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ENDORSED
FILED
ALAMEDA COUNTY

DEC 15 2008

CLERK OF THE SUPERIOR COURT
By E. Opelski-Erickson, Deputy

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

14 PEOPLE OF THE STATE OF CALIFORNIA ex rel.
EDMUND G. BROWN JR., Attorney General of the
15 State of California,
16 Plaintiffs,
17 v.
18 AVALON NATURAL PRODUCTS, INC.,
BEAUMONT PRODUCTS, INC., NUTRIBIOTIC,
19 WHOLE FOODS MARKET CALIFORNIA, INC., and
Does 1 - 100,
20 Defendants.

No. RG08389960

STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AND
ORDER THEREON (PLANET
INC.)

21 Plaintiff, the People of the State of California (“People”) and defendant Planet Inc.
22 (“Planet”) herein enter into this Stipulation for Entry of Consent Judgment (hereinafter “Consent
23 Judgment”) as follows:

24 1. Introduction

25 1.1 On May 29, 2008, the People of the State of California, ex rel. Edmund G. Brown
26 Jr. (“People”) filed a Complaint for Civil Penalties and Injunctive Relief (“Complaint”) in the
27 Superior Court of the State of California, County of Alameda against the defendants in this
28 action. On October 1, 2008, the People served Planet as Doe No. 1.

1 1.2 Planet is a company that employs ten or more persons and manufacturers,
2 distributes and/or sells Ultra Dishwashing Liquid to consumers within the state of California.

3 1.3 The People’s Complaint alleges that Planet, through the sale of its Ultra
4 Dishwashing Liquid to consumers in California, violated provisions of the Safe Drinking Water
5 and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5 et seq.
6 (“Proposition 65”), and Business and Professions Code sections 17200 et seq. (“Unfair
7 Competition Act”), by knowingly and intentionally exposing persons to 1, 4-dioxane, a chemical
8 known to the State of California to cause cancer, without first providing a clear and reasonable
9 warning to such individuals.

10 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
11 has jurisdiction over the allegations of violations contained in the Complaint and personal
12 jurisdiction over Planet as to the acts alleged in the Complaint, that venue is proper in the County
13 of Alameda and that this Court has jurisdiction to enter this Consent Judgment.

14 1.5 The Parties enter into this Consent Judgment to settle certain disputed claims as
15 alleged in the Complaint and to avoid potentially lengthy and/or costly litigation between the
16 Parties hereto. By execution of this Consent Judgment, the Parties do not admit any facts or
17 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
18 demonstrating any violations of Proposition 65, the Unfair Competition Act, or any other
19 statutory, common law or equitable requirements relating to Ultra Dishwashing Liquid. Nothing
20 in this Consent Judgment shall be construed as an admission by the Parties of any fact,
21 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent
22 Judgment constitute or be construed as an admission by the Parties, either individually or
23 collectively, of any fact, conclusion of law, issue of law, or violation of law. Except as provided
24 herein, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
25 argument or defense the Parties may have in this or any other or future legal proceedings. This
26 paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the
27 Parties under this Consent Judgment.

28

1 2. Representations of Planet

2 2.1 Planet has provided a declaration under penalty of perjury to the Attorney

3 General, representing as follows:

- 4 a. Prior to March 14, 2008, Planet was not aware of the presence of 1,4-dioxane
5 in any amount in its Ultra Dishwashing Liquid.
- 6 b. Upon learning of the alleged presence of 1,4-dioxane in its Ultra
7 Dishwashing Liquid, Planet began efforts to reformulate its product to reduce
8 the level of 1,4-dioxane to no more than 10 ppm.
- 9 c. On August 6, 2008, Planet began shipment of the reformulated product into
10 California.

11 3. Injunctive Relief - Warning Program

12 3.1 1,4-Dioxane Reducing Measures: Except as provided below, all Ultra
13 Dishwashing Liquid shipped by Planet for sale in California or to a third party for retail sale in
14 California after August 6, 2008 shall contain no more than 10 parts per million (“ppm”) of 1,4-
15 dioxane.

16 3.2 Clear and Reasonable Warning: In the event that Planet ships Ultra Dishwashing
17 Liquid that contain more than 10 ppm of 1,4-dioxane for sale in California or to a third party for
18 retail sale in California, Planet shall provide a clear and reasonable warning to consumers in the
19 manner described below, that the Ultra Dishwashing Liquid contain a chemical known to the
20 State of California to cause cancer.

21 a. Product Labeling: Planet shall, at the point of manufacture or prior to
22 shipment to California, affix to or put on the product container, cap, label, unit package, or
23 (where the Ultra Dishwashing Liquid is too small to receive a warning directly on the container)
24 on the display of such Ultra Dishwashing Liquid that is intended for sale in California the
25 following warning:

26 **WARNING:** This product contains a chemical known to the
27 State of California to cause cancer.

28 Such warning shall be prominently affixed to or printed on the Ultra Dishwashing Liquid with

1 such conspicuousness, as compared with other words, statements, designs or devices on the label
2 as to render it likely to be read and understood by an ordinary individual under customary
3 conditions or purchase or use. The requirement for product labeling, set forth herein, is imposed
4 pursuant to the terms of this Consent Judgment. The Parties recognize that product labeling is
5 not the exclusive method of providing a warning under Proposition 65 and its implementing
6 regulations.

7 3.3 Testing Requirements: Beginning thirty days after the Effective Date of this
8 agreement, and continuing for four consecutive quarters, Planet shall test a randomly selected
9 sample from each uniform batch of Ultra Dishwashing Liquid used for the production of a run
10 performed during the month that the sampling is done, to ensure that the levels of 1,4-dioxane are
11 below 10 ppm. Testing shall be performed by a laboratory certified by the California
12 Environmental Laboratory Accreditation Program for the analysis of volatile organics in water or
13 a laboratory that is approved by, accredited by, or registered with the United States Food & Drug
14 Administration for the analysis of volatile organics in water. The laboratory shall conduct the
15 testing according to the protocol attached as Exhibit A hereto. Planet shall be required to
16 conduct no further testing if both of the following conditions are met:

- 17 (1) no single quarterly sample tested pursuant to the requirements of this paragraph 3.3
18 contains a concentration of 1,4-dioxane in excess of 10 ppm; and
19 (2) the arithmetic mean of 1,4-dioxane concentrations in the four quarterly samples tested
20 pursuant to this Paragraph 3.3 does not exceed 4 ppm.

21 If either of the above two conditions is not met, Planet shall conduct additional testing as
22 described in Paragraph 3.4 below.

23 3.4 In the event that additional testing is required by the provisions of paragraph 3.3,
24 Planet shall continue testing for a period of a further one year after the tests described in
25 paragraph 3.3 above. Planet may cease testing after the second year as long as no samples of the
26 Ultra Dishwashing Liquid have tested in excess of 10 ppm 1,4-dioxane during the two year time
27 period. In the event that, after testing has ceased, Planet changes the formulation or processing
28 of the Ultra Dishwashing Liquid in any manner that will affect the levels of 1,4-dioxane, Planet

1 shall test a randomly selected sample from three uniform batches of Ultra Dishwashing Liquid
2 used for the production of three different runs of the product in accordance with the protocol
3 described in paragraph 3.3 above. If no single sample contains a concentration of 1,4-dioxane in
4 excess of 4 ppm, no further testing shall be required as long as the product formulation and
5 processing remains the same. If a single sample tests above 4 ppm of 1,4-dioxane, Planet shall
6 resume the testing process as set forth in paragraph 3.3 above.

7 3.5 Planet shall retain copies of its test data for a period of four years from the date of
8 testing and shall turn over all test data to the Attorney General upon written request.

9 4. Settlement Payments - Civil Penalties

10 4.1 Within thirty (30) days after the Effective Date of this Consent Judgment, as full,
11 final and complete satisfaction of all claims for civil penalties or restitution for the alleged
12 violations of Proposition 65 as regards 1,4-dioxane in Ultra Dishwashing Liquid up to and
13 including the date of entry of this Consent Judgment, Planet shall pay the sum of seven thousand
14 five hundred dollars (\$7,500) by mailing a check, payable to the "Office of the Attorney General
15 of the State of California" (Attn: Susan S. Fiering, Deputy Attorney General), 1515 Clay Street,
16 20th Floor, P.O. Box 70550, Oakland, CA 94612. Payment of the preceding amount shall be
17 made as a civil penalty, pursuant to Health & Safety Code Sections 25249.7(b) and 25249.11(c).
18 Making this payment shall not be construed as an admission by Planet of any fact, conclusion of
19 law, or violation of law, nor shall compliance with the Consent Judgment constitute or be
20 construed as an admission by Planet of any fact, conclusion of law, or violation of law.

21 5. Settlement Payments - Payment of Costs and Fees

22 5.1 Within thirty (30) days after the Effective Date of this Consent Judgment, Planet
23 shall pay the amount of seven thousand five hundred dollars (\$7,500) as reimbursement of the
24 Attorney General's costs incurred in investigating, bringing this action and negotiating a
25 settlement, by mailing a check, payable to the "Office of the Attorney General of the State of
26 California," 1515 Clay Street, 20th Floor, P.O. Box 70550, Oakland, CA 94612 (Attn: Susan S.
27 Fiering, Deputy Attorney General) to be used by the Attorney General for the purpose of
28 obtaining experts and consultants, and for other costs associated with the investigation and

1 prosecution of other actions under Proposition 65.

2 6. Additional Enforcement Actions; Continuing Obligations

3 6.1 By entering into this Consent Judgment, the People do not waive any right to take
4 further enforcement actions on any violations not covered by the Complaint or this Consent
5 Judgment. Nothing in this Consent Judgment shall be construed as diminishing Planet's
6 continuing obligation to comply with Proposition 65 or the Unfair Competition Law in its future
7 activities.

8 7. Enforcement of Consent Judgment

9 7.1 The People may, by motion or order to show cause before the Superior Court of
10 Alameda, enforce the terms and conditions contained in this Consent Judgment. In any action
11 brought by the People to enforce this Consent Judgment, the People may seek whatever fines,
12 costs, penalties or remedies as provided by law for failure to comply with the Consent Judgment.
13 Where said failure to comply constitutes future violations of Proposition 65 or other laws,
14 independent of the Consent Judgment and/or those alleged in the Complaint, the People are not
15 limited to enforcement of this Consent Judgment but may seek in another action whatever fines,
16 costs, penalties or remedies are provided by law for failure to comply with Proposition 65 or
17 other laws. However, the rights of Planet to defend itself and its actions in law or equity shall not
18 be abrogated or reduced in any fashion by the terms of this paragraph, except that Planet shall not
19 contest its obligation to comply with this Consent Judgment as long as this Consent Judgment
20 remains in effect.

21 8. Application of Consent Judgment

22 8.1 The Consent Judgment shall apply to, be binding upon and inure to the benefit of,
23 the Parties, their divisions, subdivisions, subsidiaries, and affiliates and the successors or assigns
24 of each of them. Unless otherwise provided herein, any change in ownership, partnership status
25 or corporate status of Planet, including, but not limited to, any transfer of assets or real or
26 personal property, shall in no way alter Planet's responsibilities under this Consent Judgment,
27 and Planet shall be responsible and shall remain responsible for carrying out all activities
28 required of it under this Consent Judgment.

1 8.2 All new Ultra Dishwashing Liquid introduced by Planet into the stream of
2 commerce for distribution or sale in California shall be governed by this Consent Judgment.

3 9. Effective Date

4 9.1 The "Effective Date" of this Consent Judgment shall be the date upon which this
5 Court enters this Consent Judgment.

6 10. Authority to Stipulate to Consent Judgment

7 10.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the Party he or she represents to enter into this Consent Judgment on behalf of the Party
9 represented and legally to bind that Party.

10 11. Claims Covered

11 11.1 Except as provided elsewhere herein, this Consent Judgment is a final and binding
12 resolution between the People and Planet of any and all alleged violations of Proposition 65 or
13 the Unfair Competition Law, Business and Professions Code Sections 17200 *et seq.* arising from
14 Planet's failure to provide clear and reasonable warnings pursuant to Proposition 65 of exposure
15 to 1,4-dioxane from use of Planet's Ultra Dishwashing Liquid that were committed by Planet or
16 by any entity within its respective chain of distribution prior to the Effective Date of this
17 agreement, including, but not limited to, distributors, wholesalers and retailers of any of Planet's
18 Ultra Dishwashing Liquid. Compliance with the terms of this Consent Judgment by Planet
19 constitutes compliance with Proposition 65 as to 1,4-dioxane in Ultra Dishwashing Liquid.

20 12. Retention of Jurisdiction

21 12.1 This Court shall retain jurisdiction of this matter to implement the Consent
22 Judgment.

23 13. Entire Agreement

24 13.1 This Consent Judgment contains the sole and entire agreement and understanding
25 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26 negotiations, commitments and understandings related hereto. No representations, oral or
27 otherwise, express or implied, other than those contained herein have been made by any Party
28 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be

1 deemed to exist or to bind any of the Parties.

2 14. Modification

3 14.1 This Consent Judgment may be modified from time to time by express written
4 agreement of Planet and the Attorney General with the approval of the Court, or by an order of
5 this Court.

6 15. Execution in Counterparts

7 15.1 This Consent Judgment may be executed in counterparts, which taken together
8 shall be deemed to constitute one and the same document.

9 16. Entry of Stipulation for Entry of Consent Judgment Required

10 16.1 This Stipulation for Entry of Consent Judgment shall be null and void, and be
11 without any force or effect, unless entered by the Court in this matter. If the Stipulation for Entry
12 of Consent Judgment is not entered by the Court, the execution of this Stipulation for Entry of
13 Consent Judgment by any Settling Defendant shall not be construed as an admission by a Settling
14 Defendant of any fact, issue of law or violation of law.

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16 IT IS SO STIPULATED:

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18 Dated: 11/14, 2008

EDMUND G. BROWN JR., Attorney General
of the State of California
KEN ALEX
Senior Assistant Attorney General
EDWARD G. WEIL
Supervising Deputy Attorney General
SUSAN S. FIERING
Deputy Attorney General

19
20
21
22
23
24 By: 

SUSAN S. FIERING
Deputy Attorney General
Attorneys for the People of the State of California ex rel.
Edmund G. Brown Jr., Attorney General of the State of
California

1 Dated: Nov 13, 2008

PLANET, INC.

2

By: Allen Stedman

3

Its: President

4

5

6

APPROVED AS TO FORM:

7

8 Dated: Nov. 14, 2008

MORRISON & FOERSTER

9

By: Robin Stafford

10

ROBIN STAFFORD, Esq.
Counsel for Planet Inc. dba NutriBiotic

11

12

IT IS SO ORDERED:

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DEC 15 2008

STEVEN A. BRICK

14

Dated: _____, 2008

JUDGE, SUPERIOR COURT, COUNTY OF ALAMEDA

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EXHIBIT A

PROTOCOL

Summary of Method:

An aliquot of sample (~1 g) is accurately weighed into a vial with 5 mL water and one gram of sodium sulfate. Internal standard (5 $\mu\mu\text{g}$ 1,4-Dioxane-d8) is added. The vial is capped and heated at 95 °C for 60 minutes. A one mL aliquot of the headspace over the sample is analyzed by direct injection using the following GCMS conditions or equivalent.

GCMS Conditions

Instrument: Agilent 5973N

Column: 25 m x 0.20 mm HP-624, 1.12 micron film

Column Temp: 40 °C (hold 3 min) to 100 °C at 10 °C/min, then to 180 °C at 25 °C/min (hold 5 min)

Injector Temp: 220 °C

Mass Range: Selected ion monitoring: masses 43, 58, and 88 (dioxane); 64 and 96 (dioxane-d8); 1.72 cycles per second

Quality control shall include at a minimum

1. Calibration using a blank and 4 standards over the range of 0.5 to 10 micrograms of 1,4-dioxane with a regression fit R squared >0.995.
2. A method blank analyzed just prior to the samples must be free of 1,4-dioxane (<1 ppm)
3. Continuing calibration standards should be analyzed after every 10 or fewer samples, and the result must be within 10% of the initial calibration.
4. With each batch of 20 or fewer samples, one of the samples must be analyzed in duplicate and as a spiked sample. QC limits for duplicates which exceed 5 ppm is <25% relative percent difference. QC limits for spiked samples is 75-125% recovery when the amount spiked is greater than or equal to the background in the unspiked sample.