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12 Environmental Health Advocates, Inc.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15 ENVIRONMENTAL HEALTH
16 ADVOCATES, INC.,

17 Plaintiff,

18 v.

19 MINERAL FUSION NATURAL BRANDS
20 LLC, a Delaware limited liability company;
21 TARGET CORPORATION, a Minnesota
22 corporation, and DOES 1 through 100,
23 inclusive,

24 Defendants.

Case No. CGC-22-601187

[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 Mineral Fusion Natural Brands, LLC (“Defendant” or “MFNB”) with EHA
5 and MFNB 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 MFNB 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 MFNB manufactures, imports, sells, and distributes for sale Mineral Fusion
16 Brush-On SPF 30 Defense that contains airborne, unbound particles of Titanium Dioxide (“TiO2”).
17 EHA further alleges that MFNB does so without providing a sufficient health hazard warning as
18 required by Proposition 65 and related Regulations. Pursuant to Proposition 65, TiO2 is listed as a
19 chemical known to cause cancer. MFNB denies these allegations and asserts that its products are safe
20 and in compliance with all applicable laws, rules and regulations.

21 **1.5 Notice of Violation**

22 On or around June 27, 2022, EHA served Defendant MFNB, Target Corporation, the California
23 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of
24 Violation of Proposition 65 (“Notice”). The Notice alleged that MFNB had violated Proposition 65 by
25 failing to sufficiently warn consumers in California of the health hazards associated with exposures to
26 TiO2 contained in Mineral Fusion Brush-On SPF 30.

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

1 **1.6 Product Description**

2 The products covered by this Consent Judgment are sunscreens manufactured by MFNB,
3 including but not limited to Mineral Fusion Brush-On SPF 30 (“Covered Products”).

4 **1.7 State of the Pleadings**

5 On or around August 09, 2022, EHA filed a Complaint against MFNB for the alleged
6 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
18 Court has jurisdiction over MFNB as to the allegations in the Complaint, that venue is proper in the
19 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

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

24 **2. INJUNCTIVE RELIEF**

25 **2.1 Reformulation of the Covered Products**

26 Commencing on January 1, 2024, or nine months after the Effective Date, whichever is later,
27 Defendant shall not sell in California any Covered Product with greater than 250 respirable-sized
28 unbound TiO2 particles per liter (str/L) of air. When those TiO2 particles are elongate fibers, the

1 concentration of particles should not exceed 75 str/L. This would be measured using the following
2 method:

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

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

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

20 Covered Products' compliance with the standard set for in this section constitutes compliance
21 with Proposition 65 as to TiO₂.


22 **2.2 Clear and Reasonable Warnings**

23 For Covered Products that contain TiO₂ in a concentration exceeding the Reformulation
24 Standard set forth in section 2.1 above, and which are distributed or directly sold by MFNB in the State
25 of California on or after the Effective Date, MFNB shall provide one of the following warning
26 statements.


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1 **Option 1:**

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

4 **Option 2:**

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

6
7 This warning statement shall be prominently displayed on the Covered Products, on the packing
8 of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with
9 such conspicuousness, as compared with other words, statements, or designs as to render it likely to be
10 read and understood by an ordinary individual prior to sale. If Option 2 warning statement is displayed
11 on the Covered Products' packaging, it must be in a type size no smaller than the largest type size used
12 for other consumer information on the product. In no case shall an Option 2 warning statement
13 displayed on the Covered Products' packaging appear in a type size smaller than 6-point type. The
14 same warning shall be posted on any websites under the exclusive control of MFNB where Covered
15 Products are sold into California. MFNB shall instruct any third-party website to which it directly sells
16 its Covered Products to include the same warning as a condition of selling the Covered Products in
17 California.

18 **2.3 Sell-Through Period**

19 Notwithstanding anything else in this Consent Judgment, Covered Products that are
20 manufactured, packaged, or put into commerce within the later of (a) nine months after the Effective
21 Date and (b) January 1, 2024 shall be subject to the release of liability pursuant to this Consent
22 Judgment, without regard to when such Covered Products were, or are in the future, distributed or sold
23 to customers. As a result, the obligations of MFNB, or any Releasees (if applicable), stated in this
24 Section 2 do not apply to Covered Products manufactured, packaged, or put into commerce within the
25 later of (a) nine months after the Effective Date and (b) January 1, 2024.

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Settlement Amount**

3 MFNB shall pay sixty thousand dollars (\$60,000.00) in settlement and total satisfaction of all
4 the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
5 penalties in the amount of six thousand dollars (\$6,000.00) pursuant to Health and Safety Code section
6 25249.7(b) and attorneys' fees and costs in the amount of fifty-four thousand dollars (\$54,000.00)
7 pursuant to Code of Civil Procedure section 1021.5.

8 **3.2 Civil Penalty**

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

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

14 Environmental Health Advocates
15 225 Broadway, Suite 2100
16 San Diego, CA 92101

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

18 For United States Postal Service Delivery:

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

24 For Federal Express 2-Day Delivery:

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

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

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

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

5 **3.3 Attorney’s Fees and Costs**

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

10 MFNB shall provide its payment for civil penalty and for attorneys’ fees and costs to EHA’s
11 counsel as follows. Payment may be by physical check or by electronic means, including wire transfers,
12 at MFNB’s discretion: four thousand five hundred dollars (\$4,500.00) payable to OEHHA as a civil
13 penalty; one thousand five hundred dollars (\$1,500) payable to EHA pursuant to Health and Safety
14 Code section 25249.12(d), and fifty-four thousand dollars (\$54,000.00) payable to Entorno Law, LLP,
15 within thirty (30) days of the Effective Date.

16 The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this
17 entity is:

18 Noam Glick
19 Entorno Law, LLP
20 225 Broadway, Suite 1900
21 San Diego, CA 92101

22 **4. CLAIMS COVERED AND RELEASE**

23 **4.1 EHA’s Public Release of Proposition 65 Claims**

24 Plaintiff, acting on its own behalf and in the public interest, releases MFNB, and its parents,
25 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,
26 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns
27 (“Defendant Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or
28 sells the Covered Products, including but not limited to downstream distributors, wholesalers,

1 customers, retailers, and marketplaces franchisees, franchisors, cooperative members, suppliers,
2 licensees, and licensors, including but not limited to Target Corporation, and all of the foregoing
3 entities' owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants,
4 representatives, predecessors, successors, and assigns (collectively referred to as the "Releasees")
5 from all claims for violations of Proposition 65 up through the Effective Date based on exposure to
6 TiO2 from Covered Products as set forth in the Notice(s). Compliance with the terms of this Consent
7 Judgment constitutes compliance with Proposition 65 with respect to exposures to TiO2 from
8 Covered Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding
9 resolution and release of all claims under Proposition 65 that were or could have been asserted
10 against MFNB and/or Releasees for failure to comply with Proposition 65 for alleged exposure to
11 TiO2 from Covered Products.
12

13 **4.2 EHA's Individual Release of Claims**

14 EHA, in its individual capacity, also provides a release to MFNB and/or Releasees, which shall
15 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
16 costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every nature,
17 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
18 actual exposures to TiO2 in Covered Products manufactured, imported, sold, or distributed by MFNB
19 before the later of (a) six months after the Effective Date and (b) August 15, 2023.
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21 **4.3 MFNB's Release of EHA**

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

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1 **4.4 No Other Known Claims or Violations**

2 EHA and EHA’s counsel affirm that they are not presently aware of any actual or alleged
3 violations of Proposition 65 by MFNB or for which MFNB bears legal responsibility other than those
4 that are fully resolved by this Consent Judgment.

5 **5. COURT APPROVAL**

6 This Consent Judgment is not effective until it is approved by the Court and shall be null and
7 void if it is not approved by the Court within six months after it has been fully executed by the Parties,
8 or by such additional time as the Parties may agree to in writing.

9 **6. SEVERABILITY**

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

12 **7. GOVERNING LAW**

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

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

25 **8. ENFORCEMENT**

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

1 **9. NOTICE**

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

6 **If to MFNB:**

7 Matthew Orr
8 Amin Talati Wasserman
9 515 South Flower St. 18th Floor
Los Angeles, CA 90071
matt@amintalati.com

If to EHA:

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

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

13 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

17 **11. POST EXECUTION ACTIVITIES**

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

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1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

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

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

13 **15. ENTIRE AGREEMENT**

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

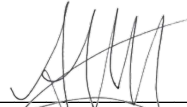
19 **AGREED TO:**

AGREED TO:

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21 Date: 01/03/2023

Date: December 15, 2022

22
23 By: 

By: 

24 ENVIRONMENTAL HEALTH
25 ADVOCATES, INC.

MINERAL FUSION NATURAL
BRANDS, LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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