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9 Environmental Health Advocates, Inc.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

12 ENVIRONMENTAL HEALTH  
13 ADVOCATES, INC.,

14 Plaintiff,

15 v.

16 BEAUTY 21 COSMETICS, INC., a  
17 California corporation, BIG LOTS STORES,  
18 INC., an Ohio corporation, and DOES 1  
19 through 100, inclusive,

20 Defendants.

Case No. 21CV001126

**[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 Beauty 21 Cosmetics, Inc. (“Defendant” or “Beauty 21”) with EHA and  
5 Beauty 21 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 Beauty 21 employs ten or more individuals and is a “person in the course of doing business”  
12 for 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 Beauty 21 manufactures, imports, sells, and distributes for sale L.A. Colors  
16 Blusher & Deluxe Brush CBC141 Natural that contains asbestos. EHA further alleges that Beauty 21  
17 does so without providing a sufficient health hazard warning as required by Proposition 65 and related  
18 Regulations. Pursuant to Proposition 65, asbestos is listed as a chemical known to cause cancer, birth  
19 defects and other reproductive harm.

20 **1.5 Notices of Violation**

21 On or around March 27, 2021, EHA served Beauty 21, Big Lots Stores, Inc., the California  
22 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of  
23 Violation of Proposition 65 (“Initial Notice”). The Initial Notice alleged that Beauty 21 had violated  
24 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated  
25 with exposures to asbestos contained in L.A. Colors Blusher & Deluxe Brush CBC141 Natural.

26 On or around December 23, 2021, EHA served Beauty 21, Big Lots Stores, Inc., the California  
27 Attorney General, and all other required public enforcement agencies with an Amended 60-Day Notice  
28 of Violation of Proposition 65 (“Amended Notice”). The Amended Notice included supplemental

1 supporting documents for the named products.

2 No public enforcer has commenced or is otherwise prosecuting an action to enforce the  
3 violations alleged in the Initial Notice or Amended Notice (hereinafter, the “Notices”).

#### 4 **1.6 Product Description**

5 For purposes of this Consent Judgment, “Covered Product” means L.A. Colors Blusher &  
6 Deluxe Brush CBC141 Natural.

#### 7 **1.7 State of the Pleadings**

8 On or around October 26, 2021, EHA filed a Complaint against Beauty 21 for the alleged  
9 violations of Proposition 65 that are the subject of the Notices (“Complaint”).

#### 10 **1.8 No Admission**

11 Beauty 21 denies the material factual and legal allegations of the Notices and Complaint and  
12 maintains that the Covered Products it has manufactured, imported, sold, and/or distributed for sale in  
13 California have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be  
14 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor  
15 shall compliance with this Consent Judgment be construed as an admission of any fact, finding,  
16 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or  
17 otherwise affect Beauty 21’s obligations, responsibilities, and duties under this Consent Judgment.

#### 18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction  
20 over Beauty 21 as to the allegations in the Complaint, that venue is proper in the County of Alameda,  
21 and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment  
22 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 grants the motion for approval of this Consent Judgment, as discussed in Section 5.

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Testing of the Covered Products**

3 Commencing 90 days after the Effective Date, Beauty 21 shall not manufacture or purchase  
4 any Covered Products for sale in California unless a sample of each lot of the Covered Product, or each  
5 lot of the talc ingredient of the Covered Product, has been tested by an accredited laboratory for  
6 asbestos concentration by transmission electron microscopy (“TEM”) pursuant to one of the following  
7 methods: NY ELAP 198.4, ASTM D5756, or ISO 22262-2 and the results of such test are below  
8 the laboratory’s level of quantification. For purposes of complying with this Section 2, Beauty 21 may  
9 rely on a certificate of analysis provided by the supplier of the talc ingredient for the Covered  
10 Products or the supplier of the Covered Product, provided said certificate indicates non-detect of  
11 asbestos using TEM. Covered Products’ compliance with the standard set forth in this section  
12 constitutes compliance with Proposition 65 as to asbestos.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Settlement Amount**

15 Beauty 21 shall pay one hundred forty thousand dollars (\$140,000.00) in settlement and total  
16 satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This  
17 includes civil penalties in the amount of fifteen thousand dollars (\$15,000.00) pursuant to Health and  
18 Safety Code section 25249.7(b) and attorneys’ fees and costs in the amount of one hundred twenty-  
19 five thousand dollars (\$125,000.00) pursuant to Code of Civil Procedure section 1021.5.

20 **3.2 Civil Penalty**

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

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

26 Environmental Health Advocates  
27 225 Broadway, Suite 2100  
28 San Diego, CA 92101

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

3 For United States Postal Service Delivery:

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

9 For Federal Express 2-Day Delivery:

10 Mike Gyurics  
11 Fiscal Operations Branch Chief  
12 Office of Environmental Health Hazard Assessment  
13 1001 I Street  
14 Sacramento, CA 95814

15 Beauty 21 agrees to provide EHA's counsel with a copy of the check payable to OEHHA,  
16 simultaneous with its penalty payments to EHA.

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

### 18 **3.3 Attorney's Fees and Costs**

19 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's  
20 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not  
21 limited to investigating potential violations, bringing this matter to Beauty 21's attention, as well as  
22 litigating and negotiating a settlement in the public interest.

23 Beauty 21 shall provide its payment to EHA's counsel in one check for in the amount of  
24 \$125,000 payable to Entorno Law, LLP. The payment shall be delivered to the following address:

25 Noam Glick  
26 Entorno Law, LLP  
27 225 Broadway, Suite 1900  
28 San Diego, CA 92101

### 3.4 **Timing**

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

1     **4. CLAIMS COVERED AND RELEASED**

2             **4.1 EHA’s Public Release of Proposition 65 Claims**

3             Plaintiff acting on its own behalf and in the public interest releases Beauty 21 and its parents,  
4 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,  
5 employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant  
6 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered  
7 Products including but not limited to downstream distributors, wholesalers, customers, and retailers  
8 (including but not limited to Big Lots Stores, Inc.), franchisees, franchisors, cooperative members,  
9 suppliers, licensees, and licensors, and all of the foregoing entities’ owners, directors, officers, agents,  
10 principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and  
11 assigns (collectively referred to as the “Releasees”) from all claims for violations of Proposition 65  
12 relating to exposure to asbestos from Covered Products manufactured, distributed, or sold through the  
13 Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with  
14 Proposition 65 with respect to exposures to asbestos from Covered Products.

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

16             EHA, in its individual capacity, also provides a release to Beauty 21 and/or Releasees, which  
17 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,  
18 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every  
19 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of  
20 alleged or actual exposures to asbestos in Covered Products and other talc-containing cosmetics  
21 manufactured, imported, sold, or distributed by Beauty 21 before the Effective Date.

22             **4.3 Beauty 21’s Release of EHA**

23             Beauty 21 on its own behalf, and on behalf of Releasees as well as its past and current agents,  
24 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA  
25 and its attorneys and other representatives, for any and all actions taken or statements made by EHA  
26 and its attorneys and other representatives, whether in the course of investigating claims, otherwise  
27 seeking to enforce Proposition 65 against them, in this matter or with respect to alleged exposure to  
28 asbestos from the Covered Products and other talc-containing cosmetics.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved by the Court and shall be null and  
3 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or  
4 by such additional time as the Parties may agree to in writing. If this Consent Judgment is not entered  
5 by the Court, it shall be of no force or effect and shall not be introduced into evidence or otherwise  
6 used in any proceeding for any purpose.

7 **6. SEVERABILITY**

8 If any provision is held by a court to be unenforceable, the validity of the remaining provisions  
9 shall not be adversely affected.

10 **7. GOVERNING LAW**

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

17 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use  
18 determination, or issues an interpretive guideline that exempts Covered Products from meeting the  
19 requirements of Proposition 65; or if asbestos cases are permanently enjoined by a court of competent  
20 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First  
21 Amendment rights with respect to asbestos in Covered Products or Covered Products substantially  
22 similar to Covered Products, then Beauty 21 shall be relieved of its obligation to comply with Section  
23 2 herein.

24 **8. ENFORCEMENT**

25 **8.1 Enforcement Procedures**

26 Either Party may by motion or application for an order to show cause before this Court seek to  
27 enforce the terms of this Consent Judgment. Prior to filing any such motion or application, a Party  
28 seeking to enforce the terms of this Consent Judgment shall provide the allegedly violating Party with

1 a written notice setting forth the detailed factual and legal basis for the alleged violation (“Notice of  
2 Violation”), and if applicable, comply with the requirements of Section 8.2. The Parties shall then meet  
3 and confer during the thirty (30) day period following the date the Notice of Violation was sent in an  
4 effort to try to reach agreement on the alleged violation. After such thirty (30) day period, the Party  
5 seeking to enforce may, by motion or order to show cause before the Superior Court of Alameda, seek  
6 to enforce the terms and conditions contained in this Consent Judgment. Only the Parties may enforce  
7 this Consent Judgment.

### 8 **8.2 Enforcement of Section 2.1**

9 Prior to bringing any motion or application related to detectable asbestos in Covered Products  
10 pursuant to Section 2.1, EHA’s Notice of Violation must include data demonstrating that the Covered  
11 Product contains asbestos above the reporting level by TEM. Within 30 days, Beauty 21 may provide  
12 EHA with any certificate of analysis, provided by the supplier of the talc ingredient or Covered Product,  
13 demonstrating compliance with Section 2.1, or any later-performed testing of the Covered Product  
14 containing the same lot of talc ingredient. If Beauty 21 provides a genuine certificate of analysis for  
15 the talc ingredient or Covered Product that was generated at or prior to the time that Beauty 21 took  
16 possession of the Covered Product, then EHA shall not take any further actions to enforce the alleged  
17 violation. If there is a dispute about the genuineness of the certificate of analysis, the Parties shall meet  
18 and confer as required by Section 8.1.

### 19 **8.3 Attorney’s Fees for Prevailing Party**

20 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled  
21 to its reasonable attorneys’ fees and costs.

## 22 **9. NOTICE**

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



1 If to Beauty 21:

2 Chelsea Trinh  
3 VP of Finance & Operations  
4 Beauty 21 Cosmetics, Inc.  
2021 S. Archibald Avenue  
Ontario, CA 91761

5 Jeffrey Margulies  
6 Norton Rose Fullbright US LLP  
7 555 South Flower Street, 41st Floor  
Los Angeles, CA 90071

If to EHA:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 1900  
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 support  
19 the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely  
20 manner.

21 **12. MODIFICATION**

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

25 If, after the Effective Date, either (i) a California court approves a Proposition 65 consent  
26 judgment concerning asbestos or (ii) the Office of Environmental Health Hazard Assessment adopts or  
27 amends a regulation concerning asbestos that (a) determines a level for reformulating or providing  
28 warnings for asbestos in cosmetics different than the level identified in Section 2.1, or (b) provides for

1 different methods for testing for asbestos levels in cosmetics, the Court, upon application by Beauty  
2 21, shall modify Section 2.1 in accordance with such alternative compliance measures.

3 **13. AUTHORIZATION**

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

6 **14. ENTIRE AGREEMENT**

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

12 **15. RETENTION OF JURISDICTION**

13 The Court shall retain jurisdiction of this matter to implement, enforce or modify the Consent  
14 Judgment.

15  
16 **AGREED TO:**

**AGREED TO:**

17  
18 Date: 7/5/2023

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

19  
20 By: 

By: \_\_\_\_\_

21 ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

BEAUTY 21 COSMETICS, INC.

22 **IT IS SO ORDERED.**

23  
24 Date: \_\_\_\_\_

25  
26  
27  
28  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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14 Judgment.

15  
16 **AGREED TO:**

**AGREED TO:**

17  
18 Date: \_\_\_\_\_

Date: 7/6/2023

19  
20 By: \_\_\_\_\_  
21 ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
22 BEAUTY 21 COSMETICS, INC.

23 **IT IS SO ORDERED.**

24 Date: \_\_\_\_\_

25 \_\_\_\_\_  
26 JUDGE OF THE SUPERIOR COURT  
27  
28