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MAY 23 2008

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California corporation,

Plaintiff,

v.

THE PROCTER & GAMBLE DISTRIBUTING
COMPANY, an Ohio corporation, et al.,

Defendants.

CASE NO. BC 334309

[Hon. Mary Thornton House]

~~[PROPOSED]~~ STIPULATED SETTLEMENT
AGREEMENT ONLY AS TO DEFENDANT
WELEDA, INC.

Complaint Filed: June 1, 2005
Location: Department: 17
Trial Date: October 14, 2008

This settlement ("Settlement") is entered into by and between the plaintiff American Environmental Safety Institute ("AESI") and defendant Weleda, Inc., a Delaware corporation ("Weleda").

1. **Definitions.** As used in this Settlement, the following definitions shall apply:

1.1. **"Toothpaste Products"** includes any toothpaste products previously (*i.e.*, at any time up to or prior to the entry of this consent judgment) sold in California by Weleda, whether or not such products continue to be sold, as well as all toothpaste products sold by Weleda in or into California in the future (*i.e.*, at any time after entry of this settlement).

1.2. **"Lead"** means the chemical element lead (Pb) and lead compounds as defined in section 12000 of Title 22 of the California Code of Regulations.

1 1.3. “Hydrated Silica” is the naturally-occurring mined material used as a gentle abrasive
2 in the Toothpaste Products.

3 1.4. “ppm” means parts per million.

4 1.5. “Party” shall mean AESI and Weleda individually, and when used in the plural, shall
5 mean both of them.

6 **2. Background.**

7 2.1. AESI is a non-profit California corporation dedicated to investigating environmental
8 and public health hazards affecting children and adults in their regular daily lives. AESI is based in
9 Palo Alto, California, and was incorporated under the laws of the State of California in 1998. AESI
10 is a “person” within the meaning of Health & Safety Code § 25249.11(a), and brought this
11 enforcement action in the public interest pursuant to Health & Safety Code § 25249.7(d).

12 2.2. AESI served a 60-day “Notice of Violation” (the “Notice”) on Weleda. AESI served
13 the Notice on June 2, 2005, pursuant to California Health and Safety Code section 25249.7(d) and
14 section 12903 of Title 22 of the California Code of Regulations.

15 2.3. The Notice alleged, among other things, that Weleda was in violation of the Safe
16 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5 *et*
17 *seq.* (“Proposition 65”) for failing to warn purchasers of Toothpaste Products sold in California that
18 the products allegedly expose users to Lead.

19 2.4. For purposes of this Settlement only, the Parties stipulate that this Court has
20 jurisdiction over the allegations of the violations contained in the Notice, that venue is proper in the
21 County of Los Angeles, and that this Court has jurisdiction to enter this Settlement. No public
22 prosecutor has commenced an action regarding the matters raised in the Notice.

23 2.5. Weleda denies that any Toothpaste Products have been or are in violation of
24 Proposition 65 or any other law, and further contends that all of its Toothpaste Products have been
25 and are safe for use as directed. Weleda, however, wishes to resolve this matter without further
26 litigation or cost.

27 2.6. The Parties enter into this Settlement to settle claims alleged in the Notice and AESI’s
28 complaint (the “Complaint”) in this action against Weleda, to avoid prolonged and costly litigation,

1 and to promote the public interest. By executing and complying with this Settlement, no party admits
2 any facts or conclusions of law including, but not limited to, any facts or conclusions of law
3 regarding any violations of Proposition 65, or any other statutory, common law or equitable claim or
4 requirement relating to or arising from the Toothpaste Products, or any other liability arising from the
5 Toothpaste Products. This Settlement shall not be construed as an admission by Weleda as to any of
6 the allegations in the Notice and/or the Complaint.

7 **3. Agreement of the Parties.**

8 The Parties agree that, after an appropriate pre-filing investigation by AESI and in-depth
9 discovery (including written discovery and a deposition) during the course of this litigation, AESI
10 concluded that Weleda's Toothpaste Products do not appear to be in violation of Proposition 65.
11 However, because Weleda is aware of AESI's desire to create an industry-wide commitment (as
12 embodied in the prior consent judgments enter in this action) to the provisions of sections 3.1 to 3.3 ,
13 inclusive, below, Weleda voluntarily commits to abide by the terms of sections 3.1 to 3.3, inclusive,
14 below.

15 **3.1. Actions as to Hydrated Silica.**

16 (a) Within 60 days of the Effective Date , Weleda shall establish and thereafter
17 maintain a Lead ("Pb") specification of less than or equal to 4.5 parts per million ("the 4.5 ppm
18 specification") for any Hydrated Silica to be used in Weleda's Toothpaste Products that is obtained
19 by Weleda 60 days after its Lead specification is established.

20 (b) Weleda acknowledges that prior consent judgments entered in this matter
21 required prior settling defendants to demonstrate compliance with the 4.5 ppm Lead specification via
22 the following testing protocol, and while Weleda is not bound by the following testing protocol,
23 Weleda agrees to work with its Hydrated Silica supplier to demonstrate the same or substantially
24 similar methods of compliance:

25 "(i) once every six months, if the supplier manufactured Hydrated Silica
26 during such period, the Hydrated Silica supplier shall select five (5) randomly chosen
27 grab samples from a lot of Hydrated Silica that is ready for shipment to the Settling
28 Defendant, and the supplier shall test a composite of the 5 grab samples;

1 (ii) using a sample preparation method that permits recovery of at least that
2 amount of Lead in the sample that is bioavailable to humans, test the prepared sample
3 using Inductively Coupled Plasma/Mass Spectrometry ("ICP/MS") or Inductively
4 Coupled Plasma/Optical Emission Spectrometry ("ICP/OES") laboratory equipment
5 and protocols for Lead detection to demonstrate compliance with the 4.5 ppm
6 specification for Lead in Hydrated Silica for use in toothpaste;

7 (iii) failure of this testing protocol shall require rejection by the supplier of
8 the test lot, with written notice of that rejection provided to the Settling Defendant,
9 and a re-review by the supplier of its methods then in use to meet the 4.5 ppm Lead
10 specification; and

11 (iv) In the event of the failure described in subsection 3.1(b)(iii), the test
12 protocol set forth above must then be conducted on the next three lots of Hydrated
13 Silica from that supplier in succession; if any of these three additional lots fails this
14 test protocol, then the next five lots from that supplier must be tested, until all lots in a
15 test group of five demonstrate compliance with the 4.5 ppm Lead specification."

16 (c) Because Hydrated Silica is derived from a mined substance, Weleda cannot
17 ensure that Hydrated Silica with a Lead specification of 4.5 ppm will be commercially feasible at all
18 times. If Hydrated Silica with a Lead specification of 4.5 ppm becomes commercially unfeasible,
19 Weleda will make every reasonable effort to use Hydrated Silica with the lowest level of Lead
20 feasible from the Hydrated Silica suppliers able to meet Weleda's quality and volume requirements.
21 If Weleda chooses to use Hydrated Silica that does not meet the Lead specification of less than or
22 equal to 4.5 ppm, then Weleda shall provide prompt notice to AESI of that election.

23 **3.2. Feasibility.** The term "feasible" as used in this Settlement means "reasonable"
24 considering: (1) the availability and reliability of a supply to Weleda of Hydrated Silica meeting a
25 Lead specification not to exceed 4.5 ppm; (2) the cost to Weleda of using such Hydrated Silica; (3)
26 the performance characteristics, including, but not limited to, formulation compatibility, performance,
27 safety, taste, efficacy and stability, of an ingredient in any Toothpaste Product or the Toothpaste
28 Products as a whole; (4) the lawfulness of the alternative (for example, no such alternative can be

1 allowed to render Weleda's Toothpaste Products unlawful under state or federal law); and (5) other
2 reasonable considerations. Notwithstanding any other provision in this Settlement, Weleda shall be
3 required to fulfill only those obligations respecting Lead in its Toothpaste Products that are feasible
4 as described in this paragraph.

5 **3.3. Naturally Occurring Lead.** Any Lead remaining in Weleda's Toothpaste Products
6 after Weleda has undertaken those actions required by Paragraphs 3.1 and 3.2, above, is deemed
7 "naturally occurring" within the meaning of section 12501 of Title 22 of the California Code of
8 Regulations.

9 **4. Settlement Payments.**

10 **4.1.** In light of AESI's investigation and litigation costs, and in keeping with the concept
11 of, but in lieu of, statutory penalties and/or restitution, under the statutes set forth in the Complaint,
12 Weleda shall pay to the Trust Account of the Carrick Law Group, P.C., in immediately available
13 funds \$53,000.00 (the "Settlement Proceeds") within five (5) days from the entry of this Settlement.
14 Carrick Law Group P.C. shall disburse these funds to AESI (a) to pay its attorneys' fees of
15 \$25,440.00 pursuant to those parties' written contingent fee agreement; and (b) to further the
16 remedial purposes established under Proposition 65 by providing funds for AESI's ongoing costs of
17 monitoring compliance with this Settlement, as well as for its future investigational and enforcement
18 activities regarding toxic chemicals and Proposition 65, in a manner that is consistent with the private
19 enforcement mechanism and funds allocation scheme established by Health & Safety Code
20 §§ 25249.7(d) and 25249.12(d) and AESI's non-profit mission.

21 **4.2.** Apart from the payments to be made pursuant to paragraph 4.1 above, each Party shall
22 bear its own attorneys' fees and costs.

23 **5. Termination of All Claims; Claims Covered and Released.**

24 **5.1.** This Settlement includes the resolution of all claims asserted in the Notice and the
25 Complaint, as well as all potential claims that were considered or could have been brought by AESI
26 on behalf of the public interest and the general public regarding Lead in any Weleda's Toothpaste
27 Products. This Settlement is a final and binding resolution between AESI, on behalf of the public
28 interest and the general public, and Weleda, of any and all alleged violations of Proposition 65 and

1 any other statutory or common law claims that were or could have been asserted by AESI against
2 Weleda or purchasers or sellers of Weleda's Toothpaste Products arising from or related to Lead in
3 Weleda's Toothpaste Products up through the date of entry of this Settlement, including, but not
4 limited to, any claims for attorneys' fees and costs. AESI hereby releases Weleda, their affiliated
5 companies, officers, directors and employees and their suppliers (including Grace GmbH & Co. KG,
6 Grace Silica GmbH, and W.R. Grace & Co.-Conn. and their affiliated companies, officers, directors
7 and employees), distributors, wholesalers, and retailers from and against the claims described in this
8 paragraph relating to Weleda's Toothpaste Products; however, AESI expressly does not release any
9 claims which AESI does not have the authority to release, including specifically and without
10 limitation any personal injury claims (or claims directly related to personal injuries).

11 **6. Covenant Not To Sue.** AESI and Weleda agree that with regard to those matters that AESI
12 has herein released and that are described above, neither AESI nor Weleda will ever institute a
13 lawsuit or administrative proceedings against any other Party, nor shall any Party assert any claim of
14 any nature against any person or entity hereby released, with regard to any such matters which have
15 been released.

16 **7. Application of Settlement.** Sections 3, 5 and 6 of this Settlement shall apply to, be binding
17 upon, and inure to the benefit of, the Parties, their divisions, subdivisions, subsidiaries, affiliates,
18 merged entities, acquired entities, successors, predecessors and assigns, and the directors, officers,
19 employees, counsel, and agents of each of them, as applicable, and will inure to the benefit of the
20 Parties' parent companies, and all of their suppliers, distributors, wholesalers, retailers and contract
21 manufacturers, and all of their respective directors, officers, employees, counsel, and agents.

22 **8. Modification of Settlement.** This Settlement may be modified or terminated upon written
23 agreement of Weleda and AESI, with approval of the Court, or upon noticed motion for good cause
24 shown.

25 **9. Governing Law.** This Settlement shall be governed by, and construed in accordance with,
26 the laws of the State of California, without regard to conflict of laws principles.

27 **10. Entire Agreement.** The Parties declare and represent that no promise, inducement or other
28 agreement has been made conferring any benefit upon any party except those contained herein and

1 that this Settlement contains the entire agreement pertaining to the subject matter hereof. This
2 Settlement supersedes any prior or contemporaneous negotiations, representations, agreements and
3 understandings of the Parties with respect to such matters, whether written or oral. Parol evidence
4 shall be inadmissible to show agreement by, between, or among the Parties to any term or condition
5 contrary to or in addition to the terms and conditions contained in this Settlement. The Parties
6 acknowledge that each has not relied on any promise, representation or warranty, expressed or
7 implied, not contained in this Settlement.

8 **11. Challenges.** Subject to their rights to apply for a modification of this Settlement for good
9 cause shown under Paragraph 8 hereof, the Parties agree that they, individually or collectively, will
10 not seek to challenge or to have determined invalid, void or unenforceable any provision of this
11 Settlement or this Settlement itself. The Parties understand that this Settlement contains the
12 relinquishment of legal rights and each Party has, as each has deemed appropriate, sought the advice
13 of legal counsel, which each of the Parties has encouraged the other to seek. Further, no Party has
14 reposed trust or confidence in any other Party so as to create a fiduciary, agency, or confidential
15 relationship.

16 **12. Construction.** This Settlement has been jointly negotiated and drafted. The language of this
17 Settlement shall be construed as a whole according to its fair meaning and not strictly for or against
18 any Party.

19 **13. Authority to Stipulate to Settlement.** Each signatory to this Settlement represents and
20 warrants that the signatory has all requisite authorization, power, and legal right necessary to execute
21 and deliver this Settlement and to perform and carry out the transactions contemplated by this
22 Settlement. No other or further authorization or approval from any person will be required for the
23 validity and enforceability of the provisions of this Settlement.

24 **14. Cooperation and Further Assurances.** The Parties hereby will execute such other
25 documents and take such other actions as may be necessary to further the purposes and fulfill the
26 terms of this Settlement.

27 **15. Counterparts.** This Settlement may be executed in counterparts and has the same force and
28 effect as if all the signatures were obtained in one document.

1 **16. Notices.**

2 **16.1** All correspondence and notices required by this Settlement to AESI shall be sent to:

3 Roger Lane Carrick
4 The Carrick Law Group, P.C.
5 350 S. Grand Avenue, Suite 2930
6 Los Angeles, CA 90071-3406
7 Tel: (213) 346-7930
8 Fax: (213) 346-7931
9 E-mail: roger@carricklawgroup.com

10 **16.2** All correspondence and notices required by this Settlement to Weleda shall be sent to
11 Weleda as follows:

12 WELEDA, INC.
13 Erk Schuchhardt
14 President and CEO
15 Weleda North America
16 1 Closter Road
17 Palisades, NY 10964
18 Phone: (845) 510-5555
19 Fax: (845) 480-8260
20 E-mail: erk@weleda.com

21 With a copy to:
22 Donald S. Burris, Esq.
23 Burris & Schoenberg LLP
24 12121 Wilshire Boulevard, Suite 800
25 Los Angeles, CA 90025
26 Phone: (310) 442-5559
27 Fax: (310) 442-0353
28 E-mail: don@bslaw.net

1 **17. Motion for Approval of Settlement.** Following the execution of this Settlement by the
2 Parties, counsel for AESI shall promptly prepare and submit to the Court a motion seeking the
3 Court's approval of this Settlement.

4 **18. Entry of Stipulation For Entry of Settlement Required.** This Settlement shall be null and
5 void, and without any force or effect, unless fully approved as required by law and entered by the
6 Court. If the Court does not enter this Settlement, the execution thereof by Weleda or AESI shall not
7 be construed as an admission by Weleda or AESI of any fact, issue of law or violation of law.

8 **19. Jurisdiction.** This Court shall retain jurisdiction of this matter to implement this Settlement.

9 **20. Compliance with Reporting Requirements.** AESI shall comply with the reporting form
10 requirements referred to in Health and Safety Code section 25249.7(f) and established in Title 11 of
11 the California Code of Regulations sections 3000-3008. Copies of all such reports shall be supplied
12 to Weleda as provided in Paragraph 17.2.

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21. Non-Interference in Settlement Approval Process. The Parties will cooperate, as well as use their respective best efforts, to secure the Attorney General's approval of this Settlement, and not to seek his disapproval of any portion of this Settlement.

IT IS SO STIPULATED:

DATED: 5/9/08

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a nonprofit California corporation

By: *Dalvin Swann*

Title: PRESIDENT

DATED: 05/09/08

WELEDA, INC.

By: *[Signature]*

Title: CEO & President

1 **21. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well as
2 use their respective best efforts, to secure the Attorney General's approval of this Settlement, and not
3 to seek his disapproval of any portion of this Settlement.
4

5 **IT IS SO STIPULATED:**
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7 DATED: _____
8

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California corporation

9 By: _____

10 Title: _____
11

12
13 DATED: 05/09/08

WELEDA, INC.

14 By: 

15 Title: CEO & President
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1 **THE COURT HEREBY FINDS AND ORDERS:**

2 1. In light of the findings below, and based upon the Court's review of the proposed
3 Stipulated Settlement executed by the Plaintiff American Environmental Safety Institute ("AESI" or
4 "Plaintiff") and Defendant Weleda, Inc. ("Weleda" or "Defendant"), and the papers filed in support
5 of this Motion to Enter the proposed Stipulated Settlement in a manner consistent with Code of Civil
6 Procedure § 664.6, the Court finds that this settlement agreement is just, and serves and will serve the
7 public interest, as follows:

8 2. Because no warnings are required by this Stipulated Settlement, this Court does not
9 have to make any finding regarding compliance with warnings under the provisions of Health &
10 Safety Code §§ 25249.5-25249.13.

11 3. The Parties' agreement that no civil penalties are warranted is in accord with the
12 criteria set forth in Health & Safety Code §§ 25249.7(b)(2) and 25249.7(f)(4)(C), in that payments as
13 set forth in section 4 of the Stipulated Settlement totaling \$53,000.00, in lieu of such penalties, to
14 Plaintiff (a) to pay its attorneys' fees of \$25,440.00, and (b) to further the remedial purposes
15 established under Proposition 65 by reimbursing Plaintiff for its costs in this litigation and its
16 ongoing costs of monitoring compliance with this Stipulated Settlement, as well as for its future
17 investigational and enforcement activities regarding toxic chemicals and Proposition 65, are
18 consistent with the private enforcement mechanism and funds allocation scheme established by
19 Health & Safety Code §§ 25249.7(d) and 25249.12(d) and AESI's non-profit mission.

20 4. Pursuant to Health & Safety Code §25249.7(f)(4)(B) and Code of Civil Procedure
21 §1033.5, the Court finds that the Stipulated Settlement's contractual provision at section 4 for the
22 Plaintiff to pay, pursuant to its written contingent fee agreement, to Carrick Law Group, P.C.,
23 attorneys' fees of \$25,440.00 from the financial relief set forth in section 4 of the Stipulated
24 Settlement, as well as the amount of these fees, are reasonable under California law.

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