

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

11 Attorneys for Plaintiff
12 Environmental Health Advocates, Inc.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

15 ENVIRONMENTAL HEALTH
16 ADVOCATES, INC.,

17 Plaintiff,

18 v.

19 EDGEWELL PERSONAL CARE BRANDS,
20 LLC, a Delaware limited liability company,
21 BED BATH & BEYOND INC., a New York
22 corporation, and DOES 1 through 100,
23 inclusive,
24 Defendants.

Case No.: 22CV006660

[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”) and Edgewell Personal Care Brands, LLC (“Defendant” or “EPCB”), with EHA
5 and EPCB each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 EPCB employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that EPCB manufactures, imports, sells, and distributes for sale Covered Products
16 that contain benzene. EHA further alleges that EPCB does so without providing a sufficient health
17 hazard warning as required by Proposition 65 and related regulations. Pursuant to Proposition 65,
18 benzene is listed as a chemical known to cause cancer and birth defects or other reproductive harm.

19 **1.5 Notices of Violation**

20 On or around November 5, 2021, EHA issued a 60-Day Notice of Violation of Proposition 65
21 (“Notice”) to EPCB, Bed Bath & Beyond Inc., the California Attorney General, and all other required
22 public enforcement agencies. The Notice alleged that EPCB violated Proposition 65 by failing to
23 provide Proposition 65 warnings to consumers in California associated with exposures to benzene
24 contained in the Covered Products.

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

1 **1.6 Product Description**

2 The products covered by this Consent Judgment are Banana Boat® and Hawaiian Tropic®
3 aerosol sunscreens manufactured, imported, sold, or distributed by EPCB that allegedly contain
4 benzene and are imported, sold, shipped, delivered, or distributed for sale to consumers in California
5 (“Covered Products”).

6 **1.7 State of the Pleadings**

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

9 **1.8 No Admission**

10 EPCB 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, and/or distributed for
12 sale in California, including Covered Products, have been, and are, in compliance with all laws,
13 including Proposition 65. Nothing in this Consent Judgment shall be construed as an admission of any
14 fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
15 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
16 of law. This Section shall not, however, diminish or otherwise affect EPCB’s obligations,
17 responsibilities, and duties under 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 EPCB 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 the
25 Court signs this Consent Judgment and all Parties have been provided with a copy.

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of the Covered Products**

3 Any Covered Products that are manufactured by or for EPCB after the Effective Date that are
4 thereafter sold or distributed for sale in California by EPCB without a warning shall not contain more
5 than 2 parts per million (“ppm”) of benzene from each lot, unless such Covered Products comply with
6 the warning requirements of Section 2.3. As used in this Section 2, “distributed for sale in California”
7 means to directly ship Covered Products into California or to sell Covered Products to a distributor
8 EPCB knows will sell Covered Products in California.

9 **2.2 Testing**

10 Compliance with Section 2.1 shall be determined by GC-MS testing on Covered Product after
11 it has been dispensed from the bottle. This Consent Judgment does not mandate testing, but to the
12 extent EPCB conducts more than one test of units from a particular lot, the highest scientifically reliable
13 benzene result shall be used to determine compliance with Section 2.1. Any testing shall be performed
14 by a laboratory accredited by the State of California, a federal agency, or a recognized accrediting
15 organization. If a new test method is developed to test for benzene in aerosol sunscreen products that
16 more accurately measures consumer exposure, EPCB may request a modification to this Section of the
17 Consent Judgment pursuant to Section 12, which EHA will not unreasonably oppose.

18 **2.3 Sell-Through Period**

19 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
20 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to this
21 Consent Judgment, without regard to when such Covered Products were, or are in the future, distributed
22 or sold to consumers. As a result, the obligation of EPCB, or any Releasees (if applicable), does not
23 apply to these Covered Products manufactured on or prior to the Effective Date.

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Settlement Amount**

26 EPCB shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all the
27 claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil penalties
28 in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section

1 25249.7(b) and attorneys' fees and costs in the amount forty-five thousand dollars (\$45,000.00)
2 pursuant to Code of Civil Procedure section 1021.5.

3 **3.2 Civil Penalty**

4 The portion of the settlement attributable to civil penalties shall be allocated according to Health
5 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
6 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
7 twenty-five percent (25%) of the penalty paid to EHA individually.

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

9 Environmental Health Advocates
10 225 Broadway, Suite 2100
11 San Diego, CA 92101

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

13 For United States Postal Service Delivery:

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

19 For Federal Express 2-Day Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

25 EPCB agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
26 simultaneous with its penalty payments to EHA.

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

28 Relevant information is set out below:

- 25 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided in
26 Section 3.2(a)(i);
- 27 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

1 **3.3 Attorney’s Fees and Costs**

2 The portion of the settlement attributable to attorneys’ fees and costs, forty-five thousand
3 dollars (\$45,000.00), shall be paid to Entorno Law, LLP (“EHA’s Counsel”), who are entitled to
4 attorneys’ fees and costs incurred by it in this action, including but not limited to investigating potential
5 violations, bringing this matter to EPCB’s attention, as well as litigating and negotiating a settlement
6 in the public interest.

7 EPCB shall provide their payment to EHA’s counsel in one check for forty-five thousand
8 dollars (\$45,000.00) payable to Entorno Law, LLP. The payment shall be delivered to the following
9 address:

10 Noam Glick
11 Entorno Law LLP
12 225 Broadway, Suite 2100
13 San Diego, CA 92101

14 **3.4 Timing**

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

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 EHA’s Public Release of Proposition 65 Claims**

18 Plaintiff acting on its own behalf and in the public interest releases EPCB and its parents,
19 subsidiaries, affiliated entities, its directors, officers, principals, agents, employees, attorneys, insurers,
20 accountants, predecessors, successors, and assigns (“Defendant Entities”), each entity to whom
21 Defendant directly or indirectly distributes, ships, or sells the Covered Products including but not
22 limited to downstream distributors, wholesalers, customers, and retailers (including but not limited to
23 Bed Bath & Beyond Inc.), franchisees, franchisors, cooperative members, suppliers, licensees, and
24 licensors, and all of the foregoing entities’ owners, directors, officers, agents, principals, employees,
25 attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (collectively,
26 including Defendant Entities, referred to as the “Releasees”) from all claims of Proposition 65
27 violations for exposure to benzene for Covered Products manufactured prior to the Effective Date.
28 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with
respect to exposures to benzene from Covered Products as set forth in the Notice. This Consent

1 Judgment is a full, final, and binding resolution of all claims under Proposition 65 that were or could
2 have been asserted against EPCB and/or Releasees for failure to provide warnings required under
3 Proposition 65 for alleged exposure to benzene through reasonably foreseeable use of the Covered
4 Products.

5 **4.2 EHA's Individual Release of Claims**

6 EHA, in its individual capacity, also hereby provides a release to Releasees, which shall be a
7 full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
8 costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every nature,
9 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
10 actual exposures to benzene in Covered Products manufactured by EPCB or Releasees before the
11 Effective Date. The release in this Section 4.2 is effective as a full and final accord and satisfaction of,
12 as well as a bar to, all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages,
13 losses, claims, liabilities and demands of every nature, character, and kind, whether known or unknown,
14 suspected or unsuspected as to Defendant Entities. EHA acknowledges that it is familiar with Section
15 1542 of the California Civil Code, which provides as follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS THAT THE CREDITOR OR
17 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
18 TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
19 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
20 PARTY.

21 EHA understands and acknowledges the significance and consequences of California Civil Code
22 section 1542 and nevertheless specifically waives its rights thereunder.

23 **4.3 EPCB's Release of EHA**

24 EPCB on its own behalf, and on behalf of Releasees as well as its past and current agents,
25 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
26 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
27 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
28 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

5. **COURT APPROVAL**

This Consent Judgment is not effective until it is approved by the Court and shall be null and

1 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
2 by such additional time as the Parties may agree to in writing.

3 **6. SEVERABILITY**

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

6 **7. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the state of California as
8 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
9 rendered inapplicable for reasons, including but not limited to changes in the law, then EPCB may
10 provide written notice to EHA of any asserted change and is entitled to move to modify this Consent
11 Judgment, which EHA agrees not to oppose except for good cause shown. In the event the California
12 Office of Health Hazard Assessment adopts a regulation or issues an interpretive guideline that exempts
13 Covered Products from meeting the requirements of Proposition 65; or if benzene cases are
14 permanently enjoined by a court of competent jurisdiction; or if Proposition 65 is determined to be
15 preempted by federal law or a burden on First Amendment rights with respect to benzene in Covered
16 Products or products substantially similar to Covered Products, then EPCB is entitled to move to
17 modify this Consent Judgment, which EHA agrees not to oppose except for good cause shown n.

18 **8. ENFORCEMENT**

19 Only EHA may enforce the terms of this Consent Judgment. Should an exceedance of the level
20 in Section 2.1 be alleged, EPCB must be provided written notice and data supporting such an allegation
21 and thirty (30) days to address the allegations before an enforcement motion may be filed. No violation
22 of this Consent Judgment shall be deemed to occur if EPCB demonstrates that testing in its possession
23 of the lot of the Covered Product at issue shows less than 2 ppm of benzene in accordance with Section
24 2.2. In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
25 to its reasonable attorneys' fees and costs.

26 **9. NOTICE**

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

4 If to EPCB:

5 Will Wagner
6 Arnold & Porter
7 Three Embarcadero Center | 10th Floor
San Francisco, CA 94111-4024

If to EHA:

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

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

10 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

14 **11. POST EXECUTION ACTIVITIES**

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

24 **12. MODIFICATION**

25 12.1 This Consent Judgment may be modified by: (i) a written agreement of the Parties and
26 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
27 of any Party, and the entry of a modified consent judgment thereon by the Court.
28

1 12.2 **Other EHA Settlements.** EPCB may move to modify this Consent Judgment to
2 substitute a higher benzene reformulation level that EHA agrees to in a future consent judgment
3 applicable to products substantially similar to the Covered Products, and EHA agrees not to oppose
4 any such motion except for good cause shown.

5 12.3 **Court Decision Regarding Similar Products.** If a court of competent jurisdiction
6 renders a final judgment that one or more products that are substantially similar to the Covered Products
7 do not require a warning for benzene under Proposition 65, then Defendant may move to modify this
8 Consent Judgment to conform to such ruling, and EHA agrees not to oppose any such motion except
9 for good cause shown.

10 12.4 **Federal Agency Action and Preemption.** If a court of competent jurisdiction or an
11 agency of the federal government, including, but not limited to the U.S. Food and Drug Administration,
12 states through any guidance, regulation, or legally binding act that federal law has preemptive effect
13 on any of the requirements of this Consent Judgment, then this Consent Judgment may be modified in
14 accordance with the procedure for noticed motions set forth herein to bring it into compliance with or
15 avoid conflict with federal law, and EHA agrees not to oppose any such motion except for good cause
16 shown.

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 Parties
27 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

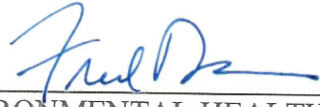
1 implied, other than those contained herein have been made by any Party. No other agreements, oral or
2 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

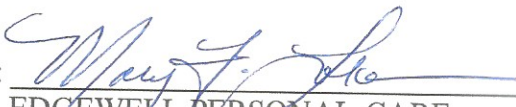
3 **AGREED TO:**

AGREED TO:

4
5 Date: 10/11/23

Date: 10/11/23

6
7 By: 
8 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
EDGEWELL PERSONAL CARE
BRANDS, LLC

9 **IT IS SO ORDERED.**

10
11 Date: _____

JUDGE OF THE SUPERIOR COURT