

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

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) Case No. RG13697992
14 California limited liability company))
15 Plaintiff,) [PROPOSED] CONSENT JUDGMENT –
16 vs.) NIPPON MENARD COSMETIC CO., LTD.
17 ACCESS BUSINESS GROUP LLC, et al.) (Cal. Health & Safety Code section 25249.6 et
18 Defendants.) seq.)

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 Nippon Menard Cosmetic Co., Ltd. (“NMCC”), with PIA and
22 NMCC 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 **NMCC.** NMCC employs ten or more persons and, for purposes of this Consent
27 Judgment only agrees that it is a “person in the course of doing business” for purposes of the Safe

1 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et*
2 *seq.* (“Proposition 65”).

3 1.4 **General Allegations**

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

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

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

21 1.5 **Notice of Violation.** On or about June 12, 2013, PIA served NMCC and certain
22 requisite public enforcement agencies with Proposition 65 60-Day Notices of Violation and
23 Proposition 65 Supplemental Notices of Violation (the “NOVs”) that provided the recipients with
24 notice of alleged violations of Proposition 65 based on the recipient’s alleged failure to warn customers
25 and consumers, workers and other individuals that the Covered Products exposed users in California to
26 the Listed Chemical. To the best of the Parties’ knowledge, no public enforcer has commenced or is
27 diligently prosecuting the allegations set forth in the NOVs.

1 1.6 **Complaint.** On October 3, 2013, PIA filed a Complaint in the Superior Court in and
2 for the County of Alameda styled, *PIA v. Access Business Group, LLC, et al.*, Case No. RG13697992,
3 alleging violations of Proposition 65 arising from unwarned exposures to the Listed Chemical when
4 the Covered Products are used (the “Complaint”).

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

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

18 **2. DEFINITIONS**

19 2.1 **California Customers.** “California Customer(s)” shall mean any customer that NMCC
20 reasonably understands is located in California, has a California warehouse or distribution center,
21 maintains a retail outlet in California or has made any internet sale into California between September
22 2, 2012 and the Effective Date, inclusive.

23 2.2 **Effective Date.** “Effective Date” shall mean the date on which this Consent Judgment
24 is approved and entered by the Court.

25 2.3 **Reformulated Products.** “Reformulated Products” shall mean Covered Products that
26 contain no more than trace amounts of Titanium Dioxide (airborne, unbound chemicals of respirable
27 size) that were not added intentionally by NMCC.

1 delivered to the addresses listed in Section 4.3 below. Any failure by NMCC to deliver the required
2 civil penalty payments to either OEHHA or Judd Law Group LLP within two (2) days of the required
3 date shall result in the imposition of a ten percent (10%) simple interest assessment on the undelivered
4 payment(s) until delivery.

5 4.2 Reimbursement of Fees and Costs. NMCC and PIA have agreed on the compensation
6 due PIA's counsel under the principles of Code of Civil Procedure Section 1021.5. NMCC agrees to
7 pay attorneys' fees and costs incurred as a result of investigating, bringing this matter to NMCC's
8 attention, negotiating a settlement in the public interest, and seeking court approval in the amount of
9 Five Thousand Dollars (\$5,000.00). NMCC further agrees that it shall not oppose Plaintiff's
10 application to the court for approval of such fees. All attorneys' fees and cost reimbursement
11 payments shall be made within ten (10) business days after the Effective Date and delivered to the
12 addresses listed in Section 4.3 below. Any failure by NMCC to deliver the required attorneys' fees
13 and cost reimbursement payment to the Judd Law Group LLP within two (2) days after the required
14 date shall result in imposition of a ten percent (10%) simple interest assessment on the undelivered
15 payment(s) until delivery. All payments due from NMCC shall be made by NMCC or a designee on
16 its behalf.

17 4.3 Payment Procedures

18 4.3.1 Issuance of Payments

19 (a) All payments owed to PIA and its counsel pursuant to Sections 4.1 and 4.2 shall be
20 delivered to the following address:

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

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

26 For United States Postal Service Delivery:

Fiscal Operations Branch Chief
Office of Environ'tal Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery: Fiscal Operations Branch Chief
2 Office of Environ'tal Health Hazard Assessment
3 1001 I Street
4 Sacramento, CA 95814

5 4.3.2 **Proof of Payment to OEHHA.** A copy of each check payable to OEHHA shall
6 be mailed, simultaneous with payment, to the Judd Law Group LLP at the address set forth in Section
7 4.3.1(a) above, as proof of payment to OEHHA.

8 4.3.3 **Tax Documentation.** NMCC shall issue a separate 1099 form for each
9 payment required by this Section to: (a) PIA (EIN 46-3826361), to the address set forth in Section
10 4.3.1(a) above; (b) OEHHA, which shall be identified as "California Office of Environmental Health
11 Hazard Assessment" (EIN 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O.
12 Box 4010, Sacramento, CA 95814; and (c) "Judd Law Group LLP" (EIN: 90-0789749) to the address
13 set forth in Section 4.3.1(a) above.

14 **5. CLAIMS COVERED AND RELEASED**

15 5.1 **PIA's Release of Proposition 65 Claims.** PIA, acting on his own behalf and in the
16 public interest, releases NMCC, its parents, subsidiaries, directors, officers, attorneys, and each entity
17 to whom NMCC directly or indirectly distributed or sold Covered Products, including, but not limited
18 to, Hi-Mate International Corporation and any other downstream distributors, wholesalers, customers,
19 retailers, franchisees, cooperative members, and licensees (collectively, "Releasces"), from all claims
20 for violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed
21 Chemicals in the Covered Products, as set forth in the NOV and Complaint. Compliance with the
22 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures
23 to the Listed Chemicals from the Covered Products, as set forth in the NOVs. The Parties further
24 understand and agree that this Section 5.1 release shall not extend upstream to any entities other than
25 affiliates of NMCC.

26 5.2 **NMCC's Release of PIA.** NMCC, on behalf of itself, its past and current agents,
27 representatives, attorneys, successors, and assignees, hereby waives any and all claims against PIA and
28 its attorneys and other representatives for any and all actions taken or statements made (or those that

1 could have been taken or made) by PIA and its attorneys and other representatives, whether in the
2 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
3 with respect to the Covered Products.

4 6. PRESERVATION OF COMPETITIVENESS. The intent of this Section 6 is to
5 protect the competitive interests of NMCC arising from PIA's claims and to ensure that by settling the
6 allegations in the NOV and the Complaint, NMCC is not disadvantaged with respect to its competitors.
7 Specifically, the parties agree that should any agreement or consent judgment be entered into by PIA,
8 the California Office of Environmental Health Hazard Assessment, or the California Attorney
9 General's Office concerning personal care products similar to the Covered Products that contains
10 provisions that would materially impact the terms of this Agreement, such benefits shall be deemed to
11 accrue to NMCC and this Agreement shall be amended by a stipulation and proposed order, a copy of
12 which shall be provided to the Attorney General's office five (5) business days prior to submission to
13 the Court, to provide NMCC the benefit thereof. Further, should there be a court decision involving
14 any other person or entity that received a Proposition 65 60-Day Notice of Violation alleging Titanium
15 Dioxide in personal care products similar to the Covered Products and such decision is in whole or in
16 part favorable to the defendant(s) in such action, then that decision shall be incorporated into this
17 Agreement by a stipulation and proposed order, a copy of which shall be provided to the Attorney
18 General's office five (5) business days prior to submission to the Court. Further, should any consent
19 judgment establish a "No Significant Risk Level" for Titanium Dioxide (airborne, unbound particles of
20 respirable size) and provide for other parties to opt-in, any payments NMCC has made pursuant to this
21 Consent Judgment shall be offset against any opt-in payment requirements of such consent judgment.
22 Should PIA in the future become aware of facts or circumstances that have not been publicly disclosed
23 that, in PIA's opinion, affect NMCC's competitiveness, it shall so notify NMCC's counsel by email
24 within forty-five (45) days after PIA becomes aware of such non-public facts or circumstances.
25 Nothing herein shall prohibit NMCC from selling or distributing or manufacturing for sale or
26 distribution in California Covered Products that bear the Required California Proposition 65 Health
27 Warning.

1 7. **COURT APPROVAL.** This Consent Judgment is not effective until it is approved and
2 entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the
3 Court within one (1) year after it has been fully executed by all Parties. If the Court does not approve
4 the Consent Judgment, the Parties shall meet and confer as to whether to modify the language or
5 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall
6 proceed in its normal course on the Court's trial calendar. If the Court's approval is ultimately
7 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the terms of
8 this Consent Judgment. If the Parties do not jointly agree on a course of action to take, then the case
9 shall proceed in its normal course on the Court's trial calendar. If for any reason, this Consent
10 Judgment is not entered by the Court, then it shall be of no force or effect and PIA shall not introduce
11 into evidence or otherwise use this Consent Judgment in any proceeding for any purpose.

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

15 9. **GOVERNING LAW.** The terms of this Consent Judgment shall be governed by the
16 laws of the State of California. In the event that Proposition 65 is repealed, preempted, or otherwise
17 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment
18 are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
19 rendered inapplicable by reason of law generally as to the Covered Products, then NMCC may make a
20 formally noticed motion to this Court for relief from this Consent Judgment or provisions of this
21 Consent Judgment, with the requisite written notice to PIA, and shall only have no further obligations
22 pursuant to this Consent Judgment to the extent of any Court order so excusing or eliminating such
23 obligation or obligations. Nothing in this Consent Judgment shall be interpreted to relieve NMCC
24 from any obligation to comply with any pertinent state or federal law or regulation.

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

1 the other party at the following addresses; or (iv) e-mail:

2 To NMCC:

3 Ronie M. Schmelz
4 Edwards Wildman Palmer LLP
5 1901 Avenue of the Stars, Suite 1700
6 Los Angeles, CA 90067
7 rschmelz@edwardswildman.com

To PIA:

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

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

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

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

17 13. **ADDITIONAL POST-EXECUTION ACTIVITIES.** PIA and NMCC each agrees to
18 mutually employ its best efforts to support the entry of this Agreement as a Consent Judgment and
19 obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge
20 that, pursuant to California Health & Safety Code Section 25249.7, a noticed motion is required to
21 obtain judicial approval of this Consent Judgment, which PIA shall draft and file, and in which NMCC
22 shall join. If any third party objection to the noticed motion is filed, PIA and NMCC shall work
23 together to file a joint reply and appear at any hearing before the Court. This provision is a material
24 component of the Consent Judgment and shall be treated as such in the event of a breach.

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

28 15. **AUTHORIZATION.** The undersigned certify that they are authorized to execute this

1 Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of
2 the terms and conditions of this Consent Judgment.

3 Dated: 8/5, 2014

PUBLIC INTEREST ALLIANCE LLC

4
5 By: 
6 Daniel P. Madison
Managing Member

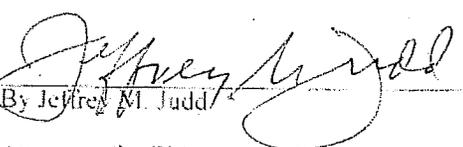
7 Dated: August 04, 2014

NIPPON MENARD COSMETICS CO., LTD.

8
9 By: 
10 Junichi Nonogawa
President

11 Approved as to form:

12 JUDD LAW GROUP LLP

13
14 
15 By Jeffrey M. Judd
16 Attorneys for PIA

Dated: August 5, 2014

17 Approved as to form:

18 EDWARDS WILDMAN PALMER LLP

19
20 
21 By Ronie M. Schmelz
22 Attorneys for Nippon Menard Cosmetics Co., Ltd.

Dated: 8/4/14, 2014

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EXHIBIT A
[PROP.] CONSENT JUDGMENT (NIPPON MENARD COSMETIC CO., LTD.)

Covered Products Include:

Embellir Powder Foundation

Tsukika Powder Foundation

Tsukika Face Powder

Fairlucent Fix Bihaku Cake

Jupier Powder Foundation

Jupier Face Powder

Jupier Pressed Powder

Jupier Eye Color

Jupier Face Color

Shining Coffret II