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CENTER FOR ENVIRONMENTAL HEALTH  
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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA  
15

16  
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. Alberto-Culver USA, Inc., et al., A.C.S.C.* ) **JUDGMENT AS TO ASPIRE**  
22 Case No. RG 13-697455 ) **BRANDS AND BONNE BELL, LLC**  
23 \_\_\_\_\_ )

24 **1. INTRODUCTION**

25 1.1 The parties to this Consent Judgment (“Parties”) are the Center for  
26 Environmental Health (“CEH”) and defendants Aspire Brands and Bonne Bell, LLC (“Settling  
27 Defendants”). CEH and Settling Defendants are referred to collectively as the “Parties.”  
28

ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 15 2014

CLERK OF SUPERIOR COURT  
BY **YOLANDA ESTRADA** Deputy

1           1.2           Settling Defendants are corporations that employ ten (10) or more persons and  
2 that manufacture, distribute and/or sell shampoo and liquid soaps that contain coconut oil  
3 diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the  
4 State of California or has done so in the past.

5           1.3           On July 26, 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 Defendants, 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 and liquid  
11 soaps manufactured, distributed and/or sold by Settling Defendants.

12           1.4           On September 30, 2013, CEH filed the action entitled *Center for*  
13 *Environmental Health v. Alberto-Culver USA, Inc., et al.*, Case No. RG 13-697455, in the  
14 Superior Court of California for Alameda County, naming Aspire Brands as a defendant in that  
15 action. On October 8, 2013, CEH named Bonne Bell, LLC as a defendant in that action pursuant  
16 to California Code of Civil Procedure §474. On December 4, 2013, the *Alberto-Culver* action  
17 was coordinated with several other related Proposition 65 actions in the *Proposition 65 Cocamide*  
18 *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 Defendants (the “Complaint”) and personal jurisdiction over Settling  
22 Defendants as to the acts alleged in the Complaint; (ii) that venue is proper in the County of  
23 Alameda; and (iii) that 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 Products” means shampoo and liquid soaps.

6 2.2 “Effective Date” means the date on which this Consent Judgment is entered by  
7 the Court.

8 **3. INJUNCTIVE RELIEF**

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

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

19 3.3 **Action Regarding Specific Products.**

20 3.3.1 On or before the Effective Date, Settling Defendants have ceased selling  
21 the Formula 10.0.6 Best Face Forward Daily Foaming Cleanser Passionfruit + Green Tea, SKU  
22 No. 0-50051-00535-6 (the “Section 3.3 Product”) in California. On or before the Effective Date,  
23 Settling Defendants have also: (i) ceased shipping the Section 3.3 Product to any of their stores  
24 and/or customers that resell the Section 3.3 Product in California, and (ii) sent instructions to their  
25 stores and/or customers that resell the Section 3.3 Product in California instructing them to return  
26 all the Section 3.3 Product to Settling Defendants. As of the Effective Date, Settling Defendants  
27 have reformulated the Section 3.3 Product to remove Cocamide DEA, and will not sell any  
28 Section 3.3 product(s) in California containing Cocamide DEA.



1 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use  
2 such funds to continue its work educating and protecting people from exposures to toxic  
3 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent  
4 Judgment and to purchase and test Settling Defendants' products to confirm compliance. In  
5 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four  
6 percent (4%) of such funds to award grants to grassroots environmental justice groups working to  
7 educate and protect people from exposures to toxic chemicals. The method of selection of such  
8 groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to  
9 this Section shall be made payable to the Center For Environmental Health.

10 5.1.3 \$10,730.00 as reimbursement of a portion of CEH's reasonable attorneys'  
11 fees and costs. A check for \$9,280.00 shall be made payable to the Lexington Law Group, and a  
12 check for \$1,450.00 shall be made payable to the Center For Environmental Health.

## 13 6. MODIFICATION

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

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

## 20 7. CLAIMS COVERED AND RELEASED

21 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
22 behalf of itself and the public interest and Settling Defendants, and their parents, subsidiaries,  
23 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
24 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell  
25 Covered Products, or have in the past directly or indirectly distributed or sold Covered Products,  
26 including but not limited to distributors, wholesalers, customers, retailers, franchisees,  
27 cooperative members, licensors and licensees, including but not limited to Ulta Salon, Cosmetics  
28 and Fragrance, Inc. ("Ulta") ("Downstream Defendant Releasees") of any violation of Proposition

1 65 that was or could have been asserted in the Complaint against Settling Defendants, Defendant  
2 Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged  
3 exposure to cocamide DEA contained in Covered Products that were sold by Settling Defendants  
4 prior to the Effective Date.

5 7.2 Compliance with the terms of this Consent Judgment by Settling Defendants  
6 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling  
7 Defendants, their Defendant Releasees and their Downstream Defendant Releasees with respect  
8 to any alleged failure to warn about cocamide DEA in Covered Products manufactured,  
9 distributed, or sold by Settling Defendants after the Effective Date.

10 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an  
11 action under Proposition 65 against any person other than Settling Defendants, Defendant  
12 Releasees, or Downstream Defendant Releasees.

13 **8. NOTICE**

14 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
15 notice shall be sent by first class and electronic mail to:

16 Mark Todzo  
17 Lexington Law Group  
18 503 Divisadero Street  
19 San Francisco, CA 94117  
20 mtodzo@lexlawgroup.com

21 8.2 When Settling Defendants are entitled to receive any notice under this Consent  
22 Judgment, the notice shall be sent by first class and electronic mail to:  
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1 Sophia B. Belloli  
2 Michael Van Zandt  
3 Hanson Bridgett LLP  
4 425 Market Street, 26th Floor  
5 San Francisco, CA 94105  
6 [sbelloli@hansonbridgett.com](mailto:sbelloli@hansonbridgett.com)

7 On behalf of Ulta:  
8 Lisa Bond  
9 Richards Watson & Gershon  
10 355 South Grand Avenue, 40th Floor  
11 Los Angeles, CA 90071  
12 [lbond@rwgawcom](mailto:lbond@rwgawcom)

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 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 Defendants  
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 Defendants prevail on any motion application for an order to show cause or other  
27 proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a  
28 result 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 Defendants, and their respective divisions, subdivisions, and subsidiaries, and the successors or  
10 assigns of any 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 and therein. There are no warranties, representations, or other agreements between  
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 Party to be bound thereby. No waiver of any of the provisions of this Consent  
21 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
22 whether or not similar, 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 Defendants 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        The stipulations to this Consent Judgment may be executed in counterparts



1 and by means of facsimile or portable document format (pdf), which taken together shall be  
2 deemed to constitute 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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ASPIRE BRANDS

Robert B Evans  
Signature

ROBERT B EVANS  
Printed Name

Managing Director  
Title

BONNE BELL, LLC

Robert B Evans  
Signature

ROBERT B EVANS  
Printed Name

COO & CFO  
Title

IT IS SO ORDERED:

Dated: AUG 15, 2014

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