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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

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

13 Coordination Proceeding Special Title:) Judicial Council Coordination Proceeding
14 PROPOSITION 65 COCAMIDE DEA CASES) Case No. 4765
15 _____) ~~PROPOSED~~ CONSENT
16 This Document Relates To:) JUDGMENT AS TO HOTHOUSE
17 *CEH v. Commonwealth Soap & Toiletries, Inc., et*) PARTNERSHIPS LIMITED
18 *al.*, A.C.S.C. Case No. RG 13-698427)

20 **1. INTRODUCTION**

21 1.1 The parties to this Consent Judgment ("Parties") are the Center for
22 Environmental Health ("CEH") and defendant HotHouse Partnerships Limited ("Settling
23 Defendant"). CEH and Settling Defendant are referred to collectively as the "Parties."

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

1 1.3 On July 26, 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 Defendant, the California Attorney General, the
4 District Attorneys of every County in the State of California, and the City Attorneys for every City
5 in the State of California with a population greater than 750,000. The Notice alleges violations of
6 Proposition 65 with respect to the presence of cocamide DEA in shampoo and liquid soaps
7 manufactured, distributed, and/or sold by Settling Defendant.

8 1.4 On October 8, 2013, CEH filed the action entitled *Center for Environmental*
9 *Health v. Commonwealth Soap & Toiletries, Inc., et al.*, Case No. RG 13-698427, in the Superior
10 Court of California for Alameda County. On October 18, 2013, CEH named Settling Defendant as
11 a defendant in the *Commonwealth* action pursuant to California Code of Civil Procedure § 474. On
12 December 4, 2013, the *Commonwealth* action was coordinated with several other related
13 Proposition 65 actions in the *Proposition 65 Cocamide DEA Cases*, Case No. JCCP 4765, currently
14 pending before this Court.

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

1 **2. DEFINITIONS**

2 2.1 “Covered Products” means shampoo and liquid soaps manufactured,
3 distributed, or sold by Settling Defendant.

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

6 **3. INJUNCTIVE RELIEF**

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

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

17 3.3 **Action Regarding Specific Products.**

18 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the
19 Brown & Harris England Lavender Conditioning Handwash, SKU No. 5-060185-370133 (the
20 “Section 3.3 Product”) in California if it contains cocamide DEA. On or before the Effective Date,
21 Settling Defendant shall also: (i) cease shipping the Section 3.3 Product to any of its stores and/or
22 customers that resell the Section 3.3 Product in California if the Section 3.3 Product contains
23 cocamide DEA; and (ii) send instructions to its stores and/or customers that resell the Section 3.3
24 Product in California instructing them either to: (a) return all the Section 3.3 Product to Settling
25 Defendant for destruction if it is labeled as containing cocamide DEA, or (b) directly destroy the
26 Section 3.3 Product if it is labeled as containing cocamide DEA.

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

1 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall
2 provide 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 file
13 its enforcement motion or application. This Consent Judgment may only be enforced by the
14 Parties.

15 **5. PAYMENTS**

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

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

25 5.1.2 \$2,250 as a payment in lieu of civil penalty to CEH pursuant to Health &
26 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
27 such funds to continue its work educating and protecting people from exposures to toxic chemicals.
28 CEH may also use a portion of such funds to monitor compliance with this Consent Judgment and

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

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

10 **6. MODIFICATION**

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

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

17 **7. CLAIMS COVERED AND RELEASED**

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

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

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

9 **8. NOTICE**

10 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
11 notice shall be sent by first class and electronic mail to:

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

17 8.2 When Settling Defendant is entitled to receive any notice under this Consent
18 Judgment, the notice shall be sent by first class and electronic mail to:

19 Sarah Esmaili
20 Arnold & Porter LLP
21 Three Embarcadero Center, 10th Floor
22 San Francisco, CA 94111
23 sarah.esmaili@aporter.com

24 8.3 Any Party may modify the person and address to whom the notice is to be sent
25 by sending the other Party notice by first class and electronic mail.

26 **9. COURT APPROVAL**

27 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
28 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
support entry of this Consent Judgment.

1 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
2 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
3 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

4 **10. ATTORNEYS' FEES**

5 10.1 Should CEH prevail on any motion, application for an order to show cause, or
6 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
7 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
8 Settling Defendant prevail on any motion application for an order to show cause or other
9 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
10 of such motion or application upon a finding by the Court that CEH's prosecution of the motion or
11 application lacked substantial justification. For purposes of this Consent Judgment, the term
12 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
13 Code of Civil Procedure §§ 2016, *et seq.*

14 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
15 own attorneys' fees and costs.

16 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
17 sanctions pursuant to law.

18 **11. OTHER TERMS**

19 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
20 of California.

21 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
22 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
23 assigns of any of them.

24 11.3 This Consent Judgment contains the sole and entire agreement and
25 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
26 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
27 merged herein and therein. There are no warranties, representations, or other agreements between
28 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or

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

8 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
9 that Settling Defendant might have against any other party, whether or not that party is a Settling
10 Defendant.

11 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
12 Consent Judgment.

13 11.6 The stipulations to this Consent Judgment may be executed in counterparts and
14 by means of facsimile or portable document format (pdf), which taken together shall be deemed to
15 constitute one document.

16 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
17 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
18 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

19 11.8 The Parties, including their counsel, have participated in the preparation of this
20 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
21 Consent Judgment was subject to revision and modification by the Parties and has been accepted
22 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
23 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
24 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
25 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
26 the drafting Party should not be employed in the interpretation of this Consent
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28

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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HOTHOUSE PARTNERSHIPS LIMITED

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Signature

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Printed Name

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Title

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22 **IT IS SO ORDERED:**

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Dated: _____, 2014

Judge of the Superior Court

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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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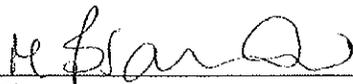
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HOTHOUSE PARTNERSHIPS LIMITED

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Signature

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M Blawman
Printed Name

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DIRECTOR
Title

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IT IS SO ORDERED:

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Dated: **OCT 24**, 2014

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court

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