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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 California limited liability company) Case No. RG13697992
14 Plaintiff,) [PROPOSED] CONSENT JUDGMENT RE:
15 vs.) SCIENCE OF SKINCARE, LLC (d/b/a
16 ACCESS BUSINESS GROUP LLC, et al.) INNOVATIVE SKINCARE)
17 Defendants.) (Cal. Health & Safety Code section 25249.6 et
) seq.)
)
)
)

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19 1. INTRODUCTION

20 1.1 **Parties.** This Consent Judgment is entered into by and between plaintiff The Public
21 Interest Alliance LLC (“PIA”) and Science of Skincare, LLC (d/b/a Innovative Skincare) (“Science of
22 Skincare”), with PIA and Science of Skincare 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 **Science of Skincare.** Science of Skincare employs ten or more persons and is a
27 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
28 Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

1 1.4 **General Allegations**

2 1.4.1 PIA alleges that Science of Skincare manufactured, imported, sold and/or
3 distributed for sale in California, cosmetic and personal care powders that contain Titanium dioxide
4 (“TiO₂”). PIA alleges that, during use, some TiO₂ is released into the air, exposing consumers to
5 unbound TiO₂ particles of respirable size without the health hazard warnings that Proposition 65
6 requires. The products that are the subject of this Consent Judgment are identified on Exhibit A
7 attached hereto (the “Covered Products”). TiO₂ is a chemical widely used as a whitening agent in a
8 wide range of consumer products, including, without limitation, paper, paints, printers’ inks,
9 toothpaste, cosmetics, and personal care products. In 2010, the International Agency for Research on
10 Cancer (“IARC”) issued Monograph 93, which concluded that TiO₂ is “possibly carcinogenic” to
11 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 alleges that the Listed Chemical is released into the air when
19 the Covered Products are applied to the skin by brush, pad or sponge, leading to human exposures.

20 1.5 **Notice of Violation.** On or about June 21, 2013, PIA served Science of Skincare and
21 certain requisite public enforcement agencies with Proposition 65 60-Day Notices of Violation and
22 Proposition 65 Supplemental Notices of Violation (the “NOVs”) that provided the recipients with
23 notice of alleged violations of Proposition 65 based on the recipient’s alleged failure to warn customers
24 and consumers, workers and other individuals that the Covered Products exposed users in California to
25 the Listed Chemical. To the best of the Parties’ knowledge, no public enforcer has commenced or is
26 diligently prosecuting the allegations set forth in the NOVs.

27 1.6 **Complaint.** On October 3, 2013, PIA filed a Complaint in the Superior Court in and
28 for the County of Alameda styled, *PIA v. Access Business Group, LLC, et al.*, Case No. RG13697992,

1 alleging violations of Proposition 65 arising from unwarned exposures to the Listed Chemical when
2 the Covered Products are used (the "Complaint"). On May 14, 2014, Science of Skincare filed an
3 Answer to the Complaint, containing a general denial and multiple affirmative defenses.

4 1.7 **No Admission.** Science of Skincare denies the material factual and legal allegations
5 contained in the NOV's and Complaint, and maintains that all products it has manufactured, imported,
6 distributed, and/or sold in California, including the Covered Products, have been and are in compliance
7 with all laws. Nothing in this Consent Judgment shall be construed as an admission by Science of
8 Skincare of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with
9 this Consent Judgment constitute or be construed as an admission by Science of Skincare of any fact,
10 finding, conclusion, issue of law, or violation of law. This section shall not, however, diminish or
11 otherwise affect Science of Skincare's obligations, responsibilities, and duties under this Consent
12 Judgment.

13 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
14 stipulate that this Court has jurisdiction over Science of Skincare as to the allegations contained in the
15 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter
16 and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of
17 Civil Procedure § 664.6.

18 2. **DEFINITIONS**

19 2.1 **California Customers.** "California Customer" shall mean any customer that Science
20 of Skincare reasonably understands is located in California, has a California warehouse or distribution
21 center, maintains a retail outlet in California or has made any internet sales into California between
22 September 2, 2012, and the Effective Date, inclusive.

23 2.2 **Effective Date.** "Effective Date" shall mean the date this Court enters this Consent
24 Judgment.

25 2.3 **Reformulated Products.** "Reformulated Products" shall mean Covered Products that
26 contain no Titanium Dioxide that was intentionally added as a product ingredient.

27 2.4 **Retailer.** "Retailer" means a Science of Skincare authorized entity or person or entity
28 that offers a Product for retail sale to consumers in the State of California.

1 **3. COVENANTS IN LIEU OF INJUNCTION**

2 3.1 **Reformulation Covenant.** Since approximately September 2013, Science of Skincare
3 has not sold or otherwise distributed any Covered Product in California or to a California Customer,
4 and Science of Skincare agrees that, subject to the terms of this Consent Judgment, it shall not
5 distribute or sell to California Customers, manufacture or import for distribution or sale to California
6 Customers or cause to be manufactured or imported for distribution or sale to California Customers,
7 any Covered Products that are not Reformulated Products or unless and until Science of Skincare
8 complies with the provisions of Paragraph 3.5., below (Product Warnings) (the “Reformulation
9 Covenant”).

10 3.2 **Intentionally Deleted.**

11 3.3 **Intentionally Deleted.**

12 3.4 **No Current Inventory.** PIA and its counsel acknowledge that Science of Skincare has
13 provided PIA and its counsel with evidence supporting the conclusion that since approximately
14 September 2013, Science of Skincare has not sold or otherwise distributed any Covered Product in
15 California or to a California Customer. To Science of Skincare’s best knowledge, as of the Effective
16 Date, no Retailers have any Covered Products remaining in inventory for sale in California or to a
17 California Customer.

18 **3.5 Product Warnings.**

19 3.5.1 **Product Labeling.** If Science of Skincare sells any Covered Products in the
20 future that are not Reformulated Products, Science of Skincare shall provide a warning under this
21 Consent Judgment, which shall be (1) affixed to the exterior packaging of such product or (2) affixed
22 to the Covered Product itself in immediate proximity to any marketing, ownership or pricing tags or
23 labels or, if none, to a surface of the product that would be immediately visible to a purchaser or user
24 upon inspection or use. Each warning shall be of such size, color and font and shall be prominently
25 placed with such conspicuousness as compared with other words, statements, designs, or devices as to
26 render it likely to be read and understood by an ordinary individual under customary conditions before
27 purchase. Each warning shall be provided in a manner such that the consumer or user understands to
28 which specific product the warning applies, so as to minimize the risk of consumer confusion. A

1 are full and complete, and are a true and accurate reflection of sales of the Covered Products in
2 California during the relevant period. If, within nine months after the Effective Date, PIA discovers
3 and presents to Science of Skincare evidence that prior to execution of this Consent Judgment the
4 Covered Products were distributed by Science of Skincare in sales volumes materially different than
5 those identified by Science of Skincare prior to execution of this Consent Judgment, then Science of
6 Skincare shall be liable for an additional penalty amount as well as additional attorney fees expended
7 by PIA in the public interest. In the event PIA believes there is evidence that any of the Covered
8 Products have been distributed by Science of Skincare in sales volumes materially different than those
9 identified by Science of Skincare, PIA shall provide Science of Skincare with a written demand for
10 additional penalties and attorney fees under this Section. After service of such demand, Science of
11 Skincare shall have thirty (30) days to meet and confer with PIA about the demand. Should this 30-
12 day period pass without any resolution between the Parties, PIA shall be entitled to file a noticed
13 motion, and the prevailing party shall be entitled to all reasonable attorney fees and costs relating to
14 that action. Any additional penalty or attorney fee payments must be approved by the Court and
15 comply with Title 11, California Code of Regulations section 3000, et seq., including provision of at
16 least 45 days' notice to the Attorney General's office prior to the hearing date.

17 4.2 **Reimbursement of Fees and Costs.** Science of Skincare and PIA have agreed on the
18 compensation due PIA under the principles of Code of Civil Procedure Section 1021.5. Science of
19 Skincare agrees to pay attorney fees and costs incurred as a result of investigating, bringing this matter
20 to Science of Skincare's attention, negotiating a settlement in the public interest, and seeking court
21 approval in the amount of Six Thousand Five Hundred Dollars (\$6,500). Science of Skincare further
22 agrees that it shall not oppose Plaintiffs' application to the court for approval of such fees. All attorney
23 fee and cost reimbursement payments shall be made within five (5) business days after the Effective
24 Date and delivered to the addresses listed in Section 4.3 below. Any failure by Science of Skincare to
25 deliver the required attorney fee and cost reimbursement payment to Judd Law Group LLP within two
26 (2) days after the required date shall result in imposition of a 10% simple interest assessment on the
27 undelivered payment(s) until delivery.

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1 licensors, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65
2 through the Effective Date based on unwarned exposures to the Listed Chemicals in the Covered
3 Products, as set forth in the NOV and Complaint. Compliance with the terms of this Consent
4 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed
5 Chemicals from the Covered Products, as set forth in the NOV's. The Parties further understand and
6 agree that this Section 5.1 release shall not extend upstream to any entities, other than affiliates of
7 Science of Skincare, LLC.

8 As of the Effective Date, PIA represents to Science of Skincare that PIA is not in possession of
9 information pertaining to any other alleged violations by Science of Skincare or Releasees of
10 Proposition 65 covered by the NOV and Complaint.

11 **5.2 Science of Skincare's Release of PIA.** Science of Skincare, on behalf of itself, its past and
12 current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims
13 against PIA and its attorneys and other representatives, for any and all actions taken or statements
14 made (or those that could have been taken or made) by PIA and its attorneys and other representatives,
15 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it
16 in this matter with respect to the Covered Products.

17 **6. PRESERVATION OF COMPETITIVENESS.** The intent of this section 6 is to protect the
18 competitive interests of Science of Skincare arising from PIA's claims and to ensure that by settling
19 the allegations in the NOV and the Complaint, Science of Skincare is not disadvantaged with respect to
20 its competitors. Specifically, the parties agree that should any agreement or consent judgment be
21 entered into by PIA, the California Office of Environmental Health Hazard Assessment, or the
22 California Attorney General's Office concerning personal care products similar to the Covered
23 Products that contains provisions that would materially impact the terms of this Agreement, such
24 benefits shall accrue to Science of Skincare and this Agreement shall be amended by a stipulation and
25 proposed order, a copy of which shall be provided to the Attorney General's office at least five (5)
26 business days prior to submission to the Court to provide Science of Skincare the benefit thereof.
27 Further, should there be a court decision involving any other person or entity that received a
28 Proposition 65 60-Day Notice of Violation alleging Titanium Dioxide in personal care products similar

1 to the Covered Products and such decision is in whole or in part favorable to the defendant(s) in such
2 action, then that decision shall be incorporated into this Agreement by a stipulation and proposed
3 order, a copy of which shall be provided to the Attorney General's office at least five (5) business days
4 prior to submission to the Court. Further, should any consent judgment establish a "No Significant
5 Risk Level" for Titanium Dioxide (airborne, unbound particles of respirable size) and provide for other
6 parties to opt-in, any payments Science of Skincare has made pursuant to this Agreement shall be
7 offset against any opt-in payment requirements of such consent judgment. Should PIA in the future
8 become aware of facts or circumstances that have not been publicly disclosed that, in PIA's opinion
9 affect Science of Skincare's competitiveness, it shall so notify Science of Skincare's counsel by email
10 within forty-five (45) days after PIA becomes aware of such non-public facts or circumstances. PIA
11 shall prepare all such stipulations and proposed orders, at PIA's sole expense, and shall make
12 reasonable efforts to obtain the parties' signatures thereto.

13 7. **COURT APPROVAL.** This Consent Judgment is not effective until it is entered by the Court
14 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
15 year after it has been fully executed by all Parties. If the Court does not approve the Consent
16 Judgment, the Parties shall meet and confer as to whether to modify the language or appeal the ruling.
17 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal
18 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate
19 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment. If
20 the Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal
21 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
27 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment
28 are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or

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

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

11 To Science of Skincare:

Bryan Johns
SCIENCE OF SKINCARE, LLC
3333 N. San Fernando Blvd.
Burbank, CA 91504

To PIA:

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

15 With a copy to:

16 Mr. Albert T. Liou
LKP Global Law, LLP
1901 Avenue of the Stars, Suite 480
17 Los Angeles, California 90067

18 Any Party, from time to time, may specify in writing to the other Party a change of address to
19 which all notices and other communications shall be sent.

20 11. **COUNTERPARTS, FACSIMILE AND PDF SIGNATURES.** This Consent Judgment may
21 be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an
22 original, and all of which, when taken together, shall constitute one and the same document. A
23 facsimile or pdf signature shall be as valid as the original.

24 12. **COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f).** PIA and its
25 attorneys agree to comply with the reporting form requirements referenced in California Health &
26 Safety Code section 25249.7(f).

27 13. **POST EXECUTION.** PIA and Science of Skincare each agrees to mutually employ its best
28 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the

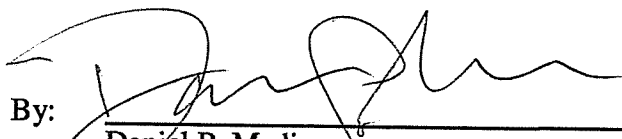
1 Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to
2 California Health & Safety Code section 25249.7, a noticed motion is required to obtain judicial
3 approval of this Consent Judgment, which PIA shall draft and file, and Science of Skincare shall join.
4 If any third party objection to the noticed motion is filed, PIA and Science of Skincare shall work
5 together to file a joint reply and appear at any hearing before the Court. The Court shall maintain
6 jurisdiction under Code of Civil Procedure section 664.4 and, if after entry of a Consent Judgment,
7 either party determines that the other is in breach of this Agreement, such party shall provide to the
8 other written notice of such alleged breach pursuant to Section 10, above, and the noticed party shall
9 thereafter have thirty (30) days within which to attempt to cure or otherwise resolve the alleged breach
10 (the "Cure Period"). If the alleged breach is not resolved or cured to the satisfaction of the noticing
11 party during the Cure Period, the noticing party may thereafter bring a noticed motion to have the
12 Court resolve the dispute by order, including, as applicable, an order awarding he prevailing party
13 reasonable attorney fees and costs incurred in connection with the motion. This provision is a material
14 component of the Consent Judgment and shall be treated as such in the event of a breach.

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

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

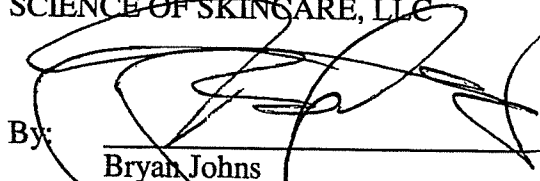
21 Dated: June 20, 2014

PUBLIC INTEREST ALLIANCE LLC

22
23 By: 
24 Daniel P. Madison
Managing Member

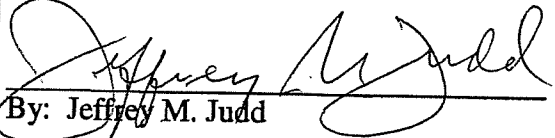
25 Dated: June 18, 2014

SCIENCE OF SKINCARE, LLC

26
27 By: 
28 Bryan Johns
President/CEO

1 Approved as to form:


2 JUDD LAW GROUP LLP

3 
4 By: Jeffrey M. Judd

Dated: June 20, 2014

5 Attorneys for Plaintiff
6 PUBLIC INTEREST ALLIANCE LLC

7
8 LKP Global Law, LLP

9 
10 By: Albert T. Liou

Dated: June 20, 2014

11 Attorneys for Defendant
12 SCIENCE OF SKINCARE, LLC (d/b/a INNOVATIVE SKINCARE)

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