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7 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

OCT 24 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

12 Coordination Proceeding Special Title:) Judicial Council Coordination
13) Proceeding
14 PROPOSITION 65 COCAMIDE DEA CASES)
15) Case No. 4765

15 This Document Relates To:) ~~PROPOSED~~ CONSENT
16) JUDGMENT AS TO OUIDAD
17) HOLDINGS LLC AND OUIDAD
18) PRODUCTS, LLC
19)

16 *Center for Environmental Health v. Accessory*
17 *Zone, LLC, et al.*, A.C.S.C. Case No. RG 13-
18 699752

20 **1. INTRODUCTION**

21 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
22 Environmental Health (“CEH”) and defendants Ouidad Holdings LLC and Ouidad Products, LLC
23 (“Settling Defendants”). CEH and Settling Defendants are referred to collectively as the
24 “Parties.”

25 1.2 Settling Defendants are corporations that employs ten (10) or more persons
26 and that manufacture, distribute, and/or sell shampoo and liquid soaps that contain coconut oil
27 diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the
28 State of California or has done so in the past.

1 1.3 On July 15, 2013, CEH served a 60-Day Notice of Violation under Proposition
2 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
3 Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendants, the California Attorney General, the
4 District Attorneys of every County in the State of California, and the City Attorneys for every
5 City in the State of California with a population greater than 750,000. The Notice alleges
6 violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo and liquid
7 soaps that are manufactured, distributed, and/or sold by Settling Defendants.

8 1.4 On October 18, 2013, CEH filed the action entitled *Center for Environmental*
9 *Health v. Accessory Zone, LLC, et al.*, A.C.S.C. Case No. RG 13-699752, in the Superior Court
10 of California for Alameda County. On December 4, 2013, the *Accessory Zone* action was
11 coordinated with several other related Proposition 65 actions in the *Proposition 65 Cocamide*
12 *DEA Cases*, Case No. JCCP 4765, currently pending before this Court. On May 29, 2014, CEH
13 named Settling Defendants as defendants in that action pursuant to California Code of Civil
14 Procedure § 474.

15 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
16 Court has jurisdiction over the allegations of violations contained in the operative Complaint
17 applicable to Settling Defendants (“Complaint”) and personal jurisdiction over Settling
18 Defendants as to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda;
19 and (iii) this Court has jurisdiction to enter this Consent Judgment.

20 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
21 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
22 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
23 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
24 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
25 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
26 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
27 this action.

28

1 **2. DEFINITIONS**

2 2.1 “Covered Products” means shampoo and liquid soaps.

3 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
4 the Court.

5 **3. INJUNCTIVE RELIEF**

6 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
7 Defendants shall not manufacture, distribute, sell, or offer for sale any Covered Product that
8 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
9 purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
10 intentionally added ingredient in the product and/or part of the product formulation.

11 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
12 Date, Settling Defendants shall issue specifications to their suppliers of Covered Products
13 requiring that Covered Products not contain any cocamide DEA, and shall instruct each supplier
14 to use reasonable efforts to eliminate Covered Products containing cocamide DEA on a
15 nationwide basis.

16 3.3 **Action Regarding Specific Products.**

17 3.3.1 On or before the Effective Date, Settling Defendants shall cease selling the
18 Ouidad Climate Control Defrizzing Shampoo, SKU No. 8-14591-01079-5 (“Section 3.3
19 Product”). On or before the Effective Date, Settling Defendants shall also: (i) cease shipping the
20 Section 3.3 Product to any of their stores and/or customers that resell the Section 3.3 Product in
21 California; and (ii) send instructions to their stores and/or customers that resell the Section 3.3
22 Product in California instructing them either to: (a) return all the Section 3.3 Product to Settling
23 Defendants for destruction, or (b) directly destroy the Section 3.3 Product.

24 3.3.2 Any destruction of the Section 3.3 Product shall be in compliance with all
25 applicable laws.

26 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendants shall
27 provide CEH with written certification from Settling Defendants confirming compliance with the
28 requirements of this Section 3.3.

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 Defendants 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 Defendants a reasonable opportunity of at least thirty
9 (30) days to cure any alleged violation. Should such attempts at informal resolution fail, CEH
10 may file its enforcement motion or application. This Consent Judgment may only be enforced by
11 the Parties.

12 **5. PAYMENTS**

13 5.1 **Payments by Settling Defendants.** Within five (5) business days of the
14 Effective Date, Settling Defendants shall pay the total sum of \$15,000 as a settlement payment.
15 The total settlement amount for Settling Defendants shall be paid in four separate checks
16 delivered to counsel for CEH at the address set forth in Section 8.1 below. The funds paid by
17 Settling Defendants shall be allocated between the following categories:

18 5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
19 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
20 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
21 Assessment). The civil penalty check shall be made payable to the Center for Environmental
22 Health.

23 5.1.2 \$2,250 as a payment in lieu of civil penalty to CEH pursuant to Health &
24 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
25 such funds to continue its work educating and protecting people from exposures to toxic
26 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
27 Judgment and to purchase and test Settling Defendants's products to confirm compliance. In
28 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four

1 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
2 educate and protect people from exposures to toxic chemicals. The method of selection of such
3 groups can be found at the CEH web site at www.keh.org/justicefund. The payment pursuant to
4 this Section shall be made payable to the Center for Environmental Health.

5 5.1.3 \$11,100 as reimbursement of a portion of CEH's reasonable attorneys' fees
6 and costs. A check for \$9,600 shall be made payable to the Lexington Law Group, and a check
7 for \$1,500 shall be made payable to the Center for Environmental Health.

8 **6. MODIFICATION**

9 6.1 **Written Consent.** This Consent Judgment may be modified from time to time
10 by express written agreement of the Parties with the approval of the Court, or by an order of this
11 Court upon motion and in accordance with law.

12 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
13 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
14 modify the Consent Judgment.

15 **7. CLAIMS COVERED AND RELEASED**

16 7.1 This Consent Judgment is a full, final, and binding resolution between CEH on
17 behalf of itself and the public interest and Settling Defendants, and their parents, subsidiaries,
18 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
19 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
20 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
21 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees"),
22 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
23 Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees, based on
24 failure to warn about alleged exposure to cocamide DEA contained in Covered Products that were
25 sold by Settling Defendants prior to the Effective Date.

26 7.2 Compliance with the terms of this Consent Judgment by Settling Defendants
27 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendants,
28 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to

1 warn about cocamide DEA in Covered Products manufactured, distributed, or sold by Settling
2 Defendants after the Effective Date.

3 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
4 action under Proposition 65 against any person other than Settling Defendants, Defendant
5 Releasees, or Downstream Defendant Releasees.

6 **8. NOTICE**

7 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
8 notice shall be sent by first class and electronic mail to:

9 Mark Todzo
10 Lexington Law Group
11 503 Divisadero Street
12 San Francisco, CA 94117
13 mtodzo@lexlawgroup.com

14 8.2 When Settling Defendants is entitled to receive any notice under this Consent
15 Judgment, the notice shall be sent by first class and electronic mail to:

16 Daniel J. Herling
17 Mintz Levin
18 44 Montgomery Street, 36th Floor
19 San Francisco, CA 94104
20 djherling@mintz.com

21 8.3 Any Party may modify the person and address to whom the notice is to be sent
22 by sending the other Party notice by first class and electronic mail.

23 **9. COURT APPROVAL**

24 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
25 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
26 shall support entry of this Consent Judgment.

27 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
28 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

10. ATTORNEYS' FEES

10.1 Should CEH prevail on any motion, application for an order to show cause, or

1 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
2 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
3 Settling Defendants prevail on any motion application for an order to show cause or other
4 proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a
5 result of such motion or application upon a finding by the Court that CEH's prosecution of the
6 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
7 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
8 1986, Code of Civil Procedure §§ 2016, *et seq.*

9 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
10 its own attorneys' fees and costs.

11 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
12 sanctions pursuant to law.

13 **11. OTHER TERMS**

14 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
15 of California.

16 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
17 Defendants, and their respective divisions, subdivisions, and subsidiaries, and the successors or
18 assigns of any of them.

19 11.3 This Consent Judgment contains the sole and entire agreement and
20 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
21 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
22 merged herein and therein. There are no warranties, representations, or other agreements between
23 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
24 implied, other than those specifically referred to in this Consent Judgment have been made by any
25 Party hereto. No other agreements not specifically contained or referenced herein, oral or
26 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
27 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
28 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent

1 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
2 whether or not similar, nor shall such waiver constitute a continuing waiver.

3 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
4 that Settling Defendants might have against any other party, whether or not that party is a settling
5 defendant.

6 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
7 Consent Judgment.

8 11.6 The stipulations to this Consent Judgment may be executed in counterparts
9 and by means of facsimile or portable document format (pdf), which taken together shall be
10 deemed to constitute one document.

11 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
12 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
13 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
14 Party.

15 11.8 The Parties, including their counsel, have participated in the preparation of
16 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
17 This Consent Judgment was subject to revision and modification by the Parties and has been
18 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
19 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
20 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
21 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
22 be resolved against the drafting Party should not be employed in the interpretation of this Consent
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1 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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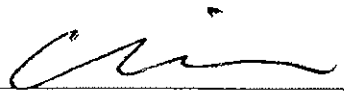
3 **IT IS SO STIPULATED:**

4 **CENTER FOR ENVIRONMENTAL HEALTH**

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8 Charlie Pizarro
Associate Director

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10 **QUIDAD HOLDINGS LLC**

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13 _____
Signature

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16 _____
Printed Name

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Title

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1 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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3 **IT IS SO STIPULATED:**

4 **CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro
Associate Director

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10 **OUIDAD HOLDINGS LLC**

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Signature

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DAVID L. STERN
Printed Name

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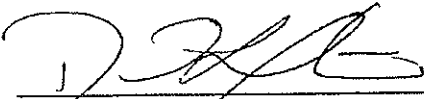
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OIDAD PRODUCTS, LLC



Signature

DAVID L. STERN

Printed Name

CEO

Title

IT IS SO ORDERED:

Dated: OCT 24, 2014

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court