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10 Counsel for Plaintiff  
11 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY

JUN - 8 2014

CLERK OF COURT  
**YOLANDA ESTRADA** JRT  
By \_\_\_\_\_ Deputy

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

17 CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 13-707307  
18 a non-profit corporation, )  
19 Plaintiff, ) **[PROPOSED] CONSENT**  
20 vs. ) **JUDGMENT AS TO CONVATEC**  
21 SKINFOOD USA, INC., *et al.*, ) **INC.**  
22 Defendant. )

24 **1. INTRODUCTION**

25 1.1 The parties to this Consent Judgment (“Parties”) are the Center for  
26 Environmental Health (“CEH”) and defendant ConvaTec Inc. (“Settling Defendant”). CEH and  
27 Settling Defendant are referred to collectively as the “Parties.”  
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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 September 12, 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 December 18, 2013, CEH filed the action entitled *CEH v. Skinfood USA,*  
13 *Inc., et al.*, Case No. RG 13-707307, 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           **Grace Period for Products Manufactured Prior to the Effective Date.**  
12 Liability for Covered Products that were manufactured and distributed for retail sale prior to the  
13 Effective Date shall be subject to the release of liability pursuant to Section 7 of this Consent  
14 Judgment, without regard to when such Covered Products were, or are in the future, sold to  
15 consumers.

16            3.3           **Action Regarding Specific Products.**

17                 3.3.1    On or before the Effective Date, Settling Defendant shall cease selling the  
18 Aloe Vesta Body Wash & Shampoo, SKU No. 7-68455-10836-7 containing cocamide DEA (the  
19 “Section 3.3 Product”) in California. On or before the Effective Date, Settling Defendant shall  
20 also cease shipping the Section 3.3 Product to any of its distributors and/or customers that resell  
21 the Section 3.3 Product in California.

22                 3.3.2    Within sixty days of the Effective Date, Settling Defendant shall provide  
23 CEH with written certification from Settling Defendant confirming compliance with the  
24 requirements of this Section 3.3.

25            3.4           **Warnings for Covered Products.**

26                 3.4.1    **Interim Warning Option.** From the date of execution of this  
27 Consent Judgment through the Effective Date, no Covered Product that contains cocamide DEA  
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1 shall be manufactured and/or distributed for sale in California by Settling Defendant without a  
2 Clear and Reasonable Warning that complies with the provisions of Section 3.4.2.

3 3.4.2 **Proposition 65 Warnings.** A Clear and Reasonable Warning under  
4 this Consent Judgment shall state:

5 WARNING: This product contains cocamide DEA, a chemical known to  
6 the State of California to cause cancer.

7 This statement shall be prominently displayed on the principal display panel of the label or the  
8 packaging of the Covered Product in such a manner that it is likely to be read and understood by  
9 an ordinary individual prior to sale.

#### 10 **4. ENFORCEMENT**

11 4.1 CEH may, by motion or application for an order to show cause before the  
12 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent  
13 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3  
14 above, CEH shall provide Settling Defendant with a Notice of Violation and a copy of any test  
15 results which purportedly support CEH's Notice of Violation. The Parties shall then meet and  
16 confer regarding the basis for CEH's anticipated motion or application in an attempt to resolve it  
17 informally, including providing Settling Defendant a reasonable opportunity of at least thirty (30)  
18 days to cure any alleged violation. Should such attempts at informal resolution fail, CEH may  
19 file its enforcement motion or application. The prevailing party on any motion to enforce this  
20 Consent Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result  
21 of such motion or application. This Consent Judgment may only be enforced by the Parties.

#### 22 **5. PAYMENTS**

23 5.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective  
24 Date, Settling Defendant shall pay the total sum of \$25,000 as a settlement payment. The total  
25 settlement amount for Settling Defendant shall be paid in four separate checks delivered to  
26 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling  
27 Defendant shall be allocated between the following categories:

28 5.1.1 \$2,750 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),

1 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12  
2 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard  
3 Assessment). The civil penalty check shall be made payable to the Center for Environmental  
4 Health.

5 5.1.2 \$3,750 as a payment in lieu of civil penalty to CEH pursuant to Health &  
6 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use  
7 such funds to continue its work educating and protecting people from exposures to toxic  
8 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent  
9 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In  
10 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four  
11 percent (4%) of such funds to award grants to grassroots environmental justice groups working to  
12 educate and protect people from exposures to toxic chemicals. The method of selection of such  
13 groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to  
14 this Section shall be made payable to the Center for Environmental Health.

15 5.1.3 \$18,500 as reimbursement of a portion of CEH's reasonable attorneys' fees  
16 and costs. A check for \$16,000 shall be made payable to the Lexington Law Group, and a check  
17 for \$2,500 shall be made payable to the Center for Environmental Health.

## 18 **6. MODIFICATION**

19 6.1 **Written Consent.** This Consent Judgment may be modified from time to  
20 time by express written agreement of the Parties with the approval of the Court, or by an order of  
21 this Court upon motion and in accordance with law.

22 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
23 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
24 modify the Consent Judgment.

## 25 **7. CLAIMS COVERED AND RELEASED**

26 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
27 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
28 affiliated entities that are under common ownership, directors, officers, employees, and attorneys

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

9 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant,  
10 its Defendant Releasees and their Downstream Defendant Releasees shall constitute compliance  
11 with Proposition 65 by Settling Defendant and its Defendant Releasees with respect to any  
12 alleged failure to warn about cocamide DEA in Covered Products manufactured, distributed, or  
13 sold by Settling 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 and Defendant  
16 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:  
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ConvaTec Inc.  
Michael R. Von Ohlen  
Vice President, Legal Affairs  
200 Headquarters Park Drive  
Skillman, NJ 08558  
Michael.VonOhlen@convatec.com>

Renee D. Wasserman  
Walter S. Chen  
Rogers Joseph O'Donnell  
311 California Street, 10<sup>th</sup> Floor  
San Francisco, CA 94104  
rwasserman@rjo.com  
wchen@rjo.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 Should CEH prevail on any motion, application for an order to show 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 shall be entitled to its reasonable attorneys' fees and costs 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

1 sanctions pursuant to law.

2 **11. OTHER TERMS**

3 11.1 The terms of this Consent Judgment shall be governed by the laws of the State  
4 of California.

5 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
6 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or  
7 assigns of any of them.

8 11.3 This Consent Judgment contains the sole and entire agreement and  
9 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
10 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
11 merged herein and therein. There are no warranties, representations, or other agreements between  
12 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
13 implied, other than those specifically referred to in this Consent Judgment have been made by any  
14 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
15 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
16 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
17 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
18 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
19 whether or not similar, nor shall such waiver constitute a continuing waiver.

20 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights  
21 that Settling Defendant might have against any other party, whether or not that party is a Settling  
22 Defendant.

23 11.5 This Court shall retain jurisdiction of this matter to implement or modify the  
24 Consent Judgment.

25 11.6 The stipulations to this Consent Judgment may be executed in counterparts  
26 and by means of facsimile or portable document format (pdf), which taken together shall be  
27 deemed to constitute one document.

28 11.7 Each signatory to this Consent Judgment certifies that he or she is fully

1 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
2 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
3 Party.

4 11.8 The Parties, including their counsel, have participated in the preparation of  
5 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
6 This Consent Judgment was subject to revision and modification by the Parties and has been  
7 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
8 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
9 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
10 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
11 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
12 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

**CONVATEC INC.**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

1 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
2 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
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11 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
12 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

13  
14 **IT IS SO STIPULATED:**

15 **CENTER FOR ENVIRONMENTAL HEALTH**

16  
17  
18 \_\_\_\_\_  
19 Charlie Pizarro  
20 Associate Director

21 **CONVATEC INC.**

22   
23 \_\_\_\_\_  
24 Signature

25 **FIONA ADAM**  
26 \_\_\_\_\_  
27 Printed Name

28 **VP & GENERAL MANAGER, WOUND THERAPEUTICS**  
\_\_\_\_\_  
Title

RG13707307

IT IS SO ORDERED:

Dated: JUN - 3, 2014

**GEORGE C. HERNANDEZ, JR.**

Judge of the Superior Court

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