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JUN 06 2014
ENDORSED
FILED
ALAMEDA COUNTY

JUL - 1 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 J.A. COSMETICS US, INC.**

) Date: July 1, 2014

) Time: 2:30 p.m.

) Dept: 17

) Res'n No. 1518342

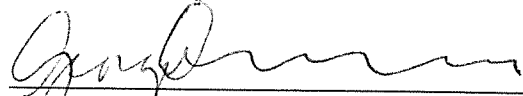
Action Filed: October 3, 2013

1 In the above-captioned action, plaintiff Public Interest Alliance LLC, and defendant J.A.
2 Cosmetics US, Inc. ("JA"), having agreed through their respective counsel that Judgment be entered
3 under the terms of their settlement in the form of the proposed consent judgment (the "Consent
4 Judgment"), and following this Court's entry of an Order approving the Consent Judgment on June __,
5 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 Consent Judgment attached hereto as Exhibit A and by this reference
9 incorporated herein. The Court shall maintain jurisdiction under Code of Civil Procedure section 664.6
10 to resolve any allegations by JA or PIA that the other has breached any terms of the Consent Judgment,
11 as provided in Section 16.f of the Consent Judgment.

12 **IT IS SO ORDERED:**

13
14 Dated: July 7, 2014



15 JUDGE, SUPERIOR COURT

16 **GEORGE C. HERNANDEZ, JR.**

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (this "Agreement") is entered as of this 16 day of May 2014 by and between THE PUBLIC INTEREST ALLIANCE LLC, a California limited liability company ("PIA"), and J.A. Cosmetics US, Inc., a Delaware corporation ("JA").

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts, understandings, and intentions:

A. PIA is a California limited liability company whose mission is to improve human health, preserve the natural environment, and promote compliance with environmental and consumer disclosure laws.

B. On or around June 12, 2013, PIA served a 60-Day Notice of Violation of Proposition 65 re: Titanium Dioxide (airborne, unbound particles of respirable size) on E.L.F./JA Cosmetics Corp. (the "NOV"). Among other things, PIA alleged in the NOV that E.L.F./JA had exposed California consumers to Titanium Dioxide (airborne, unbound particles of respirable size) through the sale and use of certain cosmetic and personal care powders.

C. JA denies all of the allegations in the NOV and Complaint (as defined below) and maintains that all products it has manufactured, imported, distributed and/or sold in California, including the Covered Products (as defined below), have been and are in compliance with all laws.

D. JA and PIA are interested in settling the claims alleged in the NOV and Complaint (as defined below).

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. Effective Date and Settlement Payment.

a. Effective Date. The parties acknowledge and agree that this Agreement shall not be effective unless and until a court with competent jurisdiction has entered a consent judgment containing the terms herein (the date such consent judgment is entered is hereinafter referred to

as the "Effective Date"). In the event such consent judgment is not entered by a court with competent jurisdiction within one (1) year of the date first written above, this Agreement shall be null and void.

b. Settlement Payment. For and in consideration of the payment of TWENTY THOUSAND and No/100 Dollars (\$20,000.00) (the "Settlement Payment") in the aggregate and as allocated below, the parties hereby agree that all claims asserted by PIA against JA in the NOV and in the Complaint styled, *Public Interest Alliance LLC v. Access Business Group, LLC, et al.* (Alameda Superior Case No. RG136997992) (the "Complaint"), in which JA will be substituted for a fictitiously named defendant, will be fully settled and resolved. Payment pursuant to section 1.b.1.A, below, shall be by check to the California Office of Environmental Health Hazard Assessment ("OEHHA"), Fiscal Operations Branch Chief, P.O. Box 4010, Sacramento, CA 95812-4010 (EIN68-02844860). Payment pursuant to section 1.b.1.B, below, shall be made by check or wire transfer to a trust account maintained by Judd Law Group LLP, and payment pursuant to section 1.b.2, below, shall be made by check or wire transfer to a bank account maintained by Judd Law Group LLP, all payments to be made within five (5) business days after JA receives written notice by email to JA's outside counsel at mweiss@hunton.com (or other designated person) from PIA's counsel advising that a court with competent jurisdiction has entered a consent judgment containing the terms herein. The Settlement Payment shall be allocated as follows:

1. *Penalty*. JA shall pay FOUR THOUSAND and No/100 Dollars (\$4,000.00) as a penalty pursuant to California Health and Safety Code section 25249.7 (the "Penalty Payment"). The Penalty Payment shall be allocated between the OEHHA and PIA, with seventy-five percent (75%) to be paid to OEHHA and twenty-five percent (25%) to be allocated to PIA.

A. *Payment to OEHHA*. THREE THOUSAND and No/100 Dollars (\$3,000.00) shall be paid to the OEHHA.

B. *Payment to PIA*. ONE THOUSAND and No/100 Dollars (\$1,000.00), shall be paid to The Public Interest Alliance LLC c/o Judd Law Group LLP (EIN 46-3826361); and

2. *Payment to Judd Law Group LLP*. SIXTEEN THOUSAND and No/100

Dollars (\$16,000.00) shall be paid to Judd Law Group LLP (EIN 90-0789749).

2. JA's Covenants in Lieu of Injunction.

A. *Reformulation Covenant.* JA hereby covenants and agrees that within ninety (90) days after the Effective Date it will cease and desist from selling, or offering to sell, to California consumers the products identified on Exhibit A, attached hereto and by this reference incorporated herein (the "Covered Products"), unless and until such Covered Products have been reformulated by deleting Titanium Dioxide as an ingredient or unless and until JA complies with the provisions of Paragraph 2.C., below (Covered Product Warnings).

B. *Current Inventory.* The parties acknowledge and agree that Covered Products already manufactured, in inventory, with distributors, wholesalers, customers, retailers, franchisees, cooperative members and/or licensees, or otherwise in the stream of commerce prior to the expiration of ninety (90) days after the Effective Date are not subject to the covenant in section 2.A., above.

C. *Covered Product Warnings.*

1. **Product Labeling.** Any warning provided under this Agreement shall be (a) affixed to, or printed on, the Covered Product itself in immediate proximity to any marketing, ownership, or pricing tags or labels or, if none, to a surface of the product that would be readily visible to a purchaser or user upon inspection or use of the Covered Product, or (b) comply with Paragraph 2.C.2, below. Each warning shall be of such size, color, and font, and shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Covered Product the warning applies, so as to minimize the risk of consumer confusion. A warning provided pursuant to this Agreement shall state:

WARNING: This product contains chemicals known to the State of California

to cause cancer and birth defects or other reproductive harm.

2. **Internet Website Warning.** A warning shall be provided in conjunction with internet sales of the Covered Products to a California ship-to address, which warning shall appear on the “Details” page that is displayed when an internet user clicks on a Covered Product for a description thereof as illustrated on Exhibit B attached hereto. A warning substantially conforming to the following warning shall be used and shall appear with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

In the event JA changes its internet applications program after the Effective Date, which such program does not allow the precise functionality described above, it shall ensure that a warning substantially and materially conforming to the warning above is displayed when an internet user with a California ship-to address clicks on a Covered Product for a description thereof or other related information (including by placing such warning on the web page with the product details or description).

D. *Opt-In to NSRL Consent Judgment.* PIA has offered to work collaboratively with a joint defense group comprised of manufacturers of personal care and cosmetics products (the “JDG”) to, among other things, develop a No Significant Risk Level (“NSRL”) for Titanium Dioxide (airborne, unbound particles of respirable size). In the event that PIA enters into an agreement or consent judgment with the JDG, or any other person or entity that received a 60-Day Notice of Violation of Proposition 65 materially similar to the NOV, which such agreement or consent judgment establishes an NSRL for Titanium Dioxide (airborne, unbound particles of respirable size) (the “NSRL Consent Judgment”), then JA shall have the right to opt-in to such NSRL Consent Judgment, and any payment made to PIA or its counsel under this Agreement shall be credited to JA as an offset against any opt-in payments established under the NSRL Consent Judgment.

3. Releases.

a. *PIA's Release of JA.* PIA acting on its own behalf and in the public interest hereby waives and releases JA, its past and present parents, subsidiaries and affiliated companies and each of its shareholders, members, heirs, successors, predecessors, assigns, conservators, directors, officers, employees, representatives, subsidiaries, parent companies, affiliates, agents, partners, joint venturers, insurers, attorneys, and sureties, if any, and each entity to whom JA directly or indirectly distributed or sold Covered Products, including, but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, as well as each entity involved in the manufacturing, assembly or production of the Covered Products (collectively, "Releasees"), from any and all claims for violations of Proposition 65 through ninety (90) days after the Effective Date based on unwarned exposures to Titanium Dioxide (airborne, unbound particles of respirable size) from the Covered Products as set forth in the NOV and/or Complaint. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 with respect to exposures to Titanium Dioxide (airborne, unbound particles of respirable size) from the Covered Products, as set forth in the NOV and/or the Complaint.

PIA's release, on its own behalf, shall be effective as a full and final accord and satisfaction, and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of PIA, acting on its own behalf, of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to Titanium Dioxide (airborne, unbound particles of respirable size) in the Covered Products. The foregoing releases are expressly conditioned on the following:

- i. Receipt of funds in the amount of the Settlement Payment; and
- ii. Performance of the covenants described in Paragraphs 2.A and 2.C, above

(to the extent applicable and subject to Paragraph 16.f).

b. *JA's Release of PIA.* JA, on behalf of itself, its past and current shareholders,

members, heirs, successors, predecessors, assigns, conservators, directors, officers, employees, representatives, subsidiaries, parent companies, affiliates, agents, partners, joint venturers, insurers, attorneys, and sureties, if any, hereby waives, releases and forever discharges any and all claims against PIA and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by PIA and its attorneys and other representatives, whether in the course of investigating claims or otherwise, seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

4. Waiver. This is a full, final and binding release applying to all unknown and unanticipated injuries or damages relating to or arising out of the claims alleged or that could have been alleged relating to the Covered Products, as well as those relating to the Covered Products now known, whether or not disclosed, and PIA and JA do hereby relinquish and waive all rights or benefits conferred upon them by the provisions of Section 1542 of the California Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

5. No Admission of Liability. PIA understands the liability alleged in the NOV and Complaint is disputed by JA; that this Agreement is a compromise and shall not be construed as an admission of liability, and JA expressly denies the material factual and legal allegations contained in the NOV and Complaint or claims related thereto, and maintains that all products it has manufactured, imported, distributed, and/or sold in California, including the Covered Products, have been and are in compliance with all laws.

6. Warranties.

a. *PIA*. PIA warrants and represents that PIA is competent to give this complete release, and has fully authorized the signatory below to give this complete release and discharge on PIA's behalf.

b. JA. JA warrants and represents that JA is competent to give this complete release, and has fully authorized the signatory below to give this complete release and discharge on JA's behalf.

7. Attorneys' Fees. PIA and JA each acknowledge and agree that each will bear its own costs, expenses and attorneys' fees arising out of and/or connected with the NOV and Complaint, and the negotiation, drafting and execution of this Agreement.

8. Notices. Unless otherwise specified in this Agreement, all correspondence and notices required to be provided under this Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class registered or certified mail, return receipt requested; or (c) overnight courier to any party by the other party to the following addresses:

To PIA: Jeffrey M. Judd
Judd Law Group LLP
222 Sutter Street, Suite 600
San Francisco, CA 94108

To JA: General Counsel
J.A. Cosmetics US, Inc.
10 West 33rd Street
Suite 802
New York, NY 10001

With a Copy To: Malcolm C. Weiss
HUNTON & WILLIAMS LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071

From time to time, any party may specify in writing to the other a change of address to which all notices and other communications shall be sent.

9. Construction of Agreement. This Agreement is the product of negotiation and preparation by and between PIA and JA and their respective attorneys; and that, therefore, PIA and JA expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or the other, or by either party's respective attorneys, and will be construed accordingly.

10. Governing Law. This Agreement shall be interpreted in accordance with and governed in

all respects by the laws of the State of California.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of PIA and JA.

12. Severability. If any provision of this Agreement is for any reason held invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

13. Modification. This Agreement may be amended or modified only by a written agreement duly executed by PIA and JA at the time of such amendment or modification.

14. Headings. The paragraph headings are solely for the convenience of the parties and shall not be utilized in the construction of any of the terms of this Agreement.

15. Preservation of Industry Competitiveness. The intent of this section is to protect the competitive interests of JA arising from PIA's claims and to ensure that by settling the allegations as to the Covered Products, JA is not disadvantaged in regard to its competitors. Specifically, the parties agree that should any agreement, consent judgment, court decision or other relevant determination or decision by a court, PIA, California Office of Environmental Health Hazard Assessment, or the California Attorney General's Office, or any change in law, rule or regulation concerning similar personal care products containing Titanium Dioxide have a material impact on, or contain provisions less stringent than, the terms of this Agreement, the benefits thereof shall accrue to JA and this Agreement shall be amended by a stipulation and proposed order, a copy of which shall be provided to the Attorney General's office five (5) business days prior to submission to the Court, to provide JA the benefit thereof (including, without limitation, by eliminating the requirements of Sections 2.A and 2.C, to the extent applicable). Further, should (i) PIA decide not to pursue its claims against other manufacturers, distributors, or retailers or (ii) if there be a court decision involving any other person or entity that received a Proposition 65 60-Day Notice of Violation alleging Titanium Dioxide in similar personal care products and such decision is in whole or in part favorable to the defendant(s) in such action, then any elements of such decision that would benefit JA shall be incorporated into this Agreement by a stipulation and proposed

order, a copy of which shall be provided to the Attorney General's office five (5) business days prior to submission to the Court, and shall thereby accrue to JA and provide JA with the benefit thereof (including, without limitation, in the case of clause (i) and/or (ii), by eliminating the requirements of Sections 2.A and 2.C, to the extent applicable). PIA's approval of and support for any stipulation or proposed order offered by JA relating to this Paragraph 15 shall not be unreasonably withheld by PIA. Should JA request that PIA agree to a stipulation and/or a proposed order relating to this Paragraph 15, and should PIA not respond to JA's request within five (5) business days, then such lack of response by PIA shall be and shall be deemed by the parties and the Court as agreed to by PIA. Should PIA in the future become aware of facts or circumstances that have not been publicly disclosed that, in PIA's opinion might help preserve JA's competitiveness, it shall so notify JA's counsel by email within forty-five (45) days after PIA becomes aware of such non-public facts or circumstances.

16. Miscellaneous.

a. *Entire Agreement.* This Agreement contains the entire agreement between PIA and JA. PIA and JA each warrants and represents that no promise or inducement has been offered or received, except as herein recited for the releases of PIA and JA recited to be released herein, and PIA and JA further warrant that, except as expressly provided herein, this Agreement is executed without reliance on any statement or representation by PIA or JA, persons or entities recited to be released herein, or any of their representatives, attorneys, investigators, agents, experts, consultants, adjusters or insurers, concerning the nature and extent of the damages which may have been sustained, if at all, or concerning the rights of PIA and JA, or of the legal liability therefore, or the rights, duties or obligations of any party, person or entity recited to be released herein.

b. *Consultation With Attorneys.* PIA and JA each acknowledge and warrant that each has consulted at length in this matter with his, her, or its attorney.

c. *No Fraud, Duress, or Undue Influence.* PIA and JA each further warrant that he, she, or it executes this Agreement freely, voluntarily and without fraud, duress or undue

influence.

d. *Signatories.* Signatories on the behalf of the parties represent that they are authorized to bind the parties to this Agreement.

e. *Counterparts.* This Agreement may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

f. *Resolution of Post-Consent Judgment Disputes About This Agreement.* If after entry of a consent judgment, either PIA or JA determines that the other is in breach of the terms of this Agreement, such party shall provide to the other written notice of such alleged breach pursuant to Section 8, above, and the noticed party shall thereafter have thirty (30) days within which to attempt to cure or otherwise resolve the alleged breach (the "Cure Period"). If the alleged breach is not resolved or cured to the reasonable satisfaction of the noticing party during the Cure Period, the noticing party may thereafter bring a noticed motion to have the Court resolve the dispute by order.

17. Covenant Not to Sue. PIA and JA agree that he, she, or it will not file, or permit to be filed, in his, her, or its name or on his, her, or its behalf any lawsuit based on any of the matters released herein. This Agreement may be pled as a full and complete defense of any action, proceeding or claim, or as a basis for abatement of or injunction against such action.

18. No Publicity. The parties, including counsel for PIA and JA, agree not to issue any press release or make any other statement reasonably likely to be disseminated to the public regarding this Agreement, or the subject matter hereof, including in any attorney advertising or commentary on the internet by counsel using the names of the parties hereto or the Covered Products; provided, however, this section 18 does not, and shall not pertain to factual statements about this Agreement made in connection with any required reports, motions, hearings, or other proceedings brought, or disclosures made to comply with Health & Safety Code section 25249.7,

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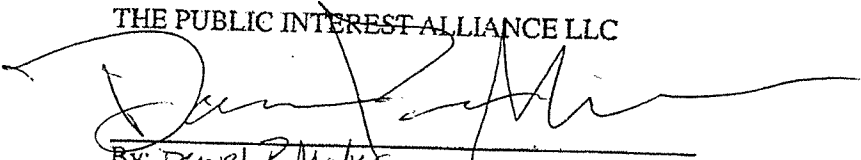
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subsections (f) and (g) and California Code of Regulations, Title 11, sections 3003 and 3004.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

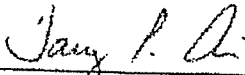
THE PUBLIC INTEREST ALLIANCE LLC

Dated: May 16, 2014


By: Daniel P. Madison
Title: Managing Member

J.A. COSMETICS US, INC.

Dated: May 16, 2014


By: TARANG P. AMIN
Title: PRESIDENT & CEO
