

ENTORNO LAW, LLP

Craig M. Nicholas (SBN 178444)

Noam Glick (SBN 251582)

Jake W. Schulte (SBN 293777)

Janani Natarajan (SBN 346770)

Gianna E. Tirrell (SBN 358788)

225 Broadway, Suite 1900

San Diego, California 92101

Tel: (619) 629-0527

Email: craig@entornolaw.com

Email: noam@entornolaw.com

Email: jake@entornolaw.com

Email: janani@entornolaw.com

Email: gianna@entornolaw.com

Attorneys for Plaintiff

Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH
ADVOCATES, INC.,

Plaintiff,

v.

PERIO, INC., an Ohio corporation; C.O.
BIGELOW CHEMISTS, INC., a New York
corporation; ELEMIS USA, INC., a Florida
corporation; THE GILLETTE COMPANY
LLC, a Delaware limited liability company;
THE PROCTER & GAMBLE COMPANY,
an Ohio corporation; CVS PHARMACY,
INC., a Rhode Island corporation;
WALGREEN CO., an Illinois corporation;
TARGET CORPORATION, a Minnesota
corporation; NAME RITE, LLC, a Delaware
limited liability company; JOHNSON &
JOHNSON CONSUMER INC., a Delaware
corporation; EDGEWELL PERSONAL
CARE BRANDS, LLC, a Delaware limited
liability company; FRUIT OF THE EARTH,
INC., a Delaware corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. 24CV095397

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Environmental Health Advocates, Inc., (“EHA” or “Plaintiff”) and Elemis USA, Inc. (“Defendant” or “Elemis”) with EHA and Elemis each individually referred to as a “Party” and collectively referred to as the “Parties.”

1.2 Plaintiff

EHA is a corporation organized in the state of California, acting in the interest of the general public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Defendant

Elemis employs ten or more individuals and for purposes of this Consent Judgment only, is a “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

1.4 General Allegations

EHA alleges that Elemis manufactures, imports, sells, and distributes for sale Elemis Ice Cool Foaming Shave Gel For Men that contains diethanolamine (“DEA”). EHA further alleges that Elemis does so without providing a sufficient health hazard warning as required by Proposition 65 and related Regulations. Elemis denies these allegations and asserts that its products, including the Covered Products, as defined herein, are safe and in compliance with all applicable laws, rules and regulations.

1.5 Notice of Violation

On or around May 10, 2024, EHA served Elemis, the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Elemis had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to diethanolamine (“DEA”) contained in shave gel products, including, but not limited to, Elemis Ice Cool Foaming Shave Gel For Men manufactured or processed by Elemis that allegedly contain DEA and are imported, sold, shipped, delivered, or distributed for sale to consumers 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 shave gel products, including but not
5 limited to Elemis Ice Cool Foaming Shave Gel For Men, manufactured or processed by Elemis that
6 allegedly contains DEA and are imported, sold, shipped, delivered, or distributed for sale to consumers
7 in California by Releasees (as defined in section 4.1) (“Covered Products”).

8 **1.7 State of the Pleadings**

9 On or around October 11, 2024, EHA filed a Complaint against Elemis for the alleged violations
10 of Proposition 65 that are the subject of the Notice (“Complaint”).

11 **1.8 No Admission**

12 Elemis denies all 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 Elemis' 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 Elemis 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 Reformulation of the Covered Products**


3 Beginning thirty (30) days after the Effective Date, Elemis shall be permanently enjoined from
4 supplying any Covered Products directly to any California consumer that has a DEA content above the
5 Reporting Limit of 10 mg/kg when analyzed pursuant to liquid chromatography/tandem mass
6 spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy (ICP-MS) or other method of
7 analysis utilized by the International Organization for Standardization (ISO) for qualitative and
8 quantitative screening of cosmetics and cosmetic raw materials. Eleims shall also instruct its third party
9 retailers to stop selling Covered Products to California Consumers as of the Effective Date unless the
10 Covered Products contain the Proposition 65 warning set forth below in section 2.2.

11 **2.2 Clear and Reasonable Warnings**

12 Commencing on the Effective Date, Elemis agrees any of the Covered Products sold by Elemis
13 directly to any California consumer, or supplied to any retailer that sells to any California consumer,
14 exceeding the Reformulation Standard set forth in section 2.1 above, shall contain a “clear and
15 reasonable” Proposition 65 warning, within the meaning of Section 25249.6 of the Act. Elemis agrees
16 that each warning shall be prominently placed with such conspicuousness, as compared with other
17 words, statements, designs, or devices as to render it likely to be seen, read and understood by an
18 ordinary individual under customary conditions before purchase or use. Each warning shall be provided
19 in a manner such that the consumer or user understands to which specific Covered Products the warning
20 applies, and which listed chemical(s) is/are implicated, so as to minimize the risk of consumer
21 confusion. The Parties agree that once Elemis has complied with its obligations under section 2.1 to
22 instruct its retailers to cease selling the Covered Products unless they have the Proposition 65 warning
23 described herein, Elemis shall bear no liability or responsibility for that third party retailer selling
24 Covered Products in violation with the terms of this Consent Judgment.


25 For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered
26 Products shall consist of a product-specific warning via one or more of the following methods: (1) A
27 posted sign, shelf tag, or shelf sign for the consumer product at each point of display of the product;
28 (2) Any electronic device or process that automatically provides the warning to the purchaser (not

applicable to internet purchases, which are subject to the provisions of § 25602(b)); (3) A warning directly affixed to the product's label or tag; or (4) A short-form warning on the label that complies with the content requirements set forth in §§ 25603(b) and 25603(a). Specifically, pursuant to § 25603(a) – (d), one of the following statements must be utilized:

- 1)  **WARNING:**” [or] “**CA WARNING:**” [or] “**CALIFORNIA WARNING:**” This product can expose you to chemicals including diethanolamine ("DEA"), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

OR

SHORT FORM


- 2)  **WARNING:**” [or] “**CA WARNING:**” [or] “**CALIFORNIA WARNING:**” Cancer risk from exposure to diethanolamine ("DEA"). See www.P65Warnings.ca.gov.

OR

- SHORT FORM** 3)  **WARNING:**” [or] “**CA WARNING:**” [or] “**CALIFORNIA WARNING:**” Can expose you to diethanolamine ("DEA"), a carcinogen. See www.P65Warnings.ca.gov.

OR

**SHORT FORM
ON A PRODUCT
MANUFACTURED
OR LABELED
PRIOR TO
1/1/28,
REGARDLESS**

- 4)  **WARNING:** Cancer- www.P65Warnings.ca.gov

The triangle above shall be yellow on the warning statement. Where the sign, label, or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the warning text, in a size no smaller than the height of the word, “WARNING.” A short-form warning must be provided on a product in a type size that complies with Cal. Code Regs Tit. 27, § 25601(c). In no case shall a warning statement displayed on the Covered Products’ packaging appear in a type size smaller than 6-point type. Where a sign, labeling, or label as defined in Section 256001.1 is used to provide a warning that includes consumer information

1 about a product in a language other than English, the warning must also be provided in that language
2 in addition to English.

3 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are
4 sold online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603
5 must be provided via of the following methods: (1) A warning on the product display page; (2) A
6 clearly marked hyperlink using the word “WARNING” or the words “CA WARNING” or
7 “CALIFORNIA WARNING” on the product display page that links to the warning; or (3) An otherwise
8 prominently displayed warning provided to the purchaser prior to completing the purchase. If a warning
9 is provided using the short-form label content pursuant to Section 25602(a)(4), the warning provided
10 on the website may use the same content. For purposes of this section, a warning is not prominently
11 displayed if the purchaser must search for it in the general content of the website. For internet purchases
12 made prior to 1/1/28, a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously
13 posting or displaying the new warning online until 60 calendar days after the retailer receives a warning
14 or a written notice under Section 25600.2(b) and (c) which updates a short-form warning compliant
15 with Section 25603(c) with content compliant with Section 25603(b). These requirements extend to
16 any websites under the exclusive control of Elemis where Covered Products are sold into California.
17 In addition, Elemis shall instruct any third-party website to which it directly sells its Covered Products
18 to include the same online warning, as set forth above, as a condition of selling the Covered Products
19 in California.

20 There shall be no obligation for Elemis to provide a warning for Covered Products that
21 entered the stream of commerce, or was supplied to any retailer, prior to the Effective Date, and the
22 Section 4 release applies to all such Covered Products.

23 (i) Changes in Warning Regulations or Statutes

24 In the event that the Office of Environmental Health Hazard Assessment promulgates
25 one or more regulations requiring or permitting Proposition 65 warning text and/or methods of
26 transmission applicable to the Covered Products and the chemical at issue, which are different than
27 those set forth above, Elemis shall be entitled to use, at its discretion, such other warning text and/or
28 method of transmission without being deemed in breach of this Agreement. If regulations or legislation

are enacted by a controlling regulatory agency or governing body, or any court of competent jurisdiction providing that Proposition 65 warnings as to DEA in this product are no longer required, a lack of warning by Elemis will not thereafter be a breach of this Agreement.

2.3 Sell-Through Period

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

3. MONETARY SETTLEMENT TERMS

3.1 Settlement Amount

Elemis shall pay fifty thousand dollars (\$50,000.00) 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 doallars (\$5,000.00) pursuant to 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 Code of Civil Procedure section 1021.5.

3.2 Civil Penalty

The portion of the settlement attributable to civil penalties shall be allocated according to 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 \$5,000.00 to OEHHA, due 14 (fourteen) days after the date the Court approves EHA's motion to approve this Consent Judgment.

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

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

6 All payments owed to OEHHHA (EIN: 68-0284486) shall be delivered directly to OEHHHA
(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 Elemis agrees to provide EHA's counsel with a copy of the check payable to OEHHHA, within
20 five business days of 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 date the Court
26 approves EHA's motion to approve this Consent Judgment.

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 Elemis' attention, as well as
litigating and negotiating a settlement in the public interest.

1 Elemis shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's
2 counsel by physical check or by electronic means, including wire transfers, at Elemis' discretion, as
3 follows: forty-five thousand dollars (\$45,000.00) in Attorney's Fees and Costs shall be paid as follows:

- 4 • One payment of \$45,000.00, 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 and delivered to:

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

9 **4. CLAIMS COVERED AND RELEASE**

10 **4.1 EHA's Public Release of Proposition 65 Claims**

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

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

2 EHA, in its individual capacity, and its parents, subsidiaries, affiliated entities under common
3 ownership or control, its directors, officers, principals, agents, employees, attorneys, insurers,
4 accountants, predecessors, successors, and assigns also provides a release to Elemis 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
8 alleged or actual exposures to DEA in Covered Products manufactured, imported, sold, or distributed
9 by Elemis before the Effective Date.

10 **4.3 Elemis’s Release of EHA**

11 Elemis 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 Elemis or for which Elemis bears legal responsibility other than those
19 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.
27
28

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, whether by a
5 controlling regulatory agency or governing body or a court of competent jurisdiction; or in the event
6 the California Office of Health Hazard Assessment adopts a regulation or safe use determination, or
7 issues an interpretive guideline that exempts Covered Products from meeting the requirements of
8 Proposition 65; or if DEA cases are permanently enjoined by a court of competent jurisdiction; or if
9 Proposition 65 is determined to be preempted by federal law or a burden on First Amendment rights
10 with respect to DEA in Covered Products or Covered Products substantially similar to Covered
11 Products, then Elemis may seek relief from the injunctive obligations imposed by this Consent
12 Judgment to the extent any Covered Products are so affected by modifying the agreement via the
13 mechanisms set forth in Section 12.

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 Elemis:

23 Ronie M. Schmelz
24 K&L Gates LLP
25 10100 Santa Monica Blvd., 8th Floor
26 Los Angeles, CA 90067
27 ronie.schmelz@klgates.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

28 Any Party may, from time to time, specify in writing to the other, a change of address to which
29 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**

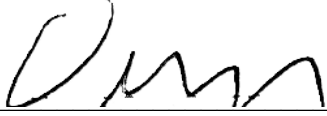
2 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
3 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
4 commitments, and understandings related hereto. No representations, oral or otherwise, express or
5 implied, 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: 5/14/25

Date: 5/15/2025

10 By: 
11 ENVIRONMENTAL HEALTH
12 ADVOCATES, INC.

DocuSigned by:

By: 70E4749A526B4DC...
ELEMIS USA, INC.

13
14 **IT IS SO ORDERED.**

15
16 Date: _____

JUDGE OF THE SUPERIOR COURT