

1 Jeffrey M. Judd (SBN 136358)
2 jeff@juddlawgroup.com
3 JUDD LAW GROUP LLP
4 222 Sutter Street, Suite 600
5 San Francisco, California 94108
6 Telephone: 415.597.5500
7 Facsimile: 888.308.7686

8 Attorneys for Plaintiff
9 Public Interest Alliance LLC

ENDORSED
FILED
ALAMEDA COUNTY

MAY 20 2014

CLERK OF THE SUPERIOR COURT
By **YOLANDA ESTRADA** Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13 THE PUBLIC INTEREST ALLIANCE, LLC, a
14 California limited liability company

15 Plaintiff,

16 vs.

17 ACCESS BUSINESS GROUP LLC, et al.

18 Defendants.

) Case No. RG13697992

) **[PROPOSED] JUDGMENT UNDER**
) **PROPOSITION 65 SETTLEMENT AND**
) **CONSENT JUDGMENT AS TO**
) **DEFENDANT DR. HAUSCHKA SKIN**
) **CARE, INC.**

) Date: May 20, 2014
) Time: 2:30 p.m.
) Dept: 17
) Res'n No. 1498836

Action Filed: October 3, 2013

1 In the above-captioned action, plaintiff Public Interest Alliance LLC, and defendant Dr.
2 Hauschka Skin Care, Inc. ("DHSI"), having agreed through their respective counsel that Judgment be
3 entered under the terms of their settlement in the form of the proposed consent judgment attached
4 hereto as Exhibit A (the "DHSI Consent Judgment"), and following this Court's entry of an Order
5 approving the DHSI Consent Judgment on May 20, 2014:

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, under Health & Safety Code
7 section 25249.7, subsection (f)(4), and Code of Civil Procedure section 664.6, judgment is entered in
8 accordance with the terms of the DHSI Consent Judgment attached hereto as Exhibit A and by this
9 reference incorporated herein. By stipulation of the parties, the Court will retain jurisdiction under
10 Code of Civil Procedure section 664.6 to enforce Section 4.1.1 and to resolve any disputes that may
11 arise hereafter between PIA and DHSI regarding the DHSI Consent Judgment.

12 **IT IS SO ORDERED:**

13 Dated: May 20, 2014

GEORGE C. HERNANDEZ, JR.

JUDGE, SUPERIOR COURT

EXHIBIT A

1 Jeffrey M. Judd (SBN 136358)
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16 ACCESS BUSINESS GROUP LLC, et.al.
17 Defendants.

Case No. RG13697992
} CONSENT JUDGMENT
} DR. HAUSCHKA SKIN CARE, INC.
} (Cal. Health & Safety Code section 25249.6 et
} seq.)

18
19 I. INTRODUCTION

20 1.1 Parties. This Consent Judgment is entered into by and between plaintiff The Public
21 Interest Alliance LLC ("PIA") and Dr. Hauschka Skin Care, Inc. ("DHSI"), with PIA and DHSI
22 collectively referred to as the "Parties."

23 1.2 Public Interest Alliance LLC. The Public Interest Alliance LLC is a California
24 limited liability company dedicated to improving human health, preserving the natural environment,
25 and promoting compliance with environmental and consumer disclosure laws..

26 1.3 DHSI. DHSI employs ten or more persons and is a "person in the course of doing
27 business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California

1 Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

2 1.4 General Allegations

3 1.4.1 PIA alleges that DHSI manufactured, imported, sold and/or distributed for sale
4 in California, cosmetic and personal care powders that contain Titanium dioxide (“TiO₂”) and that
5 during use, it is possible that some TiO₂ is released into the air, exposing consumers to unbound TiO₂
6 particles of respirable size without the health hazard warnings that Proposition 65 requires. A list of
7 such DHSI products is identified on Exhibit A attached hereto (the “Covered Products”). TiO₂ is a
8 chemical widely used as a whitening agent in a wide range of consumer products, including, without
9 limitation, paper, paints, printers’ inks, toothpaste, cosmetics, and personal care products. In 2010, the
10 International Agency for Research on Cancer (“IARC”) issued Monograph 93, which concluded that
11 TiO₂ is “possibly carcinogenic” to humans when inhaled.

12 1.4.2 Pursuant to Proposition 65, on September 2, 2011, California identified and
13 listed Titanium Dioxide (airborne, unbound chemicals of respirable size) as a chemical known to cause
14 cancer. Titanium Dioxide (airborne, unbound chemicals of respirable size) became subject to the
15 “clear and reasonable warning” requirements of the Act one year later on September 2, 2012. Cal.
16 Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

17 1.4.4 Titanium Dioxide (airborne, unbound chemicals of respirable size) is hereinafter
18 referred to as the “Listed Chemical.” PIA has alleged that the Listed Chemical is released into the air
19 when the Covered Products are applied to the skin by brush, pad or sponge, leading to human
20 exposures.

21 1.5 Notice of Violation. On or about June 12, 2013, PIA served DHSI, and many other
22 cosmetic manufactures selling cosmetic powders in California that contain TiO₂ and create airborne,
23 unbound chemicals of respirable size when used for their intended use, and certain requisite public
24 enforcement agencies with Proposition 65 60-Day Notices of Violation and Proposition 65
25 Supplemental Notices of Violation (the “NOVs”) that provided the recipients with notice of alleged
26 violations of Proposition 65 based on the recipient’s alleged failure to warn customers and consumers,
27 workers and other individuals that the Covered Products exposed users in California to the Listed

1 Chemical. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently
2 prosecuting the allegations set forth in the NOV's.

3 1.6 **Complaint.** On October 3, 2013, PIA filed a Complaint against more than 100 cosmetic
4 manufacturers in the Superior Court in and for the County of Alameda styled, *PIA v. Access Business*
5 *Group, LLC, et al.*, Case No. RG13697992, alleging violations of Proposition 65 arising from
6 unwarned exposures to the Listed Chemical when the Covered Products are used (the "Complaint").

7 1.7 **No Admission.** DHSI denies the material factual and legal allegations contained in the
8 NOV and Complaint and maintains that all products it has manufactured, imported, distributed, and/or
9 sold in California, including the Covered Products, have been and are in compliance with all laws.
10 Nothing in this Consent Judgment shall be construed as an admission by DHSI of any fact, finding,
11 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
12 constitute or be construed as an admission by DHSI of any fact, finding, conclusion, issue of law, or
13 violation of law. This section shall not, however, diminish or otherwise affect DHSI's obligations,
14 responsibilities, and duties under this Consent Judgment.

15 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
16 stipulate that this Court has jurisdiction over DHSI as to the allegations contained in the Complaint,
17 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce
18 the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
19 Procedure § 664.6.

20 2. **DEFINITIONS**

21 2.1 **California Customers.** "California Customer" shall mean any customer that DHSI
22 reasonably understands is located in California, has a California warehouse or distribution center,
23 maintains a retail outlet in California or has made any internet sales into California between September
24 2, 2012, and the Effective Date, inclusive.

25 2.2 **Effective Date.** "Effective Date" shall mean March __, 2014.

1 application to the court for approval of such fees. All attorney fee and cost reimbursement payments
2 shall be made within five (5) business days after the Effective Date and delivered to the addresses
3 listed in Section 4.3 below. Any failure by DHSI to deliver the required attorney fee and cost
4 reimbursement payment to Judd Law Group LLP within two days after the required date shall result in
5 imposition of a 10% simple interest assessment on the undelivered payment(s) until delivery.

6 **4.3 Payment Procedures**

7 **4.3.1 Issuance of Payments**

8 (a) All payments owed to PIA and its counsel, pursuant to Sections 4.1 and 4.2 shall be delivered to
9 the following payment address:

10 JUDD LAW GROUP LLP
11 222 Sutter Street, Suite 600
San Francisco, CA 94108

12 (b) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to Section 4.1, shall be delivered
13 directly to OEHHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

14 For United States Postal Service Delivery: Fiscal Operations Branch Chief
15 Office of Environ'tal Health Hazard Assessment
P.O. Box 4010
16 Sacramento, CA 95812-4010

17 For Non-United States Postal Service Delivery: Fiscal Operations Branch Chief
18 Office of Environ'tal Health Hazard Assessment
1001 I Street
19 Sacramento, CA 95814

20 **4.3.2 Proof of Payment to OEHHHA.** A copy of each check payable to OEHHHA shall be
21 mailed, simultaneous with payment, to Judd Law Group LLP at the address set forth in Section 4.3.1(a) above,
as proof of payment to OEHHHA.

22 **4.3.3 Tax Documentation.** DHSI shall issue a separate 1099 form for each payment required
23 by this Section to: (a) PIA (EIN 46-3826361), to the address set forth in Section 4.3.1(a) above; (b) OEHHHA,
24 who shall be identified as "California Office of Environmental Health Hazard Assessment" (EIN 68-0284486)
25 in the 1099 form, to be delivered directly to OEHHHA, P.O. Box 4010, Sacramento, CA 95814, and (c) "Judd
26 Law Group LLP" (EIN: 90-0789749) to the address set forth in Section 4.3.1(a) above.

1 5. **CLAIMS COVERED AND RELEASED**

2 5.1 **PIA's Release of Proposition 65 Claims.** PIA, acting on his own behalf and in the
3 public interest, releases DHSI, its parents, subsidiaries, directors, officers, attorneys, and each entity to
4 whom DHSI directly or indirectly distributed or sold Covered Products, including, but not limited, to
5 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and
6 licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the
7 Effective Date based on unwarned exposures to the Listed Chemicals in the Covered Products, as set
8 forth in the NOV and Complaint. Compliance with the terms of this Consent Judgment constitutes
9 compliance with Proposition 65 with respect to exposures to the Listed Chemicals from the Covered
10 Products, as set forth in the NOVs. The Parties further understand and agree that this Section 5.1
11 release shall not extend upstream to any entities, other than affiliates of DHSI, including, without
12 limitation WALA Heimittel GmbH.

13 5.2 **DHSI's Release of PIA.** DHSI, on behalf of itself, its past and current agents,
14 representatives, attorneys, successors, and assignees, hereby waives any and all claims against PIA and
15 its attorneys and other representatives, for any and all actions taken or statements made (or those that
16 could have been taken or made) by PIA and its attorneys and other representatives, whether in the
17 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
18 with respect to the Covered Products.

19 6. **PRESERVATION OF COMPETITIVENESS.** The intent of this section 6 is to protect the
20 competitive interests of DHSI arising from PIA's claims and to ensure that by settling the allegations
21 in the NOV and the Complaint, DHSI is not disadvantaged with respect to its competitors. Specifically,
22 the parties agree that should any agreement or consent judgment be entered into by PIA, the California
23 Office of Environmental Health Hazard Assessment, or the California Attorney General's Office
24 concerning personal care products similar to the Covered Products that contains provisions that would
25 materially impact the terms of this Agreement, such benefits shall accrue to DHSI and this Agreement
26 shall be amended by a stipulation and proposed order, a copy of which shall be provided to the
27 Attorney General's office at least five (5) business days prior to submission to the Court to provide

1 DHSI the benefit thereof. Further, should there be a court decision involving any other person or entity
2 that received a Proposition 65 60-Day Notice of Violation alleging Titanium Dioxide in personal care
3 products similar to the Covered Products and such decision is in whole or in part favorable to the
4 defendant(s) in such action, then that decision shall be incorporated into this Agreement by a
5 stipulation and proposed order, a copy of which shall be provided to the Attorney General's office at
6 least five (5) business days prior to submission to the Court. Further, should any consent judgment
7 establish a "No Significant Risk Level" for Titanium Dioxide (airborne, unbound particles of
8 respirable size) and provide for other parties to opt-in, any payments DHSI has made pursuant to this
9 Agreement shall be offset against any opt-in payment requirements of such consent judgment. Should
10 PIA in the future become aware of facts or circumstances that have not been publicly disclosed that, in
11 PIA's opinion affect DHSI's competitiveness, it shall so notify DHSI's counsel by email within forty-
12 five (45) days after PIA becomes aware of such non-public facts or circumstances.

13 7. **COURT APPROVAL.** This Consent Judgment is not effective until it is approved and entered
14 by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
15 within one year after it has been fully executed by all Parties. If the Court does not approve the
16 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal
17 the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall proceed in
18 its normal course on the Court's trial calendar. If the Court's approval is ultimately overturned by an
19 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
20 Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall proceed in
21 its normal course on the Court's trial calendar.

22 8. **SEVERABILITY.** If, subsequent to the Court's approval and entry of this Consent Judgment,
23 any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of
24 the enforceable provisions remaining shall not be adversely affected.

25 9. **GOVERNING LAW.** The terms of this Consent Judgment shall be governed by the laws of
26 the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
27 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are

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1 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
2 inapplicable by reason of law generally as to the Covered Products, then DHSI may make a formally noticed
3 motion to this Court for relief from this Agreement or provisions of this Agreement, with the requisite written
4 notice to PIA, and shall only have no further obligations pursuant to this Consent Judgment to the extent of any
5 Court order so excusing or eliminating such obligation. Nothing in this Consent Judgment shall be interpreted to
6 relieve DHSI from any obligation to comply with any pertinent state or federal law or regulation.

7 10. **NOTICES.** Unless specified herein, all notices required to be provided pursuant to this Consent
8 Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return
9 receipt requested; or (iii) overnight courier to any party by the other party at the following addresses:

10 To DHSI:

10 Mr. Victor Morrison
11 Dr. Hauschka Skincare, Inc.
12 20 Industrial Drive East
13 South Deerfield, MA 01373

To PIA:

Public Interest Alliance, LLC
c/o Jeffrey M. Judd
222 Sutter Street, Suite 600
San Francisco, CA 94108

13 With a copy to:

13 Mr. Robert Tucker
14 Tucker & Latifi, LLP
15 160 East 84th Street
16 New York, NY 10028

17 Any Party, from time to time, may specify in writing to the other Party a change of notice address.

18 11. **COUNTERPARTS, SIGNATURES; DISPUTES.** This Consent Judgment may be executed in
19 counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which,
20 when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid
21 as the original. The Court shall maintain jurisdiction under CCP § 664.6 and, if after entry of a Consent
22 Judgment, either party determines that the other is in breach of this Consent Judgment, such party shall provide
23 to the other written notice of such alleged breach pursuant to Section 10, above, and the noticed party shall
24 thereafter have thirty (30) days within which to attempt to cure or otherwise resolve the alleged breach (the
25 "Cure Period"). If the alleged breach is not resolved or cured to the reasonable satisfaction of the noticing party
26 during the Cure Period, the noticing party may thereafter bring a noticed motion to have the Court resolve the
27 dispute by order, including, as applicable, an order awarding the prevailing party reasonable attorney fees and
28 costs incurred in connection with the motion.

12. **COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f).** PIA shall
comply with the reporting form requirements referenced in Health & Safety Code section 25249.7(f).

1 13. ADDITIONAL POST EXECUTION ACTIVITIES. PIA and DHSI each agrees to mutually
2 employ its best efforts to support the entry of this agreement as a Consent Judgment and obtain
3 approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that,
4 pursuant to California Health & Safety Code section 25249.7, a noticed motion is required to obtain
5 judicial approval of this Consent Judgment, which PIA shall draft and file, and DHSI shall join. If any
6 third party objection to the noticed motion is filed, PIA and DHSI shall work together to file a joint
7 reply and appear at any hearing before the Court. This provision is a material component of the
8 Consent Judgment and shall be treated as such in the event of a breach.

9 14. MODIFICATION. This Consent Judgment may be modified only: (1) by written agreement
10 of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a
11 successful motion of any party and entry of a modified Consent Judgment by the Court.

12 15. AUTHORIZATION. The undersigned are authorized to execute this Consent Judgment on
13 behalf of their respective parties and have read, understood, and agree to all of the terms and
14 conditions of this Consent Judgment.

15 Dated: _____, 2014

PUBLIC INTEREST ALLIANCE LLC

17 By:

Daniel P. Madison, *Managing Member*

18 Dated: March 11, 2014

DR. HAUSCHKA SKIN CARE, INC.

21 By:

Victor Morrison, *Chief Executive Officer* 3/12/14

22 Approved as to form:

23 JUDD LAW GROUP LLP

24 By:

Jeffrey M. Judd
Attorneys for PIA

Dated: March 10, 2014

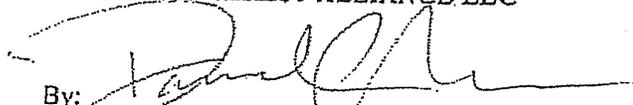
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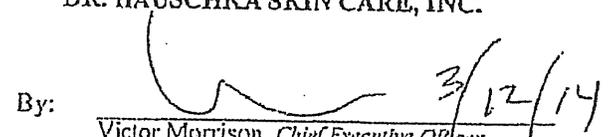
15 Dated: 3/14, 2014

PUBLIC INTEREST ALLIANCE, LLC

16
17 By: 
18 Daniel P. Madison, *Managing Member*

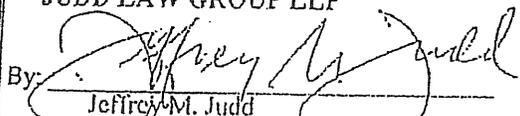
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DR. HAUSCHKA SKIN CARE, INC.

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21 By:  3/12/14
Victor Morrison, *Chief Executive Officer*

22 Approved as to form:

23 JUDD LAW GROUP LLP

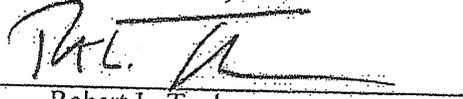
24 By: 
25 Jeffrey M. Judd
26 Attorneys for PIA

Dated: March 10, 2014

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2 Approved as to form:

3 TUCKER & LATIFI, LLP

4 By:



5 Robert L. Tucker
6 Attorneys for DHSI

Dated: March 11, 2014

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EXHIBIT A

DR. HAUSCHKA-branded Bronzing Powder