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ENDORSED
FILED
ALAMEDA COUNTY

AUG 15 2014

CLERK OF THE SUPERIOR COURT
BY YOLANDA ESTRADA Deputy

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

13 Coordination Proceeding Special Title:) Judicial Council Coordination Proceeding
14 PROPOSITION 65 COCAMIDE DEA CASES) Case No. 4765
15 _____)
16 This Document Relates To:) **[PROPOSED] CONSENT**
17 *CEH v. Lake Consumer Products Company, et*) **JUDGMENT AS TO HELEN OF**
18 *al., A.C.S.C. Case No. RG 13-693280*) **TROY LIMITED, HELEN OF TROY**
19 *CEH v. ABACO Partners LLC, et al., A.C.S.C.*) **L.P AND IDELLE LABS, LTD.**
20 *Case No. RG 14-717127*)

21 **1. INTRODUCTION**

22 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
23 Environmental Health (“CEH”) and defendants Helen of Troy Limited, Helen of Troy L.P. and
24 Idelle Labs, Ltd. (“Settling Defendants”). CEH and Settling Defendants are referred to
25 collectively as the “Parties.”

26 1.2 Settling Defendants are each a corporation that employs ten (10) or more
27 persons and that manufactures, distributes and/or sells shampoo and liquid soaps that contain
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1 coconut oil diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide
2 DEA”) in the State of California or has done so in the past.

3 1.3 Beginning on June 24, 2013, CEH served 60-Day Notices of Violation under
4 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
5 & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) to Settling Defendants, the California Attorney
6 General, the District Attorneys of every County in the State of California, and the City Attorneys
7 for every City in the State of California with a population greater than 750,000. The Notices
8 allege violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo and
9 liquid soaps manufactured, distributed and/or sold by Settling Defendant or their affiliated
10 companies.

11 1.4 On August 27, 2013, CEH amended the action entitled *CEH v. Lake*
12 *Consumer Products Company, et al.*, Case No. RG 13-693280, in the Superior Court of
13 California for Alameda County, naming Settling Defendants Helen of Troy Limited and Helen of
14 Troy L.P. as defendants in that action. On March 12, 2014, CEH filed the action entitled *CEH v.*
15 *ABACO Partners LLC, et al.*, Case No. RG 14-717127, in the Superior Court of California for
16 Alameda County, naming Idelle Labs, Ltd. as a defendant in that action. The *Lake* and *ABACO*
17 actions have been coordinated with several other related Proposition 65 actions in the *Proposition*
18 *65 Cocamide DEA Cases*, Case No. JCCP 4765, which is currently pending before this Court.

19 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
20 Court has jurisdiction over the allegations of violations contained in the operative Complaints
21 applicable to Settling Defendants (the “Complaints”) and personal jurisdiction over Settling
22 Defendants as to the acts alleged in the Complaints; (ii) that venue is proper in the County of
23 Alameda; and (iii) that this Court has jurisdiction to enter this Consent Judgment.

24 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
25 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
26 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
27 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
28 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any

1 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
2 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
3 this action.

4 **2. DEFINITIONS**

5 2.1 “Covered Products” means shampoo and liquid soaps manufactured,
6 distributed and/or sold by Settling Defendants.

7 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
8 the Court.

9 **3. INJUNCTIVE RELIEF**

10 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
11 Defendants shall not manufacture, distribute, sell or offer for sale any Covered Product that
12 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
13 purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
14 intentionally added ingredient in the product and/or part of the product formulation.

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

20 3.3 **Action Regarding Specific Products.**

21 3.3.1 On or after the Effective Date, neither Settling Defendants nor their
22 affiliated companies shall sell units of Infusium 23 Color Defender Shampoo UPC No. 8-2775-
23 01166-8 or Condition 3-in-1 Moisturizing Shampoo in Fresh Green Apple Scent that contain
24 cocamide DEA (the “Section 3.3 Product”) in California. On or after the Effective Date, neither
25 Settling Defendants nor their affiliated companies shall ship the Section 3.3 Product to any of
26 their stores and/or customers for sale in California. In addition, on or before the Effective date,
27 Settling Defendants shall send instructions to their stores and/or customers that resell the Section
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1 3.3 Product in California instructing them either to: (a) return all the Section 3.3 Product to
2 Settling Defendants for destruction; or (b) directly destroy the Section 3.3 Product.

3 3.3.2 Any destruction of Section 3.3 Product shall be in compliance with all
4 applicable laws.

5 3.3.3 Within sixty days of the Effective Date, Settling Defendants shall provide
6 CEH with written certification from Settling Defendants confirming compliance with the
7 requirements of this Section 3.3.

8 **4. ENFORCEMENT**

9 4.1 CEH may, by motion or application for an order to show cause before the
10 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
11 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
12 above, CEH shall provide Settling Defendants with a Notice of Violation and a copy of any test
13 results which purportedly support CEH's Notice of Violation. The Parties shall then meet and
14 confer regarding the basis for CEH's anticipated motion or application in an attempt to resolve it
15 informally, including providing Settling Defendants a reasonable opportunity of at least thirty
16 (30) days to cure any alleged violation. Should such attempts at informal resolution fail, CEH
17 may file its enforcement motion or application. This Consent Judgment may only be enforced by
18 the Parties.

19 **5. PAYMENTS**

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

25 5.1.1 \$2,750 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
26 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
27 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
28 Assessment). The civil penalty check shall be made payable to the Center For Environmental

1 Health.

2 5.1.2 \$3,750 as a payment in lieu of civil penalty to CEH pursuant to Health &
3 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
4 such funds to continue its work educating and protecting people from exposures to toxic
5 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
6 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In
7 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
8 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
9 educate and protect people from exposures to toxic chemicals. The method of selection of such
10 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
11 this Section shall be made payable to the Center For Environmental Health.

12 5.1.3 \$18,500 as reimbursement of a portion of CEH's reasonable attorneys' fees
13 and costs. A check for \$16,000 shall be made payable to the Lexington Law Group, and a check
14 for \$2,500 shall be made payable to the Center For Environmental Health.

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 Defendants, and their 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 Defendants prior to the Effective Date.

5 7.2 Compliance with the terms of this Consent Judgment by Settling Defendants
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 Defendants 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 Defendants are entitled to receive any notice under this Consent
22 Judgment, the notice shall be sent by first class and electronic mail to:

23 Office of General Counsel
24 Helen of Troy Limited
25 1 Helen of Troy Plaza
26 El Paso, Texas 79912

27 8.3 Any Party may modify the person and address to whom the notice is to be sent
28 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 Defendants
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 Defendants prevail on any motion application for an order to show cause or other
11 proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a
12 result of such motion or application upon a finding by the Court that CEH's prosecution of the
13 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
14 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
15 1986, 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 Defendants, and their 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 Defendants 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

HELEN OF TROY LIMITED

Signature

Printed Name

Title

HELEN OF TROY L.P.

Signature

Printed Name

Title

1 be resolved against the drafting Party should not be employed in the interpretation of this Consent

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3 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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5 **IT IS SO STIPULATED:**

6 **CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro
Associate Director

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HELEN OF TROY LIMITED

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By: 

Signature

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VINCENT D. CARSON

Printed Name

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SR. VICE PRESIDENT

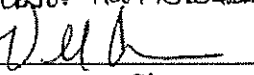
Title

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HELEN OF TROY L.P.
BY: HELEN OF TROY NEVADA CORPORATION, C. P.

21

By: 

Signature

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VINCENT D. CARSON

Printed Name

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CHIEF LEGAL OFFICER

Title

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IDELLE LABS, LTD.

Jack Jansen

Signature

Jack Jansen

Printed Name

Sr. Vice President

Title

IT IS SO ORDERED:

Dated: AUG 15, 2014

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court