

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Johnson & Johnson Consumer Inc. (“JJCI”), on the other hand, with EHA and JJCI each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. JJCI employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

For the limited purposes of the obligations or representations set forth in Paragraph 3.1 of this Settlement Agreement, EHA’s counsel identified in Paragraph 8 and on the signature pages hereof shall also be parties to this Settlement Agreement.

#### **1.2 General Allegations**

EHA alleges, and JJCI denies, that JJCI manufactured, sold, and distributed for sale in California, two sunscreen products, Neutrogena Ultra Sheer Spray Sunscreen SPF 70 [*sic*] and Neutrogena Beach Defense Sunscreen Spray SPF 100 (“the Products”), that contained benzene and exposed consumers to this chemical at a level requiring a Proposition 65 warning without providing such a warning. JJCI denies that the Products require or required a Proposition 65 warning or that their manufacture, sale, or distribution for sale in California violated Proposition 65 in any manner whatsoever. Benzene is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

#### **1.3 Products Description**

The Products covered by this Settlement Agreement are defined as, and expressly limited to, Neutrogena Ultra Sheer Spray Sunscreen SPF 70 [*sic*] and Neutrogena Beach Defense Sunscreen Spray SPF 100.

## **1.4 Notices of Violation**

On July 23, 2021, EHA served JJCI, Target Corporation, the California Attorney General and other requisite public enforcers with two Proposition 65 60-Day Notices of Violation (“the Notices”). One 60-Day Notice of Violation was for Neutrogena Ultra Sheer Spray Sunscreen SPF 70 [*sic*], and the other 60-Day Notice of Violation was for Neutrogena Beach Defense Sunscreen Spray SPF 100. The Notices alleged that use of the Products by California consumers exposes them to benzene without first receiving clear and reasonable warnings from JJCI, which is in violation of Proposition 65.

### **1.4.1 Proactive Implementation of Protective Measures**

Prior to EHA’s issuance of the Notices, JJCI instituted a voluntary recall from all distribution channels of the units of the Products that had been manufactured and sold or introduced in the stream of commerce (the “VRPs”). JJCI shall not in the future ship, distribute, offer for sale or otherwise make available for purchase or use any unit of the VRPs. To reduce the risk of inadvertent introductions of benzene into the Products, JJCI implemented corrective and preventative measures prior to manufacturing any additional units of the Products. JJCI denies all material allegations in the Notices and specifically denies the Products (including the VRPs) (a) require or required a Proposition 65 warning or (b) cause or caused harm to any person.

### **1.4.2 No Public Enforcer Prosecution of an Action Related to the Notices**

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notices.

### **1.5 No Admission**

For the purpose of avoiding prolonged and costly litigation concerning the claims and defenses raised, or which could be claimed or raised, by the material, factual and legal allegations in the Notices, the Parties have entered into this Settlement Agreement as a full and final settlement, compromise, and resolution of all claims against JJCI that were raised in the Notices based on the facts alleged or set forth therein, or which could have been raised against JJCI based on the facts alleged or set forth therein. JJCI denies the material, factual, and legal allegations in the Notices and maintains that all of the products it sold and/or distributed for sale in California, including the Products (and the VRPs), have been, and are, in compliance with all laws. Nothing in this Settlement Agreement, the execution of this Settlement Agreement, JJCI's voluntary recall of the VRPs, JJCI's implementation of corrective and preventative measures to reduce the risk of inadvertent introductions of benzene into the Products, or compliance with this Settlement Agreement shall constitute or be construed as an admission by JJCI or by any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or violation of law at any time, for any purpose. Nothing in this Settlement Agreement shall be construed as giving rise to any presumption or inference of admission, concession, or waiver of any defense by JJCI, or by any other person or entity, as to any fault, wrongdoing, or liability, including without limitation any alleged violation of Proposition 65. This Section shall not, however, diminish or otherwise affect JJCI's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean twenty-one (21) days following the execution of this Settlement Agreement by the Parties.

## **2. MONETARY SETTLEMENT TERMS**

### **2.1 Civil Penalty Payment**

In settlement of all claims alleged in the Notices or referred to in this Settlement Agreement, JJCI agrees to pay two thousand five hundred dollars (\$2,500.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1)

& (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Within thirty (30) days of the date this Settlement Agreement is executed by the Parties, JJCI shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of one thousand eight hundred and seventy-five dollars (\$1,875.00) and (b) Environmental Health Advocates, Inc., in the amount of six hundred and twenty-five dollars (\$625.00).

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

For United States Postal Service Delivery:

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

For Federal Express 2-Day Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

All penalty payments owed to EHA shall be sent to:

Samantha Dice  
Environmental Health Advocates  
225 Broadway, Suite 1900  
San Diego, CA 92101

## **2.2 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within thirty (30) days of the date this Settlement Agreement is executed by the Parties, JJCI agrees to pay twenty-two thousand five hundred dollars (\$22,500.00) to EHA and its counsel for all fees and costs

incurred in investigating, bringing this matter to the attention of JJCI and negotiating a settlement.

JJCI shall provide their payment to EHA's counsel in one check for twenty-two thousand five hundred dollars (\$22,500.00) payable to "Entorno Law LLP".

### **2.3 Payment Address**

All payments required under this Section shall be delivered to:

Noam Glick  
Entorno Law LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **2.4 Tax Documentation**

The Parties acknowledge that JJCI cannot issue any settlement payments pursuant to Section 2.1 and 2.2 above until after JJCI receives the requisite W-9 forms from EHA's counsel.

## **3. CLAIMS COVERED AND RELEASED**

### **3.1 EHA's and its Attorneys' Release of JJCI**

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and JJCI of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against JJCI and each of its retailers, including but not limited to Target Corporation ("the Releasees"), based on the alleged failure to warn about exposures to benzene allegedly required under Proposition 65 in the Products sold or distributed for sale in California by JJCI before the Effective Date, as alleged in the Notices.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby fully, finally and forever discharges and waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action, and fully, finally, and forever discharges, releases, and covenants not to sue, regarding all claims, against JJCI and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but

not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to any alleged or actual failure to warn about exposures to benzene required under Proposition 65 in the Products distributed, sold or offered for sale by JJCI, before or after the Effective Date.

In consideration of the promises and agreements herein contained, EHA's attorneys, including Noam Glick and Entorno Law LLP, represent and warrant that, as of the date of signing this Settlement Agreement, they do not have a present intention to file, and covenant that they will not at any time file, nor cooperate in the filing or prosecution of, a Proposition 65 lawsuit on any potential plaintiff's behalf other than EHA with respect to any alleged or actual failure to warn about exposures to benzene required under Proposition 65 in connection with, or regarding, the Products before or after the Effective Date.

### **3.2 JJCI's Release of EHA**

JJCI, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements made prior to the Effective Date by EHA and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

### **3.3 California Civil Code Section 1542**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Products will develop or be discovered. EHA on behalf of itself only, on one hand, and JJCI on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 3.1 and 3.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES NOT  
KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**

**THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

**4. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**5. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

**6. ENFORCEMENT**

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For JJCI:

Steven R. Tekosky  
Tatro Tekosky Sadwick LLP  
333 South Grand Avenue, Suite 4270  
Los Angeles, California 90071

For EHA:

Noam Glick  
Entorno Law LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**10. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**


The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 05/17/2022

Date: 06/01/2022

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
JOHNSON & JOHNSON CONSUMER INC.

**AGREED TO:**

Date: 05/17/2022

By:   
ENTORNO LAW LLP