

COPY

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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

13
14 PEOPLE OF THE STATE OF CALIFORNIA ex rel.
EDMUND G. BROWN JR., Attorney General of the
15 State of California,

Plaintiffs,

16 v.

17 AVALON NATURAL PRODUCTS, INC.,
18 BEAUMONT PRODUCTS, INC., NUTRIBIOTIC,
WHOLE FOODS MARKET CALIFORNIA, INC., and
19 Does 1 - 100

Defendants,

Case No. RG08389960

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

20
21
22 Plaintiff, the People of the State of California ("People") and defendant Avalon Natural
23 Products, Inc. (Avalon) herein enter into this Stipulation for Entry of Consent Judgment
24 (hereinafter "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 Superior Court of the State of California, County of Alameda against Avalon and other

1 defendants.

2 1.2 Avalon is a company that employs more than ten persons and manufactures, distributes
3 and/or sells Alba Passion Fruit Body Wash to consumers within the state of California.
4 (hereafter "Passion Fruit Body Wash").

5 1.3 The People's Complaint alleges that Avalon, through the sale of its Body Washes 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, the parties stipulate that the People's
12 Complaint is deemed to be limited to the Alba Passion Fruit Body Wash.

13 1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court has
14 jurisdiction over the allegations of violations contained in the Complaint and personal
15 jurisdiction over Avalon as to the acts alleged in the Complaint, that venue is proper in the
16 County of Alameda and that this Court has jurisdiction to enter this Consent Judgment.

17 1.6 The Parties enter into this Consent Judgment to settle certain disputed claims as alleged
18 in the Complaint and to avoid potentially lengthy and/or costly litigation between the Parties
19 hereto. By execution of this Consent Judgment, the Parties do not admit any facts or conclusions
20 of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating
21 any violations of Proposition 65, the Unfair Competition Act, or any other statutory, common
22 law or equitable requirements relating to Passion Fruit Body Wash. Nothing in this Consent
23 Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue
24 of law or violation of law, nor shall compliance with the Consent Judgment constitute or be
25 construed as an admission by the Parties, either individually or collectively, of any fact,
26 conclusion of law, issue of law, or violation of law. Except as provided herein, nothing in this
27 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the
28 Parties may have in this or any other or future legal proceedings. This paragraph shall not

1 diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this
2 Consent Judgment.

3 2. Representations of Avalon

4 2.1 Avalon has provided a declaration under penalty of perjury to the Attorney General,
5 representing as follows:

- 6 - Prior to March 18, 2008 Avalon was not aware of the presence of 1,4-dioxane in
7 any amount in its Passion Fruit Body Wash.
- 8 - As of August 1, 2008 Avalon's Passion Fruit Body Wash shipped for sale or
9 distribution into California has been reformulated to have non-detectable levels of
10 1,4-dioxane.

11 3. Injunctive Relief

12 3.1 As of August 1, 2008 Avalon shall not sell any Passion Fruit Body Washes in
13 California that contain more than 10 ppm of 1,4-dioxane, unless Avalon has provided a clear and
14 reasonable warning consistent with Proposition 65, as set forth below, that the Passion Fruit
15 Body Washes contain a chemical known to the State of California to cause cancer.

16 3.2 In the event that Avalon sells Passion Fruit Body Washes that contain more than 10
17 ppm of 1,4-dioxane in California after August 1, 2008, Avalon shall at the point of manufacture,
18 prior to shipment to California, or prior to distribution within California, affix to or put on the
19 Passion Fruit Body Wash container, cap, label, or unit package, the following warning:

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

22 Such warning shall be prominently affixed to or printed on the Passion Fruit Body Washes with
23 such conspicuousness, as compared with other words, statements, designs or devices on the label
24 as to render it likely to be read and understood by an ordinary individual under customary
25 conditions of purchase or use. The requirement for product labeling, set forth herein is imposed
26 pursuant to the terms of this Consent Judgment. The parties recognize that product labeling is
27 not the exclusive method of providing a warning under Proposition 65 and its implementing
28 regulations.

1 3.3 Testing Requirements: Beginning thirty days after the Effective Date of this
2 agreement, and continuing for one year thereafter, Avalon shall, on a quarterly basis, test
3 randomly selected samples from each lot of Passion Fruit Body Washes to ensure that the levels
4 of 1,4-dioxane are below 10 ppm. Testing shall be performed by an FDA-registered laboratory
5 or a laboratory certified by the California Environmental Laboratory Accreditation Program,
6 accredited for the analysis of volatile organics in water. The laboratory shall conduct the testing
7 according to the protocol attached as Exhibit A hereto.

8 3.4 As long as Avalon does not reformulate its Passion Fruit Body Wash to contain any
9 chemicals that can degrade to produce 1,4-dioxane as a contaminant, it need not continue testing
10 after the one year time period set forth above.

11 3.5 In the event that Avalon reformulates its Passion Fruit Body Wash to contain any
12 chemical that can degrade to produce 1,4-dioxane as a contaminant, Avalon shall resume testing
13 and shall test randomly selected samples from each lot of its Passion Fruit Body Washes.
14 Testing shall be performed consistent with the requirements of paragraph 3.3 above. Avalon
15 shall continue testing for a period of two years after the date of reformulation. Avalon may cease
16 testing after two years as long as no samples of the Passion Fruit Body Wash have tested in
17 excess of 10 ppm 1,4-dioxane. In the event that, after testing has ceased, Avalon changes the
18 formulation or processing of the Passion Fruit Body Wash in any manner that will affect the
19 levels of 1,4-dioxane, Avalon shall resume the testing process as set forth above.

20 3.6 Avalon shall retain copies of its test data for a period of four years from the date of
21 testing and shall turn over all test data to the Attorney General upon written request.

22 4. Settlement Payments - Civil Penalties

23 4.1 Within thirty (30) days after the Effective Date of this Consent Judgment, as full,
24 final and complete satisfaction of all claims for civil penalties or restitution for the alleged
25 violations of Proposition 65 as regards 1,4-dioxane in Passion Fruit Body Washes up to and
26 including the date of entry of this Consent Judgment, Avalon shall pay the sum of two thousand,
27 five hundred dollars (\$2,500.00) by mailing a check, payable to the "Office of the Attorney
28 General of the State of California" (Attn: Susan S. Fiering, Deputy Attorney General), 1515 Clay

1 Street, 20th Floor, P.O. Box 70550, Oakland, CA 94612 . Payment of the preceding amount shall
2 be made as a civil penalty pursuant to Health & Safety Code Section 25249.7(b) and
3 25249.11(c). Making this payment shall not be construed as an admission by Avalon of any fact,
4 conclusion of law, or violation of law, nor shall compliance with the Consent Judgment
5 constitute or be construed as an admission by Avalon of any fact, conclusion of law, or violation
6 of law.

7 5. Settlement Payments - Payment of Costs and Fees

8 5.1 Within thirty (30) days after the Effective Date of this Consent Judgment,
9 Avalon shall pay the amount of two thousand, five hundred dollars (\$2,500) as reimbursement of
10 the costs incurred by the Carrick Law Group in investigating and sending a sixty day notice on
11 this matter, by mailing a check, payable to the Carrick Law Group, at Carrick
12 Law Group, 350 South Grand Avenue, Suite 2930, Los Angeles, CA 90071.

13 5. Additional Enforcement Actions; Continuing Obligations

14 5.1. By entering into this Consent Judgment, the People do not waive any right to take
15 further enforcement actions on any violations not covered by the Complaint or this Consent
16 Judgment. Nothing in this Consent Judgment shall be construed as diminishing Avalon's
17 continuing obligation to comply with Proposition 65 or the Unfair Competition Law in its future
18 activities.

19 6. Enforcement of Consent Judgment

20 6.1. The People may, by motion or order to show cause before the Superior Court of
21 Alameda enforce the terms and conditions contained in this Consent Judgment. In any action
22 brought by the People to enforce this Consent Judgment, the People may seek whatever fines,
23 costs, penalties or remedies as provided by law for failure to comply with the Consent Judgment.
24 Where said failure to comply constitutes future violations of Proposition 65 or other laws,
25 independent of the Consent Judgment and/or those alleged in the Complaint, the People are not
26 limited to enforcement of this Consent Judgment but may seek in another action whatever fines,
27 costs, penalties or remedies are provided by law for failure to comply with Proposition 65 or
28 other laws. However, the rights of Avalon to defend itself and its actions in law or equity shall

1 not be abrogated or reduced in any fashion by the terms of this paragraph, except that Avalon
2 shall not contest its obligation to comply with this Consent Judgment as long as this Consent
3 Judgment remains in effect.

4 7. Application of Consent Judgment

5 7.1 The Consent Judgment shall apply to, be binding upon and inure to the benefit of, the
6 parties, their divisions, subdivisions, subsidiaries, and affiliates and the successors or assigns of
7 each of them. Unless otherwise provided herein, any change in ownership, partnership status or
8 corporate status of Avalon, including, but not limited to, any transfer of assets or real or personal
9 property, shall in no way alter Avalon's responsibilities under this Consent Judgment and Avalon
10 shall be responsible and shall remain responsible for carrying out all activities required of it
11 under this Consent Judgment.

12 8. Effective Date

13 8.1 The "Effective Date" of this Consent Judgment shall be the date upon which this Court
14 enters this Consent Judgment.

15 9. Authority to Stipulate to Consent Judgment

16 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
17 the party he or she represents to enter into this Consent Judgment on behalf of the party
18 represented and legally to bind that party.

19 10. Claims Covered

20 10.1 Except as provided elsewhere herein, this Consent Judgment is a final and binding
21 resolution between the People and Avalon of any and all alleged violations of Proposition 65 or
22 the Unfair Competition Law, Business and Professions Code Sections 17200 et seq. arising from
23 Avalon's failure to provide clear and reasonable warnings pursuant to Proposition 65 of exposure
24 to 1,4-dioxane from use of Avalon's Passion Fruit Body Washes that were committed by Avalon
25 or by any entity within its respective chain of distribution prior to the effective date of this
26 agreement, including, but not limited to, distributors, wholesalers and retailers of any of Avalon's
27 Passion Fruit Body Washes. Compliance with all of the terms of this Consent Judgment by
28 Avalon constitutes compliance with Proposition 65 as to 1,4-dioxane in Passion Fruit Body

1 Washes.

2 11. Retention of Jurisdiction

3 11.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

4 12. Entire Agreement

5 12.1 This Consent Judgment contains the sole and entire agreement and understanding of
6 the parties with respect to the entire subject matter hereof, and any and all prior discussions,
7 negotiations, commitments and understandings related hereto. No representations, oral or
8 otherwise, express or implied, other than those contained herein have been made by any party
9 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
10 deemed to exist or to bind any of the parties.

11 13. Modification

12 13.1 This Consent Judgment may be modified from time to time by express written
13 agreement of Avalon and the Attorney General with the approval of the Court, or by an order of
14 this Court.

15 14. Execution in Counterparts

16 14.1 This Consent Judgment may be executed in counterparts, which taken together shall be
17 deemed to constitute one and the same document.

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

19 15.1 This Stipulation for Entry of Consent Judgment shall be null and void, and be without
20 any force or effect, unless entered by the Court in this matter. If the Stipulation for Entry of
21 Consent Judgment is not entered by the Court, the execution of this Stipulation for
22 Entry of Consent Judgment by any Settling Defendant shall not be construed as an admission by
23 a Settling Defendant of any fact, issue of law or violation of law.

24 //

25 //

26 //

27 //

28 //

1 IT IS SO STIPULATED:

2 Dated: 11/19/08

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: 
8 SUSAN S. FIERING
9 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: _____ AVALON NATURAL PRODUCTS, INC.

12

13 By: _____

14

15

16 Its: _____

17

18

19

APPROVED AS TO FORM:

20

21 Dated: _____ LAW OFFICES OF SCOTT A. COX

22

23 By: _____

SCOTT A. COX, Esq.
Counsel for Avalon Natural Products, Inc.

24

25

26

27 IT IS SO ORDERED:

28

Dated: DEC 15 2008

STEVEN A. BRICK

JUDGE, SUPERIOR COURT, COUNTY OF ALAMEDA 

1 IT IS SO STIPULATED:

2 Dated: _____

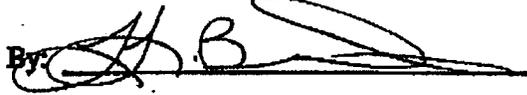
EDMUND G. BROWN JR., Attorney General
of the State of California
KEN ALEX
Senior Assistant Attorney General
EDWARD G. WEIL
Supervising Deputy Attorney General
SUSAN S. FIERING
Deputy Attorney General

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: 11/13/08

AVALON NATURAL PRODUCTS, INC.

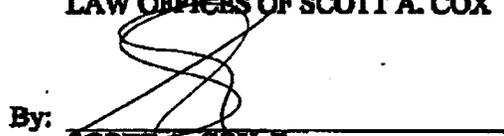
12
13 By: 

15 Its: CFO

18 APPROVED AS TO FORM:

19 Dated: 11/13/08

LAW OFFICES OF SCOTT A. COX

21
22 By: 

SCOTT A. COX, Esq.
Counsel for Avalon Natural Products, Inc.

24 IT IS SO ORDERED:

25 Dated: _____

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.