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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 MURAD, INC.
)
)
) Date: May 20, 2014
) Time: 2:30 p.m.
) Dept: 17
) Res'n No. 1499620

19 Action Filed: October 3, 2013

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

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, under Health & Safety Code
6 section 25249.7, subsection (f)(4), and Code of Civil Procedure section 664.6, judgment is entered in
7 accordance with the terms of the Consent Judgment attached hereto as Exhibit A and by this reference
8 incorporated herein.

9 **IT IS SO ORDERED:**

10
11 Dated: May 20, 2014

GEORGE C. HERNANDEZ, JR.

JUDGE, SUPERIOR COURT

1 Jeffrey M. Judd (SBN 136358)
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA
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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

) CONSENT JUDGMENT

) (Cal. Health & Safety Code section 25249.6 et
) 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 MURAD, INC. ("Murad"), with PIA and Murad collectively
22 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 **Murad, Inc.** Murad employs ten or more persons and is a "person in the course of
27 doing business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,

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

2 1.4 **General Allegations**

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

11 1.4.2 Pursuant to Proposition 65, on September 2, 2011, California identified and
12 listed Titanium Dioxide (airborne, unbound chemicals of respirable size) as a chemical known to cause
13 cancer. TCEP became subject to the “clear and reasonable warning” requirements of the Act one year
14 later on September 2, 2012. Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8,
15 25249.10(b).

16 1.4.4 Titanium Dioxide (airborne, unbound chemicals of respirable size) is hereinafter
17 referred to as the “Listed Chemical.” PIA alleges that the Listed Chemical is released into the air when
18 the Covered Product is applied to the skin by brush, pad or sponge, leading to human exposures.

19 1.5 **Notice of Violation.** On or about August 12, 2013, PIA served Murad and certain
20 requisite public enforcement agencies with a Proposition 65 60-Day Notice of Violation (the “NOV”)
21 that provided the recipients with notice of alleged violations of Proposition 65 based on Murad’s
22 alleged failure to warn customers and consumers, workers and other individuals that the Products
23 exposed users in California to the Listed Chemical. To the best of the Parties’ knowledge, no public
24 enforcer has commenced or is diligently prosecuting the allegations set forth in the NOV.

25 1.6 **Complaint.** On October 3, 2013, PIA filed a Complaint in the Superior Court in and
26 for the County of Alameda styled, *PIA v. Access Business Group, LLC, et al.*, Case No. RG13697992,
27 alleging violations of Proposition 65 arising from unwarned exposures to the Listed Chemical when

1 the Covered Product is used (the "Complaint").

2 1.7 **No Admission.** Murad denies the material factual and legal allegations contained in the
3 NOV and Complaint and maintains that all products it has manufactured, imported, distributed, and/or
4 sold in California, including the Covered Product, have been and are in compliance with all laws.
5 Nothing in this Consent Judgment shall be construed as an admission by Murad of any fact, finding,
6 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
7 constitute or be construed as an admission by Murad of any fact, finding, conclusion, issue of law, or
8 violation of law. This section shall not, however, diminish or otherwise affect Murad's obligations,
9 responsibilities, and duties under this Consent Judgment.

10 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
11 stipulate that this Court has jurisdiction over Murad as to the allegations contained in the Complaint,
12 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce
13 the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
14 Procedure § 664.6.

15 2. **DEFINITIONS**

16 2.1 **California Customers.** "California Customer" shall mean any customer that Murad
17 reasonably understands is located in California, has a California warehouse or distribution center,
18 maintains a retail outlet in California or has made any internet sales into California between September
19 2, 2012, and the Effective Date, inclusive.

20 2.2 **Effective Date.** "Effective Date" shall mean ~~April~~ May 20, 2014.

21 2.3 **Reformulated Products.** "Reformulated Products" shall mean Covered Product, if it is
22 sold, that contains no Titanium Dioxide.

23 2.4 **Retailer.** "Retailer" means an individual or entity that offers a Product for retail sale to
24 consumers in the State of California.

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

26 3.1 **Current Inventory.** Murad does not sell the Covered Product and does not know of
27 any person or entity that offers the Covered Product for sale in California. Commencing on the
28

1 Effective Date, Murad shall not sell or otherwise distribute the Covered Product in California or to a
2 California Customer unless such product is certified as complying with the Reformulation Covenant or
3 contains a clear and reasonable warning as set forth in Section 3.6 below.

4 **3.2 Reformulation Covenant.** Commencing on the Effective Date, Murad 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 the Covered Product, unless it is a Reformulated Product or unless and until Murad complies with the
8 provisions of Paragraph 3.6., below (Product Warnings) (the "Reformulation Covenant").

9 **3.3 Vendor Notification/Certification.** No later than thirty (30) days after the Effective
10 Date, Murad shall provide written notice, to all of its then-current vendors of each of the Covered
11 Product, if any, instructing each such vendor to provide Murad with only Covered Product that is
12 Reformulated Products. In addressing the obligation set forth in the preceding sentence, Murad shall
13 not employ or imply statements or other communication that will or reasonably likely may encourage a
14 vendor to delay compliance with Murad's Reformulation Covenant. For each vendor and for the
15 Covered Product, Murad shall demand and obtain written certification from such vendors of the
16 Covered Product and any newly engaged vendors of the Covered Product, of the date that the Covered
17 Product manufactured by such vendors are in compliance with the Reformulation Covenant.
18 Certifications shall be held by Murad for at least two years after their receipt, and shall be made
19 available to PIA upon written request therefor.

20 **3.4 Products No Longer in Murad's Control.** No later than thirty (30) days after the
21 Effective Date, Murad shall send a letter, electronic or otherwise ("Notification Letter") to any
22 California store or establishment, if any, that Murad reasonably understands or believes had any
23 inventory of the Covered Product available for sale in California as of the date that Murad was served
24 with the NOV. The Notification Letter shall advise the recipient that the Covered Product "contains
25 chemicals known to the State of California to cause cancer," and request that the recipient either: (a)
26 label the Covered Product remaining in inventory for sale in California pursuant to Section 3.6; or (b)
27 return or destroy, at Murad's sole expense, all units of the Covered Product held for sale in California

28

1 3.5.3 Applicability of Proposition 65. These covenants will only be in effect so long as
2 Titanium Dioxide (airborne, unbound particles of respirable size) is listed under Proposition 65.

3 4. **MONETARY PAYMENTS**

4 4.1 **Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**. In settlement of all
5 the claims referred to in this Consent Judgment, Murad shall pay a civil penalty in the amount of zero
6 Dollars (\$ 0.00) in accordance with this Section. The penalty payment will be allocated in accordance
7 with California Health & Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
8 funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and
9 the remaining 25% of the penalty remitted to "Judd Law Group LLP in Trust for Public Interest
10 Alliance LLC." All penalty payments shall be made within five (5) business days after this Consent
11 Judgment has been approved by the Court, and delivered to the addresses listed in Section 4.3 below.
12 Any failure by Murad to deliver the required civil penalty payments to either OEHHA or Judd Law
13 Group LLP within two days of the required date shall result in imposition of a 10% simple interest
14 assessment on the undelivered payment(s) until delivery.

15 4.2 **Reimbursement of Fees and Costs**. Murad and PIA have agreed on the compensation
16 due PIA under the principles of Code of Civil Procedure Section 1021.5. Murad agrees to pay
17 attorney's fees and costs incurred as a result of investigating, bringing this matter to Murad's attention,
18 negotiating a settlement in the public interest, and seeking court approval in the amount of Seven
19 Thousand Dollars (\$7,000.00). Murad further agrees that it shall not oppose Plaintiffs' application to
20 the court for approval of such fees. All attorney fee and cost reimbursement payments shall be made
21 within five (5) business days after the Effective Date and delivered to the addresses listed in Section
22 4.3 below. Any failure by Murad to deliver the required attorney fee and cost reimbursement payment
23 to Judd Law Group LLP within two days after the required date shall result in imposition of a 10%
24 simple interest assessment on the undelivered payment(s) until delivery.

25 4.3 **Payment Procedures**

26 4.3.1 **Issuance of Payments**

27 (a) All payments owed to PIA and its counsel, pursuant to Sections 4.1 and 4.2 shall be

28

1 delivered to the following payment address:

2 JUDD LAW GROUP LLP
3 222 Sutter Street, Suite 600
4 San Francisco, CA 94108

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

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

12 For Non-United States Postal Service Delivery: Fiscal Operations Branch Chief
13 Office of Environ'tal Health Hazard Assessment
14 1001 I Street
15 Sacramento, CA 95814

16 4.3.2 **Proof of Payment to OEHHHA.** A copy of each check payable to OEHHHA shall
17 be mailed, simultaneous with payment, to Judd Law Group LLP at the address set forth in Section
18 4.3.1(a) above, as proof of payment to OEHHHA.

19 4.3.3 **Tax Documentation.** Murad shall issue a separate 1099 form for each payment
20 required by this Section to: (a) PIA (EIN 46-3826361), to the address set forth in Section 4.3.1(a)
21 above; (b) OEHHHA, who shall be identified as "California Office of Environmental Health Hazard
22 Assessment" (EIN 68-0284486) in the 1099 form, to be delivered directly to OEHHHA, P.O. Box 4010,
23 Sacramento, CA 95814, and (c) "Judd Law Group LLP" (EIN: 90-0789749) to the address set forth in
24 Section 4.3.1(a) above.

25 5. **CLAIMS COVERED AND RELEASED**

26 5.1 **PIA's Release of Proposition 65 Claims.** PIA, acting on his own behalf and in the
27 public interest, releases Murad, its parents, subsidiaries, directors, officers, attorneys, and each entity to
28 whom Murad directly or indirectly distributed or sold the Covered Product, including, but not limited,
to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and
licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the

1 Effective Date based on unwarned exposures to the Listed Chemicals in the Covered Product, as set forth in the
2 NOV and Complaint. Compliance with the terms of this Consent Judgment constitutes compliance with
3 Proposition 65 with respect to exposures to the Listed Chemicals from the Covered Product, as set forth in the
4 NOVs. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any
5 entities, other than affiliates of Murad, LLC dba The Murad Company.

6 5.2 **Murad's Release of PIA.** Murad, on behalf of itself, its past and current agents,
7 representatives, attorneys, successors, and assignees, hereby waives any and all claims against PIA and its
8 attorneys and other representatives, for any and all actions taken or statements made (or those that could have
9 been taken or made) by PIA and its attorneys and other representatives, whether in the course of investigating
10 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered
11 Product.

12 6. **PRESERVATION OF COMPETITIVENESS.** The intent of this section 6 is to protect the
13 competitive interests of Murad arising from PIA's claims and to ensure that by settling the allegations in the
14 NOV and the Complaint, Murad is not disadvantaged with respect to its competitors. Specifically, the parties
15 agree that should any agreement or consent judgment be entered into by PIA, the California Office of
16 Environmental Health Hazard Assessment, or the California Attorney General's Office concerning personal care
17 products similar to the Covered Product that contains provisions that would materially impact the terms of this
18 Agreement, such benefits shall accrue to Murad and this Agreement shall be amended by a stipulation and
19 proposed order, a copy of which shall be provided to the Attorney General's office at least five (5) business days
20 prior to submission to the Court to provide Murad the benefit thereof. Further, should there be a court decision
21 involving any other person or entity that received a Proposition 65 60-Day Notice of Violation alleging
22 Titanium Dioxide in personal care products similar to the Covered Product and such decision is in whole or in
23 part favorable to the defendant(s) in such action, then that decision shall be incorporated into this Agreement by
24 a stipulation and proposed order, a copy of which shall be provided to the Attorney General's office at least five
25 (5) business days prior to submission to the Court. Further, should any consent judgment establish a "No
26 Significant Risk Level" for Titanium Dioxide (airborne, unbound particles of respirable size) and provide for
27 other parties to opt-in, any payments Murad has made pursuant to this Agreement shall be offset against any

1 opt-in payment requirements of such consent judgment. Should PIA in the future become aware of facts or
2 circumstances that have not been publicly disclosed that, in PIA's opinion affect Murad's competitiveness, it
3 shall so notify Murad's counsel by email within forty-five (45) days after PIA becomes aware of such non-
4 public facts or circumstances. PIA shall prepare all such stipulations and proposed orders, at PIA's sole expense,
5 and shall make reasonable efforts to obtain the parties' signatures thereto.

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

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

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

26 10. **NOTICES.** Unless specified herein, all correspondence and notices required to be provided pursuant to
27 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified

1 mail, return receipt requested; or (iii) overnight courier to any party by the other party at the following
2 addresses:

3 To Murad:

4 Jeff Murad
5 VP - New Product Development
6 MURAD, INC.
2121 Rosecrans Ave., 5th Floor
El Segundo, CA 90245

With a copy to:
Gregory J. Sater
Jennifer Levin
VENABLE LLP
2049 Century Park E., Ste. 2010
Los Angeles, CA 90067

To PIA:

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

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

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

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

15 13. **POST EXECUTION.** The Parties agree to mutually employ best efforts to support the entry of this
16 agreement as a Consent Judgment and obtain approval of by the Court in a timely manner. The parties
17 acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial
18 approval of this Consent Judgment, which PIA shall draft and file, and Murad shall join. If any third party
19 objection to the noticed motion is filed, PIA and Murad shall work together to file a joint reply and appear at any
20 hearing before the Court. The Court shall maintain jurisdiction under Code of Civil Procedure § 664.6 and, if
21 after entry of a Consent Judgment, either party determines that the other is in breach of this Agreement, such
22 party shall provide to the other written notice of such alleged breach pursuant to Section, above, and the noticed
23 party shall thereafter have thirty (30) days within which to attempt to cure or otherwise resolve the alleged
24 breach (the "Cure Period"). If the alleged breach is not resolved or cured to the satisfaction of the noticing party
25 during the Cure Period, the noticing party may thereafter bring a noticed motion to have the Court resolve the
26 dispute by order, including, as applicable, an order awarding the prevailing party reasonable attorney fees and
27 costs incurred in connection with the motion. This provision is a material component of the

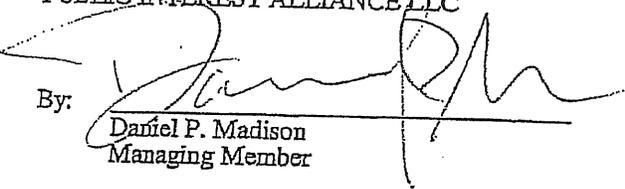
1 Consent Judgment and shall be treated as such in the event of a breach.

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

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

8 Dated: March 24, 2014

PUBLIC INTEREST ALLIANCE LLC

9
10 By: 

Daniel P. Madison
Managing Member

11
12 Dated: March 24, 2014

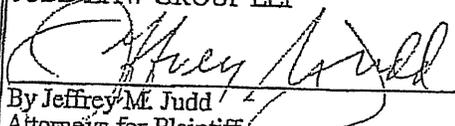
MURAD, INC.

13
14 By: 

Jeff Murad
Vice President, New Product Development

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16 Approved as to form:

17 JUDD LAW GROUP LLP

18 
19 By Jeffrey M. Judd
Attorneys for Plaintiff

Dated: March 24, 2014

20 PUBLIC INTEREST ALLIANCE LLC

21 Approved as to form:

22 VENABLE LLP

23
24 
25 By Jennifer Levin
Attorneys for Defendant

Dated: March 24, 2014

26 MURAD, INC.