

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Lanocorp USA Inc. (“Lanocorp”), on the other hand, with EHA and Lanocorp each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. EHA alleges that Lanocorp is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that Lanocorp manufactures, sells, and/or distributes for sale in California, eye cream products that contain diethanolamine ("DEA") and that it does so without first providing the health hazard warning required by Proposition 65. DEA is listed pursuant to Proposition 65 as a chemical known to cause cancer.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to Trader Joe's Supreme Hydrating Eye Cream (“Covered Products”), that are manufactured, sold and/or distributed for sale in California by Lanocorp.

1.4 Notice of Violation

On or around October 24, 2024, EHA served Lanocorp, the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Lanocorp had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to DEA contained in Covered Products.

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

1.5 No Admission

The Parties enter this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice regarding Lanocorp's compliance with Proposition 65 with respect to the Covered Products. Lanocorp denies all 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 laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Lanocorp of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Lanocorp of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Lanocorp. This Section shall not, however, diminish or otherwise affect Lanocorp's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is executed by the Parties.

1.7 Compliance Date

For purposes of this Settlement Agreement, the term "Compliance Date" shall mean sixty (60) days following the Effective Date.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard


Beginning on the Compliance Date, Defendant shall be permanently enjoined from manufacturing, distributing, or directly selling in the State of California any Covered Product that has a DEA content above the Reporting Limit of 10 mg/kg when analyzed pursuant to liquid chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy (ICP-MS) or other method of analysis utilized by the International Organization for Standardization (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw materials. The requirements set forth in this Section 2 shall apply only to Covered Products that are distributed, marketed, sold or shipped for sale in the State of California, and shall not apply to any Covered

Products that are already in the stream of commerce as of the Compliance Date.

2.2 General Warning Requirements


Commencing on the Compliance Date, Lanocorp agrees that any Covered Product sold that was not reformulated pursuant to paragraph 2.1 shall contain a “clear and reasonable” Proposition 65 warning, within the meaning of Section 25249.6 of the Act. Lanocorp 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.

For purposes of this Settlement Agreement, 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 (“DEA”). See-
www.P65Warnings.ca.gov

OR


- 3)  **“WARNING:” [or] “CA WARNING:” [or]**

SHORT FORM

“CALIFORNIA WARNING:” Can expose you to Diethanolamine (“DEA”), a carcinogen. See www.P65Warnings.ca.gov.

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

OR

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 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 one 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. If a warning is provided using the short-form label content pursuant to Section 25602(a)(4), the warning provided on the website may use the same content. For purposes of this section, a warning is not prominently displayed if the purchaser must search for it in the general content of the website. These requirements extend to any websites under the exclusive control of Lanocorp where Covered Products are sold into California. In addition, Lanocorp shall instruct any third-party website to which it directly sells its Covered Products to include the same online warning, as set forth above, as a condition of selling the Covered Products in California.

There shall be no obligation for Lanocorp to provide a warning for Covered Products that entered the stream of commerce prior to the Compliance Date, and the Section 4 release applies to all such Covered Products.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Covered Products and the chemical at issue, which are different than those set forth above, Lanocorp shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that Proposition 65 warnings as to DEA in this product are no longer required, a lack of warning by Lanocorp will not thereafter be a breach of this Agreement.

2.3 Grace Period for Existing Inventory of Covered Products

The injunctive requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce as of the Compliance Date, which Covered Products are expressly subject to the releases provided in Section 4.1. For the avoidance of doubt, Covered Products in the stream of commerce specifically include, but are not limited to, Covered Products in the process of manufacture.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Lanocorp agrees to pay three thousand (\$3,000.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$2,250.00 to OEHHA, due twenty one (21) days after the Effective Date.

- One payment of \$750.00 to EHA, due twenty one (21) days after the Effective Date.

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

All penalty payments owed to EHA shall be sent to:

Isaac Fayman
Environmental Health Advocates
225 Broadway, Suite 1900
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Lanocorp agrees to pay twenty-six thousand dollars (\$26,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of Lanocorp, and negotiating a settlement. The Attorney's Fees and Costs shall be payable to Entorno Law, LLP as one payment of \$26,000.00, due twenty one (21) days after the Effective Date.

All payments required under this Section shall be delivered to:

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

3.3 Tax Documentation

Lanocorp agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Lanocorp cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Lanocorp receives the requisite W-9 forms from EHA's counsel. Lanocorp shall be excused and forgiven for any late payment caused by EHA's failure to timely provide the W-9 forms and such event will not give rise to a breach of the payment terms of this Agreement.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Lanocorp

This Settlement Agreement is a full, final, and binding resolution of all claims between EHA, on its own behalf and not on behalf of the public, and Lanocorp for all claims that can or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against Lanocorp and each of its respective parents, subsidiaries, affiliated entities, directors, owners, shareholders, officers, members, employees, attorneys, agents, and any entity, including, but not limited to each entity from whom Lanocorp directly or indirectly purchases, sources Covered Products or ingredients and components thereof, including but not limited to its suppliers, manufactures, and including entities to whom Lanocorp distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including but not limited to Trader Joe's Company), franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to DEA required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale in California by Lanocorp before the Effective Date, as alleged in the Notice, or for any other reason.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action or claim and releases all claims against Lanocorp and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but

not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEA required under Proposition 65 in the Covered Products manufactured, distributed, sold or offered for sale by Lanocorp, before the Effective Date.

4.2 Lanocorp's Release of EHA

Lanocorp, on its own behalf and on behalf of 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 enforcing Proposition 65 against it in this matter, or with respect to the Covered Products.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and Lanocorp on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO 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 Lanocorp each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5. PUBLIC BENEFIT

Lanocorp understands that the commitments it has agreed to herein, and actions to be taken by Lanocorp under this Settlement Agreement confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the

intent of Lanocorp that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Lanocorp's alleged failure to provide a warning concerning actual or alleged exposure to DEA prior to use of the Covered Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that Lanocorp is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement 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 Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65, either as a whole or as specifically applicable to the Covered Products or DEA, is repealed or federally preempted, or if new or different safe harbor levels are established as applicable to the Covered Products, or if Proposition 65 is otherwise rendered inapplicable to the Covered Products or to DEA, or if any of the provisions of this Settlement Agreement are specifically rendered inapplicable or no longer required as to the Covered Products as a result of any regulatory or statutory change or repeal or preemption, then Lanocorp may provide written notice to EHA of any asserted change in the law, and it shall have no further obligations pursuant to this Settlement Agreement with respect to the Covered Products, to the extent that the Covered Products are so affected, and to the extent that it complies with the law.

8. MODIFICATION AND ENFORCEMENT

If a dispute arises with respect to either Party's compliance with the terms of this Settlement Agreement, the Parties shall meet and confer in writing and endeavor to resolve the dispute in an amicable manner, for a period of thirty (30) days following receipt of the aggrieved Party's written notification outlining the basis for the dispute. No action may be filed in the absence of such good

faith attempt to resolve the dispute for the aforementioned period of at least thirty (30) days which may be extended by mutual agreement of the Parties. Should an exceedance of the reformulation standard(s) in Section 2.1 be alleged, Lanocorp must be provided with written notice and data supporting such an allegation and thirty (30) days to address the allegations before an enforcement action may be filed. No violation of this Settlement Agreement shall be deemed to occur if Lanocorp demonstrates that its own testing of the Covered Product shows compliance with Section 2.1. Additionally, if a California court enters judgment in another Proposition 65 enforcement action over exposure to DEA in Covered Products or product substantially similar to Covered Products that imposes different injunctive relief than what is set forth in this Settlement Agreement, Lanocorp may seek to modify Section 2.1 of this Settlement Agreement to conform with the injunctive relief provided in such judgement. EHA has a right to oppose any such modification. In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

9. FORCE MAJEURE

The inability of Lanocorp to comply with any deadline set forth in this Settlement Agreement due to an act of terrorism, fire, earthquake, civil disorders, war, or act of God that is beyond the reasonable control of Lanocorp shall be grounds to amend the deadlines set forth in this Agreement.

10. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Lanocorp:

Hazel Ocampo
Greenberg Traurig, LLP
12830 El Camino Real, Suite 350
San Diego, CA 92130
ocampoh@gtlaw.com

For EHA:

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

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

11. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

13. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

14. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 4/11/25

Date: 11 APRIL 2025

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
LANOCORP USA INC.