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ENDORSED
FILED
ALAMEDA COUNTY

MAY - 2 2014

CLERK OF THE SUPERIOR COURT
YOLANDA ESTRADA Deputy

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

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

15 Plaintiff,)

16 vs.)

17 LAKE CONSUMER PRODUCTS, INC., *et*)
al.,)

18 Defendant.)
19

Case No. RG 13-693280

~~PROPOSED~~ CONSENT
JUDGMENT AS TO PERSON &
COVEY, INC.

20
21 **1. INTRODUCTION**

22 1.1 The parties to this Consent Judgment ("Parties") are plaintiff the Center
23 for Environmental Health ("CEH") and defendant Person & Covey, Inc. ("Settling
24 Defendant"). CEH and Settling Defendant are referred to collectively as the "Parties."

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

1 1.3 On August 2, 2013, CEH served a 60-Day Notice of Violation under
2 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California
3 Health & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) to Settling Defendant, the
4 California Attorney General, the District Attorneys of every County in the State of
5 California, and the City Attorneys for every City in State of California with a population
6 greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the
7 presence of cocamide DEA in shampoo and liquid soaps manufactured, distributed and/or
8 sold by Settling Defendant.

9 1.4 On August 27, 2013, CEH filed the action entitled *CEH v. Lake Consumer*
10 *Products, Inc., et al.*, Case No. RG 13-693280, in the Superior Court of California for
11 Alameda County. On [DATE], CEH amended the complaint to name Settling Defendant as
12 a defendant.

13 1.5 In an effort to comply with Proposition 65, Settling Defendant instructed
14 its customers to cease shipping Covered Products into California prior to June 22, 2013 and
15 ceased manufacturing Covered Products with cocamide DEA prior to June 30, 2013.

16 1.6 For purposes of this Consent Judgment only, the Parties stipulate that: (i)
17 this Court has jurisdiction over the allegations of violations contained in the operative
18 Complaint applicable to Settling Defendant (the “Complaint”) and personal jurisdiction
19 over Settling Defendant as to the acts alleged in the Complaint; (ii) that venue is proper in
20 the County of Alameda; and (iii) that this Court has jurisdiction to enter this Consent
21 Judgment.

22 1.7 Nothing in this Consent Judgment is or shall be construed as an
23 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor
24 shall compliance with the Consent Judgment constitute or be construed as an admission by
25 the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
26 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense
27 the Parties may have in any other legal proceeding. This Consent Judgment is the product
28 of negotiation and compromise and is accepted by the Parties for purposes of settling,

1 compromising and resolving issues disputed in this action.

2 **2. DEFINITIONS**

3 2.1 "Covered Products" means shampoo and liquid soaps.

4 2.2 "Effective Date" means the date on which this Consent Judgment is
5 entered by 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.
10 For purposes of this Consent Judgment, a product "contains cocamide DEA" if cocamide
11 DEA is an intentionally added ingredient in the product and/or part of the product
12 formulation.

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

18 3.3 **Grace Period for Products Manufactured Prior to Effective Date.**
19 Liability for Covered Products that were manufactured and distributed for retail sale prior
20 to the Effective Date shall be subject to the release of liability pursuant to Section 7 of this
21 Consent Judgment, without regard to when such Covered Products were, or are in the
22 future, sold to consumers.

23 **4. ENFORCEMENT**

24 4.1 CEH may, by motion or application for an order to show cause before the
25 Superior Court of Alameda County, enforce the terms and conditions contained in this
26 Consent Judgment. Prior to bringing any motion or application to enforce the
27 requirements of Section 3 above, CEH shall provide Settling Defendant with a Notice of
28 Violation and a copy of any test results which purportedly support CEH's Notice of

1 Violation. The Parties shall then meet and confer regarding the basis for CEH's anticipated
2 motion or application in an attempt to resolve it informally, including providing Settling
3 Defendant a reasonable opportunity of at least thirty (30) days to cure any alleged violation.
4 Should such attempts at informal resolution fail, CEH may file its enforcement motion or
5 application. The prevailing party on any motion to enforce this Consent Judgment shall be
6 entitled to its reasonable attorney's fees and costs incurred as a result of such motion or
7 application. This Consent Judgment may only be enforced by the Parties.

8 **5. PAYMENTS**

9 5.1 **Payments by Settling Defendant.** Within five (5) business days of entry of this
10 Consent Judgment, Settling Defendant shall pay the total sum of \$15,000 as a settlement
11 payment. The total settlement amount for Settling Defendant shall be paid in three
12 separate checks delivered to the offices of the Lexington Law Group (Attn: Mark Todzo),
13 503 Divisadero Street, San Francisco, California 94117. The funds paid by Settling
14 Defendant shall be allocated between the following categories:

15 5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code §
16 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety
17 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
18 Environmental Health Hazard Assessment). The civil penalty check shall be made payable
19 to the Center For Environmental Health.

20 5.1.2 \$2,250 as a payment in lieu of civil penalty to CEH pursuant to Health
21 & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH
22 will use such funds to continue its work educating and protecting people from exposures to
23 toxic chemicals. CEH may also use a portion of such funds to monitor compliance with this
24 Consent Judgment and to purchase and test Settling Defendant's products to confirm
25 compliance. In addition, as part of its Community Environmental Action and Justice Fund,
26 CEH will use four percent (4%) of such funds to award grants to grassroots environmental
27 justice groups working to educate and protect people from exposures to toxic chemicals.

28 The method of selection of such groups can be found at the CEH web site at

1 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to
2 the Center For Environmental Health.

3 5.1.3 \$11,100 as reimbursement of a portion of CEH's reasonable attorneys'
4 fees and costs. The attorneys' fees and cost reimbursement check shall be made payable to
5 the Lexington Law Group.

6 **6. MODIFICATION**

7 6.1 **Written Consent.** This Consent Judgment may be modified from time to
8 time by express written agreement of the Parties with the approval of the Court, or by an
9 order of this Court upon motion and in accordance with law.

10 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment
11 shall attempt in good faith to meet and confer with all affected Parties prior to filing a
12 motion to modify the Consent Judgment.

13 **7. CLAIMS COVERED AND RELEASED**

14 7.1 This Consent Judgment is a full, final and binding resolution between
15 CEH on behalf of itself and the public interest and Settling Defendant, and its parents,
16 subsidiaries, affiliated entities that are under common ownership, directors, officers,
17 employees, and attorneys ("Defendant Releasees") of any violation of Proposition 65 that
18 was or could have been asserted in the Complaint against Settling Defendant and Defendant
19 Releasees, based on failure to warn about alleged exposure to cocamide DEA contained in
20 Covered Products that were sold by Settling Defendant prior to the Effective Date.

21 7.2 Compliance with the terms of this Consent Judgment by Settling
22 Defendant and the Defendant Releasees shall constitute compliance with Proposition 65 by
23 Settling Defendant and its Defendant Releasees with respect to any alleged failure to warn
24 about cocamide DEA in Covered Products manufactured, distributed, or sold by Settling
25 Defendant after the Effective Date.

26 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute
27 an action under Proposition 65 against any person other than Settling Defendant,
28 Defendant Releasees, or Downstream Defendant Releasees.

1 **8. NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment,
3 the notice shall be sent by first class and electronic mail to:

4 Mark Todzo
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 mtodzo@lexlawgroup.com

9 8.2 When Settling Defendant is entitled to receive any notice under this
10 Consent Judgment, the notice shall be sent by first class and electronic mail to:

11 Brenda K. Radmacher
12 Wood, Smith, Henning & Berman LLP
13 505 N. Brand Blved., Suite 1100
14 Glendale, CA 91203
15 bradmacher@wshblaw.com

16 8.3 Any Party may modify the person and address to whom the notice is to be
17 sent by sending the other Party notice by first class and electronic mail.

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon entry by the Court.
20 CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling
21 Defendant shall each support entry of this Consent Judgment.

22 9.2 If this Consent Judgment is not entered by the Court, it shall be of no
23 force or effect and shall never be introduced into evidence or otherwise used in any
24 proceeding for any purpose other than to allow the Court to determine if there was a
25 material breach of Section 9.1.

26 **10. ATTORNEYS' FEES**

27 10.1 Should CEH prevail on any motion, application for an order to show
28 cause or other proceeding to enforce a violation of this Consent Judgment, CEH shall be
entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or
application. Should Settling Defendant prevail on any motion application for an order to
show cause or other proceeding, Settling Defendant may be awarded its reasonable

1 attorneys' fees and costs as a result of such motion or application upon a finding by the
2 Court that CEH's prosecution of the motion or application lacked substantial justification.
3 For purposes of this Consent Judgment, the term substantial justification shall carry the
4 same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016,
5 *et seq.*

6 10.2 Except as otherwise provided in this Consent Judgment, each Party shall
7 bear its own attorneys' fees and costs.

8 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award
9 of sanctions pursuant to law.

10 11. OTHER TERMS

11 11.1 The terms of this Consent Judgment shall be governed by the laws of the
12 State of California.

13 11.2 This Consent Judgment shall apply to and be binding upon CEH and
14 Settling Defendant, and its respective divisions, subdivisions, and subsidiaries, and the
15 successors or assigns of any of them.

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

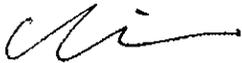
1 and by means of facsimile or portable document format (pdf), which taken together shall be
2 deemed to constitute one document.

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:**

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19 **CENTER FOR ENVIRONMENTAL HEALTH**

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21 _____
22 Charlie Pizarro
23 Associate Director

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PERSON & COVEY, INC.

William A. Marquardt
Signature

WILLIAM A. MARQUARDT
Printed Name

VP SYSTEM OPERATIONS
Title

IT IS SO ORDERED:

Dated: MAY - 2 2014, ~~2013~~

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