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11 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

JUL 22 2014

CLERK OF THE SUPERIOR COURT
YOLANDA ESTRADA Deputy

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

17 Coordination Proceeding Special Title:) Judicial Council Coordination Proceeding
18 PROPOSITION 65 COCAMIDE DEA CASES) Case No. 4765
19 _____)
20 This Document Relates To:) **[PROPOSED] CONSENT**
21 *CEH v. Fantasia Industries Corporation, et al.,*) **JUDGMENT AS TO BLISS WORLD**
22 *A.C.S.C. Case No. RG 13-696756*) **LLC**

24 **1. INTRODUCTION**

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

1 1.2 Settling Defendant is a limited liability corporation that employs ten (10) or
2 more persons and that manufactures, distributes, and/or sells shampoo and liquid soaps that
3 contain coconut oil diethanolamine condensate (cocamide diethanolamine) (hereinafter,
4 “cocamide DEA”) in the State of California 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 certain shampoo
11 and liquid soaps manufactured, distributed, and/or sold by Settling Defendant in the State of
12 California.

13 1.4 On September 24, 2013, CEH filed the action entitled *CEH v. Fantasia*
14 *Industries Corporation, et al.*, Case No. RG 13-696756, in the Superior Court of California for
15 Alameda County. On October 8, 2013, CEH named Settling Defendant as a defendant in that
16 action pursuant to California Code of Civil Procedure § 474. On December 4, 2013, the *Fantasia*
17 action was coordinated with several other related Proposition 65 actions in the *Proposition 65*
18 *Cocamide DEA Cases*, Case No. JCCP 4765, currently pending before this Court.

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) venue is proper in the County of Alameda;
23 and (iii) 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 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
28 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any

1 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
2 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
3 this action.

4 **2. DEFINITIONS**

5 2.1 "Covered Product(s)" means shampoo, liquid soaps, and body washes
6 containing cocamide DEA that are manufactured by or for, and/or sold by, Settling Defendant in
7 the State of California, including, but not limited to, Minty Suds, Bliss Super Minty Soapy Suds
8 Body Wash, Super Minty Body Butter, Raspberry Soapy Suds, Bliss Raspberry Champagne Body
9 Wash, Raspberry Body Butter, Vanilla + Bergamot Body Wash, Vanilla + Bergamot Soapy Suds,
10 Blood Orange + White Pepper Soapy Suds, Blood Orange + White Pepper Body Butter, Naked
11 Body Butter, Sinkside Six Pack, Bod Squad Promo Set, Lemon + Sage Soapy Suds, Lemon +
12 Sage Body Butter, Snow Wonder Body Butter, Vanilla Body Butter, Fabulous Foaming Body
13 Wash, and Fabulous Foaming Face Wash. For purposes of this Consent Judgment, a product
14 "contains cocamide DEA" if cocamide DEA is itself an intentionally added ingredient in the
15 product and/or part of the product formulation.

16 2.2 "Effective Date" means the date on which this Consent Judgment is entered
17 by the Court.

18 **3. INJUNCTIVE RELIEF**

19 3.1 **Reformulation of Covered Products.** To the extent it has not already done
20 so, as of the Effective Date, Settling Defendant shall not manufacture, distribute, sell, or offer for
21 sale any Covered Product that will be sold or offered for sale in California to consumers.

22 3.2 **Specification to Suppliers and/or Manufacturers.** To the extent it has not
23 already done so, no more than thirty (30) days after the Effective Date, Settling Defendant shall
24 issue specifications to its suppliers and/or manufacturers of Covered Products requiring that
25 products supplied to or manufactured for Settling Defendant not contain any cocamide DEA, and
26 shall instruct each supplier and/or manufacturer to use reasonable efforts to eliminate cocamide
27 DEA as an added ingredient from Settling Defendant's products on a nationwide basis.

28

1 **3.3 Action Regarding Specific Products.**

2 3.3.1 To the extent it has not done so already, on or before the Effective Date,
3 Settling Defendant shall also: (i) cease shipping Covered Products to any of its stores and/or
4 customers that resell Covered Products in California, and (ii) send instructions to its stores and/or
5 customers that resell Covered Products in California instructing them either to: (a) return all of
6 the Covered Products to Settling Defendant for destruction; or (b) directly destroy the Covered
7 Products.

8 3.3.2 Any destruction of Covered Products shall be in compliance with all
9 applicable laws.

10 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall
11 provide CEH with written certification from Settling Defendant confirming compliance with the
12 requirements of this Section 3.3.

13 **4. ENFORCEMENT**

14 4.1 CEH may, by motion or application for an order to show cause before the
15 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
16 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
17 above, CEH shall provide Settling Defendant with a Notice of Violation and a copy of any test
18 results which purportedly support CEH's Notice of Violation. The Parties shall then meet and
19 confer regarding the basis for CEH's anticipated motion or application in an attempt to resolve it
20 informally, and CEH shall provide Settling Defendant with a reasonable opportunity of at least
21 thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail,
22 CEH may file its enforcement motion or application. The prevailing party on any motion to
23 enforce this Consent Judgment shall be entitled to its reasonable attorneys' fees and costs
24 incurred as a result of such motion or application. This Consent Judgment may only be enforced
25 by the Parties.

26 **5. PAYMENTS**

27 5.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective
28 Date, Settling Defendant shall pay the total sum of \$15,000 as a settlement payment. The total

1 settlement amount for Settling Defendant shall be paid in four separate checks delivered to
2 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
3 Defendant shall be allocated between the following categories:

4 5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
5 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
6 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
7 Assessment ("OEHHA")). The civil penalty check shall be made payable to the Center For
8 Environmental Health.

9 5.1.2 \$2,250 as a payment in lieu of civil penalty to CEH pursuant to Health &
10 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
11 such funds to continue its work educating and protecting people from exposures to toxic
12 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
13 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In
14 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
15 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
16 educate and protect people from exposures to toxic chemicals. The method of selection of such
17 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
18 this Section shall be made payable to the Center For Environmental Health.

19 5.1.3 \$11,100 as reimbursement of a portion of CEH's reasonable attorneys' fees
20 and costs. A check for \$9,600 shall be made payable to the Lexington Law Group, and a check
21 for \$1,500 shall be made payable to the Center For Environmental Health.

22 **6. MODIFICATION**

23 6.1 **Written Consent.** This Consent Judgment may be modified from time to
24 time by express written agreement of the Parties with the approval of the Court, or by an order of
25 this Court upon motion and in accordance with law. If the Parties agree that this Consent
26 Judgment should no longer apply to the Covered Products, the Parties may modify the Consent
27 Judgment via Stipulation and Proposed Order.

28 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall

1 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
2 modify the Consent Judgment.

3 **7. CLAIMS COVERED AND RELEASED**

4 7.1 This Consent Judgment is a full, final, and binding resolution between CEH on
5 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
6 affiliated entities that are under common ownership, and each of their directors, officers,
7 shareholders, members, employees, and attorneys (“Defendant Releasees”), and each entity to
8 whom they directly or indirectly sell or sold or distributed Covered Products, including, but not
9 limited to, Ross Stores, Inc., Sephora, USA, Inc., and any and all of Settling Defendant’s other
10 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
11 licensees (“Downstream Defendant Releasees”) of any violation of Proposition 65 that was or
12 could have been asserted in the Complaint against Settling Defendant, Defendant Releasees, and
13 Downstream Defendant Releasees, based on failure to warn about alleged exposure to cocamide
14 DEA contained in Covered Products that were sold by Settling Defendant prior to the Effective
15 Date.

16 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
17 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling
18 Defendant, its Defendant Releasees, and each of their Downstream Defendant Releasees with
19 respect to any alleged failure to warn about cocamide DEA in Covered Products manufactured,
20 distributed, or sold by Settling Defendant after the Effective Date.

21 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
22 action under Proposition 65 against any person other than Settling Defendant, Defendant
23 Releasees, or Downstream Defendant Releasees.

24 **8. NOTICE**

25 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by first class and/or electronic mail to:

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1 Mark Todzo
2 Lexington Law Group
3 503 Divisadero Street
4 San Francisco, CA 94117
5 mtodzo@lexlawgroup.com

6 8.2 When Settling Defendant is entitled to receive any notice under this Consent
7 Judgment, the notice shall be sent by first class and/or electronic mail to:

8 Ronie M. Schmelz
9 Edwards Wildman Palmer LLP
10 1901 Avenue of the Stars, Ste. 1700
11 Los Angeles, CA 90067
12 rschmelz@edwardswildman.com

13 8.3 Any Party may modify the person and address to whom the notice is to be sent
14 by sending the other Party notice by first class and/or electronic mail.

15 **9. COURT APPROVAL**

16 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
17 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
18 shall support entry of this Consent Judgment.

19 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
20 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
21 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

22 **10. ATTORNEYS' FEES**

23 10.1 Should CEH prevail on any motion, application for an order to show cause, or
24 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
25 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
26 Settling Defendant prevail on any motion application for an order to show cause, or other
27 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
28 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
or application lacked substantial justification. For purposes of this Consent Judgment, the term
substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
Code of Civil Procedure §§ 2016, *et seq.*

1 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
2 its own attorneys' fees and costs.

3 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
4 sanctions pursuant to law.

5 **11. OTHER TERMS**

6 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
7 of California.

8 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
9 Defendant and each of its respective divisions, subdivisions, and subsidiaries, and the successors
10 and assigns of each of them.

11 11.3 This Consent Judgment contains the sole and entire agreement and
12 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
13 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
14 merged herein. There are no warranties, representations, or other agreements between or among
15 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
16 implied, other than those specifically referred to in this Consent Judgment have been made by any
17 Party hereto. No other agreements not specifically contained or referenced herein, oral or
18 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
19 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
20 writing by the Parties. No waiver of any of the provisions of this Consent Judgment shall be
21 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,
22 nor shall such waiver constitute a continuing waiver.

23 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
24 that Settling Defendant might have against any other party, whether or not that party is a Settling
25 Defendant.

26 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

28 11.6 This Consent Judgment may be executed in counterparts and by means of

1 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
2 one document.

3 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
5 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
6 Party.

7 11.8 The Parties, including their counsel, have participated in the preparation of
8 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
9 This Consent Judgment was subject to revision and modification by the Parties and has been
10 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
11 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
12 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
13 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
14 be resolved against the drafting Party should not be employed in the interpretation of this Consent
15 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.
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17 **IT IS SO STIPULATED:**

18
19 **CENTER FOR ENVIRONMENTAL HEALTH**

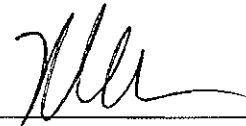
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22 _____
23 Charlie Pizarro
24 Associate Director
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BLISS WORLD LLC



Signature

Michael F Miller

Printed Name

V & CFO

Title

IT IS SO ORDERED:

Dated: JUL 22 2014, 2014

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court