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9 Attorneys for Defendant:  
10 UNREAL BRANDS, INC.

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

13 ENVIRONMENTAL HEALTH  
14 ADVOCATES, INC.,

15 Plaintiff,

16 v.

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

20 Defendants.  
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Case No. 21CV003598

**[PROPOSED] AMENDED CONSENT  
JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code Civ. Proc. § 664.6)

# **1. INTRODUCTION**

## **1.1 Parties**

This Consent Judgment ("URB Consent Judgment") is entered into by and between Environmental Health Advocates, Inc., ("EHA" or "Plaintiff") and Unreal Brands, Inc. ("Defendant" or "Unreal" or "URB") with EHA and Unreal each individually referred to as a "Party" and collectively referred to as the "Parties."

## **1.2 Plaintiff**

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

## **1.3 Defendant**

For the purposes of this URB Consent Judgment only, Unreal states that it currently 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, Health and Safety Code section 25249.6 et seq. ("Proposition 65").

## **1.4 General Allegations**

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

## **1.5 Notices of Violation**

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

No public enforcer has commenced or is otherwise prosecuting an action to enforce the

violations alleged in the Notice.

#### **1.6 Product Description**

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

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

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

#### **1.8 No Admission**

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

#### **1.9 Jurisdiction**

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

#### **1.10 Effective Date**

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

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1     **2.     INJUNCTIVE RELIEF**


2             **2.1     Covered Products**

3             Beginning thirty (30) days after the Effective Date, Unreal shall be permanently enjoined from  
4     manufacturing, distributing, or directly selling in the State of California, any Covered Product that  
5     expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless  
6     such Covered Products comply with the warning requirements of Section 2.2. The “Daily Lead  
7     Exposure Level” shall be calculated by multiplying the recommended serving size in Covered Products  
8     by the concentration of lead in Covered Products. As used in this Section 2, “distributed for sale in  
9     California” means to directly ship Covered Products into California or to sell Covered Products to a  
10    distributor Unreal knows will sell Covered Products in California.


11            **2.2     Clear and Reasonable Warnings**

12            For Covered Products that contain lead in a concentration exceeding the “Daily Lead Exposure  
13    Level” above, and which are manufactured and packaged for distribution for authorized sale or use in  
14    California on or after the Effective Date, Unreal shall provide one of the following warning statements.

15            **Option 1:**

16                     **WARNING :** Consuming this product can expose you to  
17                    chemicals including lead, which is known to the State of California to  
18                    cause cancer and birth defects or other reproductive harm. For more  
                      information go to [www.P65warnings.ca.gov/food](http://www.P65warnings.ca.gov/food)

19            **Option 2:**

20                     **WARNING :** Cancer and Reproductive Harm –  
                      [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

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

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

3 For any products sold over the internet, the warning shall be provided to California consumers  
4 in a manner that complies with 27 C.C.R. § 25602(b). Specifically, for internet purchases, a warning  
5 must also be provided by including either the warning or a clearly marked hyperlink using the word  
6 "WARNING" on the product display page, or by otherwise prominently displaying the warning to the  
7 purchaser prior to completing the purchase.

### 8 **2.3 Sell-Through Period**

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

## 14 **3. MONETARY SETTLEMENT TERMS**

### 15 **3.1 Settlement Amount**

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

### 21 **3.2 Civil Penalty**

22 The portion of the settlement attributable to civil penalties shall be allocated according to Health  
23 and Safety Code section 25249.12(c)(1) and (d). This payment shall be made, following the entry of  
24 the URB Consent Judgment, via two separate checks: (a) one check made payable to the California  
25 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of three thousand  
26 seven hundred fifty dollars (\$3,750.00), representing seventy-five percent (75%) of the total penalty,  
27 and (b) one check made payable to EHA individually in the amount of one thousand two hundred fifty  
28 dollars (\$1,250.00), representing the remaining twenty-five percent (25%) of the penalty paid.

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

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

**All payments owed to OEHHHA (EIN: 68-0284486) shall be delivered directly to OEHHHA (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

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

Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.

Relevant information is set out below:

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

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

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

1 retailers selling the product on a website who, after receiving instruction from Unreal to include a  
2 warning as set forth above in Section 2.2, do not include such a warning after a reasonable time to  
3 amend the website.

#### 4 **4.2 EHA's Individual Release of Claims**

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

#### 11 **4.3 Unreal's Release of EHA**

12 Unreal on its own behalf, as well as on behalf of its past and current agents, representatives,  
13 attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys  
14 and other representatives, for any and all actions taken or statements made by EHA and its attorneys  
15 and other representatives, whether in the course of investigating claims, otherwise seeking to enforce  
16 Proposition 65 against them, in this matter or with respect to the Covered Products.

### 17 **5. COURT APPROVAL**

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

### 21 **6. SEVERABILITY**

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

### 25 **7. GOVERNING LAW**

26 The terms of this URB Consent Judgment shall be governed by the laws of the state of  
27 California as applied within the state of California. In the event that Proposition 65 is repealed, or is  
28 otherwise rendered inapplicable for reasons, including but not limited to changes in the law, then Unreal



1 may provide written notice to EHA of any asserted change, and shall have no further injunctive  
2 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered  
3 Products are so affected. Notwithstanding any other provision of this URB Consent Judgment, nothing  
4 in this URB Consent Judgment shall preclude Unreal from complying with then-current law,  
5 regulation, or relevant case law, whichever is most favorable to Unreal. In the event the California  
6 Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues an  
7 interpretive guideline that exempts Covered Products from meeting the requirements of Proposition  
8 65; or if lead cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65  
9 is determined to be preempted by federal law or a burden on First Amendment rights with respect to  
10 lead in Covered Products or Covered Products substantially similar to Covered Products, then Unreal  
11 shall be relieved of its obligation to comply with Section 2 herein.

12 **8. ENFORCEMENT**

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

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

16 By execution of this Consent Judgment, the Parties do not admit any facts or conclusions of  
17 law, including, but not limited to, any facts or conclusions of law regarding the applicability of  
18 Proposition 65 to the Covered Products, or any violation of Proposition 65, or any other statutory,  
19 regulatory, common law, or equitable doctrine. Nothing in this URB Consent Judgment or any  
20 document referred to herein, nor compliance with the terms of the Consent Judgment, shall constitute  
21 or be construed as an admission or concession by EHA, Unreal, or the Released Parties of any fact,  
22 conclusion of law, issue of law, or violation of law. Nothing in this URB Consent Judgment or any  
23 document referred to herein, nor compliance with this Judgment, shall constitute or be construed as  
24 giving rise to any presumption or inference of admission or concession by the Released Parties as to  
25 any fault, wrongdoing, or liability. Nothing in this URB Consent Judgment, nor compliance with its  
26 terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or  
27 evidence of fault, wrongdoing, or liability by Unreal, or its officers, directors, employees, or parents,  
28 subsidiaries or affiliated corporations, or other Released Parties, including without limitation in any

administrative or judicial proceeding or litigation in any court, agency, or forum. For the avoidance of doubt, Unreal denies any liability in connection with any claim, demand, or allegation against it or the Covered Products and intends merely to avoid litigating and to buy peace. Except for the allegations settled and compromised, and except as may be set forth elsewhere in this URB Consent Judgment, nothing in this URB Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense that EHA or Unreal may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

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

#### **10. NOTICE**

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

##### **If to Unreal:**

Joanne M. Gray  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018

– and –

Amanda Russo  
601 South Figueroa Street, Suite 4100  
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

1 notices and other communications shall be sent, or may mutually agree to accept notice or  
2 correspondence and notice under this URB Consent Judgment by other means.

3 **11. COUNTERPARTS; DIGITAL SIGNATURES**

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

7 **12. POST EXECUTION ACTIVITIES**

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

18 **13. MODIFICATION**

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

22 **14. AUTHORIZATION**

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

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

26 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
27 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in  
28

1 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed  
2 in the absence of such a good faith attempt to resolve the dispute beforehand.

3 **16. ENTIRE AGREEMENT**

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

11 **AGREED TO:**

**AGREED TO:**

13 Date: 07/27/2022

Date: 7/28/2022

15 By:   
16 ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
UNREAL BRANDS, INC.

17 **AGREED TO:**

19 Date: \_\_\_\_\_

21 By: \_\_\_\_\_  
AMAZON.COM, INC.

23 **IT IS SO ORDERED.**

25 Date: \_\_\_\_\_

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