

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

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) Case No. RG13697992
14 California limited liability company)
15 Plaintiff,) **[PROPOSED] JUDGMENT UNDER**
16 vs.) **PROPOSITION 65 SETTLEMENTS AND**
17 ACCESS BUSINESS GROUP LLC, et al.) **CONSENT JUDGMENTS AS TO**
18 Defendants.) **DEFENDANT MELALEUCA, INC.**
19)
20) Date: May 6, 2014
21) Time: 2:30 p.m.
22) Dept: 17
23) Res'n No. 1498836

24 Action Filed: October 3, 2013

1 In the above-captioned action, plaintiff Public Interest Alliance LLC, and defendants Dr.
2 Hauschka Skin Care, Inc. (“DHSI”), Melaleuca, Inc. (“Melaleuca”), and Tarte, Inc. (“Tarte”), having
3 each agreed through their respective counsel that Judgment be entered under the terms of their
4 settlements in the form of three different proposed consent judgments (collectively, the “Consent
5 Judgments”), and following this Court’s entry of an Order approving the Consent Judgments on May
6 20, 2014:

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, under Health & Safety Code
8 section 25249.7, subsection (f)(4), and Code of Civil Procedure section 664.6, judgment is entered in
9 accordance with the terms of the Consent Judgment attached hereto as Exhibit A, and by this reference
10 incorporated herein. By stipulation of the parties, the Court will retain jurisdiction to enforce Section
11 4.1.1 of the Consent Judgments under Code of Civil Procedure section 664.6.

12 **IT IS SO ORDERED:**

13 Dated: May 20, 2014

GEORGE C. HERNANDEZ, JR.

JUDGE, SUPERIOR COURT

EXHIBIT A

1 Jeffrey M. Judd (SBN 136358)
jeff@juddlawgroup.com
2 JUDD LAW GROUP LLP
222 Sutter Street, Suite 600
3 San Francisco, California 94108
Telephone: 415.597.5500
4 Facsimile: 888.308.7686

5 Attorneys for Plaintiff
Public Interest Alliance LLC
6
7
8

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION
9
10
11

12	THE PUBLIC INTEREST ALLIANCE, LLC, a)	Case No. RG13697992
13	California limited liability company)	CONSENT JUDGMENT
14	Plaintiff,)	(Cal. Health & Safety Code section 25249.6 <i>et</i>
15	vs.)	<i>seq.</i>)
16	ACCESS BUSINESS GROUP LLC, et al.)	
17	Defendants.)	
18	<hr/>		

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 MELALEUCA, INC. (“MELALEUCA”), with PIA and
22 MELALEUCA 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 **Melaleuca.** MELALEUCA employs ten or more persons and is a “person in the course
27 of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
28

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

2 1.4 **General Allegations**

3 1.4.1 PIA alleges that MELALEUCA manufactured, imported, sold and/or distributed
4 for sale in California, cosmetic and personal care powders that contain Titanium dioxide (“TiO2”).
5 During use, some TiO2 is released into the air, exposing consumers to unbound TiO2 particles of
6 respirable size without the health hazard warnings that Proposition 65 requires. A list of such products
7 is identified on Exhibit A attached hereto (the “Covered Products”). TiO2 is a chemical widely used as
8 a whitening agent in a wide range of consumer products, including, without limitation, paper, paints,
9 printers’ inks, toothpaste, cosmetics, and personal care products. In 2010, the International Agency for
10 Research on Cancer (“IARC”) issued Monograph 93, which concluded that TiO2 is “possibly
11 carcinogenic” to 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. TiO2 became subject to the “clear and reasonable warning” requirements of Proposition 65
15 one year later on September 2, 2012. Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§
16 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 MELALEUCA 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 Products exposed users in California to the
25 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

1 for the County of Alameda styled, *PIA v. Access Business Group, LLC, et al.*, Case No. RG13697992,
2 alleging violations of Proposition 65 arising from unwarned exposures to the Listed Chemical when
3 the Covered Products are used (the "Complaint")

4 1.7 **No Admission.** MELALEUCA denies the material factual and legal allegations
5 contained in the NOV 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 MELALEUCA
8 of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this
9 Consent Judgment constitute or be construed as an admission by MELALEUCA of any fact, finding,
10 conclusion, issue of law, or violation of law. This section shall not, however, diminish or otherwise
11 affect MELALEUCA's obligations, responsibilities, and duties under this Consent Judgment.

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

17 2. **DEFINITIONS**

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

22 2.2 **Effective Date.** "Effective Date" shall mean May 6, 2014.

23 2.3 **Reformulated Products.** "Reformulated Products" shall mean Covered Products that
24 contain no more than trace amounts of Titanium Dioxide that were not added intentionally by the
25 manufacturer.

26 2.4 **Retailer.** "Retailer" means an individual or entity that offers a Covered Product for
27 retail sale to consumers in the State of California.

28

1 //

2 3. COVENANTS IN LIEU OF INJUNCTION

3 3.1 Reformulation Covenant. Commencing on the Effective Date, MELALEUCA shall
4 not distribute or sell to California Customers for sale in California, manufacture or import for
5 distribution or sale to California Customers for sale in California or cause to be manufactured or
6 imported for distribution or sale to California Customers for sale in California, any Covered Products
7 that are not Reformulated Products (“Non-Reformulated Products”) or unless and until MELALEUCA
8 complies with the provisions of Paragraph 3.6., below (Product Warnings) (the “Reformulation
9 Covenant”).

10 3.2 INTENTIONALLY LEFT BLANK

11 3.3 INTENTIONALLY LEFT BLANK

12 3.4 INTENTIONALLY LEFT BLANK

13 3.5 INTENTIONALLY LEFT BLANK

14 3.6 Product Warnings

15 3.6.1 Product Labeling. Any warning provided under this Agreement shall be (1)
16 affixed to the exterior packaging of such Non-Reformulated Products or (2) affixed to the Non-
17 Reformulated Products itself in immediate proximity to any marketing, ownership or pricing tags or
18 labels or, if none, to a surface of the product that would be immediately visible to a purchaser or user
19 upon inspection or use. Each warning shall be of such size, color and font and shall be prominently
20 placed with such conspicuousness as compared with other words, statements, designs, or devices as to
21 render it likely to be read and understood by an ordinary individual under customary conditions before
22 purchase. Each warning shall be provided in a manner such that the consumer or user understands to
23 which specific product the warning applies, so as to minimize the risk of consumer confusion. A
24 warning provided pursuant to this Consent Judgment shall state:

25 **WARNING:** This product contains chemicals known to the State of
26 California to cause cancer.

27
28

1 allegations in the NOV and the Complaint, MELALEUCA is not disadvantaged with respect to its
2 competitors. Specifically, the parties agree that should any agreement or consent judgment be entered
3 into by and between any other person and PIA, the California Office of Environmental Health Hazard
4 Assessment, or a public prosecutor concerning personal care products similar to the Covered Products
5 that contains provisions less stringent than the terms of this Agreement, such benefits shall accrue to
6 MELALEUCA and this Agreement shall be amended by a stipulation and proposed order, a copy of
7 which shall be provided to the Attorney General's office five (5) business days prior to submission to
8 the Court, to provide MELALEUCA the benefit thereof. Further, should any consent judgment
9 establish a "No Significant Risk Level" ("NSRL") for Titanium Dioxide (airborne, unbound particles
10 of respirable size) then that NSRL shall be incorporated into this Agreement by a stipulation and
11 proposed order, a copy of which shall be provided to the Attorney General's office five (5) business
12 days prior to submission to the Court. Should any other Consent Judgment provide for other parties to
13 opt-in, any payments MELALEUCA has made pursuant to this Agreement shall be offset against any
14 opt-in payment requirements of such consent judgment. Should PIA in the future become aware of
15 facts or circumstances that have not been publicly disclosed that, in PIA's opinion affect
16 MELALEUCA's competitiveness, it shall so notify MELALEUCA's counsel by email within forty-
17 five (45) days after PIA becomes aware of such non-public facts or circumstances. PIA shall prepare
18 all such stipulations and proposed orders, at PIA's sole expense, and shall make reasonable efforts to
19 obtain the parties' signatures thereto.

20 7. **COURT APPROVAL.** This Consent Judgment is not effective until it is approved and entered by the
21 Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year
22 after it has been fully executed by all Parties. If the Court does not approve the Consent Judgment, the Parties
23 shall meet and confer as to whether to modify the language or appeal the ruling. If the Parties do not jointly
24 agree on a course of action to take, then the case shall proceed in its normal course on the Court's trial calendar.
25 If the Court's approval is ultimately overturned by an appellate court, all payments made by MELALEUCA
26 pursuant to this Consent Judgment shall be returned within five (5) days after the Parties have met and conferred
27 as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of

1 action to take, then the case shall proceed in its normal course on the Court's trial calendar.

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

5 9. **GOVERNING LAW**. The terms of this Consent Judgment shall be governed by the laws of the State
6 of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
7 reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or are no
8 longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally
9 as to the Covered Products, then MELALEUCA may make a formally noticed motion to this Court for relief
10 from this Agreement or provisions of this Agreement, with statutory notice to PIA, and shall only have no
11 further obligations pursuant to this Consent Judgment to the extent of any Court order so excusing or
12 eliminating such obligation. Nothing in this Consent Judgment shall be interpreted to relieve MELALEUCA
13 from any obligation to comply with any pertinent state or federal law or regulation.

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

18 To MELALEUCA:

To PIA:

19 Mr. Jay Cobb
20 Melaleuca, Inc.
21 3910 S. Yellowstone Hwy
22 Idaho Falls, ID 83402

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

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

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

1 12. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f). PIA and its attorneys
2 agree to comply with the reporting form requirements referenced in California Health & Safety Code section
3 25249.7(f).

4 13. ADDITIONAL POST EXECUTION ACTIVITIES. PIA and MELALEUCA each agrees to
5 mutually employ its best efforts to support the entry of this agreement as a Consent Judgment and
6 obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge
7 that, pursuant to California Health & Safety Code section 25249.7, a noticed motion is required to
8 obtain judicial approval of this Consent Judgment, which PIA shall draft and file, and MELALEUCA
9 shall join. If any third party objection to the noticed motion is filed, PIA and MELALEUCA shall
10 work together to file a joint reply and appear at any hearing before the Court. This provision is a
11 material component of the Consent Judgment and shall be treated as such in the event of a breach.

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

15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //

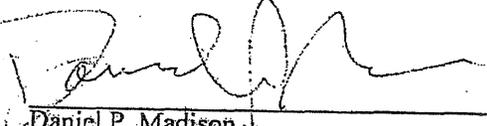
28

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

4 Agreed to by:

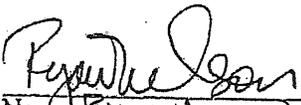
5 Dated: May 5, 2014

PUBLIC INTEREST ALLIANCE LLC

6
7 By: 
8 Daniel P. Madison
Managing Member

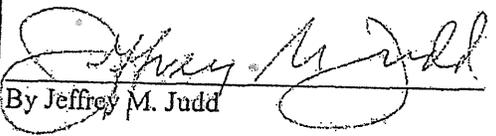
9 Dated: May 5, 2014

MELALEUCA, INC.

10
11 By: 
12 Name: RYAN NELSON
13 Title: General Counsel

14 Approved as to form:

15 JUDD LAW GROUP LLP

16
17 
By Jeffrey M. Judd

Dated: May 5, 2014

18 Attorneys for Plaintiff
19 PUBLIC INTEREST ALLIANCE LLC

20
21 
22 By ~~Jay Cobb~~ Amy P. Lally
Sidley Austin LLP
Attorneys for Defendant
23 MELALEUCA, INC.

Dated: 5-5, 2014

EXHIBIT A
Covered Products

All Nicole Miller brand loose powders
Sei Bella Fair Mineral Powder
Sei Bella Light Mineral Powder
Sei Bella Medium Mineral Powder
Sei Bella Warm Tan Mineral Powder
Sei Bella Deep Mineral Powder
Sei Bella Light Loose Powder
Sei Bella Medium Loose Powder
Sei Bella Dark Loose Powder
Sei Bella Deep Loose Powder