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ENDORSED
FILED
ALAMEDA COUNTY

JAN 15 2015

10 Counsel for Plaintiff
11 CENTER FOR ENVIRONMENTAL HEALTH

CLERK OF THE SUPERIOR COURT
By Darneda Scott

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA

14 Coordination Proceeding Special Title:) Judicial Council Coordination
15 PROPOSITION 65 COCAMIDE DEA CASES) Proceeding
16) Case No. 4765
17 This Document Relates To:) **[PROPOSED] CONSENT**
18 *CEH v. Lake Consumer Products, Inc., et al.,*) **JUDGMENT AS TO COLOMER**
19 *A.C.S.C. Case No. RG 13-693280*) **U.S.A., INC.**

20
21 **1. INTRODUCTION**

22 1.1 The parties to this Consent Judgment ("Parties") are the Center for
23 Environmental Health ("CEH") and defendant Colomer U.S.A., Inc. ("Settling Defendant").
24 CEH and Settling Defendant are referred to collectively as the "Parties."

25 1.2 Settling Defendant is a corporation that employs ten (10) or more persons and
26 that manufactures, distributes and/or sells shampoo that contain coconut oil diethanolamine

1 condensate (cocamide diethanolamine) (hereinafter, "cocamide DEA") in the State of California
2 or has done so in the past.

3 1.3 On June 24, 2013, CEH served a 60-Day Notice of Violation under
4 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
5 & Safety Code §§ 25249.5, *et seq.*) (the "Notice") to Settling Defendant, the California Attorney
6 General, the District Attorneys of every County in the State of California, and the City Attorneys
7 for every City in the State of California with a population greater than 750,000. The Notice
8 alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo
9 manufactured, distributed and/or sold by Settling Defendant.

10 1.4 On August 27, 2013, CEH filed the action entitled *CEH v. Lake Consumer*
11 *Products, Inc., et al.*, Case No. RG 13-693280, in the Superior Court of California for Alameda
12 County. On September 4, 2013, CEH named Settling Defendant as a defendant in that action
13 pursuant to California Code of Civil Procedure §474. On December 4, 2013, the *Lake* action was
14 coordinated with several other related Proposition 65 actions in the *Proposition 65 Cocamide*
15 *DEA Cases*, Case No. JCCP 4765, currently pending before this Court. Upon entry of this
16 Consent Judgment, the Complaint shall be deemed amended as to Settling Defendant only to limit
17 the definition of Products in the Complaint to all packaging design variations and sizes of the
18 Covered Products as defined herein.

19 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
20 Court has jurisdiction over the allegations of violations contained in the operative Complaint
21 applicable to Settling Defendant (the "Complaint") and personal jurisdiction over Settling
22 Defendant as to the acts alleged in the Complaint; (ii) that venue is proper in the County of
23 Alameda; and (iii) that this Court has jurisdiction to enter this Consent Judgment.

24 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
25 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
26 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
27

1 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
2 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
3 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
4 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
5 this action.

6 **2. DEFINITIONS**

7 2.1 “Covered Products” means those cosmetic products with formulations that
8 contained cocamide DEA, manufactured, distributed and/or sold in multiple sizes and packaging
9 variations by Settling Defendant, including but not limited to the cosmetic products listed in
10 Appendix 1.

11 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
12 the Court.

13 **3. INJUNCTIVE RELIEF**

14 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
15 Defendant shall not manufacture, distribute, sell or offer for sale any Covered Product that
16 contains cocamide DEA and that will be sold or offered for sale to consumers located in
17 California. For purposes of this Consent Judgment, a product “contains cocamide DEA” if
18 cocamide DEA is an intentionally added ingredient in the product and/or part of the product
19 formulation.

20 3.2 **Specification to Suppliers.** No more than 30 days after the Effective Date,
21 Settling Defendant shall issue specifications to its suppliers of Covered Products requiring that
22 Covered Products not contain any cocamide DEA, and shall instruct each supplier to use
23 reasonable efforts to eliminate Covered Products containing cocamide DEA on a nationwide
24 basis.

1 **4. ENFORCEMENT**

2 4.1 CEH may, by motion or application for an order to show cause before the
3 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
4 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
5 above, CEH shall provide Settling Defendant with a Notice of Violation and a copy of any test
6 results which purportedly support CEH's Notice of Violation. The Parties shall then meet and
7 confer regarding the basis for CEH's anticipated motion or application in an attempt to resolve it
8 informally, including providing Settling Defendant a reasonable opportunity of at least thirty (30)
9 days to cure any alleged violation. Should such attempts at informal resolution fail, CEH may
10 file its enforcement motion or application. The prevailing party on any motion to enforce this
11 Consent Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result
12 of such motion or application. This Consent Judgment may only be enforced by the Parties.

13 **5. PAYMENTS**

14 5.1 **Payments by Settling Defendant.** Within ten (10) business days of the Effective
15 Date, Settling Defendant shall pay the total sum of \$25,000 as a settlement payment. The total
16 settlement amount for Settling Defendant shall be paid in four separate checks delivered to
17 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
18 Defendant shall be allocated between the following categories:

19 5.1.1 \$2,750 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
20 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
21 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
22 Assessment). The civil penalty check shall be made payable to the Center For Environmental
23 Health.

24 5.1.2 \$3,750 as a payment in lieu of civil penalty to CEH pursuant to Health &
25 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
26 such funds to continue its work educating and protecting people from exposures to toxic
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1 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
2 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In
3 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
4 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
5 educate and protect people from exposures to toxic chemicals. The method of selection of such
6 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
7 this Section shall be made payable to the Center For Environmental Health.

8 5.1.3 \$18,500 as reimbursement of a portion of CEH's reasonable attorneys' fees
9 and costs. A check for \$16,000 shall be made payable to the Lexington Law Group, and a check
10 for \$2,500 shall be made payable to the Center For Environmental Health.

11 **6. MODIFICATION**

12 6.1 **Written Consent.** This Consent Judgment may be modified from time to
13 time by express written agreement of the Parties with the approval of the Court, or by an order of
14 this Court upon motion and in accordance with law.

15 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
16 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
17 modify the Consent Judgment.

18 **7. CLAIMS COVERED AND RELEASED**

19 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
20 behalf of itself, its agents, representatives, attorneys, successors, assignees, and in its
21 representational capacity on behalf of the public interest, and Settling Defendant, and its parents,
22 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
23 principals, agents, and attorneys, including but not limited to Roux Laboratories, Inc. ("Defendant
24 Releasees") and each entity to whom they directly or indirectly distribute or sell Covered
25 Products, including but not limited to Colomer Beauty Brands USA, Inc., Creative Nail Design,
26 Inc. and other distributors, wholesalers, customers, retailers, franchisees, cooperative members,

1 licensors and licensees (“Downstream Defendant Releasees”) of any alleged violation of
2 Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant,
3 Defendant Releasees and Downstream Defendant Releasees based on the alleged failure to warn
4 about alleged exposure to cocamide DEA contained in Covered Products that were sold by
5 Settling Defendant prior to the Effective Date (“Released Claims”)

6 7.2 CEH on behalf of itself, its agents representatives, attorneys, successors,
7 assignees, and in its representational capacity on behalf of the public interest, hereby waives all
8 rights to institute or participate in, directly or indirectly, any form of legal action involving
9 Released Claims, and releases all Released Claims, against Settling Defendant, Defendant
10 Releasees, and Downstream Defendant Releasees.

11 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant,
12 the Defendant Releasees and the Downstream Defendant Releasees shall constitute compliance
13 with Proposition 65 by Settling Defendant, the Defendant Releasees and the Downstream
14 Defendant Releasees with respect to any alleged failure to warn about cocamide DEA in Covered
15 Products manufactured, distributed, or sold by Settling Defendant after the Effective Date.

16 7.4 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
17 action under Proposition 65 against any person other than Settling Defendant, Defendant
18 Releasees and Downstream Defendant Releasees.

19 **8. NOTICE**

20 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
21 notice shall be sent by first class and electronic mail to:

22 Mark Todzo
23 Lexington Law Group
24 503 Divisadero Street
25 San Francisco, CA 94117
26 mtodzo@lexlawgroup.com

27 8.2 When Settling Defendant is entitled to receive any notice under this Consent
28 Judgment, the notice shall be sent by first class and electronic mail to:

1 William N. Hall
2 Margaret K. Fawal
3 Venable LLP
4 575 7th Street, NW
5 Washington, DC 20004
6 wnhall@venable.com
7 mkfawal@venable.com

8 8.3 Any Party may modify the person and address to whom the notice is to be sent
9 by sending the other Party notice by first class and electronic mail.

10 **9. COURT APPROVAL**

11 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
12 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
13 shall support entry of this Consent Judgment.

14 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
15 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
16 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

17 **10. ATTORNEYS' FEES**

18 10.1 Except as otherwise provided in this Consent Judgment, each Party shall bear
19 its own attorneys' fees and costs.

20 10.2 Nothing in this Section 10 shall preclude a Party from seeking an award of
21 sanctions pursuant to law.

22 **11. OTHER TERMS**

23 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
24 of California.

25 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
26 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
27 assigns of any of them.

28 11.3 This Consent Judgment contains the sole and entire agreement and

1 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
2 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
3 merged herein and therein. There are no warranties, representations, or other agreements between
4 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
5 implied, other than those specifically referred to in this Consent Judgment have been made by any
6 Party hereto. No other agreements not specifically contained or referenced herein, oral or
7 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
8 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
9 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
10 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
11 whether or not similar, nor shall such waiver constitute a continuing waiver.

12 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
13 that Settling Defendant might have against any other party, whether or not that party is a Settling
14 Defendant.

15 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
16 Consent Judgment.

17 11.6 The stipulations to this Consent Judgment may be executed in counterparts
18 and by means of facsimile or portable document format (pdf), which taken together shall be
19 deemed to constitute one document.

20 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
22 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
23 Party.


24 11.8 The Parties, including their counsel, have participated in the preparation of
25 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
26 This Consent Judgment was subject to revision and modification by the Parties and has been
27

1 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
2 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
3 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
4 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
5 be resolved against the drafting Party should not be employed in the interpretation of this Consent
6 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

COLOMER U.S.A., INC.

Signature

Printed Name

Title

IT IS SO ORDERED:

Dated: **JAN 15 2015**, 2014

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court

1 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
2 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
3 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
4 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
5 be resolved against the drafting Party should not be employed in the interpretation of this Consent
6 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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8 **IT IS SO STIPULATED:**

9 **CENTER FOR ENVIRONMENTAL HEALTH**

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12 _____
Charlie Pizarro
Associate Director

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14 **COLOMER U.S.A., INC.**

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16 
Signature

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18 Jack Carrothers
Printed Name

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20 Senior Corporate Counsel and Secretary
Title

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23 **IT IS SO ORDERED:**

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25 Dated: _____, 2014

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Judge of the Superior Court

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Appendix 1

- 1. ABBA Pure Performance Haircare Detox Shampoo
- 2. All Ways Natural Moisturizing Shampoo
- 3. American Crew Daily Shampoo
- 4. American Crew Daily Moisturizing Shampoo
- 5. American Crew Moisturizing Shave Cream
- 6. American Crew Precision Blend Shampoo
- 7. CND Marine Masque
- 8. CND Marine Mineral Bath
- 9. CND Sea Scrub
- 10. Creme of Nature Kiwi & Citrus Ultra Moisturizing Shampoo - Retail & Professional Versions
- 11. Creme of Nature Neutralizing & Conditioning Shampoo – Professional Version & Packaged in all Retail Creme of Nature Hair Relaxer Kits
- 12. Creme of Nature Red Clover & Aloe Soothing Shampoo - Retail & Professional Versions
- 13. Creme of Nature Sunflower & Coconut Detangling Conditioning Shampoo - Retail & Professional Versions
- 14. Fabulaxer Hair Recovery Shampoo
- 15. Orofluido Shampoo