that Sun Bum knows will sell the
8 Product in California.

9 **2.2 Testing**

10 (a) Compliance with the Average Level shall be determined by GC-FID or any other
11 testing method agreed upon by the Parties. Any testing for purposes of Section 2.1 shall be
12 performed by a laboratory accredited by the State of California, a federal agency, or a
13 recognized accrediting organization.

14 (b) The Average Level is determined by randomly selecting and testing, over no less
15 than a ten-day period, one sample from at least three lots (or from as many lots as are available,
16 if fewer than three) and a maximum of seven lots of Products produced at locations that supply
17 such Products to California (“Sampling Data”). The mean and standard deviation shall be
18 calculated using the Sampling Data. Any data points that are more than three standard
19 deviations outside the mean shall be discarded once, and the mean and standard deviation
20 recalculated using the remaining data points. The arithmetic mean determined in accordance
21 with this procedure shall be deemed the “Average Level”.

22 (c) For at least three consecutive years after the Effective Date, Sun Bum shall
23 arrange for testing under this section 2.2. The testing shall be at least once per year. No further
24 testing shall be required unless Sun Bum materially modifies the ingredients of the Covered
25 Product, at which point up to seven lots shall be tested, as provided for in section 2.2(b) above,
26 to confirm compliance.

27 ///

28 ///

1 **2.3 Clear and Reasonable Warnings**

2 For Covered Products that are manufactured and packaged for distribution for authorized
3 sale or use in California on or after the Effective Date, and for which testing pursuant to section
4 2.2 shows the Average Level to exceed 2 ppm benzene, Sun Bum shall provide one of the following
5 warning statements.

6 **Option 1:**

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

11 **Option 2:**

12 **⚠WARNING:** Cancer and Reproductive Harm –
13 www.P65Warnings.cs.gov

14 The warning shall also include a symbol consisting of a black exclamation point in a yellow
15 equilateral triangle with a bold black outline. The symbol shall be placed to the left of the text of
16 the warning, in a size no smaller than the height of the word “WARNING”. This warning statement
17 shall be prominently displayed on the Covered Products, on the packing of the Covered Products,
18 or on a placard, shelf tag, or sign provided that the statement is displayed with such
19 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
20 read and understood by an ordinary individual prior to sale. If the warning statement is displayed
21 on the Covered Products’ packaging, it must be in a type size no smaller than the largest type size
22 used for other consumer information on the product. In no case shall a warning statement displayed
23 on the Covered Products’ packaging appear in a type size smaller than 6-point type. The same
24 warning shall be posted on any websites under the exclusive control of Sun Bum where Covered
25 Products are sold into California.

26 **2.4 Sell-Through Period**

27 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
28 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to
this Consent Judgment, without regard to when such Covered Products were, or are in the future,

1 distributed or sold to customers. As a result, the obligations of Sun Bum, or any Releasees (if
2 applicable), do not apply to these Covered Products manufactured on or prior to the Effective Date.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Settlement Amount**

5 Sun Bum shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of
6 all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
7 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code
8 section 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars
9 (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5.

10 **3.2 Civil Penalty**

11 The portion of the settlement attributable to civil penalties shall be allocated according to
12 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
13 penalty, three thousand seven hundred and fifty dollars (\$3,750.00), paid to the California Office of
14 Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%)
15 of the penalty, one thousand two hundred and fifty dollars (\$1,250.00), paid to EHA individually.
16 These payments will be sent to the below addresses within fourteen (14) days of the Effective Date.

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

18 Environmental Health Advocates
19 225 Broadway, Suite 1900
20 San Diego, CA 92101

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

23 For United States Postal Service Delivery:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 P.O. Box 4010
28 Sacramento, CA 95812-4010

For Federal Express 2-Day Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 1001 I Street
5 Sacramento, CA 95814

6 Sun Bum agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
7 simultaneous with its penalty payments to EHA.

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

- 10 • "Entorno Law, LLP" (EIN: 68-0284486) at the address provided in Section 3.3;
- 11 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA
12 95814.

13 **3.3 Attorneys' Fees and Costs**

14 The portion of the settlement attributable to attorneys' fees and costs, forty-five thousand
15 dollars (\$45,000.00), shall be paid to Entorno Law, LLP ("EHA's Counsel"), who are entitled to
16 attorneys' fees and costs incurred by it in this action, including but not limited to investigating potential
17 violations, bringing this matter to Sun Bum attention, as well as litigating and negotiating a settlement
18 in the public interest.

19 Sun Bum shall provide their payment to EHA's counsel in one check for forty-five
20 thousand dollars (\$45,000.00) payable to Entorno Law, LLP. The payment shall be delivered
21 to the following address:

22 Noam Glick
23 Entorno Law, LLP
24 225 Broadway, 19th Floor
25 San Diego, CA 92101

26 **3.4 Timing**

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

28 **4. CLAIMS COVERED AND RELEASED**

4.1 EHA's Public Release of Proposition 65 Claims

Plaintiff acting on its own behalf and in the public interest releases Sun Bum and its parents,
subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,

1 employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant
2 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
3 Products including but not limited to downstream distributors, wholesalers, customers, and retailers
4 (including but not limited to Ulta Beauty, Inc.), franchisees, franchisors, cooperative members,
5 suppliers, licensees, and licensors, and all of the foregoing entities’ owners, directors, officers, agents,
6 principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and
7 assigns (collectively, including Defendant Entities, referred to as the “Releasees”) from all claims for
8 violations of Proposition 65 up through the Effective Date (and after the Effective Date for products
9 manufactured on or before the Effective Date) based on exposure to benzene from Covered Products
10 as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance
11 with Proposition 65 with respect to exposures to benzene from Covered Products as set forth in the
12 Notice. This Consent Judgment is a full, final, and binding resolution of all claims that were or could
13 have been asserted against Sun Bum or Releasees for failure to provide warnings for alleged exposure
14 to benzene from the Covered Products.

15 **4.2 EHA’s Individual Release of Claims**

16 EHA, in its individual capacity, also hereby provides a release to Releasees, which shall be a
17 full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
18 costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every nature,
19 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
20 actual exposures to benzene in Covered Products manufactured, imported, sold, or distributed by Sun
21 Bum or Releasees before the Effective Date (and after the Effective Date for products manufactured
22 on or before the Effective Date). This release in this Section 4.2 is effective as a full and final accord
23 and satisfaction of , as well as a bar to, all actions, causes of action, obligations, costs, expenses,
24 attorney’s fees, damages, losses, claims, liabilities and demands of every nature, character, and kind,
25 whether known or unknown, suspected or unsuspected as to Defendant Entities. EHA acknowledges
26 that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS THAT THE CREDITOR OR
28 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,

1 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
2 OR RELEASED PARTY.

3 EHA understands and acknowledges the significance and consequences of this waiver of
4 California Civil Code section 1542.

5 **4.3 Sun Bum Release of EHA**

6 Sun Bum on its own behalf, and on behalf of
7 Defendant Entities as well as its past and current agents, representatives, attorneys, successors, and
8 assignees, hereby waives any and all claims against EHA and its attorneys and other
9 representatives, for any and all actions taken or statements made by EHA and its attorneys and
10 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
11 Proposition 65 against them, in this matter or with respect to the Covered Products.

12 **5. COURT APPROVAL**

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

16 **6. SEVERABILITY**

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

20 **7. GOVERNING LAW**

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

27 In the event the California Office of Health Hazard Assessment adopts a regulation or safe
28 use determination, or issues an interpretive guideline that exempts Covered Products from meeting

1 the requirements of Proposition 65; or if benzene cases are permanently enjoined by a court of
2 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden
3 on First Amendment rights with respect to benzene in Covered Products or Covered Products
4 substantially similar to Covered Products, then Sun Bum shall be relieved of its obligation to comply
5 with Section 2 herein.

6 **8. ENFORCEMENT**

7 In any contested action to enforce or modify the terms of this Consent Judgment, the
8 prevailing party shall be entitled to seek its reasonable attorneys' fees and costs.

9 **9. NOTICE**

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

13 If to Sun Bum:

14 Gary M. Roberts
15 Dentons US LLP
16 601 South Figueroa Street, Suite 2500
17 Los Angeles, CA 90017-5704

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, 19th Floor
San Diego, CA 92101

18 With a copy to:

19 Chief Executive Officer
20 Sun Bum
21 444 S. Coast Highway 101
22 Encinitas, CA 92024

23 and

24 Sun Bum LLC
25 C T Corporation System
26 330 North Brand Blvd.
27 Suite 700
28 Glendale, CA 91203

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

10. COUNTERPARTS; DIGITAL SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile signature, each of

1 which shall be deemed an original, and all of which, when taken together, shall constitute one and
2 the same document.

3 **11. POST EXECUTION ACTIVITIES**

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

13 **12. MODIFICATION**

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

17 **13. AUTHORIZATION**

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

20 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

25 **15. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the
27 Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
28 commitments, and understandings related hereto. No representations, oral or otherwise, express or

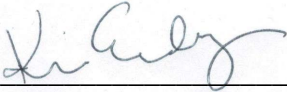
1 implied, other than those contained herein have been made by any Party. No other agreements, oral or
2 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

3
4 **AGREED TO:**

AGREED TO:

5 Date: 01/13/2022

Date: 01/21/2022

6
7 By: 
8 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
SUN BUM SUNCARE LLC

9 **IT IS SO ORDERED.**

10
11 Date: _____

JUDGE OF THE SUPERIOR COURT