

1 **ENTORNO LAW, LLP**

2 Craig M. Nicholas (SBN 178444)

3 Noam Glick (SBN 251582)

4 Jake W. Schulte (SBN 293777)

5 Janani Natarajan (SBN 346770)

6 225 Broadway, Suite 1900

7 San Diego, California 92101

8 Tel: (619) 629-0527

9 Email: craig@entornolaw.com

10 Email: noam@entornolaw.com

11 Email: jake@entornolaw.com

12 Email: janani@entornolaw.com

13 Attorneys for Plaintiff

14 Environmental Health Advocates, Inc.

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 DANESSA MYRICKS BEAUTY, LLC, a
22 New York limited liability company;
23 SEPHORA USA, INC., a Michigan
24 corporation; and DOES 1 through 100,
25 inclusive,

26 Defendants.

Case No. 23CV025460

[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 Danessa Myricks Beauty LLC ("Defendant" or "DMB") with EHA and
5 DMB 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 DMB is a New York limited liability company registered to do business in the State of
12 California. DMB employs ten or more individuals and for purposes of this Consent Judgment only, is
13 a "person in the course of doing business" for purposes of the Safe Drinking Water and Toxic
14 Enforcement Act of 1986, California Health and Safety Code section 25249.6, *et seq.* ("Proposition
15 65").

16 **1.4 General Allegations**

17 EHA alleges that DMB manufactures, imports, sells, and distributes for sale Danessa Myricks
18 Beauty Lightwork Highlighting Palette that contains Titanium Dioxide (airborne, unbound particles of
19 respirable size) ("TiO₂"). EHA further alleges that DMB does so without providing a sufficient health
20 hazard warning as required by Proposition 65 and its related Regulations. DMB denies these allegations
21 and further denies that it engaged in any improper, illegal, or wrongful conduct. DMB asserts that its
22 products are safe and in compliance with all applicable laws, rules, and regulations, including
23 Proposition 65 and its related Regulations.

24 **1.5 Notice of Violation**

25 On or around September 30, 2022, EHA served DMB, Sephora USA, Inc. ("Sephora"), the
26 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
27 of Violation of Proposition 65 ("Notice"). The Notice alleged that DMB had violated Proposition 65
28 by failing to sufficiently warn consumers in California of the health hazards associated with exposures

1 to TiO2 contained in powdered facial cosmetics products, including but not limited to Danessa Myricks
2 Beauty Lightwork Highlighting Palette, manufactured or processed by DMB that allegedly contain
3 TiO2 and are imported, sold, shipped, delivered, or distributed for sale to consumers in California by
4 Releasees (as defined in section 4.1).

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

7 **1.6 Product Description**

8 The products covered by this Consent Judgment are powdered cosmetic products, including but
9 not limited to Danessa Myricks Beauty Lightwork Palette, Danessa Myricks Beauty Enlight Halo
10 Powder, and Danessa Myricks Beauty Enlight Illuminator, manufactured or processed by DMB that
11 allegedly contain TiO2 and are imported, sold, shipped, delivered, or distributed for sale to consumers
12 in California by Releasees (as defined in section 4.1) ("Covered Products").

13 **1.7 State of the Pleadings**

14 On or around January 10, 2023, EHA filed a Complaint against DMB and Sephora for the
15 alleged violations of Proposition 65 that are the subject of the Notice ("Complaint").

16 **1.8 No Admission of Liability or Fault**

17 DMB and Sephora deny all of the allegations and claims in the Notice and Complaint and
18 further deny that they engaged in any improper, illegal, or wrongful conduct. DMB and Sephora
19 maintain that all of the products they have manufactured, imported, sold, and/or distributed for sale in
20 California, including the Covered Products, have been, and are, in compliance with all applicable laws,
21 rules, and regulations, including Proposition 65 and its related Regulations. Nothing in this Consent
22 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
23 violation of law, nor shall compliance with this Consent Judgment be construed as an admission of any
24 fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
25 diminish or otherwise affect DMB's obligations, responsibilities, and duties under this Consent
26 Judgment.

1 **1.9 Jurisdiction**

2 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
3 Court has jurisdiction over DMB and Sephora as to the allegations in the Complaint, that venue is
4 proper in the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions
5 of this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section
6 664.6.

7 **1.10 Effective Date**

8 For purposes of this Consent Judgment, the term "Effective Date" means the date on which this
9 Consent Judgment is approved and entered as a judgment of the Court, as discussed in Section 6.

10 **2. INJUNCTIVE RELIEF**

11 **2.1 Reformulation of the Covered Products**

12 Commencing one (1) year after the Effective Date, DMB shall not sell any Covered Product
13 that does not contain at least ten percent (10%) Binding Agents by mass. "Binding Agents" means
14 ingredients that are Alcohols, Ethers, Esters, Fatty Acids, Fats and Oils, Gums, Hydrocarbons,
15 Polyols, Siloxanes and Silanes, and Soaps, as categorized by chemical classes in the International
16 Cosmetic Ingredient Dictionary and Handbook.

17 **2.2 Clear and Reasonable Warnings**

18 For Covered Products that do not contain at least ten percent (10%) Binding Agents by mass,
19 and which are distributed or directly sold by DMB in the State of California on or after the Effective
20 Date, DMB shall provide a warning statement that complies with Proposition 65 and its related
21 Regulations at that time.

22 **2.3 Sell-Through Period**

23 Notwithstanding anything else in this Consent Judgment, Covered Products that are
24 manufactured, packaged, or put into commerce on or after the date this Agreement is executed but
25 before the Effective Date shall be subject to the release of liability pursuant to this Consent Judgment,
26 without regard to when such Covered Products were, or are in the future, distributed or sold to
27 customers. As a result, the obligations of DMB, or any Releasees (if applicable), stated in this Section
28

2 do not apply to Covered Products manufactured, packaged, or put into commerce between the date this Agreement is executed by all Parties and the Effective Date.

3. **MONETARY SETTLEMENT TERMS**

3.1 **Settlement Amount**

DMB, for itself and on behalf of and for the benefit of Sephora, shall pay fifty thousand dollars (\$50,000.00) ("Settlement Amount") in settlement and total satisfaction of all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to California Health and Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00) pursuant to California Code of Civil Procedure section 1021.5.

3.2 **Civil Penalty**

The portion of the Settlement Amount attributable to civil penalties shall be allocated according to California Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars (\$5,000.00) in civil penalties shall be paid as follows:

- One payment of \$3,750.00 to OEHHA, due thirty (30) days after the Effective Date.
- One payment of \$1,250.00 to EHA, due thirty (30) days after the Effective Date.

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 OEHHA (EIN: 68-0284486) 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 Federal Express 2-Day Delivery:

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

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

EHA and its counsel shall 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.

3.3 Attorney's Fees and Costs

The portion of the Settlement Amount 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 limited to, investigating potential violations, bringing this matter to DMB's attention, as well as litigating and negotiating a settlement in the public interest.

DMB shall provide its payment for attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00) to EHA's counsel by physical check or by electronic means, including wire transfers, at DMB's discretion, due thirty (30) days after the Effective Date, and subject to receipt by DMB of an executed IRS form W-9 in the name of the payee.

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

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

4. CLAIMS COVERED AND RELEASE

4.1 EHA's Public Release of Proposition 65 Claims

EHA, acting on its own behalf and in the public interest, releases and forever discharges (1) DMB and Sephora, and their respective parents, subsidiaries, affiliated entities under common

1 ownership or control, owners, directors, officers, shareholders, members, principals, agents,
2 employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns
3 ("Defendant Entities"), and (2) each and every person or entity to whom or to which DMB directly or
4 indirectly distributes, ships, or sells the Covered Products, including but not limited to, downstream
5 distributors, wholesalers, customers, retailers, marketplaces, franchisees, franchisors, cooperative
6 members, suppliers, licensees, and licensors, and all of the foregoing entities' owners, directors,
7 officers, shareholders, members, principals, agents, employees, attorneys, insurers, accountants,
8 representatives, predecessors, successors, and assigns (collectively along with the Defendant Entities,
9 the "Releasees") from all claims for violations of Proposition 65 from the beginning of time to the
10 Effective Date based on, arising out of, or relating to any of the facts alleged in or claims asserted in
11 the Notice(s) or the Complaint, including alleged exposure to TiO₂ from the Covered Products as set
12 forth in the Notice(s).

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

14 EHA, on its own behalf, and on behalf of its past and current agents, representatives, attorneys,
15 successors, and assigns, also provides a release to DMB and the Releasees, which shall be a full and
16 final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs,
17 expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every nature, character,
18 and kind, whether known or unknown, suspected or unsuspected, based on, arising out of, or related to
19 alleged or actual exposures to TiO₂ in the Covered Products manufactured, imported, sold, or
20 distributed by DMB and/or the Releasees from the beginning of time to the Effective Date.

21 **4.3 DMB's Individual Release of EHA**

22 DMB, on its own behalf, and on behalf of its past and current agents, representatives, attorneys,
23 successors, and assigns, hereby waives any and all claims against EHA and its attorneys and other
24 representatives, for any and all actions taken or statements made by EHA and its attorneys and other
25 representatives, arising out of or relating to EHA's claims against DMB for DMB's failure to comply
26 with Proposition 65 for alleged exposure to TiO₂ from the Covered Products as alleged in the Notice(s)
27 and the Complaint.
28

1 **4.4 Waiver of California Civil Code Section 1542**

2 The Parties agree to waive their respective individual rights under Section 1542 of the
3 California Civil Code, which provides:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
5 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
6 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
7 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
8 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
9 DEBTOR OR RELEASED PARTY.

10 The Parties acknowledge that they may later discover facts different from, or in addition to,
11 those which they now know and believe, or should now know and believe, to be true with respect to
12 the releases herein made. The Parties agree that their respective individual releases shall, and will
13 remain, effective notwithstanding the existence, and/or subsequent discovery, of such additional facts.

14 **4.5 No Other Known Claims or Violations**

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

18 **5. BINDING EFFECT OF CONSENT JUDGMENT**

19 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
20 65 with respect to exposures to TiO₂ from the Covered Products. This Consent Judgment is a full,
21 final, and binding resolution of all claims under Proposition 65 that were or could have been asserted
22 against DMB and/or the Releasees for failure to comply with Proposition 65 for alleged exposure to
23 TiO₂ from the Covered Products. The releases set forth above in sections 4.1 and 4.2 do not extend
24 to any third-party retailers selling the product on a website who, after receiving instruction from DMB
25 to include a warning as set forth above in section 2.2, do not include such a warning.

26 **6. COURT APPROVAL AND POST-EXECUTION ACTIVITIES**

27 **6.1 Court Approval**

28 This Consent Judgment is not effective until it is approved by the Court and shall be null and
void if it is not approved by the Court within one (1) year after it has been fully executed by the Parties,
or by such additional time as the Parties may agree to in writing.

1 **6.2 Post-Execution Activities**

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

11 **7. SEVERABILITY**

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

14 **8. GOVERNING LAW**

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

21 In the event (1) the California Office of Health Hazard Assessment adopts a regulation or safe
22 use determination, or issues an interpretive guideline that exempts the Covered Products from meeting
23 the requirements of Proposition 65; or (2) if there is a change in the law or such other legislative or
24 judicial action that exempts the Covered Products from meeting the requirements of Proposition 65; or
25 (3) if Proposition 65 is repealed or otherwise determined to be ineffective, including without limitation
26 determined to be preempted by federal law or a burden on First Amendment rights with respect to TiO₂
27 in the Covered Products or products substantially similar to the Covered Products, then DMB shall be
28

relieved of its obligation to comply with this Consent Judgment (with the exception of the payment of the Settlement Amount set forth above in section 3) and this Consent Judgment shall be void.

9. ENFORCEMENT

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

10. NOTICE

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

If to DMB:

Zia F. Modabber
Stuart M. Richter
Camille A. Brooks
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067
zia.modabber@katten.com
stuart.richter@katten.com
camille.brooks@katten.com

If to EHA:

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

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

11. COUNTERPARTS; DIGITAL SIGNATURES

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

12. MODIFICATION

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

1 **13. AUTHORIZATION**

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

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

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

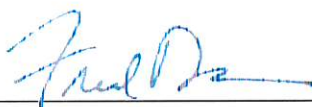
9 **15. ENTIRE AGREEMENT**

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

15 **AGREED TO:**

16 ENVIRONMENTAL HEALTH
17 ADVOCATES, INC.


18 Date: 1/12/2024

19 By: 
20 Name: Fred Duran
21 Title:

15 **AGREED TO:**

16 DANESSA MYRICKS BEAUTY LLC

17 Date: 1/24/24

18 By: 
19 Name: Gary Eustache
20 Title: COO

22 **IT IS SO ORDERED.**

23
24
25
26 Date: _____

27
28 JUDGE OF THE SUPERIOR COURT