

COPY

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ENDORSED
FILED
ALAMEDA COUNTY

DEC 15 2008

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

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13

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,
21

Case No. RG08389960

STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AND
ORDER THEREON
(BEAUMONT PRODUCTS,
INC.)

22 Plaintiff, the People of the State of California ("People") and defendant Beaumont Products,
23 Inc. (Beaumont) herein enter into this Stipulation for Entry of Consent Judgment (hereinafter
24 "Consent Judgment") as follows:

25 1. Introduction

26 1.1 On May 29, 2008, the People of the State of California, ex rel. Edmund G. Brown Jr.
27 ("People") filed a Complaint for Civil Penalties and Injunctive Relief ("Complaint") in the
28

1 Superior Court of the State of California, County of Alameda against Beaumont and other
2 defendants.

3 1.2 Beaumont is a company that employs more than ten persons and offers for sale within
4 the State of California a liquid dish soap, Citrus Magic - Natural Dish Liquid ("Citrus Magic").

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

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

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

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1 2. Representations of Beaumont

2 2.1 Beaumont has provided a declaration under penalty of perjury to the Attorney General,
3 representing as follows:

- 4 a. Prior to March 15, 2008 Beaumont was not aware of the presence of 1,4-dioxane
5 in any amount in Citrus Magic.
- 6 b. Upon learning of the alleged presence of 1,4-dioxane in Citrus Magic, Beaumont
7 commissioned testing of its product and, on March 28, 2008 confirmed that the
8 product contained 1,4-dioxane.
- 9 c. On March 31, 2008, Beaumont stopped production and shipment of Citrus Magic
10 and recalled product in California.
- 11 d. On April 9, 2008, Beaumont determined that the 1,4-dioxane was a result of the
12 ethoxylated surfactant ingredient Sulfochem ES-60, contained in Citrus Magic.
- 13 e. On May 12, 2008 Beaumont resumed production of Citrus Magic with a new non-
14 ethoxylated surfactant being used nationwide in place of Sulfochem ES-60.
- 15 f. Test results on the reformulated Citrus Magic product indicate that there is no 1,4-
16 dioxane in the product above the detection limit.

17 3. Injunctive Relief

18 3.1 1,4-Dioxane Reducing Measures: All Citrus Magic shipped by Beaumont for sale in
19 California or to a third party for retail sale in California after May 12, 2008, shall contain no
20 more than 10 ppm of 1,4-dioxane.

21 3.2 Testing Requirements: Beginning thirty days after the Effective date of this agreement,
22 and continuing for one year thereafter, Beaumont shall, on a quarterly basis, test randomly
23 selected samples from each lot of Citrus Magic. Testing shall be performed by an FDA-
24 registered laboratory accredited for the analysis of volatile organics in water, according to the
25 protocol attached as Exhibit A hereto.

26 3.3 As long as Beaumont does not reformulate its product to contain any ethoxylated
27 surfactants or any other chemicals that can degrade to produce 1,4-dioxane as a contaminant, it
28 need not continue testing after the one year time period set forth above.

1 3.4 In the event that Beaumont reformulates its product to contain any ethoxylated
2 surfactants or any other chemical that can degrade to produce 1,4-dioxane as a contaminant,
3 Beaumont shall resume testing and shall, on a quarterly basis, test randomly selected samples
4 from each lot of Citrus Magic. Testing shall be performed consistent with the requirements of
5 paragraph 3.2 above. Beaumont shall continue testing for a period of two years after the date of
6 reformulation. Beaumont may cease testing after two years as long as no samples of the Citrus
7 Magic have tested in excess of 10 ppm 1,4-dioxane. In the event that, after testing has ceased,
8 Beaumont changes the formulation or processing of the Citrus Magic in any manner that will
9 affect the levels of 1,4-dioxane, Beaumont shall resume the testing process as set forth above.

10 3.5 Beaumont shall retain copies of its test data for a period of four years from the date of
11 testing and shall turn over all test data to the Attorney General upon written request.

12 4. Settlement Payments

13 4.1 The parties stipulate that pursuant to and based on the representations made by
14 Beaumont in section 2 above, Beaumont shall not be required to pay penalties in this matter.

15 4.2. Each side shall bear its own attorneys fees and costs in this matter.

16 5. Additional Enforcement Actions; Continuing Obligations

17 5.1. By entering into this Consent Judgment, the People do not waive any right to take
18 further enforcement actions on any violations not covered by the Complaint or this Consent
19 Judgment. Nothing in this Consent Judgment shall be construed as diminishing Beaumont's
20 continuing obligation to comply with Proposition 65 or the Unfair Competition Law in its future
21 activities.

22 6. Enforcement of Consent Judgment

23 6.1. The People may, by motion or order to show cause before the Superior Court of
24 Alameda enforce the terms and conditions contained in this Consent Judgment. In any action
25 brought by the People to enforce this Consent Judgment, the People may seek whatever fines,
26 costs, penalties or remedies as provided by law for failure to comply with the Consent Judgment.
27 Where said failure to comply constitutes future violations of Proposition 65 or other laws,
28 independent of the Consent Judgment and/or those alleged in the Complaint, the People are not

1 limited to enforcement of this Consent Judgment but may seek in another action whatever fines,
2 costs, penalties or remedies are provided by law for failure to comply with Proposition 65 or
3 other laws. However, the rights of Beaumont to defend itself and its actions in law or equity
4 shall not be abrogated or reduced in any fashion by the terms of this paragraph, except that
5 Beaumont shall not contest its obligation to comply with this Consent Judgment as long as this
6 Consent Judgment remains in effect.

7 7. Application of Consent Judgment

8 7.1 The Consent Judgment shall apply to, be binding upon and inure to the benefit of, the
9 parties, their divisions, subdivisions, subsidiaries, and affiliates and the successors or assigns of
10 each of them. Unless otherwise provided herein, any change in ownership, partnership status or
11 corporate status of Beaumont, including, but not limited to, any transfer of assets or real or
12 personal property, shall in no way alter Beaumont's responsibilities under this Consent Judgment
13 and Beaumont shall be responsible and shall remain responsible for carrying out all activities
14 required of it under this Consent Judgment.

15 7.2 All new liquid dish soaps introduced by Beaumont into the stream of commerce for
16 distribution or sale in California shall be governed by this Consent Judgment.

17 8. Effective Date

18 8.1 The "Effective Date" of this Consent Judgment shall be the date upon which this Court
19 enters this Consent Judgment.

20 9. Authority to Stipulate to Consent Judgment

21 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
22 the party he or she represents to enter into this Consent Judgment on behalf of the party
23 represented and legally to bind that party.

24 10. Claims Covered

25 10.1 Except as provided elsewhere herein, this Consent Judgment is a final and binding
26 resolution between the People and Beaumont of any and all alleged violations of Proposition 65
27 or the Unfair Competition Law, Business and Professions Code Sections 17200 et seq. arising
28 from Beaumont's failure to provide clear and reasonable warnings pursuant to Proposition 65 of

1 exposure to 1,4-dioxane from use of Beaumont's Citrus Magic that were committed by
2 Beaumont or by any entity within its respective chain of distribution prior to the effective date of
3 this agreement, including, but not limited to, distributors, wholesalers and retailers of any of
4 Beaumont's Citrus Magic. Compliance with the terms of this Consent Judgment by Beaumont
5 constitutes compliance with Proposition 65 as to 1,4-dioxane in Citrus Magic.

6 11. Retention of Jurisdiction

7 11.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

8 12. Entire Agreement

9 12.1 This Consent Judgment contains the sole and entire agreement and understanding of
10 the parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments and understandings related hereto. No representations, oral or
12 otherwise, express or implied, other than those contained herein have been made by any party
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
14 deemed to exist or to bind any of the parties.

15 13. Modification

16 13.1 This Consent Judgment may be modified from time to time by express written
17 agreement of Beaumont and the Attorney General with the approval of the Court, or by an order
18 of this Court.

19 14. Execution in Counterparts

20 14.1 This Consent Judgment may be executed in counterparts, which taken together shall be
21 deemed to constitute one and the same document.

22 15. Entry of Stipulation for Entry of Consent Judgment Required

23 15.1 This Stipulation for Entry of Consent Judgment shall be null and void, and be without
24 any force or effect, unless entered by the Court in this matter. If the Stipulation for Entry of
25 Consent Judgment is not entered by the Court, the execution of this Stipulation for
26 Entry of Consent Judgment by any Settling Defendant shall not be construed as an admission by
27 a Settling Defendant of any fact, issue of law or violation of law.

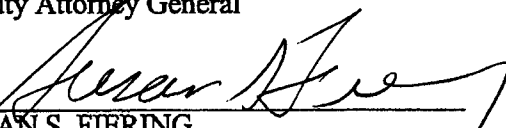
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1 IT IS SO STIPULATED:

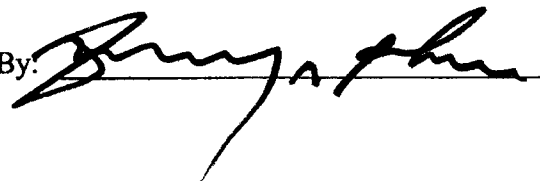
2 Dated: 11/14/08

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

6
7 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

10
11 Dated: 10/13/08


BEAUMONT, INC.

12
13 By: 

15 APPROVED AS TO FORM:

16 Dated: 10/14/08

MURCHISON & CUMMINGS

17
18 By: 
SCOTT HENGESBACH
Attorneys for Beaumont, Inc.

21 IT IS SO ORDERED:

22 Dated: DEC 15 2008

23 **STEVEN A. BRICK** 
JUDGE, SUPERIOR COURT, COUNTY OF ALAMEDA

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.