

1 JOANNE M. GRAY (*Pro Hac Vice*)  
JGray@goodwinlaw.com  
2 **GOODWIN PROCTER LLP**  
The New York Times Building  
3 620 Eighth Avenue  
New York, NY 10018  
4 Tel.: +1 212 813 8800  
Fax: +1 212 355 3333  
5

6 AMANDA H. RUSSO (SBN 319617)  
ARusso@goodwinlaw.com  
7 **GOODWIN PROCTER LLP**  
601 South Figueroa Street, Suite 4100  
Los Angeles, CA 90017  
8 Tel.: +1 213 426 2534  
Fax: +1 213 623 1673  
9

10 Attorneys for Defendant:  
UNREAL BRANDS, INC.

11  
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 ENVIRONMENTAL HEALTH  
ADVOCATES, INC.,

15 Plaintiff,

16 v.

17 UNREAL BRANDS, INC., a Delaware  
corporation, AMAZON.COM, INC., a  
18 Delaware corporation, and DOES 1 through  
19 100, inclusive,

20 Defendants.  
21  
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Case No. 21CV003598

**[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 ("URB Consent Judgment") is entered into by and between  
4     Environmental Health Advocates, Inc., ("EHA" or "Plaintiff") and Unreal Brands, Inc. ("Defendant"  
5     or "Unreal" or "URB") with EHA and Unreal 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  
10    by reducing or eliminating hazardous substances contained in consumer products.

11            **1.3 Defendant**

12            For the purposes of this URB Consent Judgment only, Unreal states that it currently employs  
13    ten or more individuals and is a "person in the course of doing business" for purposes of the Safe  
14    Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq.  
15    ("Proposition 65").

16            **1.4 General Allegations**

17            EHA alleges that Unreal manufactures, imports, sells, and distributes for sale in California  
18    certain Unreal Dark Chocolate Almond Butter Cups that contain lead. EHA further alleges that  
19    Unreal does so without providing a sufficient health hazard warning as required by Proposition 65  
20    and related Regulations. Unreal denies any and all such allegations. Pursuant to Proposition 65, lead  
21    is listed as a chemical known to cause cancer, birth defects and other reproductive harm.

22            **1.5 Notices of Violation**

1 EHA alleges that, on or around August 17, 2021, it served Defendant Unreal, Defendant  
2 Amazon.com, Inc., the California Attorney General, and all other required public enforcement  
3 agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that  
4 Unreal had violated Proposition 65 by failing to sufficiently warn consumers in California of the  
5 health hazards associated with exposures to lead contained in Unreal Dark Chocolate Almond Butter  
6 Cups.

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

#### 9 **1.6 Product Description**

10 The products covered by this URB Consent Judgment are chocolate including but not limited  
11 to Unreal Dark Chocolate Almond Butter Cups manufactured or processed by Unreal that allegedly  
12 contain lead and are imported, sold, shipped, delivered, or distributed for sale to consumers in  
13 California by or on behalf of Releasees (as defined in section 4.1) (“Covered Products”).

#### 14 **1.7 State of the Pleadings**

15 On or around December 6, 2021, EHA filed a Complaint against Unreal for the alleged  
16 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

#### 17 **1.8 No Admission**

18 Unreal denies the material factual and legal allegations of the Notice and Complaint and  
19 maintains that all of the Covered Products it has manufactured, processed, distributed or, sold in  
20 California, and are, in compliance with Proposition 65 and the AYS Consent Judgment (as defined  
21 herein). Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,  
22 conclusion of law, issue of law, or violation of law, nor shall compliance with this URB Consent  
23 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
24 violation of law. This Section shall not, however, diminish or otherwise affect Unreal’s obligations,  
25 responsibilities, and duties under the URB Consent Judgment.

#### 26 **1.9 Jurisdiction**

27 For purposes of this URB Consent Judgment and the Complaint only, the Parties stipulate that  
28 this Court has jurisdiction over Unreal as to the allegations in the Complaint, that venue is proper in

1 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
2 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

3 **1.10 Effective Date**

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

7 ///

8 **2. INJUNCTIVE RELIEF**

9 **2.1 Covered Products**

10 Beginning thirty (30) days after the Effective Date, Unreal shall be permanently enjoined  
11 from manufacturing, distributing, or directly selling in the State of California, any Covered Product  
12 that expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day  
13 unless such Covered Products comply with the warning requirements of Section 2.2. As used in this  
14 Section 2, “distributed for sale in California” means to directly ship Covered Products into California  
15 or to sell Covered Products to a distributor Unreal knows will sell Covered Products in California.

16 **2.2 Clear and Reasonable Warnings**

17 For Covered Products that contain lead in a concentration exceeding the “Daily Exposure  
18 Level” above, and which are manufactured and packaged for distribution for authorized sale or use in  
19 California on or after the Effective Date, Unreal shall provide a warning statement, as is described  
20 herein.

21 This warning statement shall be prominently displayed on the Covered Products, on the  
22 packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is  
23 displayed with such conspicuousness, as compared with other words, statements, or designs as to  
24 render it likely to be read and understood by an ordinary individual prior to sale. If the warning  
25 statement is displayed on the Covered Products’ packaging, it must be in a type size no smaller than  
26 the largest type size used for other consumer information on the product. In no case shall a warning  
27 statement displayed on the Covered Products’ packaging appear in a type size smaller than 6-point  
28 type. The same warning shall be posted on any websites under the exclusive control of Unreal where

1 Covered Products are sold into California. Unreal shall instruct any third-party website to which it  
2 sells its Covered Products to include the same warning as a condition of selling the Covered Products.

3 Notwithstanding any other provision herein, the warning shall be provided to California  
4 consumers in a manner that complies with 27 C.C.R. § 25602(b), or this URB Consent Judgment, or  
5 under then-current law, regulations, or relevant case law, whichever is more favorable to Unreal.  
6 Specifically, for internet purchases, a warning must also be provided by including either the warning  
7 or a clearly marked hyperlink using the word "**WARNING**" on the product display page, or by  
8 otherwise prominently displaying the warning to the purchaser prior to completing the purchase.

### 9 **2.3 Sell-Through Period**

10 Notwithstanding anything else in this URB Consent Judgment, the Covered Products that are  
11 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to this  
12 URB Consent Judgment, without regard to when such Covered Products were, or are in the future,  
13 distributed or sold to customers. As a result, the obligation of Unreal, or any Releasees (if  
14 applicable), do not apply to these Covered Products manufactured on or prior to the Effective Date.

## 15 **3. MONETARY SETTLEMENT TERMS**

### 16 **3.1 Settlement Amount**

17 Unreal shall pay fifty thousand dollars (\$50,000) in settlement and total satisfaction of all the  
18 claims referred to in the Notice, the Complaint, and this URB Consent Judgment. This includes civil  
19 penalties in the amount of five thousand dollars (\$5,000) pursuant to Health and Safety Code section  
20 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000)  
21 pursuant to Code of Civil Procedure section 1021.5.

### 22 **3.2 Civil Penalty**

23 The portion of the settlement attributable to civil penalties shall be allocated according to  
24 Health and Safety Code section 25249.12(c)(1) and (d). This payment shall be made, following the  
25 entry of the URB Consent Judgment, via two separate checks: (a) one check made payable to the  
26 California Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of three  
27 thousand seven hundred fifty dollars (\$3,750.00), representing seventy-five percent (75%) of the total  
28 penalty, and (b) one check made payable to EHA individually in the amount of one thousand two

1 hundred fifty dollars (\$1,250.00), representing the remaining twenty-five percent (25%) of the  
2 penalty paid.

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

4 Environmental Health Advocates, Inc.  
5 225 Broadway, Suite 2100  
6 San Diego, CA 92101

6 //

7 //

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

10 For United States Postal Service Delivery:

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

14 For Federal Express 2-Day Delivery:

15 Mike Gyurics  
16 Fiscal Operations Branch Chief  
17 Office of Environmental Health Hazard Assessment  
18 1001 I Street  
19 Sacramento, CA 95814

18 Unreal agrees to provide EHA's counsel with a copy of the check payable to OEHHA,  
19 simultaneous with its penalty payments to EHA.

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

- 22 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 23 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

24 **3.3 Attorney's Fees and Costs**

25 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's  
26 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not  
27 limited to investigating potential violations, bringing this matter to Unreal's attention, as well as  
28 litigating and negotiating a settlement in the public interest.

Unreal shall provide their payment to EHA's counsel in a single installment as follows after entry of the URB Consent Judgment. Payment may be by physical check or by electronic means, including wire transfers, at Unreal's discretion:

- The payment shall be in two payments: the first payment in the amount of thirty thousand dollars (\$30,000.00), payable to Entorno Law, LLP, within fourteen (14) days of the Effective Date ("First Payment"); the second payment in the amount of fifteen thousand dollars (\$15,000), payable to Entorno Law, LLP, within thirty (30) days of the Effective Date (the "Second Payment". If the First Payment is timely made, the Second Payment shall be waived in its entirety by EHA and Entorno Law, LLP, and no further payments shall be due.

**All payments to Entorno Law, LLP will be sent to the following address:**

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

#### **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 Unreal, and its parents, subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant Entities"), each entity to whom Defendant Unreal directly or indirectly distributes, ships, or sells the Covered Products including but not limited to downstream distributors, wholesalers, customers, and retailers (including but not limited to Defendant Amazon.com, Inc.), franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (collectively referred to as the "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure to lead from Covered Products as set forth in the Notice(s). Compliance with the terms of this URB Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead from Covered Products

as set forth in the Notice(s). This URB Consent Judgment is a full, final, and binding resolution of all claims under Proposition 65 that were or could have been asserted against Unreal and/or Releasees for failure to provide warnings required under Proposition 65 for alleged exposure to lead through reasonably foreseeable use of the Covered Products. This release does not extend to any third-party retailers selling the product on a website who, after receiving instruction from Unreal to include a warning as set forth above in Section 2.2, do not include such a warning after a reasonable time to amend the website.

#### **4.2 EHA's Individual Release of Claims**

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

#### **4.3 Unreal's Release of EHA**

Unreal on its own behalf, as well as 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 by EHA and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

### **5. COURT APPROVAL**

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

### **6. SEVERABILITY**

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



1     **7. GOVERNING LAW**

2             The terms of this URB Consent Judgment shall be governed by the laws of the state of  
3     California as applied within the state of California. In the event that Proposition 65 is repealed, or is  
4     otherwise rendered inapplicable for reasons, including but not limited to changes in the law, then  
5     Unreal may provide written notice to EHA of any asserted change, and shall have no further  
6     injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
7     Covered Products are so affected. Notwithstanding any other provision of this URB Consent  
8     Judgment, nothing in this URB Consent Judgment shall preclude Unreal from complying with then-  
9     current law, regulation, or relevant case law, whichever is most favorable to Unreal. In the event the  
10    California Office of Health Hazard Assessment adopts a regulation or safe use determination, or  
11    issues an interpretive guideline that exempts Covered Products from meeting the requirements of  
12    Proposition 65; or if lead cases are permanently enjoined by a court of competent jurisdiction; or if  
13    Proposition 65 is determined to be preempted by federal law or a burden on First Amendment rights  
14    with respect to lead in Covered Products or Covered Products substantially similar to Covered  
15    Products, then Unreal shall be relieved of its obligation to comply with Section 2 herein.

16    **8. ENFORCEMENT**

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

19    **9. NO ADMISSION AND ALTERNATIVE TERMS**

20             By execution of this Consent Judgment, the Parties do not admit any facts or conclusions of  
21    law, including, but not limited to, any facts or conclusions of law regarding the applicability of  
22    Proposition 65 to the Covered Products, or any violation of Proposition 65, or any other statutory,  
23    regulatory, common law, or equitable doctrine. Nothing in this URB Consent Judgment or any  
24    document referred to herein, nor compliance with the terms of the Consent Judgment, shall constitute  
25    or be construed as an admission or concession by EHA, Unreal, or the Released Parties of any fact,  
26    conclusion of law, issue of law, or violation of law. Nothing in this URB Consent Judgment or any  
27    document referred to herein, nor compliance with this Judgment, shall constitute or be construed as  
28    giving rise to any presumption or inference of admission or concession by the Released Parties as to

1 any fault, wrongdoing, or liability. Nothing in this URB Consent Judgment, nor compliance with its  
2 terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission  
3 or evidence of fault, wrongdoing, or liability by Unreal, or its officers, directors, employees, or  
4 parents, subsidiaries or affiliated corporations, or other Released Parties, including without limitation  
5 in any administrative or judicial proceeding or litigation in any court, agency, or forum. For the  
6 avoidance of doubt, Unreal denies any liability in connection with any claim, demand, or allegation  
7 against it or the Covered Products and intends merely to avoid litigating and to buy peace. Except for  
8 the allegations settled and compromised, and except as may be set forth elsewhere in this URB  
9 Consent Judgment, nothing in this URB Consent Judgment shall prejudice, waive, or impair any  
10 right, remedy, argument, or defense that EHA or Unreal may have against one another in any other  
11 pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

12 Notwithstanding that Unreal maintains that it is covered by the consent judgment entered in  
13 *As You Sow v. Trader Joe's, Inc., et al*, Case No. CGC-15-548791, Superior Court of California,  
14 County of San Francisco ("AYS Consent Judgment"), without EHA conceding that the AYS Consent  
15 Judgment applies in this case, the Parties agree to enter into this URB Consent Agreement to fully  
16 and finally resolve and settle any and all claims, demands, and allegations of EHA concerning the  
17 Parties' and the Covered Products' compliance with Proposition 65, as set forth herein.  
18 Notwithstanding any other terms in this URB Consent Judgment, EHA agrees that as an alternative to  
19 meeting the reformulation standard described in Section 2 above, URB is in compliance with the  
20 reformulation standard in this URB Consent Judgment by meeting the levels set forth in the AYS  
21 Consent Judgment.

22 **10. NOTICE**

23 Unless otherwise specified herein, all correspondence and notice required by this URB  
24 Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or  
25 certified mail, return receipt requested; or (iii) a recognized overnight courier to the following  
26 addresses:  
27  
28

1 If to Unreal:

2 Joanne M. Gray  
3 The New York Times Building  
4 620 Eighth Avenue  
5 New York, NY 10018

6 – and –

7 Amanda Russo  
8 601 South Figueroa Street, Suite 4100  
9 Los Angeles, CA 90017

If to EHA:

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

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, or may mutually agree to accept notice or correspondence and notice under this URB Consent Judgment by other means.

11 **11. COUNTERPARTS; DIGITAL SIGNATURES**

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

12 **12. POST EXECUTION ACTIVITIES**

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

1 **13. MODIFICATION**

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

5 **14. AUTHORIZATION**

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

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


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

13 **16. ENTIRE AGREEMENT**

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

19  
20  
21 **AGREED TO:**

22  
23 Date: 07/27/2022

24 By:   
25 ENVIRONMENTAL HEALTH  
26 ADVOCATES, INC.

**AGREED TO:**

27 Date: 7/28/2022

28 By:   
UNREAL BRANDS, INC.

1 **AGREED TO:**

2 Date: \_\_\_\_\_

3  
4 By: \_\_\_\_\_  
5 AMAZON.COM, INC.

6 **IT IS SO ORDERED.**

7  
8 Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT