

1 Mark N. Todzo, State Bar No. 168389
2 Howard Hirsch, State Bar No. 213209
3 LEXINGTON LAW GROUP
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 mtodzo@lexlawgroup.com
9 vhartanto@lexlawgroup.com

6 Counsel for Plaintiff
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

13 CENTER FOR ENVIRONMENTAL HEALTH,)
14 a non-profit corporation,)

14 Plaintiff,)

15 vs.)

16 ALBERTO-CULVER USA, INC., et al.,)

17 Defendant.)
18)
19)

Case No. RG13697455

~~[PROPOSED]~~ CONSENT
JUDGMENT AS TO SALLY
BEAUTY SUPPLY LLC AND SALLY
BEAUTY HOLDINGS, INC.

20 **1. INTRODUCTION**

21 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
22 Environmental Health (“CEH”) and defendant Sally Beauty Supply LLC. (“Settling Defendant”).
23 CEH and Settling Defendant are referred to collectively as the “Parties.”

24 1.2 Settling Defendant is a limited liability company that employs ten (10) or
25 more persons and that distributes and/or sells shampoo and liquid soaps that contain coconut oil
26 diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the
27 State of California or has done so in the past.
28

1 1.3 On July 19, 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.*) (the “Notice”) to Settling Defendant, the California Attorney General,
4 the 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 manufactured, distributed and/or sold by Settling Defendant.

8 1.4 On September 30, 2013, CEH filed the action entitled *CEH v. Alberto-Culver*
9 *USA, Inc. et al.*, Case No. RG13697455, in the Superior Court of California for Alameda County,
10 naming Settling Defendant as a defendant in that action.

11 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
12 Court has jurisdiction over the allegations of violations contained in the operative Complaint
13 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling
14 Defendant as to the acts alleged in the Complaint; (ii) that venue is proper in the County of
15 Alameda; and (iii) that this Court has jurisdiction to enter this Consent Judgment.

16 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
17 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
18 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
19 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
20 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
21 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
22 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
23 this action.

24 **2. DEFINITIONS**

25 2.1 “Covered Products” means products containing cocamide DEA. For purposes
26 of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
27 intentionally added ingredient in the product.

28

1 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
2 the Court.

3 **3. INJUNCTIVE RELIEF**

4 3.1 **Reformulation of Covered Products.** Within twelve (12) months following
5 the Effective Date (“Sell-Off Period”), Settling Defendant shall not distribute, sell or offer for
6 sale any private label Covered Product to California consumers.

7 3.2 **Specification to and Certification from Suppliers.** No more than 60 days
8 after the Effective Date, Settling Defendant shall directly or through its supply chain issue
9 specifications to its suppliers of Covered Products requiring that Covered Products not contain
10 cocamide DEA, and shall instruct each supplier to use reasonable efforts to eliminate Covered
11 Products containing cocamide DEA on a nationwide basis. Settling Defendant shall obtain and
12 maintain written certifications or other written representation from its suppliers of Covered
13 Products confirming that all Covered Products received by Settling Defendant do not contain
14 cocamide DEA. Settling Defendant shall not be deemed in violation of the requirements of this
15 Section 3 for any Covered Product to the extent it has relied on a written certification or other
16 written representation from its vendor that supplied a Covered Product that such Covered Product
17 does not contain cocamide DEA.

18 3.3 **Action Regarding Specific Product.**

19 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the
20 Doo Gro Tingling Gro Shampoo UPC No. 6-79010-75170-2 (the “Section 3.3 Product”) in
21 California. On or before the Effective Date, Settling Defendant shall also: (i) cease shipping the
22 Section 3.3 Product to any of its stores in California, and (ii) send instructions to its California
23 stores that have any remaining Section 3.3 Product in their stores instructing them either to: (a)
24 return all the Section 3.3 Product to Settling Defendant; or (b) directly destroy the Section 3.3
25 Product.

26 3.3.2 Any destruction of Section 3.3 Product shall be in compliance with all
27 applicable laws.

28

1 3.3.3 Within sixty days of the Effective Date, Settling Defendant shall provide
2 CEH with written certification from Settling Defendant confirming compliance with the
3 requirements of this Section 3.3.

4 **4. ENFORCEMENT**

5 4.1 CEH may, by motion or application for an order to show cause before the
6 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
7 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
8 above, CEH shall provide Settling Defendant with a Notice of Violation and a copy of any test
9 results which purportedly support CEH's Notice of Violation. The Parties shall then meet and
10 confer regarding the basis for CEH's anticipated motion or application in an attempt to resolve it
11 informally, including providing Settling Defendant a reasonable opportunity of at least thirty (30)
12 days to cure any alleged violation. Should such attempts at informal resolution fail, CEH may
13 file its enforcement motion or application. The prevailing party on any motion to enforce this
14 Consent Judgment shall be entitled to its reasonable attorneys' fees and costs incurred as a result
15 of such motion or application. This Consent Judgment may only be enforced by the Parties.

16 **5. PAYMENTS**

17 5.1 **Payments by Settling Defendants.** Within ten (10) business days of the Effective
18 Date, Settling Defendant shall pay the total sum of \$35,000 (thirty-five thousand dollars) as a
19 settlement payment. The total settlement amount for Settling Defendant shall be paid in four
20 separate checks delivered to counsel for CEH at the address set forth in Section 8.1 below. The
21 funds paid by Settling Defendant shall be allocated between the following categories:

22 5.1.1 \$3,850 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
23 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
24 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
25 Assessment). The civil penalty check shall be made payable to the Center For Environmental
26 Health.

27 5.1.2 \$5,250 as a payment in lieu of civil penalty to CEH pursuant to Health &
28 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use

1 such funds to continue its work educating and protecting people from exposures to toxic
2 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
3 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In
4 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
5 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
6 educate and protect people from exposures to toxic chemicals. The method of selection of such
7 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
8 this Section shall be made payable to the Center For Environmental Health.

9 5.1.3 \$25,900 as reimbursement of a portion of CEH's reasonable attorneys' fees
10 and costs. A check for \$22,400 shall be made payable to the Lexington Law Group, and a check
11 for \$3,500 shall be made payable to the Center For Environmental Health.

12 **6. MODIFICATION**

13 6.1 **Written Consent.** This Consent Judgment may be modified from time to
14 time by express written agreement of the Parties with the approval of the Court, or by an order of
15 this Court upon motion and in accordance with law.

16 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
17 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
18 modify the Consent Judgment.

19 **7. CLAIMS COVERED AND RELEASED**

20 7.1 This Consent Judgment is a full, final and binding resolution between 1) CEH
21 on behalf of itself and the public interest and 2) Settling Defendant, as well as Settling
22 Defendant's parents, subsidiaries, affiliated entities that are under common ownership, directors,
23 officers, employees, attorneys, as well as any retailers, customers, or distributors of Covered
24 Products distributed, or sold by Settling Defendant or its parents, subsidiaries, affiliated entities
25 that are under common ownership, (collectively, "Defendant Releasees"), of any violation of
26 Proposition 65 that was or could have been asserted in the Complaint against Defendant
27 Releasees, based on failure to warn about alleged exposure to cocamide DEA contained in
28 Covered Products that were sold by Defendant Releasees prior to the Effective Date.

1 7.2 Compliance with the terms of this Consent Judgment by Defendant Releasees
2 shall constitute compliance with Proposition 65 by Defendant Releasees with respect to any
3 alleged failure to warn about cocamide DEA in Covered Products distributed or sold by
4 Defendant Releasees after the Effective Date.

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

7 **8. NOTICE**

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

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

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

17 Attn: General Counsel
18 Sally Beauty Supply LLC
19 3001 Colorado Blvd.
20 Denton, Texas 76210
21 SSherman@sallybeauty.com

22 8.2.1 With a copy to:

23 Michael Steel
24 Morrison & Foerster LLP
25 425 Market Street
26 San Francisco, CA 94105
27 MSteel@mofocom

28 8.3 Any Party may modify the person and address to whom the notice is to be sent
by sending the other Party notice by first class and electronic mail.

9. COURT APPROVAL

9.1 This Consent Judgment shall become effective upon entry by the Court. CEH

1 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
2 shall support entry of this Consent Judgment.

3 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
4 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
5 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

6 **10. ATTORNEYS' FEES**

7 10.1 Should CEH prevail on any motion, application for an order to show cause or
8 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
9 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
10 Defendant Releasees prevail on any motion application for an order to show cause or other
11 proceeding, Defendant Releasees may be awarded its reasonable attorneys' fees and costs as a
12 result of such motion or application upon a finding by the Court that CEH's prosecution of the
13 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
14 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
15 1986, Code of Civil Procedure §§ 2016, *et seq.*

16 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
17 its own attorneys' fees and costs.

18 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
19 sanctions pursuant to law.

20 **11. OTHER TERMS**

21 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
22 of California.

23 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
24 Defendant, and the successors or assigns of any of them.

25 11.3 This Consent Judgment contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
27 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
28 merged herein and therein. There are no warranties, representations, or other agreements between

1 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
2 implied, other than those specifically referred to in this Consent Judgment have been made by any
3 Party hereto. No other agreements not specifically contained or referenced herein, oral or
4 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
5 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
6 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
7 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
8 whether or not similar, nor shall such waiver constitute a continuing waiver.

9 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
10 that Settling Defendant might have against any other party, whether or not that party is a Settling
11 Defendant.

12 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
13 Consent Judgment.

14 11.6 The stipulations to this Consent Judgment may be executed in counterparts
15 and by means of facsimile or portable document format (pdf), which taken together shall be
16 deemed to constitute one document.

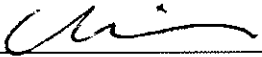
17 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
19 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
20 Party.

21 11.8 The Parties, including their counsel, have participated in the preparation of
22 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
23 This Consent Judgment was subject to revision and modification by the Parties and has been
24 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
25 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
26 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
27 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
28 be resolved against the drafting Party should not be employed in the interpretation of this Consent

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

2 **IT IS SO STIPULATED:**

3 **CENTER FOR ENVIRONMENTAL HEALTH**

4 

5 Charlie Pizarro
6 Associate Director

7 **SALLY BEAUTY SUPPLY LLC**

8 _____
9 Signature

10 _____
11 Printed Name; Title

12 **IT IS SO ORDERED:**

13
14 Dated: _____, 2014

15 _____
16 Judge of the Superior Court

17
18
19
20
21
22
23
24
25
26
27
28

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

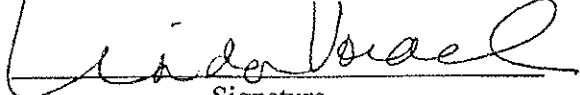
2 **IT IS SO STIPULATED:**

3 **CENTER FOR ENVIRONMENTAL HEALTH**

4

5 _____
Charlie Pizarro
6 Associate Director

7 **SALLY BEAUTY SUPPLY LLC**

8 
9 Signature

10 Linda Voracek; Group VP of Merchandising
11 Printed Name; Title

12 **IT IS SO ORDERED:**

13
14 Dated: **OCT 24**, 2014

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

16
17
18
19
20
21
22
23
24
25
26
27
28