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11 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY

MAY - 2 2014

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

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

17 CENTER FOR ENVIRONMENTAL HEALTH, )  
18 a non-profit corporation, )  
19 Plaintiff, )  
20 vs. )  
21 ACCESSORY ZONE, LLC, *et al.*, )  
22 Defendant. )

Case No. RG 13-699752

~~PROPOSED~~ CONSENT  
JUDGMENT AS TO ACCESSORY  
ZONE, LLC

24 1. INTRODUCTION

25 1.1 The parties to this Consent Judgment ("Parties") are the Center for  
26 Environmental Health ("CEH") and defendant Accessory Zone, LLC ("Settling Defendant").  
27 CEH and Settling Defendant are referred to collectively as the "Parties."  
28

1           1.2           Settling Defendant is a corporation that employs ten (10) or more persons and  
2 that manufactures, distributes and/or sells 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 August 2, 2013, CEH served a 60-Day Notice of Violation under  
6 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
7 & Safety Code §§ 25249.5, *et seq.*) (the "Notice") to Settling Defendant, the California Attorney  
8 General, the District Attorneys of every County in the State of California, and the City Attorneys  
9 for every City in the State of California with a population greater than 750,000. The Notice  
10 alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo  
11 and liquid soaps manufactured, distributed and/or sold by Settling Defendant.

12           1.4           On October 18, 2013, CEH filed the action entitled *CEH v. Accessory Zone,*  
13 *LLC, et al.*, Case No. RG 13-699752, in the Superior Court of California for Alameda County,  
14 naming Settling Defendant as a defendant in that action.

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.

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1     **2.     DEFINITIONS**

2             2.1           “Covered Products” means shampoo and liquid soaps.

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

11            3.2           **Specification to Suppliers.** No more than 30 days after the Effective Date,  
12 Settling Defendant shall issue specifications to its suppliers of Covered Products requiring that  
13 Covered Products not contain any cocamide DEA, and shall instruct each supplier to use  
14 reasonable efforts to eliminate Covered Products containing cocamide DEA on a nationwide  
15 basis.

16            3.3           **Action Regarding Specific Products.**

17                    3.3.1   On or before the Effective Date, Settling Defendant shall cease selling the  
18 Lemon Verbena Hand Wash Gel, SKU NO. 8-45763-04986-2 (the “Section 3.3 Product”) in  
19 California. On or before the Effective Date, Settling Defendant shall also: (i) cease shipping the  
20 Section 3.3 Product to any of its stores and/or customers that resell the Section 3.3 Product in  
21 California, and (ii) send instructions to its stores and/or customers that resell the Section 3.3  
22 Product in California instructing them either to: (a) return all the Section 3.3 Product to Settling  
23 Defendant for destruction; or (b) directly destroy the Section 3.3 Product.

24                    3.3.2   Any destruction of Section 3.3 Product shall be in compliance with all  
25 applicable laws.

26                    3.3.3   Within sixty days of the Effective Date, Settling Defendant shall provide  
27 CEH with written certification from Settling Defendant confirming compliance with the  
28 requirements of this Section 3.3.

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.** Settling Defendant shall pay a total settlement  
15 amount of \$15,000 as set forth on Exhibit A, on or before the dates set forth on Exhibit A. Each  
16 settlement payment shall be paid in four separate checks as set forth on Exhibit A and shall be  
17 delivered to counsel for CEH at the address set forth in Section 8.1 below. Any failure by  
18 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late  
19 fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not  
20 received after the applicable date set forth on Exhibit A. The late fees required under this Section  
21 shall apply if Settling Defendant fails to make the full payment within ten days of the applicable  
22 date set forth on Exhibit A. The late fees required under this Section shall be recoverable,  
23 together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to  
24 Section 4 of this Consent Judgment. The funds paid by Settling Defendant shall be allocated as  
25 set forth on Exhibit A between the following categories:

26                     5.1.1     A civil penalty pursuant to Health & Safety Code § 25249.7(b), such  
27 money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12 (25% to  
28 CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment).

1 The civil penalty checks shall be made payable to the Center For Environmental Health.

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

12 5.1.3 As reimbursement of a portion of CEH's reasonable attorneys' fees and  
13 costs. The payments pursuant to this Section shall be made payable to the Center For  
14 Environmental Health and the Lexington Law Group as set forth on Exhibit A.

## 15 6. MODIFICATION

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

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

## 22 7. CLAIMS COVERED AND RELEASED

23 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
24 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
25 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
26 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell  
27 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,  
28 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees")

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

5 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant  
6 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling  
7 Defendant, its Defendant Releasees and their Downstream Defendant Releasees with respect to  
8 any alleged failure to warn about cocamide DEA in Covered Products manufactured, distributed,  
9 or sold by Settling Defendant 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 Defendant, 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 Defendant is entitled to receive any notice under this Consent  
22 Judgment, the notice shall be sent by first class and electronic mail to:

23 Steven M. Gerber, Esq.  
24 666 Fifth Avenue  
25 26<sup>th</sup> Floor  
26 New York, NY 10103  
27 sgerber@gerblaw.com

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.

## 29 9. COURT APPROVAL

30 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 Settling Defendant prevail on any motion application for an order to show cause or other  
11 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
12 of such motion or application upon a finding by the Court that CEH's prosecution of the motion  
13 or application lacked substantial justification. For purposes of this Consent Judgment, the term  
14 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
15 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 its respective divisions, subdivisions, and subsidiaries, and the successors or  
25 assigns of any of them.

26 11.3 This Consent Judgment contains the sole and entire agreement and  
27 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
28 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby

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

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

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

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

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

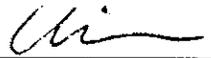
22 11.8 The Parties, including their counsel, have participated in the preparation of  
23 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
24 This Consent Judgment was subject to revision and modification by the Parties and has been  
25 accepted and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

1 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
2 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**



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

**ACCESSORY ZONE, LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**IT IS SO ORDERED:**

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

\_\_\_\_\_  
Judge of the Superior Court

1 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
2 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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4 **IT IS SO STIPULATED:**

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6 **CENTER FOR ENVIRONMENTAL HEALTH**

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

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13 **ACCESSORY ZONE, LLC**

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15 \_\_\_\_\_  
  
Signature

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17 \_\_\_\_\_  
Mark J. Berno  
Printed Name

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19 \_\_\_\_\_  
Pres  
Title

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24 **IT IS SO ORDERED:**

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26 Dated: MAY - 2, 2014

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**GEORGE C. HERNANDEZ, JR.**  
\_\_\_\_\_  
Judge of the Superior Court

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**EXHIBIT A**

**Settlement Payments and Allocation**

Total Settlement Payment: \$15,000

- Within five (5) business days of the Effective Date, Settling Defendant shall pay \$7,500 in four separate checks as follows:
  - \$825 to Center for Environmental Health as civil penalty pursuant to Section 5.1.1.
  - \$1,125 to Center for Environmental Health as payment in lieu of civil penalty pursuant to Section 5.1.2.
  - \$4,800 to Lexington Law Group as attorneys' fees and costs pursuant to Section 5.1.3.
  - \$750 to Center for Environmental Health as attorneys' fees and costs pursuant to Section 5.1.3.
- Within ninety (90) days of the Effective Date, Settling Defendant shall pay \$7,500 in four separate checks as follows:
  - \$825 to Center for Environmental Health as civil penalty pursuant to Section 5.1.1.
  - \$1,125 to Center for Environmental Health as payment in lieu of civil penalty pursuant to Section 5.1.2.
  - \$4,800 to Lexington Law Group as attorneys' fees and costs pursuant to Section 5.1.3.
  - \$750 to Center for Environmental Health as attorneys' fees and costs pursuant to Section 5.1.3.