

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 Parfums De Coeur, Ltd. (“PDC”), on the other hand, with EHA and PDC 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. EHA alleges that PDC 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”).

1.2 General Allegations

EHA alleges that PDC manufactures, sells, and/or distributes for sale in California, that contain Benzophenone and that it does so without first providing the health hazard warning required by Proposition 65. Benzophenone is listed pursuant to Proposition 65 as a chemical known to cause cancer.

1.3 Product Description

The products covered by this Settlement Agreement is defined as Bodycology Fragrance Mists (“Covered Products”) that are manufactured, sold or distributed for sale in California by PDC.

1.4 Notice of Violation

On June 24, 2022, EHA served PDC, Bed Bath & Beyond, Inc., the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that PDC and others violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to Benzophenone from the Covered Products.

To the best of the parties’ knowledge, no public enforcer has commenced or is otherwise

prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

The Parties enter into the Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning PDC's compliance with Proposition 65. PDC denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including Covered Products, have been, and are, in compliance with all applicable laws, rules, and regulations. Nothing in this Settlement Agreement shall be construed as an admission by PDC of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by PDC of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by PDC. This Section shall not, however, diminish or otherwise affect PDC's obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, PDC maintains that the Covered Products do not contain Benzophenone and do not violate Proposition 65.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is executed by the Parties.

1.7 Compliance Date

For purposes of this Settlement Agreement, the term "Compliance Date" shall mean ninety (90) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation or Clear and Reasonable Warnings


Beginning on the Compliance Date, PDC shall not manufacture for subsequent sale into the State of California any Covered Product intentionally containing octocrylene or benzophenone.

2.2 General Warning Requirements


For any Covered Product intentionally containing octocrylene or benzophenone manufactured on or after the Compliance Date, PDC agrees to add a warning for California sales,

which shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Covered Products the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging, label, tag, directly to each Covered Products sold in California by PDC, or on a placard, shelf tag, sign or electronic device or automatic process that contains one of the following statements:

- 1)  **WARNING:** This product can expose you to chemicals including Benzophenone, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

OR

- 2)  **WARNING:** Cancer– www.P65Warnings.ca.gov.

This warning statement shall be prominently displayed on the Covered Products, on the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Covered Products' packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall a warning statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point type. The warning shall also comply with 27 C.C.R. § 25602 (d). Specifically, where the product sign, or label used to provide the warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English. The same warning shall be posted on any websites under the exclusive control of PDC where Covered Products are sold into California. Such warning shall constitute compliance with Proposition 65

with respect to the Benzophenone in the Covered Products for any Covered Products in inventory that had not been reformulated and were distributed and/or sold by PDC or any of the Releasees after the Compliance Date. PDC

PDC shall be deemed to comply with its obligations under this Agreement if it discontinues sales of the Covered Products in California on or before the Compliance Date.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Covered Products and the chemical at issue, which are different than those set forth above, PDC shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that Proposition 65 warnings as to Benzophenone in this product are no longer required, a lack of warning by PDC will not thereafter be a breach of this Agreement. PDC shall instruct any third-party website to which it sells its Covered Products to include the same warning as a condition of selling the Covered Products.

2.3 Grace Period for Existing Inventory of Covered Products

The injunctive requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce as of the Effective Date, which Covered Products are expressly subject to the releases provided in Section 4.1. For the avoidance of doubt, Covered Products in the stream of commerce specifically include, but are not limited to, Covered Products in the process of manufacture.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, PDC agrees to pay three thousand dollars (\$3,000.00) 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. PDC shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$2,250.00 to OEHHA, due fourteen (14) days after the Effective Date.
- One payment of \$750.00 to EHA, due fourteen (14) days after the Effective Date.

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 Non-United States Postal Service 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:

Isaac Fayman
Environmental Health Advocates
225 Broadway, Suite 1900
San Diego, CA 92101

3.2 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 fourteen (14) days of the Effective Date, PDC agrees to pay twenty-seven thousand dollars (\$27,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of PDC, and negotiating a settlement. PDC shall provide its payment to EHA's counsel in one check payable to Entorno Law, LLP:

3.3 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

3.4 Tax Documentation

PDC agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that PDC cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after PDC receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of PDC and Downstream Entities

This Settlement Agreement is a full, final, and binding resolution of all claims between EHA, on its own behalf and not on behalf of the public, and PDC for all claims that can 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 : (a) PDC; (b) any entity to whom PDC directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, cooperative members, licensees and retailers (including, but not limited to, Bed Bath & Beyond Inc.); and (c), the respective parents, subsidiaries, franchisees, affiliated entities under common ownership, directors, officers, members,

employees, and attorneys, of the persons and entities described in (a) through (b) above (the persons and entities identified in (a) through (c) above are collectively referred to as the “Releasees”), based on the failure to warn about exposures to Benzophenone required under Proposition 65 in the Covered Products manufactured before the Compliance Date, as alleged in the Notice. This release does not extend to any third-party retailers selling the product on a website who, after receiving instruction from PDC to include a warning as set forth above in section 2.2, do not include such a warning.

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 waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against PDC 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 the alleged or actual failure to warn about exposures to Benzophenone required under Proposition 65 in the Covered Products manufactured before the Compliance Date.

4.2 PDC’s Release of EHA

PDC, 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 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 Covered Products.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and PDC 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 4.1 and 4.2 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.

EHA and PDC each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5 PUBLIC BENEFIT

It is PDC 's understanding that the commitments it has agreed to herein, and actions to be taken by PDC under this Settlement Agreement confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of PDC that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to PDC's alleged failure to provide a warning concerning actual or alleged exposure to Benzophenone prior to use of the Covered Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that PDC is in material compliance with this Settlement Agreement.

6. 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.

7. 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. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable for reasons, including but not limited to changes in the law, then

PDC may provide written notice to EHA of any asserted change, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

In the event that the California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues an interpretive guidelines that exempts Covered Products from meeting the requirements of Proposition 65; or if Benzophenone cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden of First Amendment rights with respect to Benzophenone in Covered Products or products substantially similar to Covered Products, then PDC shall be relieved of its obligations to comply with Section 2 herein.

8. ENFORCEMENT

Only a Party to this Settlement Agreement may enforce this Settlement Agreement. Should a Party wish to enforce any portion of this Settlement Agreement against another Party, it must provide the other Party with a written notice of the claim and meeting and confer for at least thirty (30) days prior to proceeding with an enforcement motion. In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

9. 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 PDC:

Will Wagner
Arnold & Porter Kaye Scholer LLP
10th Floor, Three Embarcadero Center
San Francisco, California 94111-4024
Will.wagner@arnoldporter.com

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.

10. 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.

11. 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).

12. MODIFICATION


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

13. 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:

Date: 12/08/2023

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

Date: 

Matthew Wagner, General Counsel
By: _____
PARFUMS DE COEUR, LTD.