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ENDORSED
FILED
ALAMEDA COUNTY

AUG 15 2014

CLERK OF THE SUPERIOR COURT
YOLANDA ESTRADA, Deputy

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

15 Coordination Proceeding Special Title:) Judicial Council Coordination Proceeding
16 PROPOSITION 65 COCAMIDE DEA CASES) Case No. 4765
17 _____)
18 This Document Relates To:) **[PROPOSED] CONSENT**
19 *CEH v. Accessory Zone, LLC, et al., A.C.S.C.*) **JUDGMENT AS TO NATURA BISSE**
20 Case No. RG 13-699752) **INTERNATIONAL, INC.**

21 **I. INTRODUCTION**

22 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
23 Environmental Health (“CEH”) and defendant Natura Bissé International, 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 and
26 that manufactures, distributes and/or sells shampoo and liquid soaps, including facial cleansing
27 cream and facial cleansing gel, that contain coconut oil diethanolamine condensate (cocamide
28

1 diethanolamine) (hereinafter, “cocamide DEA”) in the State of California or has done so in the
2 past.

3 1.3 On March 7, 2014, CEH served a 60-Day Notice 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 Defendant, 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 Notice
8 alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo
9 and liquid soaps manufactured, distributed and/or sold by Settling Defendant.

10 1.4 On October 18, 2013, CEH filed the action entitled *CEH v. Accessory Zone,*
11 *LLC, et al.*, Case No. RG 13-699752, in the Superior Court of California for Alameda County.
12 On December 4, 2013, the *Accessory Zone* action was coordinated with several other related
13 Proposition 65 actions in the *Proposition 65 Cocamide DEA Cases*, Case No. JCCP 4765,
14 currently pending before this Court. On May 29, 2014, CEH named Settling Defendant as a
15 defendant in the *Accessory Zone* action pursuant to California Code of Civil Procedure §474.

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

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

1 **2. DEFINITIONS**

2 2.1 “Covered Products” means shampoo and liquid soaps, including facial
3 cleansing cream and facial cleansing gel.

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

12 3.2 **Specification to Suppliers.** No more than 30 days after the Effective Date,
13 Settling Defendant shall issue specifications to its suppliers of Covered Products requiring that
14 Covered Products not contain any cocamide DEA, and shall instruct each supplier to use
15 reasonable efforts to eliminate Covered Products containing cocamide DEA on a nationwide
16 basis.

17 3.3 **Action Regarding Specific Products.**

18 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling: (1)
19 Natura Bisse Facial Cleansing Cream + A.H.A., SKU No. 31G206 and UPC No. 8-436002-
20 992548 that contains cocamide DEA; and (2) Natura Bisse Facial Cleansing Gel + A.H.A., SKU
21 No. 31G208 and UPC No. 8-436002-992548 that contains cocamide DEA (the “Section 3.3
22 Products”) in California. On or before the Effective Date, Settling Defendant shall also: (i) cease
23 shipping the Section 3.3 Products to any of its stores and/or customers that resell the Section 3.3
24 Products in California, and (ii) send instructions to its stores and/or customers that resell the
25 Section 3.3 Products in California instructing them to return all the Section 3.3 Products to
26 Settling Defendant.

27 3.3.2 Any destruction of Section 3.3 Products shall be in compliance with all
28 applicable laws.

1 3.3.3 Within sixty days of the Effective Date, Settling Defendant shall provide
2 CEH with written certification from Settling Defendant confirming compliance with the
3 requirements of this Section 3.3.

4 3.4 Settling Defendant may reformulate the Section 3.3 Products to exclude the
5 cocamide DEA ingredient. Upon such reformulation, Settling Defendant may manufacture,
6 distribute, sell or offer for sale: (1) Natura Bisse Facial Cleansing Cream + A.H.A., SKU No.
7 31G206 and UPC No. 8-436002-992548 that does not contains cocamide DEA; and (2) Natura
8 Bisse Facial Cleansing Gel + A.H.A., SKU No. 31G208 and UPC No. 8-436002-992548 that do
9 not contain cocamide DEA.

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. This Consent Judgment may only be enforced by the
20 Parties.

21 **5. PAYMENTS**

22 5.1 **Payments by Settling Defendant.** Within fifteen (15) business days of the
23 Effective Date, Settling Defendant shall pay the total sum of \$15,000 as a settlement payment.
24 The total settlement amount for Settling Defendant shall be paid in four separate checks delivered
25 to counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
26 Defendant shall be allocated between the following categories:

27 5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
28 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12

1 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
2 Assessment). The civil penalty check shall be made payable to the Center For Environmental
3 Health.

4 5.1.2 \$2,250 as a payment in lieu of civil penalty to CEH pursuant to Health &
5 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
6 such funds to continue its work educating and protecting people from exposures to toxic
7 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
8 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In
9 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
10 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
11 educate and protect people from exposures to toxic chemicals. The method of selection of such
12 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
13 this Section shall be made payable to the Center For Environmental Health.

14 5.1.3 \$11,100 as reimbursement of a portion of CEH's reasonable attorneys' fees
15 and costs. A check for \$9,600 shall be made payable to the Lexington Law Group, and a check
16 for \$1,500 shall be made payable to the Center For Environmental Health.

17 **6. MODIFICATION**

18 6.1 **Written Consent.** This Consent Judgment may be modified from time to
19 time by express written agreement of the Parties with the approval of the Court, or by an order of
20 this Court upon motion and in accordance with law.

21 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
22 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
23 modify the Consent Judgment.

24 **7. CLAIMS COVERED AND RELEASED**

25 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
26 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
27 affiliated entities that are under common ownership, directors, officers, employees, successors
28 and predecessors and attorneys ("Defendant Releasees"), and each entity to whom they directly or

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

8 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
9 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling
10 Defendant, its Defendant Releasees and their Downstream Defendant Releasees with respect to
11 any alleged failure to warn about cocamide DEA in Covered Products manufactured, distributed,
12 or sold by Settling Defendant after the Effective Date.

13 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
14 action under Proposition 65 against any person other than Settling Defendant, Defendant
15 Releasees, or Downstream Defendant Releasees.

16 **8. NOTICE**

17 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by first class and electronic mail to:

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

24 8.2 When Settling Defendant is entitled to receive any notice under this Consent
25 Judgment, the notice shall be sent by first class and electronic mail to:

26 Kimberly F. Rich
27 Baker & McKenzie LLP
28 2001 Ross Avenue, Suite 2300
 Dallas, Texas 75201
 Kimberly.Rich@bakermckenzie.com

 8.3 Any Party may modify the person and address to whom the notice is to be sent

1 by sending the other Party notice by first class and electronic mail.

2 **9. COURT APPROVAL**

3 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
4 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
5 shall support entry of this Consent Judgment.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
7 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
8 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

9 **10. ATTORNEYS' FEES**

10 10.1 Should CEH prevail on any motion, application for an order to show cause or
11 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
12 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
13 Settling Defendant prevail on any motion application for an order to show cause or other
14 proceeding, Settling Defendant shall be awarded its reasonable attorneys' fees and costs as a
15 result of such motion or application.

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 Defendant, and its 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 Defendant 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

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be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

NATURA BISSÉ INTERNATIONAL, INC.

Signature

Printed Name

Title

IT IS SO ORDERED:

Dated: _____, 2014

Judge of the Superior Court

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.

3
4 **IT IS SO STIPULATED:**

5 **CENTER FOR ENVIRONMENTAL HEALTH**

6
7
8 _____
9 Charlie Pizarro
10 Associate Director

11 **NATURA BISSÉ INTERNATIONAL, INC.**

12
13 _____
14 *Jose L. Villegas*
15 Signature

16 Jose L. Villegas
17 Printed Name

18 COO
19 Title

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21
22 **IT IS SO ORDERED:**

23
24 Dated: **AUG 15**, 2014

GEORGE C. HERNANDEZ, JHL.

Judge of the Superior Court