

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 hhirsch@lexlawgroup.com

APR 16 2015

YOLANDA ESTRADA

6 Counsel for Plaintiff
7 CENTER FOR ENVIRONMENTAL HEALTH

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

11
12 Coordination Proceeding Special Title:) Judicial Council Coordination
13 PROPOSITION 65 COCAMIDE DEA CASES) Proceeding
14) Case No. 4765
15)
16 This Document Relates To:) ~~PROPOSED~~ CONSENT
17) JUDGMENT AS TO REGIS
18) CORPORATION
19)

20 **1. INTRODUCTION**

21 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
22 Environmental Health (“CEH”) and defendant Regis Corporation (“Settling Defendant”). CEH
23 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
27 State of California or has done so in the past.

1 1.3 On August 23, 2013, CEH served a 60-Day Notice of Violation under
2 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
3 & Safety Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendant, the California Attorney
4 General, the District Attorneys of every County in the State of California, and the City Attorneys
5 for every City in the State of California with a population greater than 750,000. The Notice
6 alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo
7 and liquid soaps that are manufactured, distributed, and/or sold by Settling Defendant.

8 1.4 On December 18, 2013, CEH filed the action entitled *CEH v. Skinfood USA,*
9 *Inc., et al.*, Case No. RG 13-707307, in the Superior Court of California for Alameda County,
10 naming Settling Defendant as a defendant in that action. On April 1, 2014, the *Skinfood* action
11 was coordinated with several other related Proposition 65 actions in the *Proposition 65 Cocamide*
12 *DEA Cases*, Case No. JCCP 4765, currently pending before this Court.

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

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

26 **2. DEFINITIONS**

27 2.1 “Covered Products” means shampoo, liquid soaps, hairsprays, hair treatments,
28 and skin creams.

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

9 3.2 **Specification to Suppliers.** No more than 30 days after the Effective Date,
10 Settling Defendant shall issue specifications to its suppliers of Covered Products requiring that
11 Covered Products intended for sale to Settling Defendant for use and/or resale in California not
12 contain any cocamide DEA, and shall request each supplier to use reasonable efforts to eliminate
13 Covered Products containing cocamide DEA on a nationwide basis.

14 3.3 **Action Regarding Specific Products.**

15 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the
16 following products in California: (i) MoroccanOil Hydrating Shampoo, SKU No. 7-290011-
17 521806; and (ii) KeraStraight Straight Maintain Shampoo, SKU No. 5-060198-650031, Item No.
18 161768 (collectively, the “Section 3.3 Products”). On or before the Effective Date, Settling
19 Defendant shall also: (i) cease shipping the Section 3.3 Products to any of its stores and/or
20 customers that resell the Section 3.3 Products in California; and (ii) send instructions to its stores
21 and/or customers that resell the Section 3.3 Products in California instructing them either to: (a)
22 return all the Section 3.3 Products to Settling Defendant for destruction or return to Settling
23 Defendant’s supplier, or (b) directly destroy the Section 3.3 Products.

24 3.3.2 Any destruction of Section 3.3 Products 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. This Consent Judgment may only be enforced by the
11 Parties.

12 4.2 CEH shall not seek any further relief to enforce the terms and conditions
13 contained in this Consent Judgment if Settling Defendant provides satisfactory documentation to
14 CEH during the meet and confer period that: (a) the Covered Product identified in the Notice of
15 Violation was purchased by Settling Defendant prior to the Effective Date; (b) prior to receiving
16 the Notice of Violation, Settling Defendant sent written instructions to each of its retail locations
17 in California directing that any Covered Products that contain cocamide DEA should be removed
18 from store shelves; and (c) Settling Defendant has sent instructions to its stores and/or customers
19 that resell the Covered Product identified in the Notice of Violation in California instructing them
20 either to: (1) return the Covered Product identified in the Notice of Violation to Settling
21 Defendant for destruction or return to Settling Defendant's supplier, or (2) directly destroy the
22 Covered Product identified in the Notice of Violation.

23 **5. PAYMENTS**

24 5.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective
25 Date, Settling Defendant shall pay the total sum of \$20,000 as a settlement payment. The total
26 settlement amount for Settling Defendant shall be paid in four separate checks delivered to
27 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
28 Defendant shall be allocated between the following categories:

1 5.1.1 \$2,200 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
2 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
3 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard
4 Assessment). The civil penalty check shall be made payable to the Center for Environmental
5 Health.

6 5.1.2 \$3,000 as a payment in lieu of civil penalty to CEH pursuant to Health &
7 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
8 such funds to continue its work educating and protecting people from exposures to toxic
9 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
10 Judgment and to purchase and test Settling Defendant’s products to confirm compliance. In
11 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
12 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
13 educate and protect people from exposures to toxic chemicals. The method of selection of such
14 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
15 this Section shall be made payable to the Center for Environmental Health.

16 5.1.3 \$14,800 as reimbursement of a portion of CEH’s reasonable attorneys’ fees
17 and costs. A check for \$12,800 shall be made payable to the Lexington Law Group, and a check
18 for \$2,000 shall be made payable to the Center for Environmental Health.

19 **6. MODIFICATION**

20 6.1 **Written Consent.** This Consent Judgment may be modified from time to
21 time by express written agreement of the Parties with the approval of the Court, or by an order of
22 this Court upon motion and in accordance with law.

23 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
24 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
25 modify the Consent Judgment.

26 **7. CLAIMS COVERED AND RELEASED**

27 7.1 This Consent Judgment is a full, final, and binding resolution between CEH on
28 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,

1 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
2 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell
3 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
4 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”)
5 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
6 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
7 to warn about alleged exposure to cocamide DEA contained in Covered Products that were sold
8 by Settling Defendant prior to the Effective Date.

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

14 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
15 action under Proposition 65 against any person other than Settling Defendant, Defendant
16 Releasees, or Downstream Defendant Releasees.

17 **8. NOTICE**

18 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
19 notice shall be sent by first class and electronic mail to:

20 Mark Todzo
21 Lexington Law Group
22 503 Divisadero Street
23 San Francisco, CA 94117
24 mtodzo@lexlawgroup.com

25 8.2 When Settling Defendant is entitled to receive any notice under this Consent
26 Judgment, the notice shall be sent by first class and electronic mail to:

Philip C. Putnam
Monteleone & McCrory, LLP
725 South Figueroa Street, Suite 3200
Los Angeles, CA 90017
putnam@mmlawyers.com

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

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

10. ATTORNEYS' FEES

10.1 The prevailing party on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application.

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

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

11. OTHER TERMS

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

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

11.3 This Consent Judgment contains the sole and entire agreement and

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

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

15 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
16 Consent Judgment.

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

20 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
22 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
23 Party. CEH has not previously transferred or assigned any rights or claims being settled
24 hereunder.

25 11.8 The Parties, including their counsel, have participated in the preparation of
26 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
27 This Consent Judgment was subject to revision and modification by the Parties and has been
28 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any

1 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
2 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
3 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
4 be resolved against the drafting Party should not be employed in the interpretation of this Consent
5 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:
CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

REGIS CORPORATION

Signature

Printed Name

Title

IT IS SO ORDERED:

Dated: _____, 2015

Judge of the Superior Court

1 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
2 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
3 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
4 be resolved against the drafting Party should not be employed in the interpretation of this Consent
5 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.
6

7 **IT IS SO STIPULATED:**

8 **CENTER FOR ENVIRONMENTAL HEALTH**

9

10

11 _____
Charlie Pizarro
Associate Director

12

13 **REGIS CORPORATION**

14

15

16 _____
Signature

17

18

SCOTT SULLIVAN

Printed Name

19

20

Vice President, Law

Title

21

22

IT IS SO ORDERED:

23

24

Dated: APR 16 2015, 2015

25

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

26

27

28