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ENDORSED
FILED
ALAMEDA COUNTY

AUG 15 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 ABACO
17 *CEH v. ABACO Partners LLC, et al., A.C.S.C.*) PARTNERS LLC
18 Case No. RG 14-717127)
19 _____)

20 **1. INTRODUCTION**

21 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
22 Environmental Health (“CEH”) and defendant ABACO Partners LLC (“Settling Defendant”).
23 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 October 11, 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 General,
4 the District Attorneys of every County in the State of California, and the City Attorneys for every
5 City in the State of California with a population greater than 750,000. The Notice alleges violations
6 of 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 March 12, 2014, CEH filed the action entitled *CEH v. ABACO Partners*
9 *LLC, et al.*, Case No. RG 14-717127, in the Superior Court of California for Alameda County,
10 naming Settling Defendant as a defendant in that action. On April 1, 2014, the *ABACO* action was
11 coordinated with several other related Proposition 65 actions in the *Proposition 65 Cocamide DEA*
12 *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) this
17 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 and liquid soaps manufactured,
28 distributed, or sold by Settling Defendant.

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 thirty (30) days after the Effective
10 Date, if Settling Defendant has not already done so, Settling Defendant shall issue specifications to
11 its suppliers of Covered Products requiring that Covered Products not contain any cocamide DEA,
12 and shall instruct each supplier to use reasonable efforts to eliminate Covered Products containing
13 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 LANDER Green Tea Shampoo, SKU No. 8-14344-01211-3 (“Section 3.3 Product”) in California if
17 it contains cocamide DEA. On or before the Effective Date, Settling Defendant shall also: (i) cease
18 shipping the Section 3.3 Product to any of its stores and/or customers that resell the Section 3.3
19 Product in California if the Section 3.3 Product contains cocamide DEA; and (ii) send instructions
20 to its stores and/or customers that resell the Section 3.3 Product in California instructing them
21 either to: (a) return all the Section 3.3 Product to Settling Defendant for destruction if it is labeled as
22 containing cocamide DEA, or (b) directly destroy the Section 3.3 Product if it is labeled as
23 containing cocamide DEA.

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

26 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall
27 provide 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 file
10 its enforcement motion or application. This Consent Judgment may only be enforced by the
11 Parties.

12 **5. PAYMENTS**

13 5.1 **Payments by Settling Defendant.** Within five (5) business days of the
14 Effective Date, Settling Defendant shall pay the total sum of \$15,000 as a settlement payment. The
15 total settlement amount for Settling Defendant shall be paid in four separate checks delivered to
16 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
17 Defendant shall be allocated between the following categories:

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

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

1 from exposures to toxic chemicals. The method of selection of such groups can be found at the
2 CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be made
3 payable to the Center for Environmental Health.

4 5.1.3 \$11,100 as reimbursement of a portion of CEH's reasonable attorneys' fees
5 and costs. A check for \$9,600 shall be made payable to the Lexington Law Group, and a check for
6 \$1,500 shall be made payable to the Center for Environmental Health.

7 **6. MODIFICATION**

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

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

14 **7. CLAIMS COVERED AND RELEASED**

15 7.1 This Consent Judgment is a full, final, and binding resolution between CEH on
16 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
17 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
18 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
19 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
20 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees"),
21 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
22 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
23 to warn about alleged exposure to cocamide DEA contained in Covered Products that were
24 manufactured, distributed, or sold by Settling Defendant prior to the Effective Date.

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

3 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
4 action under Proposition 65 against any person other than Settling Defendant, Defendant
5 Releasees, or Downstream Defendant Releasees.

6 **8. NOTICE**

7 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
8 notice shall be sent by first class and electronic mail to:

9 Mark Todzo
10 Lexington Law Group
11 503 Divisadero Street
12 San Francisco, CA 94117
13 mtodzo@lexlawgroup.com

14 8.2 When Settling Defendant is entitled to receive any notice under this Consent
15 Judgment, the notice shall be sent by first class and electronic mail to:

16 Sarah Esmaili
17 Arnold & Porter LLP
18 Three Embarcadero Center, 10th Floor
19 San Francisco, CA 94111
20 Sarah.esmaili@aporter.com

21 8.3 Any Party may modify the person and address to whom the notice is to be sent
22 by sending the other Party notice by first class and electronic mail.

23 **9. COURT APPROVAL**

24 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
25 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
26 support entry of this Consent Judgment.

27 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
28 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.

1 **10. ATTORNEYS' FEES**

2 10.1 Should CEH prevail on any motion, application for an order to show cause, or
3 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
4 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
5 Settling Defendant prevail on any motion application for an order to show cause or other
6 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
7 of such motion or application upon a finding by the Court that CEH's prosecution of the motion or
8 application lacked substantial justification. For purposes of this Consent Judgment, the term
9 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
10 Code of Civil Procedure §§ 2016, *et seq.*

11 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
12 own attorneys' fees and costs.

13 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
14 sanctions pursuant to law.

15 **11. OTHER TERMS**

16 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
17 of California.

18 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
19 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
20 assigns of any of them.

21 11.3 This Consent Judgment contains the sole and entire agreement and
22 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
23 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
24 merged herein and therein. There are no warranties, representations, or other agreements between
25 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
26 implied, other than those specifically referred to in this Consent Judgment have been made by any
27 Party hereto. No other agreements not specifically contained or referenced herein, oral or
28 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,

1 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
2 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
3 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether
4 or not similar, nor shall such waiver constitute a continuing waiver.

5 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
6 that Settling Defendant might have against any other party, whether or not that party is a Settling
7 Defendant.

8 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
9 Consent Judgment.

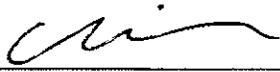
10 11.6 The stipulations to this Consent Judgment may be executed in counterparts and
11 by means of facsimile or portable document format (pdf), which taken together shall be deemed to
12 constitute one document.

13 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
14 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
15 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

16 11.8 The Parties, including their counsel, have participated in the preparation of this
17 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
18 Consent Judgment was subject to revision and modification by the Parties and has been accepted
19 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
20 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
21 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
22 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
23 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
24 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

ABACO PARTNERS LLC

Signature

Printed Name

Title

IT IS SO ORDERED:

Dated: _____, 2014

Judge of the Superior Court

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IT IS SO STIPULATED:
CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro
Associate Director

ABACO PARTNERS LLC

Signature

Thomas D. Soeber
Printed Name

Manager
Title

IT IS SO ORDERED:

Dated: AUG 15, 2014

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