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9 Attorneys for Plaintiff

Environmental Health Advocates, Inc.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

13 ENVIRONMENTAL HEALTH
14 ADVOCATES, INC.,

Plaintiff,

15 v.

16 SAND & FOG HOME, LLC, a California
17 limited liability company; THE TJX
18 COMPANIES, INC., a California corporation;
and DOES 1 through 100, inclusive,

19 Defendants.

Case No. 25CV115998

[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 Sand & Fog Home, LLC (“Defendant” or “Sand & Fog”) with EHA and
5 Sand & Fog each individually referred to as a “Party” and collectively referred to as the “Parties,” to
6 resolve the allegations in the October 18, 2024 60-Day Notice of Violation in compliance with the Safe
7 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq.
8 (“Proposition 65”).

9 **1.2 Plaintiff**

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

13 **1.3 Defendant**

14 Sand & Fog employs ten or more individuals and for purposes of this Consent Judgment only,
15 is a “person in the course of doing business” for purposes of Proposition 65.

16 **1.4 General Allegations**

17 EHA alleges that Sand & Fog manufactures, imports, sells, and distributes for sale cleansers
18 that contains DEA. EHA further alleges that Sand & Fog does so without providing a warning as
19 required by Proposition 65 and related Regulations. Sand & Fog denies these allegations and asserts
20 that its products are safe and in compliance with all applicable laws, rules and regulations.

21 **1.5 Notice of Violation**

22 On or around October 18, 2024, EHA served the Defendant, as well as the retailer where the
23 Products were purchased (The TJX Companies, Inc.), the California Attorney General, and all other
24 required public enforcement agencies with two 60-Day Notices of Violation of Proposition 65
25 (“Notices”). The Notices alleged that Sand & Fog had violated Proposition 65 by failing to sufficiently
26 warn consumers in California prior to exposure to DEA contained in Sand + Fog cleansers, such as
27 Hand Soap (e.g., Pumpkin Spice) and Shower Gel (e.g., Clean Waves).

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1 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
2 violations alleged in the Notices.

3 **1.6 Product Description**

4 The products covered by this Consent Judgment are Sand + Fog cleansers, including but not
5 limited to Hand Soap, Shower Gel, and 2-in-1 Body Wash/Shampoo (“Covered Products”).

6 **1.7 State of the Pleadings**

7 On or around March 19, 2025, EHA filed a Complaint against Sand & Fog for the alleged
8 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

9 **1.8 No Admission**

10 Sand & Fog denies the material factual and legal allegations of the Notices and Complaint and
11 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
12 California, including Covered Products, have been, and are, in compliance with all applicable laws,
13 rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact,
14 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
15 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
16 of law. This Section shall not, however, diminish or otherwise affect San & Fog’s obligations,
17 responsibilities, and duties under this Consent Judgment. Sand & Fog maintains that it has not
18 knowingly manufactured, imported, sold, and/or distributed for sale in California, Covered Products in
19 violation of Proposition 65.

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 Sand & Fog as to the allegations in the Complaint, that venue is proper in
23 the 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
27 EHA provides Sand & Fog with notice that the Court approves this Consent Judgment and enters
28 Judgment pursuant to its terms, as discussed in Section 5.


1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of the Covered Products**

3 Beginning sixty (60) days after the Effective Date, Defendant shall be permanently enjoined
4 from manufacturing, distributing, or directly selling in the State of California any Covered Product that
5 has a DEA content above the Reporting Limit of 10 mg/kg when analyzed pursuant to liquid
6 chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy
7 (ICP-MS) or other method of analysis utilized by the International Organization for Standardization
8 (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw materials.


9 **2.2 Clear and Reasonable Warnings**

10 For Covered Products that contain DEA in a concentration exceeding the Reformulation
11 Standard set forth in section 2.1 above, and which are distributed or directly sold by Sand & Fog in the
12 State of California on or after the Effective Date, Sand & Fog shall provide a “clear and reasonable”
13 Proposition 65 warning, within the meaning of Section 25249.6 of the Act, subject to Section 2.3 of
14 this Agreement. Sand & Fog agrees that the warning shall be prominently placed with such
15 conspicuousness, as compared with other words, statements, designs, or devices as to render it likely
16 to be seen, read and understood by an ordinary individual under customary conditions before purchase
17 or use. Each warning shall be provided in a manner such that it is clearly associated with the specific
18 Covered Product to which the warning applies. For purposes of this Consent Judgment, a clear and
19 reasonable warning for the Covered Products shall consist of a product-specific warning via one or
20 more of the following methods: (1) A warning directly affixed to the product’s label or tag; or (2) A
21 short-form warning on the label that complies with the content requirements set forth in §§ 25603(b)
22 and 25603(a). Specifically, pursuant to § 25603(a) – (d), one of the following statements must be
23 utilized:

- 24 1)  **“WARNING:” [or] “CA WARNING:” [or]**
25 **“CALIFORNIA WARNING:”** This product can expose
26 you to chemicals including Diethanolamine, which is known
27 to the State of California to cause cancer. For more
28 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.

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

- 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,” “CA WARNING,” or “CALIFORNIA WARNING.” The 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 subdivision (c) is used to provide a warning that includes consumer information about a product in a language other than English, the warning must also be provided in that language in addition to English.

As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603 must be provided via of the following methods: (1) A warning on the product display page; (2) A clearly marked hyperlink using the word “WARNING” or the words “CA WARNING” or “CALIFORNIA WARNING” on the product display page that links to the warning; or (3) An otherwise prominently displayed warning provided to the purchaser prior to completing the purchase. In addition, Sand & Fog

1 shall instruct any third-party website to which it directly sells its Covered Products to include the same
2 online warning, as set forth above, as a condition of selling the Covered Products in 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 before 60 days following the date this Agreement
6 is executed shall be subject to the release of liability pursuant to this Consent Judgment, without regard
7 to when such Covered Products were, or are in the future, distributed or sold to customers. As a result,
8 the obligations of Sand & Fog, or any Releasees (if applicable), stated in this Section 2 do not apply to
9 Covered Products manufactured, packaged, or put into commerce prior to 60 days after the Effective
10 Date.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Settlement Amount**

13 Sand & Fog shall pay fifty-thousand dollars (\$50,000.00) in settlement and total satisfaction of
14 all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes
15 civil penalties in the amount of five thousand (\$5,000.00) pursuant to Health and Safety Code section
16 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand (\$45,000) pursuant to
17 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 five thousand (\$5,000.00) in
23 civil penalties shall be paid as follows:

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

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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 OEHHHA (EIN: 68-0284486) shall be delivered directly to OEHHHA
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 Sand & Fog agrees to provide EHA's counsel with a copy of the check payable to OEHHHA,
21 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 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 25 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

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

28 **3.3 Attorney's Fees and Costs**

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

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Sand & Fog 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 Sand & Fog's discretion. The forty-five thousand (\$45,000.00) in Attorney's Fees and Costs shall be paid as follows:

- One payment of \$45,000.00, due fourteen (14) days after the date the Court approves EHA's motion to approve this Consent Judgment.

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

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

4. CLAIMS COVERED AND RELEASE

4.1 EHA's Public Release of Proposition 65 Claims

This Consent Judgment is a full, final, and binding resolution of any claims that were or could have been asserted by EHA arising out of the allegations in the Notices and in the Complaint. Plaintiff, acting on its own behalf, in the public interest, and on behalf of its past and current agents, representatives, attorneys, successors and assignees ("Releasors") releases Sand & Fog, and its past and present parents, subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns, each entity to whom Sand & Fog directly or indirectly distributes, ships, or sells the Covered Products, including but not limited to downstream distributors, wholesalers, customers, retailers, 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 referred to as the "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on the failure to provide a clear and reasonable warning under Proposition 65 about alleged exposures to DEA from Covered Products as set forth in the Notice(s) and Complaint. 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) and Complaint. This release does not extend to any

1 third-party retailers selling the product on a website who, after receiving instruction from Sand & Fog
2 to include a warning as set forth above in section 2.2, do not include such a warning.

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

4 In further consideration of the promises and agreements contained herein, EHA, in its individual
5 capacity, EHA hereby waives all of its rights to institute or participate in, directly or indirectly, any
6 form of legal action and also provides a release to Sand & Fog and/or Releasees, which shall be a full
7 and final accord and satisfaction of, as well as a bar to, all actions, causes of action, in law or in equity,
8 suits, obligations, costs, fines, penalties, expenses, attorneys' fees, damages, losses, claims, liabilities,
9 and demands of every nature, character, and kind, whether known or unknown, suspected or
10 unsuspected, arising out of alleged or actual exposures to DEA in Covered Products manufactured,
11 imported, sold, or distributed by Sand & Fog before the Effective Date.

12 **4.3 Sand & Fog's Release of EHA**

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

18 **4.4 No Other Known Claims or Violations**

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

22 **5. COURT APPROVAL**

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

26 **6. SEVERABILITY**

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

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 DEA cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65
8 is determined to be preempted by federal law or a burden on First Amendment rights with respect to
9 DEA in Covered Products or Covered Products substantially similar to Covered Products, then Sand
10 & Fog may provide EHA with written notice of any asserted change in the law, and shall have no
11 further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that,
12 the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve EHA
13 from its obligation to comply with any applicable state or federal law or regulation.

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 Sand & Fog:

23 Jill Petroff
24 SAND + FOG
25 18411 Gothard Street, Suite B
26 Huntington Beach, CA 92648
27 jill@sandandfog.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

26 With a copy to:

27 Natalie E. Rainer
28 K&L Gates LLP
29 4 Embarcadero Center, Suite 1200
30 San Francisco, CA 94111
31 Natalie.rainer@klgates.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.

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 this Consent Judgment, 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 judgment pursuant to the terms of this Consent 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

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.

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.

[Rest of page intentionally left blank.]

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

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

6 **15. ENTIRE AGREEMENT**

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

13 **AGREED TO:**

AGREED TO:

14
15 Date: 5/13/25

Date: 4/15/25

16
17 By: 
18 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

17 By: 
SAND & FOG HOME, LLC

19
20 **IT IS SO ORDERED.**

21
22 Date: _____

JUDGE OF THE SUPERIOR COURT