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Environmental Health Advocates, Inc.

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

12 ENVIRONMENTAL HEALTH
13 ADVOCATES, INC.,

Plaintiff,

14 v.

15 HLB90067, Inc.,

16 Defendant.
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Case No. 24CV059879

[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 HLB90067, Inc. (“Defendant” or “HLB”) with EHA and HLB 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 HLB 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 HLB manufactures, imports, sells, and distributes for sale powdered face
16 makeup that contains titanium dioxide (airborne, unbound particles of respirable size) (“TiO₂”). EHA
17 further alleges that HLB does so without providing a sufficient health hazard warning as required by
18 Proposition 65 and related Regulations. HLB denies these allegations and asserts that its products are
19 safe and in compliance with all applicable laws, rules and regulations.

20 **1.5 Notice of Violation**

21 On or around August 15, 2023, EHA served Defendant HLB, the California Attorney General,
22 and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition
23 65 (“Notice”). The Notice alleged that HLB had violated Proposition 65 by failing to sufficiently warn
24 consumers in California of the health hazards associated with exposures to TiO₂ contained in HLB’s
25 Power Sculpt Velvet Bronzer.

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

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1 **1.6 Product Description**

2 The products covered by this Consent Judgment are HLB’s Power Sculpt Velvet Bronzer
3 (“Covered Products”).

4 **1.7 State of the Pleadings**

5 On or around January 12, 2024, EHA filed a Complaint against HLB for the alleged violations
6 of Proposition 65 that are the subject of the Notice (“Complaint”).

7 **1.8 No Admission**

8 HLB 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 HLB’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 HLB as to the allegations in the Complaint, that venue is proper in the
19 County of Alameda, 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 *[Rest of page intentionally left blank.]*

1 **2. INJUNCTIVE RELIEF**


2 **2.1 Reformulation of the Covered Products**

3 For Covered Products, HLB shall either comply with the clear and reasonable warning
4 provision in section 2.2 or reformulate the Covered Products such that they will contain at least 10
5 percent Binding Agents by mass. “Binding Agents” means ingredients that are Alcohols, Ethers, Esters,
6 Fatty Acids, Fats and Oils, Gums, Hydrocarbons, Polyols, Siloxanes and Silanes, and Soaps, as
7 categorized by chemical classes in the International Cosmetic Ingredient Dictionary and Handbook.)


8 **2.2 Clear and Reasonable Warnings**

9 For Covered Products that contain TiO₂ but do not contain at least 10 percent Binding Agents
10 by mass, and which are distributed or directly sold by HLB in the State of California on or after the
11 Effective Date, HLB shall provide one of the following warning statements.

12 **Option 1:**

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

16 **Option 2:**

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

18 The triangle above shall be yellow on the warning statement. This warning statement shall be
19 prominently displayed on the Covered Products, on the packing of the Covered Products, or on a
20 placard, shelf tag, or sign provided that the statement is displayed with such conspicuousness, as
21 compared with other words, statements, or designs as to render it likely to be read and understood by
22 an ordinary individual prior to sale. If the warning statement is displayed on the Covered Products’
23 packaging, it must be in a type size no smaller than the largest type size used for other consumer
24 information on the product. In no case shall a warning statement displayed on the Covered Products’
25 packaging appear in a type size smaller than 6-point type. If the Covered Products’ packaging contains
26 consumer information in a foreign language, a warning statement in that language is required. The
27 same warning shall be posted on any websites under the exclusive control of HLB where Covered
28 Products are sold into California. HLB shall instruct any third-party website to which it directly sells

1 its Covered Products to include the same warning as a condition of selling the Covered Products in
2 California.

3 **2.3 Sell-Through Period**

4 Notwithstanding anything else in this Consent Judgment, Covered Products that are
5 manufactured, packaged, or put into commerce on or after the Effective Date shall be subject to the
6 release of liability pursuant to this Consent Judgment, without regard to when such Covered Products
7 were, or are in the future, distributed or sold to customers. As a result of the time it takes to distribute
8 or sell in process products, the obligations of HLB, or any Releasees (if applicable), stated in this
9 Section 2 do not apply to Covered Products manufactured, packaged, or put into commerce before or
10 within six months of the Effective Date.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Settlement Amount**

13 HLB shall pay sixty thousand dollars (\$60,000.00) in settlement and total satisfaction of all the
14 claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil
15 penalties in the amount of six thousand dollars (\$6,000.00) pursuant to Health and Safety Code section
16 25249.7(b) and attorneys' fees and costs in the amount of fifty-four thousand dollars (\$54,000.00)
17 pursuant to Code of Civil Procedure section 1021.5.

18 **3.2 Civil Penalty**

19 The portion of the settlement attributable to civil penalties shall be allocated according to Health
20 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
21 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
22 twenty-five percent (25%) of the penalty paid to EHA individually. The six thousand dollars
23 (\$6,000.00) in civil penalties shall be paid as follows:

- 24 • One payment of \$4,500.00 to OEHHA, due 30 (thirty) days after the Effective Date.
- 25 • One payment of \$1,500.00 to EHA, due 30 (thirty) days after the Effective date.

26 All payments owed to EHA shall be delivered to the following address:
27
28

1 Isaac Fayman
2 Environmental Health Advocates
3 225 Broadway, Suite 2100
4 San Diego, CA 92101

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

7 For United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010
12 Sacramento, CA 95812-4010

13 For Federal Express 2-Day Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street
18 Sacramento, CA 95814

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

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

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

25 All payments referenced in this section shall be paid within fourteen (14) days of the Effective
26 Date.

27 **3.3 Attorney's Fees and Costs**

28 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 HLB's attention, as well as litigating
and negotiating a settlement in the public interest.

HLB 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 HLB's discretion, as

1 follows: fifty-four thousand dollars (\$54,000.00) in Attorney’s Fees and Costs, due thirty (30) days
2 after the Effective Date.

3 The attorneys’ fee payments shall be made payable to Entorno Law, LLP. The address for this
4 entity is:

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

7 **4. CLAIMS COVERED AND RELEASE**

8 **4.1 EHA’s Public Release of Proposition 65 Claims**

9 Plaintiff, acting on its own behalf and in the public interest, releases HLB, and its parents,
10 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,
11 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant
12 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
13 Products, including but not limited to downstream distributors, wholesalers, customers, retailers, and
14 marketplaces franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all
15 of the foregoing entities’ owners, directors, officers, agents, principals, employees, attorneys, insurers,
16 accountants, representatives, predecessors, successors, and assigns (collectively referred to as the
17 “Releasees”) from all claims for violations of Proposition 65 up through the Effective Date based on
18 exposure to the Covered Products as set forth in the Notice(s). Compliance with the terms of this
19 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to TiO2 from
20 Covered Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding
21 resolution of all claims under Proposition 65 that were or could have been asserted against HLB and/or
22 Releasees for failure to comply with Proposition 65 for alleged exposure to TiO2 from Covered
23 Products. This release does not extend to any third-party retailers selling the product on a website who,
24 after receiving instruction from HLB to include a warning as set forth above in section 2.2, do not
25 include such a warning.

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1 **4.2 EHA’s Individual Release of Claims**

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

8 **4.3 HLB’s Release of EHA**

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

14 **4.4 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 HLB or for which HLB bears legal responsibility other than those that
17 are fully resolved by this Consent Judgment.

18 **5. COURT APPROVAL**

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

22 **6. SEVERABILITY**

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

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the state of California as
27 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
28 rendered inapplicable for reasons, including but not limited to changes in the law, then HLB may

1 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations
2 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so
3 affected.

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

10 **8. ENFORCEMENT**

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

13 **9. NOTICE**

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

18 If to HLB:

19 Matt Caplan
20 Cooley LLP
21 3 Embarcadero Center, 20th Floor
22 San Francisco, CA 94111
23 mcaplan@cooley.com

18 If to EHA:

19 Noam Glick
20 Entorno Law, LLP
21 225 Broadway, Suite 2100
22 San Diego, CA 92101
23 noam@entornolaw.com

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

26 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

1 **11. POST EXECUTION ACTIVITIES**

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

11 **12. MODIFICATION**

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

15 **13. AUTHORIZATION**

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

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

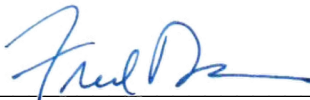
19 If a dispute arises with respect to either Party’s compliance with the terms of this Consent
20 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
21 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed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

23 **15. ENTIRE AGREEMENT**

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

1 **AGREED TO:**

2 Date: 5/8/2024

3
4 By: 
5 ENVIRONMENTAL HEALTH
6 ADVOCATES, INC.

AGREED TO:

Date: May 8, 2024

By: 
HLB90067, Inc.

7 **IT IS SO ORDERED.**

8
9 Date: _____

10 JUDGE OF THE SUPERIOR COURT