

## **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 Upper Canada Soap and Candle Makers Corporation (“Upper Canada”), on the other hand, with EHA and Upper Canada 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 Upper Canada 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 Upper Canada manufactures, sells, and/or distributes for sale in California, sheet mask 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 skin treatment products, including masks, body washes, and face washes (“Covered Products”), that are manufactured, sold and/or distributed for sale in California by Upper Canada.

#### **1.4 Notice of Violation**

On or around January 24, 2025, EHA served Upper Canada, 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 Upper Canada 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**

Upper Canada 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 laws. Nothing in this Settlement Agreement shall be construed as an admission by Upper Canada 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 Upper Canada of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Upper Canada. This Section shall not, however, diminish or otherwise affect Upper Canada'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.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**

Six months after the Effective Date, Defendant shall be permanently enjoined from manufacturing, distributing, or directly selling in the State of California any Covered Products that have triethanolamine (“TEA”) as an intentional ingredient, which is the source of DEA in the Covered Products. On and after the Effective Date, Upper Canada agrees not to sell or offer for sale in California any Covered Products that contain TEA or any other ingredients that are known to contain DEA, as published by the FDA here: <https://www.fda.gov/cosmetics/cosmetic-ingredients/diethanolamine>, and as may be updated by the FDA. Further, in the event that EHA establishes by citation to authoritative government or academic sources that definitively show other cosmetic ingredient(s) used in Upper Canada’s Covered Products function as a precursor to DEA, EHA must notify Upper Canada of such authority and seek to modify this Settlement Agreement in accordance with Section 12. If the Parties do not agree on a modification to this Settlement Agreement related to an ingredient in Upper Canada’s Covered Products that EHA alleges is a DEA precursor that is not included in FDA’s list, then nothing in this Settlement Agreement shall preclude

EHA from pursuing a new Proposition 65 enforcement action related to DEA associated with that precursor or preclude Upper Canada from asserting any applicable defense, including a No Significant Risk Level exposure defense in response. As used in this Section 2, “sell or offer for sale” in California means to directly ship Covered Products into California or to sell Covered Products to a distributor Upper Canada knows will sell Covered Products in California.

## **2.2 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 Effective 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, Upper Canada agrees to pay two thousand (\$2,000.00) 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 \$1,500.00 to OEHHA, due fourteen (14) days after the Effective Date.
- One payment of \$500.00 to EHA, due fourteen (14) 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:

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, Upper Canada agrees to pay twenty three thousand dollars (\$23,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of Upper Canada, and negotiating a settlement. The twenty three thousand dollars (\$23,000.00) in Attorney's Fees and Costs shall be payable to Entorno Law, LLP as one payment of \$23,000.00, due fourteen (14) days after the Effective Date.

All payments required under this Section shall be payable to Entorno Law, LLP and delivered to:

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

Upper Canada may also choose to wire the total payments due under Section 3.1 and 3.2. EHA shall provide wire instructions upon request and will be responsible for allocating the payments as appropriate.

### **3.3 Tax Documentation**

If appropriate, Upper Canada 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 Upper Canada cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Upper Canada receives the requisite W-9 forms from EHA's counsel.

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 EHA's Release of Upper Canada**

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 Upper Canada 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 Upper Canada and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and any entity, including, but not limited to each entity to whom Upper Canada directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including but not limited to Urban Outfitters, Inc.), 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 Upper Canada six months after 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 and releases all claims against Upper Canada 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 Upper Canada, six months after the Effective Date.

##### **4.2 Upper Canada's Release of EHA**

Upper Canada, 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 seeking to enforce 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 Upper Canada 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 six months after the Effective Date. EHA acknowledges that the claims released in Section 4.1 may include unknown claims, and nevertheless waives 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 acknowledges and understands the significance and consequences of this specific waiver of California Civil Code § 1542.

#### **5. PUBLIC BENEFIT**

It is Upper Canada's understanding that the commitments it has agreed to herein, and actions to be taken by Upper Canada 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 Upper Canada 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 Upper Canada'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 Upper Canada 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.

**8. ENFORCEMENT**

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. 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 Upper Canada:

Stephen Flatt  
Upper Canada  
5875 Chedworth Way  
Mississauga, ON L5R 3L9

Eva Yang  
Norton Rose Fulbright US, LLP  
555 South Flower Street, 41st Floor  
Los Angeles, CA 90071  
eva.yang@nortonrosefulbright.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.

**10. 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.

**11. 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).

**12. MODIFICATION**

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

**13. 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: 7/14/25

Date: \_\_\_\_\_

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
Stephen Flatt (Jul 21, 2025 12:39 EDT)  
UPPER CANADA SOAP AND CANDLE  
MAKERS CORPORATION