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11 Attorneys for Plaintiff
12 Environmental Health Advocates, Inc.

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

14 **IN AND FOR THE COUNTY OF SANTA CRUZ**

15 ENVIRONMENTAL HEALTH
16 ADVOCATES, INC.,

17 Plaintiff,

18 v.

19 PERFUME WORLDWIDE, INC., a New
20 York corporation, CARTER BEAUTY
21 COSMETICS, an Irish company,
22 WALMART INC., a Delaware corporation,
23 and DOES 1 through 100, inclusive,

24 Defendants.

Case No. 22CV02540

**[PROPOSED] AMENDED 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 Carter Beauty Cosmetics (“Defendant” or “Carter”) with EHA and Carter
5 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 Carter employs ten or more individuals and for purposes of this Consent Judgment only, is a
12 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that Carter manufactures, imports, sells, and distributes for sale Carter Beauty
16 Blusher Palette - Cupid that contains airborne, unbound particles of Titanium Dioxide (“TiO₂”). EHA
17 further alleges that Carter does so without providing a sufficient health hazard warning as required by
18 Proposition 65 and related Regulations. Pursuant to Proposition 65, TiO₂ is listed as a chemical known
19 to cause cancer. Carter denies these allegations and asserts that its products are safe and in compliance
20 with all applicable laws, rules and regulations.

21 **1.5 Notice of Violation**

22 On or around June 6, 2022, EHA served Carter, Walmart Inc., the California Attorney General,
23 and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition
24 65 (“Notice”). The Notice alleged that Carter had violated Proposition 65 by failing to sufficiently warn
25 consumers in California of the health hazards associated with exposures to TiO₂ contained in Carter
26 Beauty Blusher Palette - Cupid.

27 On August 10, 2022, EHA served Carter, Walmart Inc., Perfume Worldwide, Inc., the
28 California Attorney General and other requisite public enforcers with a 60-Day Amended Notice of

1 Violation (“Amended Notice”). This amendment included the manufacturer Perfume Worldwide, Inc.
2 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
3 violations alleged in the Notice.

4 **1.6 Product Description**

5 The products covered by this Consent Judgment are Carter Beauty Blusher Palettes
6 manufactured by Carter, including but not limited to Carter Beauty Blusher Palette - Cupid.

7 **1.7 State of the Pleadings**

8 On or around November 15, 2022, EHA filed a Complaint against Carter for the alleged
9 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

10 **1.8 No Admission**

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

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
21 Court has jurisdiction over Carter as to the allegations in the Complaint, that venue is proper in the
22 County of Santa Cruz, and that the Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
26 Consent Judgment is approved and entered as a judgment of the Court, as discussed in Section 5.

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28 ///

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of the Covered Products**

3 Commencing on August 1, 2024, or one year after the Effective Date, whichever is later,
4 Defendant shall not sell any Covered Product that: (1) when measured using air capture, contains
5 greater than 250 respirable-sized unbound TiO₂ particles per liter (str/L) of air, or for elongate fibers
6 of TiO₂, greater than 75 str/L; or (2) when measured using bulk testing, greater 5.0 X 10³ respirable-
7 sized TiO₂ unbound particles. This would be measured using either of the following methods:

8 **A. Air Capture**

9 1. Testing should be carried out in a sealed laboratory glovebox or containment free from
10 external air movements or contaminants. Released particulate should be collected on a 25mm air
11 monitoring cassette with a 0.45-micron MCE filter, connected to a personal air sampling pump
12 calibrated to a flow rate of 2.0 L / min.

13 2. With the air sampling pump running, use a makeup applicator or brush and apply
14 enough pressure to transfer the product onto the tool. Tap or blow off excess product. Simulate applying
15 the product to a gloved hand or other nonporous surface located no more than 20 cm from the air
16 cassette, for 10 minutes. Allow the air sampling pump to run for another 5 minutes with no disturbance
17 of the product. Prepare the resulting filters from the air cassettes for TEM by collapsing the filter,
18 coating with carbon evaporated in high vacuum (10⁻⁴ to 10⁻⁵ Pa), placing onto TEM grids, and
19 dissolving away residual filter material. Particulate should be analyzed via a TEM with an acceleration
20 voltage of 100KeV equipped with EDXA and SAED at magnifications of at least 15,000x. Calculated
21 concentration should be made relevant to effective filter area (EFA) divided by the area analyzed,
22 relative to the liters of air sampled, i.e., on a str/L basis.

23 **B. Bulk Testing**

24 1. Preparation for qualitative presence or absence and quantification of TiO₂ particles
25 unbound in the respirable-size fraction by TEM are conducted as follows: The product is prepared for
26 analysis by weighing and suspending a portion of the suspect material in an alcohol/deionized water
27 mix. Measured aliquots of the sample suspension are then filtered through a 0.2 μm mixed cellulose
28 ester filter (MCE). It has been determined that the optimal range of material extracted from the product

1 falls between 10-50 mg suspended in a 400 mL 50/50 DI H₂O/isopropyl alcohol solution*, from which
2 1-5 mL aliquots are drawn and filtered. The final MCE filter is dried, collapsed with acetone, and
3 coated with carbon in a vacuum evaporator. The fibers and solids collected on the carbon-coated filter
4 replicate are transferred onto copper grids for TEM analysis.

5 2. The resulting preparation is then scanned to assure a particle loading of the filter
6 between 5-15%, and then quantified by analysis, measuring lengths and widths and chemistries of
7 particulate to determine overall percent TiO₂ and size bin categorized for comparison with target value
8 compliances. Only particles less than 10 µm relative aerodynamic diameter not touching or adhering
9 to other materials on the filter preparation that reveal only titanium (and oxygen) peaks by EDS will
10 be considered for quantification. To observe and quantify all such structures down to unbound particles
11 as small as 50 nm (minimum dimension of 0.050 µm), the analysis should be conducted at 20-25,000x
12 magnification. Sufficient area of the filter shall be analyzed to reach an analytical sensitivity of at least
13 5.0 X 10³ RPTi /mg of product.

14 3. Products prepared and analyzed by this bulk screening protocol that are found to contain
15 >5.0 X 10³ RPTi /mg of product shall be deemed as "Fails TiO₂ screening test", as would any product
16 found to contain respirable titanium dioxide fibers (mineralogically, acicular to fibrous rutile) observed
17 on the filter analyzed to the specified analytical sensitivity (5.0 X 10³ RPTi /mg). Product samples
18 thusly failing this standard would then be recommended for further testing to confirm releasability such
19 as product use simulation in a controlled environment with appropriate air testing, etcetera.
20 Alternatively, such products may be reformulated by the manufacturer or removed as noncompliant.

21 Should EHA reach a court-approved settlement with another cosmetics manufacturer alleging
22 a violation of Proposition 65 with respect to TiO₂, Defendant may comply with the reformulation
23 standard in that settlement and will be deemed in compliance with Proposition 65.


24 Covered Products' compliance with either the air capture or bulk testing standard set forth
25 in this section constitutes compliance with Proposition 65 as to TiO₂.

26 **2.2 Clear and Reasonable Warnings**


27 For Covered Products that contain TiO₂ in a concentration exceeding the Reformulation
28 Standard set forth in section 2.1 above, and which are distributed or directly sold by Carter in the State

1 of California on or after the Effective Date, Carter shall provide one of the following warni
2 statements.

3 **Option 1:**

4  **WARNING:** This product can expose you to chemicals including
5 airborne, unbound particles of Titanium Dioxide, which is known to the
6 State of California to cause cancer. For more information go to
www.P65Warnings.ca.gov.

7 **Option 2:**

8  **WARNING:** Cancer- www.P65Warnings.ca.gov.

9
10 This warning statement shall be prominently displayed on the Covered Products, on the packing
11 of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with
12 such conspicuousness, as compared with other words, statements, or designs as to render it likely to be
13 read and understood by an ordinary individual prior to sale. If the warning statement is displayed on
14 the Covered Products' packaging, it must be in a type size no smaller than the largest type size used
15 for other consumer information on the product. In no case shall a warning statement displayed on the
16 Covered Products' packaging appear in a type size smaller than 6-point type. The same warning shall
17 be posted on any websites under the exclusive control of Carter where Covered Products are sold into
18 California. Carter shall instruct any third-party website to which it directly sells its non-reformulated
19 Covered Products that are not reformulated pursuant to Section 2.1 to include the same warning as a
20 condition of selling the non-reformulated Covered Products in California. To the extent Carter supplies
21 non-reformulated Covered Products sold on Walmart.com, or serves as a marketplace retailer selling
22 non-reformulated Covered Products sold on Walmart.com, Carter must provide a clear and reasonable
23 warning on Walmart.com for non-reformulated Covered Products sold on Walmart.com and shipped
24 to a California address.

25 **2.3 Sell-Through Period**

26 Notwithstanding anything else in this Consent Judgment, Covered Products that are
27 manufactured, packaged, or put into commerce within one year of the Effective Date shall be subject
28 to the release of liability pursuant to this Consent Judgment, without regard to when such Covered

1 Products were, or are in the future, distributed or sold to customers. As a result, the obligations of
2 Carter, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products
3 manufactured, packaged, or put into commerce up to one year after the Effective Date.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Settlement Amount**

6 Carter shall pay sixty thousand dollars (\$60,000.00) in settlement and total satisfaction of all
7 the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
8 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
9 25249.7(b) and attorneys' fees and costs in the amount of fifty-five thousand dollars (\$55,000.00)
10 pursuant to Code of Civil Procedure section 1021.5.

11 **3.2 Civil Penalty**

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

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

17 Environmental Health Advocates
18 225 Broadway, Suite 2100
19 San Diego, CA 92101

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

21 For United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA 95812-4010

27 For Federal Express 2-Day Delivery:

28 Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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27 For Federal Express 2-Day Delivery:

28 Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 Carter agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
2 simultaneous with its penalty payment to EHA.

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

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

7 **3.3 Attorney's Fees and Costs**

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

12 Carter shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's
13 counsel as follows.

14 • The First Installment shall be in the amount of forty-five thousand dollars (\$45,000.00),
15 payable to Entorno Law, LLP, within fourteen (14) days of the transmittal to Settling Defendant's
16 counsel of the Effective Date.

17 • The Second Installment shall be in the amount of ten thousand dollars (\$10,000.00),
18 payable to Entorno Law, LLP, within forty (40) days of the Effective Date ("Second Installment"). If
19 the First Installment is timely made by Settling Defendant's or its counsel, then EHA's and its counsel
20 agree to waive the Second Installment. The attorney fee payments shall be made payable to Entorno
21 Law, LLP. The address for this entity is:

22 Noam Glick
23 Entorno Law, LLP
24 225 Broadway, Suite 1900
25 San Diego, CA 92101

26 **4. CLAIMS COVERED AND RELEASE**

27 **4.1 EHA's Public Release of Proposition 65 Claims**

28 Plaintiff, acting on its own behalf and in the public interest, and on behalf of its past and
current agents, representatives, attorneys, successors, and assigns, releases Carter, and its parents,

1 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principal
2 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns
3 ("Defendant Entities"), each entity to whom Defendant directly or indirectly distributes, ships,
4 uploads or places for sale, or sells the Covered Products, including but not limited to downstream
5 distributors, wholesalers, customers, retailers (including Walmart Inc.), and marketplaces franchise
6 franchisors, cooperative members, suppliers, licensees, and licensors, and all of the foregoing
7 entities' owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants,
8 representatives, predecessors, successors, and assigns (collectively referred to as the "Releasees")
9 from all claims for violations of Proposition 65 up through the Effective Date based on exposure to
10 TiO₂ from Covered Products as set forth in the Notice(s). Compliance with the terms of this Consent
11 Judgment constitutes compliance with Proposition 65 with respect to exposures to TiO₂ from
12 Covered Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding
13 resolution of all actions, causes of action, obligation, costs, expenses, attorneys' fees, damages,
14 losses, claims, liabilities and demands of Plaintiff, acting on its own behalf and not in the public
15 interest, of any nature, character or kind, whether known or unknown, suspected or unsuspected,
16 arising out of alleged or actual exposures to TiO₂ in Covered Products that were or could have been
17 asserted against Carter and Releasees before the Effective Date.

20 **4.2 EHA's Individual Release of Claims**

21 EHA, in its individual capacity, and on behalf of its past and current agents, representatives,
22 attorneys, successors, and assigns, also provides a release to Carter and/or Releasees, which shall be a
23 full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
24 costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every nature,
25 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
26 actual exposures to TiO₂ in Covered Products manufactured, imported, sold, or distributed by Carter
27 before the Effective Date.
28

1 **4.3 Carter's Release of EHA**

2 Carter on its own behalf, and on behalf of Releasees as well as its past and current agents,
3 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
4 and its attorneys and other representatives related to the Notices or the Complaint, for any and all
5 actions taken or statements made by EHA and its attorneys and other representatives, whether in the
6 course of investigating claims, otherwise seeking to enforce Proposition 65 against them, in this matter
7 or with respect to the Covered Products.

8 **4.4 No Other Known Claims or Violations**

9 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged
10 violations of Proposition 65 by Carter or for which Carter bears legal responsibility other than those
11 that are fully resolved by this Consent Judgment.

12 **5. COURT APPROVAL**

13 This Consent Judgment is not effective and the Parties shall have no obligations thereunder,
14 unless and until the Court adopts and enters this Consent Judgment as one of the Court's, and shall be
15 null and void if it is not approved by the court within one year after it has been fully executed by the
16 Parties, or by such additional time as the Parties may agree to in writing. Upon the Court's execution
17 of this Consent Judgment, EHA shall dismiss the entire action against all Defendants, including Carter,
18 Perfume Worldwide, Inc., and Walmart Inc., with prejudice.

19 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

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

1 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
2 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
3 requirements of Proposition 65; or if TiO2 cases are permanently enjoined by a court of competent
4 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First
5 Amendment rights with respect to TiO2 in Covered Products or Covered Products substantially similar
6 to Covered Products, then Carter shall be relieved of its obligation to comply with Section 2 herein.

7 **8. ENFORCEMENT**

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

10 **9. NOTICE**

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

15 **If to Carter:**

16 Jacques Catafago, Esq.
17 Catagago Fini LLP
18 One Grand Central Place, 47th Floor
New York, NY 10165
Jacques@catafagofini.com

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101
noam@enteronolaw.com

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

21 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

25 **11. POST EXECUTION ACTIVITIES**

26 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
27 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
28 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which

1 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
2 employ their reasonable best efforts, including those of their counsel, to support the entry of this
3 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
4 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,
5 responding to any objection that any third-party may make, and appearing at the hearing before the
6 Court if so requested.

7 **12. MODIFICATION**

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

11 **13. AUTHORIZATION**

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

14 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

19 **15. ENTIRE AGREEMENT**

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

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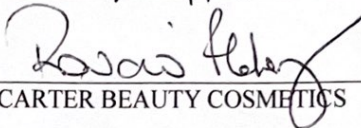
AGREED TO:

Date: 03/31/2023

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

Date: 03/04/23

By: 
CARTER BEAUTY COSMETICS

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

(50k USD Piyosh - RA)