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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 BOX ACQUISITIONS, LLC, an Illinois
22 limited liability company; TARGET
23 CORPORATION, a Minnesota corporation;
24 and DOES 1 through 100, inclusive,

25 Defendants.

Case No. 24CV076219

[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 Box Acquisitions LLC (“Defendant” or “Box Acquisitions”). EHA and Box
5 Acquisitions are 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 public.
8 It seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing
9 or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Box Acquisitions employs ten or more individuals and for purposes of this Consent Judgment only,
12 is 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 Box Acquisitions manufactures, imports, sells, and distributes for sale vinyl
16 tape products, including but not limited to, Tape Logic Solid Vinyl Safety Tape 6.0 Mil 1” x 36 yds
17 Black 3/Case T91363PKBL, that allegedly contain Di(2-ethylhexyl)phthalate (DEHP). EHA further
18 alleges that Box Acquisitions does so without providing a sufficient health hazard warning as required
19 by Proposition 65 and related Regulations. Box Acquisitions denies these allegations and asserts that its
20 products are safe and in compliance with all applicable laws, rules and regulations.

21 **1.5 Notice of Violation**

22 On or around November 9, 2023, EHA served Defendant Box Acquisitions, Box Partners, LLC,
23 Target Corporation, the California Attorney General, and all other required public enforcement agencies
24 with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Box
25 Acquisitions had violated Proposition 65 by failing to sufficiently warn consumers in California of the
26 health hazards associated with exposures to DEHP contained in vinyl tape products, including but not
27 limited to Tape Logic Solid Vinyl Safety Tape 6.0 Mil 1” x 36 yds Black 3/Case T91363PKBL
28 manufactured or processed by Box Acquisitions that allegedly contain DEHP and are imported, sold,

1 shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined in section
2 4.1).

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

5 **1.6 Covered Product Description**

6 The products covered by this Consent Judgment are vinyl tape products, including but not
7 limited to Tape Logic Solid Vinyl Safety Tape 6.0 Mil 1" x 36 yds Black 3/Case T91363PKBL
8 ("Covered Products").

9 **1.7 State of the Pleadings**

10 On or around May 17, 2024, EHA filed a Complaint against Box Acquisitions for the alleged
11 violations of Proposition 65 that are the subject of the Notice ("Complaint").

12 **1.8 No Admission**

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

21 **1.9 Jurisdiction**

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

26 **1.10 Effective Date**


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

1 **2. INJUNCTIVE RELIEF**


2 **2.1 Clear and Reasonable Warnings**

3 For Covered Products that contain DEHP which are distributed or directly sold by Box
4 Acquisitions in the State of California on or after the Effective Date, Box Acquisitions shall provide one
5 of the following warning statements.

6 **Option 1:**

7  **WARNING:** This product can expose you to chemicals including
8 Di(2-ethylhexyl)phthalate (DEHP), which is known to the State of
9 California to cause cancer and birth defects or other reproductive harm.
For more information go to www.P65Warnings.ca.gov

10 **Option 2:**

11  **WARNING:** Cancer and Reproductive Harm –
www.P65Warnings.ca.gov.

12 The triangle above shall be yellow on the warning statement. This warning statement shall be
13 prominently displayed on the Covered Products, on the packing of the Covered Products, or on a placard,
14 shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with
15 other words, statements, or designs as to render it likely to be read and understood by an ordinary
16 individual prior to sale. If the warning statement is displayed on the Covered Products' packaging, it
17 must be in a type size no smaller than the largest type size used for other consumer information on the
18 product. In no case shall a warning statement displayed on the Covered Products' packaging appear in
19 a type size smaller than 6-point type. If the Covered Products' packaging contains consumer information
20 in a foreign language, a warning statement in that language is required.

21 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold
22 online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603(a)
23 must be provided by including either the warning or a clearly marked hyperlink using the word
24 “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the
25 purchaser prior to completing the purchase. If an on-product warning is provided pursuant to Cal. Code
26 Regs. Tit. 27, § 25603(a), the warning provided on the website may use the same content as the on-
27 product warning. For purposes of this section, a warning is not prominently displayed if the purchaser
28 must search for it in the general content of the website. These requirements extend to any websites under

1 the exclusive control of Box Acquisitions where Covered Products are sold into California. In addition,
2 Box Acquisitions shall instruct any third-party website to which it directly sells its Covered Products to
3 include the same online warning, as set forth above, as a condition of selling the Covered Products in
4 California.

5 **2.3 Sell-Through Period**

6 Notwithstanding anything else in this Consent Judgment, Covered Products that are
7 manufactured, packaged, or put into commerce on or after the date this Agreement is executed shall be
8 subject to the release of liability pursuant to this Consent Judgment, without regard to when such
9 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations
10 of Box Acquisitions, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered
11 Products manufactured, packaged, or put into commerce between the date this Agreement is executed
12 and the Effective Date.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Settlement Amount**

15 Box Acquisitions shall pay fifty thousand dollars (\$50,000.00) in settlement and total
16 satisfaction of all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment.
17 This includes civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and
18 Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand
19 dollars (\$45,000.00) 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 to
23 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 14 (fourteen) days after the date the Court
27 approves EHA's motion to approve this Consent Judgment.
- 28 • One payment of \$1,500.00 to EHA, due 14 (fourteen) days after the Effective date.

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

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

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

8 For United States Postal Service Delivery:

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

14 For Federal Express 2-Day Delivery:

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

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

22 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.

23 Relevant information is set out below:

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

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

29 **3.3 Attorney's Fees and Costs**

30 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
31 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not
32 limited to investigating potential violations, bringing this matter to Box Acquisitions' attention, as well
33 as litigating and negotiating a settlement in the public interest.

1 Box Acquisitions shall provide its payment for civil penalty and for attorneys' fees and costs
2 to EHA's counsel by physical check or by electronic means, including wire transfers, at Box
3 Acquisitions' discretion, as follows: forty-five thousand dollars (\$45,000.00) in Attorney's Fees and
4 Costs shall be paid as one payment, due fourteen (14) days after the date the Court approves EHA's
5 motion to approve this Consent Judgment.

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

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

10 **4. CLAIMS COVERED AND RELEASE**

11 **4.1 EHA's Public Release of Proposition 65 Claims**

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

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

4 EHA, in its individual capacity, also provides a release to Box Acquisitions and/or Releasees,
5 which 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 alleged
8 or actual exposures to DEHP in Covered Products manufactured, imported, sold, or distributed by Box
9 Acquisitions up through the Effective Date.

10 **4.3 Box Acquisitions' Release of EHA**

11 Box Acquisitions on its own behalf, and on behalf of Releasees as well as its past and current
12 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against
13 EHA and its attorneys and other representatives, for any and all actions taken or statements made by
14 EHA 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 alleged or actual
16 exposure to DEHP in the Covered Products up through the Effective Date.

17 **4.4 No Other Known Claims or Violations**

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

21 **5. COURT APPROVAL**

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

25 **6. SEVERABILITY**

26 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
27 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.
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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; or in the event the
5 California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues
6 an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition
7 65; or if DEHP cases are permanently enjoined by a court of competent jurisdiction; or if Proposition
8 65 is determined to be preempted by federal law or a burden on First Amendment rights with respect to
9 DEHP in Covered Products or Products substantially similar to Covered Products, then Box Acquisitions
10 may seek relief from the injunctive obligations imposed by this Consent Judgment to the extent any
11 Covered Products are so affected by modifying the agreement via the mechanisms set forth in Section
12 12.

13 **8. ENFORCEMENT**

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

16 **9. NOTICE**

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

21 If to Box Acquisitions:

22 Rocky C. Tsai
23 ROPES & GRAY LLP
24 Three Embarcadero Center
25 San Francisco, CA 94111-4006
26 Rocky.Tsai@ropesgray.com

21 If to EHA:

22 Noam Glick
23 Entorno Law, LLP
24 225 Broadway, Suite 2100
25 San Diego, CA 92101
26 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 in
26 the absence of such a good faith attempt to resolve the dispute beforehand.

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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: 8/14/2024

Date: AUGUST 14th 2024

10 By: 
11 ENVIRONMENTAL HEALTH
12 ADVOCATES, INC.

By: 
BOX ACQUISITIONS LLC

13
14 **IT IS SO ORDERED.**

15
16 Date: _____

17 JUDGE OF THE SUPERIOR COURT

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