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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

17 ENVIRONMENTAL HEALTH
18 ADVOCATES, INC.,

19 Plaintiff,

20 v.

21 FLAMBEAU, INC., a Wisconsin corporation;
22 AMAZON.COM, INC., a Delaware
23 corporation; and DOES 1 through 100,
24 inclusive,

25 Defendants.

Case No. 23 CV 030742

**[PROPOSED] REVISED 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 Flambeau, Inc. ("Defendant" or "Flambeau") with EHA and Flambeau each
5 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 Flambeau employs ten or more individuals and for purposes of this Consent Judgment only, is
12 a "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 Flambeau manufactures, imports, sells, and distributes for sale Limelight LED
16 Light-Up Yo-Yo that contains BPA. EHA further alleges that Flambeau does so without providing a
17 sufficient health hazard warning as required by Proposition 65 and related Regulations. Flambeau
18 denies these allegations and asserts that its products are safe and in compliance with all applicable laws,
19 rules and regulations.

20 **1.5 Notice of Violation**

21 On or around September 14, 2022, EHA served Defendant Flambeau, Amazon.com, Inc.,
22 Flambeau, Inc., the California Attorney General, and all other required public enforcement agencies
23 with a 60-Day Notice of Violation of Proposition 65 ("Notice"). The Notice alleged that Flambeau had
24 violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards
25 associated with exposures to BPA contained in yo-yo's products, including but not limited to Limelight
26 LED Light-Up Yo-Yo manufactured or processed by Flambeau that allegedly contain BPA and are
27 imported, sold, shipped, delivered, or distributed for sale to consumers in California by Releasees (as
28 defined in section 4.1).

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

3 **1.6 Product Description**

4 The products covered by this Consent Judgment are all yo-yo products made of polycarbonate
5 material manufactured or processed by Flambeau, or for Flambeau, that allegedly contain BPA and are
6 imported, sold, shipped, delivered, or distributed for sale to consumers in California by Releasees (as
7 defined in section 4.1) (“Covered Products”).

8 **1.7 State of the Pleadings**

9 On or around April 7, 2023, EHA filed a Complaint against Flambeau for the alleged violations
10 of Proposition 65 that are the subject of the Notice (“Complaint”).

11 **1.8 No Admission**

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

20 **1.9 Jurisdiction**

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

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
27 Consent Judgment is approved and entered as a judgment of the Court, as discussed in Section 5.
28

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Covered Products in Compliance with MADL**

3 As of the Effective Date, and continuing thereafter, the Covered Products do not and will not
4 exceed California's regulatory maximum allowable daily dose ("MADL") level of BPA (currently 3.0
5 micrograms per day from dermal exposure), as published in Cal. Code Regs. Tit. 27 § 25805. The
6 "Daily BPA Exposure Level" should not exceed more than 2.1 ug/cm² of BPA using content-based
7 testing using HPLC-MS analysis, to fall below the regulatory MADL.

8 **2.2 Sell-Through Period**

9 Notwithstanding anything else in this Consent Judgment, Covered Products that are
10 manufactured, packaged, or put into commerce on or ~~after~~before the date this Agreement is executed
11 shall be subject to the release of liability pursuant to this Consent Judgment, without regard to when
12 such Covered Products were, or are in the future, distributed or sold to customers.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Settlement Amount**

15 Flambeau shall pay fifty two thousand dollars (\$52,000.00) in settlement and total satisfaction
16 of all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes
17 civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code
18 section 25249.7(b) and attorneys' fees and costs in the amount of forty seven thousand dollars
19 (\$47,000.00) 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. The five thousand dollars
25 (\$5,000.00) in civil penalties shall be paid as follows:

- 26 • One payment of \$3,750.00 to OEHHA, due fourteen (14) days after the date the Court
27 approves EHA's motion to approve this Consent Judgment.

- One payment of \$1,250.00 to EHA, due fourteen (14) days after the date the Court approves EHA's motion to approve this Consent Judgment.

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

Isaac Fayman
Environmental Health Advocates
225 Broadway, Suite 2100
San Diego, CA 92101

All payments owed to OEHHHA (EIN: 68-0284486) shall be delivered directly to OEHHHA (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 Federal Express 2-Day Delivery:

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

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

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

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

All payments referenced in this section shall be paid within fourteen (14) days of the date the Court approves EHA's motion to approve this Consent Judgment.

3.3 Attorney's Fees and Costs

The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not

1 limited to investigating potential violations, bringing this matter to Flambeau's attention, as well as
2 litigating and negotiating a settlement in the public interest.

3 Flambeau shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's
4 counsel by physical check or by electronic means, including wire transfers, at Flambeau's discretion,
5 as follows: forty seven thousand dollars (\$47,000.00) in Attorney's Fees and Costs shall be paid as
6 follows: One payment of \$47,000.00, due fourteen (14) days after the date the Court approves EHA's
7 motion to approve this Consent Judgment. This payment shall be made payable to Entorno Law, LLP.
8 The address for this entity is:

9 Noam Glick
10 Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

11 **4. CLAIMS COVERED AND RELEASE**

12 **4.1 EHA's Public Release of Proposition 65 Claims**

13 Plaintiff, acting on its own behalf and in the public interest, releases Flambeau, and its parents,
14 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,
15 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns, including,
16 without limitation, Duncan Toys Company, LLC ("Defendant Entities"), each entity to whom
17 Defendant directly or indirectly distributes, ships, or sells the Covered Products, including but not
18 limited to downstream distributors, wholesalers, customers, retailers (including but not limited to
19 Amazon.com, Inc.), and marketplaces franchisees, franchisors, cooperative members, suppliers,
20 licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents, principals,
21 employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns
22 (collectively referred to as the "Releasees") from all claims for violations of Proposition 65 based on
23 exposure to BPA from Covered Products as set forth in the Notice(s). Compliance with the terms of
24 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to BPA
25 from Covered Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding
26 resolution of all claims under Proposition 65 that were or could have been asserted against Flambeau
27 and/or Releasees for failure to comply with Proposition 65 for Covered Products. This release does not
28

1 extend to any third-party retailers selling the product on a website who, after receiving instruction from
2 Flambeau to include a warning as set forth above in section 2.2, do not include such a warning.

3 **4.2 EHA's Individual Release of Claims**

4 EHA, in its individual capacity, also provides a release to Flambeau and/or Releasees, which
5 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
6 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every
7 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
8 alleged or actual exposures to BPA in Covered Products manufactured, imported, sold, or distributed
9 by Flambeau before the Effective Date.

10 **4.3 Flambeau's Release of EHA**

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

16 **4.4 No Other Known Claims or Violations**

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

20 **5. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved by the Court and shall be null and
22 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
23 by such additional time as the Parties may agree to in writing.

24 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

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

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

14 **8. ENFORCEMENT**

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

17 **9. NOTICE**

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

22 If to Flambeau:

23 Eugene Kim
24 Stream Kim Hicks Wrage & Alfaro,
25 P.C.
26 3403 Tenth Street, Suite 700
27 Riverside CA, 92501
28 eugene.kim@streamkim.com

22 If to EHA:

23 Noam Glick
24 Entorno Law, LLP
25 225 Broadway, Suite 2100
26 San Diego, CA 92101
27 noam@entornolaw.com

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

1 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

5 **11. POST EXECUTION ACTIVITIES**

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

15 **12. MODIFICATION**

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

19 **13. AUTHORIZATION**

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

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

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

27 ///

28 ///

1 **15. ENTIRE AGREEMENT**

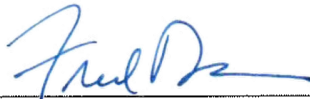
2 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
3 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
4 commitments, and understandings related hereto. No representations, oral or otherwise, express or
5 implied,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

7 **AGREED TO:**

AGREED TO:

8
9 Date: 10/10/24

Date: 10/10/24

10 By: 
11 ENVIRONMENTAL HEALTH
12 ADVOCATES, INC.

By:  General Counsel
11 FLAMBEAU, INC.

13
14 **IT IS SO ORDERED.**

15
16 Date: _____

17 JUDGE OF THE SUPERIOR COURT