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CENTER FOR ENVIRONMENTAL HEALTH  
11

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA  
15

16  
17 CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
18 )  
Plaintiff, )  
19 )  
vs. )  
20 )  
ALBERTO-CULVER USA, INC., *et al.* )  
21 )  
Defendant. )  
22 )

Case No. RG 13-697455

~~PROPOSED~~ CONSENT  
JUDGMENT AS TO AVLON  
INDUSTRIES, INC.

23  
24 **1. INTRODUCTION**

25 1.1 The parties to this Consent Judgment (“Parties”) are the Center for  
26 Environmental Health (“CEH”) and defendant Avlon Industries, Inc. (“Settling Defendant”).  
27 CEH and Settling Defendant are referred to collectively as the “Parties.”  
28

ENDORSED  
FILED  
ALAMEDA COUNTY

MAY - 2 2014

CLERK OF THE SUPERIOR COURT  
By **YOLANDA ESTRADA**,puty

1           1.2           Settling Defendant is a corporation that employs ten (10) or more persons and  
2 that manufactures, distributes and/or sells shampoo that contains coconut oil diethanolamine  
3 condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the State of California  
4 or has done so in the past.

5           1.3           On July 19, 2013, CEH served a 60-Day Notice of Violation under Proposition  
6 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety  
7 Code §§ 25249.5, *et seq.*) (the “Notice”) to Settling Defendant, the California Attorney General,  
8 the District Attorneys of every County in the State of California, and the City Attorneys for every  
9 City in the State of California with a population greater than 750,000. The Notice alleges  
10 violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo  
11 manufactured, distributed and/or sold by Settling Defendant.

12           1.4           On September 30, 2013, CEH filed the action entitled *CEH v. Alberto-Culver*  
13 *USA, Inc., et al.*, Case No. RG 13-697455, in the Superior Court of California for Alameda  
14 County.

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 Defendant (the “Complaint”) and personal jurisdiction over Settling  
18 Defendant as to the acts alleged in the Complaint; (ii) that venue is proper in the County of  
19 Alameda; and (iii) that 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.

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.** By the 180th day after the Effective  
7 Date, Settling Defendant shall not manufacture, distribute, sell or offer for sale any Covered  
8 Product that contains cocamide DEA and that will be sold or offered for sale to California  
9 consumers. For purposes of this Consent Judgment, a product “contains cocamide DEA” if  
10 cocamide DEA is an intentionally added ingredient in the product and/or part of the product  
11 formulation.

12             3.2             **Warnings for Covered Products.**

13                     3.2.1     **Interim Warning Option.** As of the Effective Date, no Covered  
14 Product that contains cocamide DEA shall be manufactured, distributed for sale in California by  
15 Settling Defendant without a Clear and Reasonable Warning that complies with the provisions of  
16 Section 3.3.2.

17                     3.2.2     **Proposition 65 Warnings.** A Clear and Reasonable Warning under  
18 this Consent Judgment shall state:

19                             WARNING: This product contains cocamide DEA, a chemical known to  
20 the State of California to cause cancer.

21 This statement shall be prominently displayed on the principal display panel of the label or the  
22 packaging of the Covered Product in such a manner that it is likely to be read and understood by  
23 an ordinary individual prior to sale.

24             3.3             **Grace Period for Products Manufactured Prior to the Effective Date.**

25 Subject to Section 3.2, liability for Covered Products that were manufactured and distributed for  
26 retail sale prior to the Effective Date shall be subject to the release of liability pursuant to Section  
27 7 of this Consent Judgment, without regard to when such Covered Products were, or are in the  
28 future, sold to consumers.

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 five (5) business days of the Effective  
15 Date, Settling Defendant shall pay the total sum of \$15,000 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     \$1,650 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     \$2,250 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  
27 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent  
28 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In

1 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four  
2 percent (4%) of such funds to award grants to grassroots environmental justice groups working to  
3 educate and protect people from exposures to toxic chemicals. The method of selection of such  
4 groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to  
5 this Section shall be made payable to the Center For Environmental Health.

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

9 **6. MODIFICATION**

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

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

16 **7. CLAIMS COVERED AND RELEASED**

17 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
18 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
19 affiliated entities that are under common ownership, directors, officers, employees, and attorneys,  
20 and Settling Defendant's sales outlets in California, including J. C. Penney Corporation, Inc.,  
21 Beauty Systems Group, Universal Beauty Supply, Professional Salon Concepts, Heavenly Touch,  
22 Ulta, Premier Salons/Macy's, and Nexcom ("Defendant Releasees") of any violation of  
23 Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant  
24 and Defendant Releasees, based on failure to warn about alleged exposure to cocamide DEA  
25 contained in Covered Products that were sold by Settling Defendant prior to the Effective Date.

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

1 cocamide DEA in Covered Products manufactured, distributed, or sold by Settling Defendant  
2 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 Defendant and Defendant  
5 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 Defendant is entitled to receive any notice under this Consent  
15 Judgment, the notice shall be sent by first class and electronic mail to:

16 Ludwig E. Kolman  
17 Vedder Price  
18 222 North LaSalle Street  
19 Chicago, IL 60601  
20 lkolman@vedderprice.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 Defendant  
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 Defendant prevail on any motion application for an order to show cause or other  
4 proceeding, Settling Defendant shall be awarded its 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 Defendant, and its 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 Defendant 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:**

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5 **CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro  
Associate Director

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**AVLON INDUSTRIES, INC.**

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Signature

15

Printed Name

16

17

Title

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**IT IS SO ORDERED:**

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Dated: \_\_\_\_\_, 2013

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Judge of the Superior Court

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

**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_  
Charlie Pizarro  
Associate Director

**AVLON INDUSTRIES, INC.**

\_\_\_\_\_  
*Ali N. Syed*  
Signature

\_\_\_\_\_  
ALI N. SYED  
Printed Name

\_\_\_\_\_  
*President*  
Title

**IT IS SO ORDERED:**

Dated:     MAY - 2     2014

    GEORGE C. HERNANDEZ, JR.      
Judge of the Superior Court