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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.

KINGDOM ANIMALIA, LLC, a California
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

Case No. 25CV106799

[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 Kingdom Animalia, LLC (“Defendant” or “Kingdom Animalia”), with EHA and Kingdom Animalia 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

Kingdom Animalia 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 Kingdom Animalia manufactures, imports, sells, and distributes for sale in California Covered Products that contain Diethanolamine (“DEA”). EHA further alleges that Kingdom Animalia does so without providing a sufficient health hazard warning as required by Proposition 65 and related regulations. Kingdom Animalia denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including Covered Products, have been and are in compliance with all applicable laws, rules and regulations.

1.5 Notice of Violation

On or around August 16, 2024, EHA issued a 60-Day Notice of Violation of Proposition 65 (“Notice”) to Defendant Kingdom Animalia, Ulta Beauty Cosmetics, LLC, the California Attorney General, and all other required public enforcement agencies. The Notice alleged that Kingdom Animalia violated Proposition 65 by failing to provide Proposition 65 warnings to consumers in California associated with exposures to DEA contained in the Covered Products.

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1 To the best of the Parties' knowledge, no public enforcer has commenced or is otherwise
2 prosecuting an action to enforce the violations alleged in the Notice.

3 **1.6 Product Description**

4 The products covered by this Consent Judgment are Hourglass Arch Brow Shaping Gel and
5 Caution Extreme Lash Mascara manufactured, imported, sold, or distributed for sale to consumers in
6 California by Kingdom Animalia that allegedly contain DEA ("Covered Products").

7 **1.7 State of the Pleadings**

8 On or around January 14, 2025, EHA filed a Complaint against Kingdom Animalia for the
9 alleged violations of Proposition 65 that are the subject of the Notice ("Complaint").

10 **1.8 No Admission**

11 Kingdom Animalia denies the material factual and legal allegations of the Notice and
12 Complaint and maintains that all of the products it has manufactured, imported, sold, and/or distributed
13 for sale in California, including Covered Products, have been, and are, in compliance with all applicable
14 laws, rules, and regulations, including Proposition 65. Nothing in this Consent Judgment shall be
15 construed as an admission by Kingdom Animalia of any fact, finding, conclusion of law, issue of law,
16 or violation of law, nor shall compliance with this Consent Judgment be construed as an admission by
17 Kingdom Animalia of any fact, finding, conclusion of law, issue of law, or violation of law, such being
18 specifically denied by Kingdom Animalia. This Section shall not, however, diminish or otherwise
19 affect Kingdom Animalia's obligations, 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 Kingdom Animalia as to the allegations in the Complaint, that venue is
23 proper in the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions
24 of this 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 and all Parties have been
28 provided with a copy.

1.11 Compliance Date

For purposes of this Consent Judgment, the term “Compliance Date” means one (1) year after the Effective Date.

2. INJUNCTIVE RELIEF

2.1 Reformulation of the Covered Products


Beginning on the Compliance Date, Kingdom Animalia shall be permanently enjoined from manufacturing for subsequent sale into the State of California without a warning any Covered Product that has triethanolamine (“TEA”) as an intentional ingredient, which is the source of DEA in the Covered Products. Kingdom Animalia further agrees not to add any ingredients that are known to contain DEA, as published by the FDA here: <https://www.fda.gov/cosmetics/cosmetic-ingredients/diethanolamine>. As used in this Section 2, “distributing for sale” in California means to directly ship Covered Products into California or to sell Covered Products to a distributor Kingdom Animalia knows will sell Covered Products in California.

2.2 Clear and Reasonable Warnings

For Covered Products that do not comply with section 2.1 above, and which are manufactured for distribution or sale by Kingdom Animalia in the State of California after the Compliance Date, Kingdom Animalia shall provide a “clear and reasonable” Proposition 65 warning, within the meaning of Section 25249.6 of the Act, subject to Section 2.3 of this Agreement. Kingdom Animalia agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be seen, read, and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Covered Products the warning applies, and which listed chemical(s) is/are implicated, so as to minimize the risk of consumer confusion.


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For purposes of this Consent Judgment, a clear and reasonable warning for the Covered Products shall consist of a product-specific warning via one or more of the following methods: (1) A posted sign, shelf tag, or shelf sign for the consumer product at each point of display of the product; (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. See-
www.P65Warnings.ca.gov

OR

SHORT FORM

3)  **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”** Can expose you to Diethanolamine, a carcinogen. See
www.P65Warnings.ca.gov.

OR

**SHORT FORM ON
A PRODUCT
MANUFACTURED/
LABELED PRIOR
TO 1/1/28,
REGARDLESS OF
DATE OF SALE**

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

1 The triangle above shall be yellow on the warning statement. Where the sign, label, or shelf tag
2 for the product is not printed using the color yellow, the symbol may be printed in black and white.
3 The symbol shall be placed to the left of the warning text, in a size no smaller than the height of the
4 word, "WARNING," "CA WARNING," or "CALIFORNIA WARNING." A short-form warning must
5 be provided on a product in a type size that complies with Cal. Code Regs Tit. 27, § 25601(c). In no
6 case shall a warning statement displayed on the Covered Products' packaging appear in a type size
7 smaller than 6-point type. Where a sign, labeling, or label as defined in Section 256001.1 is used to
8 provide a warning that includes consumer information about a product in a language other than English,
9 the warning must also be provided in that language in addition to English. Alternatively, the content
10 and method of transmission may be provided in any form as authorized by Proposition 65 law or
11 regulation effective on or after the Effective Date.

12 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold
13 online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603 must
14 be provided via of the following methods: (1) A warning on the product display page; (2) A clearly
15 marked hyperlink using the word "WARNING" or the words "CA WARNING" or "CALIFORNIA
16 WARNING" on the product display page that links to the warning; or (3) An otherwise prominently
17 displayed warning provided to the purchaser prior to completing the purchase. If a warning is provided
18 using the short-form label content pursuant to Section 25602(a)(4), the warning provided on the website
19 may use the same content. For purposes of this section, a warning is not prominently displayed if the
20 purchaser must search for it in the general content of the website. For internet purchases made prior to
21 1/1/28, a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously posting or
22 displaying the new warning online until 60 calendar days after the retailer receives a warning or a written
23 notice under Section 25600.2(b) and (c) which updates a short-form warning compliant with Section
24 25603(c) with content compliant with Section 25603(b). These requirements extend to any websites
25 under the exclusive control of Kingdom Animalia where Covered Products are sold into California. In
26 addition, if Kingdom Animalia has actual knowledge that a third-party website to which it directly sells
27 its Covered Products is offering Covered Products for sale in California, Kingdom Animalia shall
28 instruct the third-party website to include the same online warning, as set forth above, as a condition of

1 selling the Covered Products in California.

2 There shall be no obligation for Kingdom Animalia to provide a warning for Covered Products
3 manufactured prior to the Compliance Date, and the Section 4 release applies to all such Covered
4 Products. For the avoidance of doubt, "Covered Products manufactured" include, but are not limited
5 to, Covered Products in the process of manufacture.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Settlement Amount**

8 Kingdom Animalia shall pay fifty-five thousand dollars (\$55,000.00) in settlement and total
9 satisfaction of all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment.
10 This includes civil penalties in the amount of five thousand five hundred dollars (\$5,500.00) pursuant
11 to Health and Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of forty-
12 nine thousand five hundred (\$49,500.00) pursuant to Code of Civil Procedure section 1021.5.

13 **3.2 Civil Penalty**

14 The portion of the settlement attributable to civil penalties shall be allocated according to Health
15 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
16 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
17 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand five hundred
18 dollars (\$5,500.00) in civil penalties shall be paid as follows:

- 19 • \$4,125.00 to OEHHA.
20 • \$1,375.00 to EHA.

21 All payments shall be delivered to EHA the following address, and shall be allocated
22 according to this agreement by EHA:

23
24 Isaac Fayman
25 Environmental Health Advocates
26 225 Broadway, Suite 2100
27 San Diego, CA 92101
28

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 thirty (30) days of the Effective Date.

3.3 Attorneys’ 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 Kingdom Animalia's attention, as well as litigating and negotiating a settlement in the public interest.

Kingdom Animalia 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 Kingdom Animalia's discretion, as follows: forty-nine thousand five hundred dollars (\$49,500.00) in Attorney’s Fees and Costs shall be paid as follows:

- One payment of \$49,500.00, due thirty (30) days after the Effective Date.

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 Claim

Plaintiff, acting on its own behalf and in the public interest, releases Kingdom Animalia and its parents, subsidiaries, affiliated entities, its directors, officers, principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered Products, including but not limited to downstream distributors, wholesalers, customers, retailers (including but not limited to Ulta Beauty Cosmetics, LLC), and marketplaces franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities’ owners, directors,

officers, agents, principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (collectively, including the Defendant Entities, referred to as the “Releasees”) from all claims of Proposition 65 violations for Covered Products manufactured on or before the Compliance Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEA from Covered Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding resolution of all claims under Proposition 65 that were or could have been asserted against Kingdom Animalia and/or Releasees for failure to comply with Proposition 65 for alleged exposure to DEA from Covered Products. This release does not extend to any third-party retailers selling the product on a website who, after receiving instruction from Kingdom Animalia to include a warning as set forth above in section 2.2, do not include such a warning.

4.2 EHA’s Individual Release of Claims

EHA, in its individual capacity, also provides a release to Kingdom Animalia and Releasees, which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEA in Covered Products manufactured by Kingdom Animalia on or before the Compliance Date. The release in this Section 4.2 is effective as a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of every nature, character, and kind, whether known or unknown, suspected or unsuspected as to Defendant Entities. EHA acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

EHA and Kingdom Animalia each understand and acknowledge the significance and consequences of California Civil Code section 1542 and nevertheless specifically waive their rights thereunder.

4.3 Kingdom Animalia's Release of EHA

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

4.4 No Other Known Claims or Violations

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

5. COURT APPROVAL

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 year after it has been fully executed by the Parties, or by such additional time as the Parties may agree to in writing.

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the state of California as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable for reasons, including but not limited to changes in the law; or in the event the California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition 65; or if DEA cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First Amendment rights with respect to DEA in Covered Products or products substantially similar to Covered Products, then Kingdom Animalia shall be relieved of its obligations imposed by this Consent Judgment to the extent any

Covered Products are so affected by modifying the agreement via the mechanisms set forth in Section 12.

8. **ENFORCEMENT**

Only EHA or a public enforcer of Proposition 65 shall be entitled to enforce this Consent Judgment. Prior to filing an action to enforce the terms of this Consent Judgment, EHA shall provide a written letter stating the basis for its allegations of non-compliance, and the Parties shall meet and confer for a period of no less than thirty (30) days in an attempt to informally resolve such dispute. In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

9. **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 Kingdom Animalia:

Will Wagner
Greenberg Traurig, LLP
400 Capitol Mall, Suite 2400
Sacramento, CA 95814
Will.Wagner@gtlaw.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.

10. **COUNTERPARTS; DIGITAL SIGNATURES**

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

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11. POST EXECUTION ACTIVITIES

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

12. MODIFICATION

12.1 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.

12.2 **Other EHA Settlements.** Kingdom Animalia may move to modify this Consent Judgment to substitute a higher DEA reformulation level that EHA agrees to in a future consent judgment applicable to products substantially similar to the Covered Products, and EHA agrees not to oppose any such motion except for good cause shown.

12.3 **Court Decision Regarding Similar Products.** If a court of competent jurisdiction renders a final judgment that one or more products that are substantially similar to the Covered Products do not require a warning for DEA under Proposition 65, Kingdom Animalia may move to modify this Consent Judgment to conform to such ruling, and EHA agrees not to oppose any such motion except for good cause shown.

12.4 **Federal Agency Action and Preemption.** If a court of competent jurisdiction or an agency of the federal government, including, but not limited to the U.S. Food and Drug Administration, states through any guidance, regulation, or legally binding act that federal law has preemptive effect on any of the requirements of this Consent Judgment, then Kingdom Animalia may move to modify this Consent Judgment in accordance with the procedure for noticed motions set forth herein to bring

it into compliance with or avoid conflict with federal law, and EHA agrees not to oppose any such motion except for good cause shown.

13. AUTHORIZATION

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

14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

15. ENTIRE AGREEMENT

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

AGREED TO:

AGREED TO:

Date: March 11, 2025

Date: 3/21/2025

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

Signed by:

By: 
KINGDOM ANIMALIA, LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT