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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 OGORGEOUS INC., a California
22 corporation; BONKERS PRODUCTS, INC.,
23 a California corporation; TARGET
24 CORPORATION, a Minnesota corporation;
25 and DOES 1 through 100, inclusive,

26 Defendants.

Case No. 24CV064373

[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 Bonkers Products, Inc. (“Defendant” or “Bonkers”) with EHA and Bonkers
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 Bonkers 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 Bonkers manufactures, imports, sells, and distributes for sale Blogilates Glow
16 Up Greens that contains lead. EHA further alleges that Bonkers does so without providing a sufficient
17 health hazard warning as required by Proposition 65 and related Regulations. Bonkers denies these
18 allegations and asserts that its products are safe and in compliance with all applicable laws, rules and
19 regulations.

20 **1.5 Notice of Violation**

21 On or around August 8, 2023, EHA served Defendant Bonkers, Blogilates Gives, Inc.,
22 Ogorgeous Inc., Target Corporation, the California Attorney General, and all other required public
23 enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice
24 alleged that Bonkers had violated Proposition 65 by failing to sufficiently warn consumers in California
25 of the health hazards associated with exposures to lead contained in dietary supplements products,
26 including but not limited to Blogilates Glow Up Greens manufactured or processed by Bonkers that
27 allegedly contain lead and are imported, sold, shipped, delivered, or distributed for sale to consumers
28 in California by Releasees (as 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 dietary supplements products, including
5 but not limited to Blogilates Glow Up Greens manufactured or processed by Bonkers that allegedly
6 contain lead and are imported, sold, shipped, delivered, or distributed for sale to consumers in
7 California by Releasees (as defined in section 4.1) (“Covered Products”).

8 **1.7 State of the Pleadings**

9 On or around February 16, 2024, EHA filed a Complaint against Bonkers for the alleged
10 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

11 **1.8 No Admission**

12 Bonkers 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 Bonkers' 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 Bonkers 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 by the Court, as discussed in Section 5.

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1 **1.11 Compliance Date**

2 For purposes of this Consent Judgment, the term “Compliance Date” means 30 days from the
3 date on which this Consent Judgment is approved and entered as a judgment of the Court, as discussed
4 in Section 5.

5 **2. INJUNCTIVE RELIEF**


6 **2.1 Reformulation of the Covered Products**

7 Beginning on or before the Compliance Date, Bonkers shall be permanently enjoined from
8 manufacturing, distributing, or directly selling in the State of California, any Covered Product that
9 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead based on a
10 single serving per day unless such Covered Products comply with the warning requirements of Section
11 2.2. The “Daily Lead Exposure Level” shall be calculated by multiplying the recommended serving
12 size in Covered Product by the concentration of lead in Covered Products. As used in this Section 2,
13 “distributed for sale in CA” means to directly ship Covered Products into California or to sell Covered
14 Products to a distributor Bonkers knows will sell Covered Products in California.


15 **2.2 Clear and Reasonable Warnings**

16 For Covered Products that contain lead in a concentration exceeding the Reformulation
17 Standard set forth in section 2.1 above, and which are distributed or directly sold by Bonkers in the
18 State of California on or after the Compliance Date, Bonkers shall provide one of the following warning
19 statements, pursuant to Cal. Code Regs. tit. 27 § 25607.1.

20 **Option 1:**

21  **WARNING:** Consuming this product can expose you to chemicals
22 including lead, which are known to the State of California to cause
23 cancer and birth defects or other reproductive harm. For more
information, go to www.P65Warnings.ca.gov/food.

24 **Option 2:**

25  **WARNING:** Cancer and Reproductive Harm –
www.P65Warnings.ca.gov/food.

26 This warning statement shall be enclosed in a box and prominently displayed on the Covered
27 Products, on the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the
28 statement is displayed with such conspicuousness, as compared with other words, statements, or

1 designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the
2 warning statement is displayed on the Covered Products' packaging, it must be in a type size no smaller
3 than the largest type size used for other consumer information on the product. In no case shall a warning
4 statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point
5 type. If the Covered Products' packaging contains consumer information in a foreign language, a
6 warning statement in that language is required.

7 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold
8 online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603(a)
9 must be provided by including either the warning or a clearly marked hyperlink using the word
10 "WARNING" on the product display page, or by otherwise prominently displaying the warning to the
11 purchaser prior to completing the purchase. If an on-product warning is provided pursuant to Cal. Code
12 Regs. Tit. 27, § 25603(a), the warning provided on the website may use the same content as the on-
13 product warning. For purposes of this section, a warning is not prominently displayed if the purchaser
14 must search for it in the general content of the website. These requirements extend to any websites under
15 the exclusive control of Bonkers where Covered Products are sold into California. In addition, Bonkers
16 shall instruct any third-party website to which it directly sells its Covered Products to include the same
17 online warning, as set forth above, as a condition of selling the Covered Products in 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 on or after the date this Agreement is executed shall be
21 subject to the release of liability pursuant to this Consent Judgment, without regard to when such
22 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations
23 of Bonkers, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products
24 manufactured, packaged, or put into commerce between the date this Agreement is executed and the
25 Effective Date.

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Settlement Amount**

3 Bonkers shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all
4 the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil
5 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
6 25249.7(b) and attorneys' fees and costs in the amount of forty five thousand dollars (\$45,000.00)
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. The five thousand dollars
13 (\$5,000.00) in civil penalties shall be paid as follows:

- 14 • One payment of \$3,750.00 to OEHHA, due 14 (fourteen) days after the Effective Date.
- 15 • One payment of \$1,250.00 to EHA, due 14 (fourteen) days after the Effective date.

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

17
18 Isaac Fayman
19 Environmental Health Advocates
20 225 Broadway, Suite 2100
21 San Diego, CA 92101

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

23 For United States Postal Service Delivery:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 P.O. Box 4010
28 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

Bonkers agrees to provide EHA's counsel with a copy of the check payable to OEHHA, 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 limited to investigating potential violations, bringing this matter to Bonkers' attention, as well as litigating and negotiating a settlement in the public interest.

Bonkers shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's counsel by physical check or by electronic means, including wire transfers, at Bonkers' discretion, as follows: forty five thousand dollars (\$45,000.00) in Attorney's Fees and Costs shall be due fourteen (14) days after the Effective Date and shall be paid as follows:

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

Plaintiff, acting on its own behalf and in the public interest, releases Bonkers, and its parents, subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant

1 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
2 Products, including but not limited to downstream distributors, wholesalers, customers, retailers
3 (including but not limited to Ogorgeous Inc., Target Corporation,), and marketplaces franchisees,
4 franchisors, cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities’
5 owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants,
6 representatives, predecessors, successors, and assigns (collectively referred to as the “Releasees”) from
7 all claims for violations of Proposition 65 up through the Effective Date based on exposure to lead
8 from Covered Products as set forth in the Notice(s). Compliance with the terms of this Consent
9 Judgment constitutes compliance with Proposition 65 with respect to exposures to lead from Covered
10 Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding resolution of
11 all claims under Proposition 65 that were or could have been asserted against Bonkers and/or Releasees
12 for failure to comply with Proposition 65 for alleged exposure to lead from Covered Products. This
13 release does not extend to any third-party retailers selling the product on a website who, after receiving
14 instruction from Bonkers to include a warning as set forth above in section 2.2, do not include such a
15 warning.

16 **4.2 EHA’s Individual Release of Claims**

17 EHA, in its individual capacity, also provides a release to Bonkers and/or Releasees, which
18 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
19 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every
20 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
21 alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or distributed
22 by Bonkers before the Effective Date.

23 **4.3 Bonkers’ Release of EHA**

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

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 Bonkers or for which Bonkers bears legal responsibility other than
4 those 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 one year after it has been fully executed by the Parties, or
8 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; or in the event the
16 California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues
17 an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition
18 65; or if lead cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65
19 is determined to be preempted by federal law or a burden on First Amendment rights with respect to
20 lead in Covered Products or Covered Products substantially similar to Covered Products, then Bonkers
21 may seek relief from the injunctive obligations imposed by this Consent Judgment to the extent any
22 Covered Products are so affected by modifying the agreement via the mechanisms set forth in Section
23 12.

24 **8. ENFORCEMENT**

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

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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 Bonkers:

7 Brian Ledger
8 Gordon Rees Scully Mansukhani, LLP
9 101 W. Broadway, Suite 2000
 San Diego, CA 92101
 bledger@grsm.com

If to EHA:

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

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

12 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

16 **11. POST EXECUTION ACTIVITIES**

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

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:

20
21 Date: September 11, 2024

Date: August 30th, 2024

22 By: 

By: 

23 ENVIRONMENTAL HEALTH
24 ADVOCATES, INC.

BONKERS PRODUCTS, INC.

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IT IS SO ORDERED.

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Date: _____

JUDGE OF THE SUPERIOR COURT