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**FILED**  
 ALAMEDA COUNTY

DEC - 8 2016

CLERK OF THE SUPERIOR COURT  
 By [Signature] Deputy

6 Attorneys for Plaintiff  
 7 CENTER FOR ENVIRONMENTAL HEALTH

8  
 9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
 10 FOR THE COUNTY OF ALAMEDA

11  
 12 CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 15-770932  
 13 )  
 Plaintiff, ) **[PROPOSED] CONSENT**  
 14 ) **JUDGMENT AS TO PHD**  
 v. ) **MARKETING, INC.**  
 15 )  
 SPACE JAM JUICE LLC, et al., )  
 16 )  
 Defendants. )  
 17 )  
 18 )

19  
 20 **1. INTRODUCTION**

21 **1.1.** This Consent Judgment is entered into by Plaintiff Center for Environmental  
 22 Health, a non-profit corporation (“CEH”), and PHD Marketing, Inc. (“Settling Defendant”) to  
 23 settle claims asserted by CEH against Settling Defendant as set forth in the operative Complaint  
 24 in the matter *Center for Environmental Health v. Space Jam Juice LLC, et al.*, Alameda County  
 25 Superior Court Case No. RG-15-770932 (the “Action”). CEH and Settling Defendant are referred  
 26 to collectively as the “Parties.”  
 27

1           **1.2.** On February 5, 2015, CEH served a 60-Day Notice of Violation (the “Nicotine  
2 Notice”) relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986,  
3 California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Settling Defendant, the  
4 California Attorney General, the District Attorneys of every County in the State of California, and  
5 the City Attorneys for every City in State of California with a population greater than 750,000.  
6 This Notice alleges violations of Proposition 65 with respect to the presence of nicotine in  
7 electronic cigarette devices manufactured, distributed, and/or sold by Settling Defendant.

8           **1.3.** On December 10, 2015, CEH served four 60-Day Notices of Violation (the  
9 “Aldehyde Notices”) relating to the California Safe Drinking Water and Toxic Enforcement Act  
10 of 1986, California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Settling  
11 Defendant, the California Attorney General, the District Attorneys of every County in the State of  
12 California, and the City Attorneys for every City in State of California with a population greater  
13 than 750,000. These Notices allege violations of Proposition 65 with respect to the presence of  
14 formaldehyde and acetaldehyde resulting from use of Settling Defendant’s e-cigarette devices and  
15 the e-liquids used in such devices (the “Products”). (The “Nicotine Notice” and the “Aldehyde  
16 Notices” shall be collectively referred to herein as the “Notices”).

17           **1.4.** On May 19, 2015, CEH filed the present Action. On September 18, 2015, CEH  
18 added Settling Defendant to the Action via a Doe Amendment. Upon entry of this Consent  
19 Judgment, the Complaint in this Action shall be deemed amended to include the allegations and  
20 claims of the Aldehyde Notices.

21           **1.5.** Settling Defendant is a corporation that employs nine (9) persons, including one of  
22 its shareholders, and that manufactures, distributes, and/or sells Covered Products (as defined  
23 herein) in the State of California or has done so in the past.

24           **1.6.** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
25 Court has jurisdiction over the allegations of violations contained in the Notices, and Complaint  
26 and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii)  
27 venue is proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this  
28 Consent Judgment as a full and final resolution of all claims which were or could have been

1 raised in the Complaint or Amended-Complaint based on the facts alleged in the Notices and  
2 Complaint with respect to Covered Products manufactured, distributed, and/or sold by Settling  
3 Defendant.

4 1.7. The Parties enter into this Consent Judgment as a full and final settlement of all  
5 claims which were or could have been raised by Plaintiff in the Complaint or any Amended-  
6 Complaint arising out of the facts or conduct related to Settling Defendant's alleged therein and in  
7 the Notices. By execution of this Consent Judgment and agreeing to comply with its terms, the  
8 Parties do not admit any fact, conclusion of law, or violation of law, nor shall compliance with  
9 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
10 conclusion of law, or violation of law. Settling Defendant denies the material, factual, and legal  
11 allegations in the Notices and Complaint and expressly denies any wrongdoing whatsoever. This  
12 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties  
13 solely for purposes of settling, compromising, and resolving issues disputed in this Action.

## 14 2. DEFINITIONS

15 2.1. "Covered Products" means "Covered Liquid Products" and "Covered Device  
16 Products."

17 2.2. "Covered Liquid Products" means liquids that are designed for use with electronic  
18 cigarette devices, also known as tanks and vape pens, that are manufactured, distributed, and/or  
19 that may be sold by Settling Defendant in California.

20 2.3. "Covered Device Products" means electronic cigarette devices, also known as  
21 tanks and vape pens, which contain nicotine or are designed and intended for use with nicotine-  
22 containing liquid, that are manufactured, distributed, and/or may be sold by Settling Defendant in  
23 California.

24 2.4. "Effective Date" means the date on which the Court enters this Consent Judgment.

## 25 3. INJUNCTIVE RELIEF

26 3.1. **Clear and Reasonable Warnings for Nicotine-Containing Covered Liquid**  
27 **Products.** As of the Effective Date and moving forward, no nicotine-containing Covered Liquid



1 Liquid Products prior to the Effective Date. Such warning materials shall include a reasonably  
2 sufficient number of stickers in order to permit the retailer or distributor to affix the warning on  
3 each nicotine-containing Covered Liquid Product such customer has purchased from Settling  
4 Defendant. The warning stickers shall contain the warning language set forth in Section 3.1  
5 above. The warning materials shall also include a letter of instruction for the placement of the  
6 stickers, and a Notice and Acknowledgment postcard.

7 **3.2. Clear and Reasonable Warnings for Non-Nicotine-Containing Covered**  
8 **Liquid Products.** As of the Effective Date, no non-nicotine-containing Covered Liquid Product  
9 may be manufactured for sale, distributed or sold in California unless such non-nicotine-  
10 containing Covered Liquid Product has a clear and reasonable warning on the outer label of the  
11 product. The warning shall state the following:

12 **WARNING:** Use of this product will expose you to formaldehyde and  
13 acetaldehyde, chemicals known to the State of California to cause cancer.

14 The warning shall not be preceded by, surrounded by, or include any additional words or phrases  
15 that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be  
16 prominently displayed on the non-nicotine-containing Covered Liquid Product with such  
17 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
18 read and understood by an ordinary individual prior to sale. To the extent that other warning  
19 statements are included on the outer label of a non-nicotine-containing Covered Liquid Product,  
20 the warning required herein shall be separated from the other warnings by a line that is at least the  
21 same height as a line of text on the label. For internet, catalog, or any other sale where the  
22 consumer is not physically present and cannot see a warning displayed on the non-nicotine-  
23 containing Covered Liquid Product prior to purchase or payment, the warning statement shall be  
24 displayed in such a manner that it is likely to be read and understood as being applicable to the  
25 non-nicotine-containing Covered Liquid Product being purchased prior to the authorization of or  
26 actual payment. Placement of the warning statement at the bottom of an internet webpage that  
27 offers multiple products for sale does not satisfy the requirements of this Section.

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1 The warning shall not be preceded by, surrounded by, or include any additional words or phrases  
2 that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be  
3 prominently displayed on the outer packaging of the Covered Device Product with such  
4 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
5 read and understood by an ordinary individual prior to sale. To the extent that other warning  
6 statements are included on the outer packaging of a Covered Device Product, the warning  
7 required herein shall be separated from the other warnings by a line that is at least the same height  
8 as a line of text on the label. For internet, catalog, or any other sale where the consumer is not  
9 physically present and cannot see a warning displayed on the Covered Device Product prior to  
10 purchase or payment, the warning statement shall be displayed in such a manner that it is likely to  
11 be read and understood as being applicable to the Covered Device Product being purchased prior  
12 to the authorization of or actual payment. Placement of the warning statement at the bottom of an  
13 internet webpage that offers multiple products for sale does not satisfy the requirements of this  
14 Section.

15 **3.3.1. Warnings for Covered Device Products in the Stream of Commerce.**

16 As of the Effective Date, in an effort to ensure that future consumers receive clear and reasonable  
17 warnings in compliance with Proposition 65 for Covered Products that have not been labeled in  
18 accordance with Section 3.3, Settling Defendant shall provide warning materials by certified mail  
19 to each of its California retailers or distributors to whom Settling Defendant reasonably believes  
20 sold Covered Device Products prior to the Effective Date. Such warning materials shall include a  
21 reasonably sufficient number of stickers in order to permit the retailer or distributor to affix the  
22 warning on each Covered Device Product such customer has purchased from Settling Defendant.  
23 The warning stickers shall contain the warning language set forth in Section 3.3 above. The  
24 warning materials shall also include a letter of instruction for the placement of the stickers, and a  
25 Notice and Acknowledgment postcard.

26 **3.4. Optional Additional Injunctive Provisions.** In order for Settling Defendant to be  
27 eligible for any waiver of the additional civil penalty/payment in lieu of penalty payments set

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1 forth in Section 4.1.5 below, Settling Defendant shall undertake one or more of the additional  
2 actions below. If Settling Defendant opts to be bound by this Section, Settling Defendant must  
3 provide CEH with a written election stating which optional provision(s) it is agreeing to  
4 implement.

5 **3.4.1. Product Reformulation.** Within ninety (90) days following the Effective  
6 Date, all Covered Products manufactured for sale in California shall be manufactured such that  
7 use of the Covered Products will not produce detectable levels of formaldehyde and acetaldehyde.

8 **3.4.2. Product Safety Requirements.** If Settling Defendant opts to participate in  
9 Section 3.4, Settling Defendant shall make the following changes to the Covered Products to  
10 increase the safety of such products:

11 **3.4.2.1.** Within ninety (90) days following the Effective Date, all  
12 Covered Liquid Products manufactured for sale in California shall be manufactured with child  
13 proof caps in accordance with the standards set forth in 16 C.F.R. § 1700.15(b) and flow  
14 restrictions in accordance with the standard set forth in 16 C.F.R. § 1700.15(d).

15 **3.4.2.2.** Within ninety (90) days following the Effective Date, all  
16 Covered Products manufactured for sale in California shall be manufactured without diacetyl in  
17 the Covered Products.

18 **3.4.2.3.** Within ninety (90) days following the Effective Date,  
19 Settling Defendant shall implement one or more systems to ensure that no one who purchases  
20 Covered Products from Settling Defendant's website is a minor.

21 **3.4.3. Prohibition on Advertising to Minors.** Settling Defendant shall not use  
22 advertisements that target minors. Specifically, Settling Defendant will not use models or images  
23 of people that appear to be younger than twenty- (21) years of age, cartoons, art, fashion, or music  
24 that is intended and designed to appeal to people under the legal smoking age in advertisements  
25 or promotional materials that appear in California, including on the Internet.

26 **3.4.4. Prohibition on Health and Safety Claims.** If Settling Defendant opts to  
27 participate in Section 3.4, Settling Defendant shall not make health and or safety claims unless



1 such claims have been reviewed and approved by the Federal Food and Drug Administration.

2 Examples of prohibited claims include the following:

3 **3.4.4.1.** Settling Defendant shall not advertise Covered Products as  
4 smoking-cessation devices. This prohibition includes any claims or testimonials about quitting  
5 smoking, using e-cigarettes as a treatment for tobacco dependence or addiction.

6 **3.4.4.2.** Settling Defendant shall not make any claim that the  
7 Covered Products do not expose users to carcinogens or are better or safer than tobacco.

8 **4. PAYMENTS**

9 **4.1.** Settling Defendant shall initially pay to CEH the total sum of \$18,000, which shall  
10 be allocated as follows:

11 **4.1.1.** \$825 as a civil penalty pursuant to California Health & Safety Code §  
12 25249.7(b), such money to be apportioned by CEH in accordance with California Health &  
13 Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of  
14 Environmental Health Hazard Assessment). This civil penalty shall be made payable to the  
15 Center for Environmental Health.

16 **4.1.2.** \$1,237 as a payment in lieu of civil penalty pursuant to California Health &  
17 Safety Code § 25249.7(b) and California Code of Regulations, Title 11, § 3203(b). CEH will use  
18 such funds to continue its work educating and protecting people from exposures to toxic  
19 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent  
20 Judgment and to purchase and test Settling Defendant's Products to confirm compliance. In  
21 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four  
22 percent (4%) of such funds to award grants to grassroots environmental justice groups working to  
23 educate and protect the public from exposures to toxic chemicals. The method of selection of  
24 such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). This payment in lieu  
25 of civil penalty shall be made payable to the Center for Environmental Health.

26 **4.1.3.** \$15,938 as a reimbursement of a portion of CEH's reasonable attorneys'  
27 fees and costs. This amount shall be divided into two checks: (1) a check for \$14,138 shall be

1 made payable to Lexington Law Group; and (2) a check for \$1,800 shall be made payable to the  
2 Center for Environmental Health. These amounts shall be paid in one (1) check made payable to  
3 the Center for Environmental Health, and one (1) separate check made payable to the Lexington  
4 Law Group.

5 **4.1.4.** The payments required under Sections 4.1.1-4.1.3 shall be made in four (4)  
6 separate checks, all to be delivered within twenty (20) days following the Effective Date. All  
7 checks shall be delivered to Mark Todzo at Lexington Law Group at the address set forth in  
8 Section 8.1.2.

9 **4.1.5.** In the event that Settling Defendant elects not to certify its compliance with  
10 one or more of the optional provisions in Section 3.4 in accordance with that Section, on the date  
11 specified in Exhibit A, Settling Defendant must make an additional payment for each provision  
12 not certified, as follows: (i) \$1,875 if Settling Defendant elects to not participate in Section 3.4.1;  
13 (ii) \$1,875 if Settling Defendant elects to not participate in Section 3.4.2; (iii) \$1,875 if Settling  
14 Defendant elects to not participate in Section 3.4.3; and (iv) \$1,875 if Settling Defendant elects to  
15 not participate in Section 3.4.4. Each of these payments shall be paid in two separate checks,  
16 each payable to the Center for Environmental Health, to be allocated as follows:

17 **4.1.5.1.** Forty percent (40%) shall constitute a civil penalty pursuant to  
18 California Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in  
19 accordance with California Health & Safety Code § 25249.12 (25% to CEH and 75% to the State  
20 of California's Office of Environmental Health Hazard Assessment).

21 **4.1.5.2.** Sixty percent (60%) shall constitute a payment in lieu of civil  
22 penalty pursuant to California Health & Safety Code § 25249.7(b) and California Code of  
23 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and  
24 protecting people from exposures to toxic chemicals. CEH may also use a portion of such funds  
25 to monitor compliance with this Consent Judgment and to purchase and test Settling Defendant's  
26 Products to confirm compliance. In addition, as part of its Community Environmental Action and  
27 Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots

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1 environmental justice groups working to educate and protect the public from exposures to toxic  
2 chemicals. The method of selection of such groups can be found at the CEH website at  
3 [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

#### 4 **5. ENFORCEMENT OF CONSENT JUDGMENT**

5 **5.1.** CEH may, by motion or application for an order to show cause before the Superior  
6 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.  
7 Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH  
8 shall provide Settling Defendant with a Notice of Violation and a copy of any test results which  
9 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding  
10 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,  
11 including providing Settling Defendant a reasonable opportunity of at least thirty (30) days to  
12 cure any alleged violation. Should such attempts at informal resolution fail, CEH may file its  
13 enforcement motion or application. The prevailing party on any motion to enforce this Consent  
14 Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result of such  
15 motion or application. This Consent Judgment may only be enforced by the Parties.

#### 16 **6. MODIFICATION OF CONSENT JUDGMENT**

17 **6.1.** This Consent Judgment may only be modified by written agreement of CEH and  
18 Settling Defendant, or upon motion of CEH or Settling Defendant as provided by law.

#### 19 **7. CLAIMS COVERED AND RELEASE**

20 **7.1.** This Consent Judgment is a full, final, and binding resolution between CEH acting  
21 in the public interest and Settling Defendant and Settling Defendant's parents, officers, directors,  
22 shareholders, divisions, subdivisions, subsidiaries, and their respective successors and assigns  
23 ("Defendant Releasees") and all entities to whom they distribute or sell or have distributed or sold  
24 Covered Products including, but not limited to, distributors, wholesalers, customers, retailers,  
25 franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"), of all  
26 claims alleged in the Complaint in this Action arising from any violation of Proposition 65 that  
27 have been or could have been asserted in the public interest against Settling Defendant and

1 Downstream Defendant Releasees, regarding the failure to warn about exposures to nicotine,  
2 formaldehyde, and/or acetaldehyde in the Covered Products manufactured, distributed, or sold by  
3 Settling Defendant prior to the Effective Date.

4 **7.2.** CEH, for itself, releases, waives, and forever discharges any and all claims alleged  
5 in the Complaint against Settling Defendant and Downstream Defendant Releasees arising from  
6 any violation of Proposition 65 that have been or could have been asserted regarding the failure to  
7 warn about exposures to nicotine, formaldehyde, and/or acetaldehyde in connection with Covered  
8 Products manufactured, distributed, or sold by Settling Defendant prior to the Effective Date.

9 **7.3.** Compliance with the terms of this Consent Judgment by Settling Defendant and  
10 the Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Settling  
11 Defendant and Downstream Defendant Releasees with respect to any alleged failure to warn  
12 about exposures to nicotine, formaldehyde, and/or acetaldehyde from the Covered Products  
13 manufactured, distributed, or sold by Settling Defendant after the Effective Date.

14 **8. PROVISION OF NOTICE**

15 **8.1.** When any Party is entitled to receive any notice under this Consent Judgment, the  
16 notice shall be sent by first class and electronic mail as follows:

17 **8.1.1. Notices to Settling Defendant.** The persons for Settling Defendant to  
18 receive notices pursuant to this Consent Judgment shall be:

19 Angelica Leon  
20 Beverly Hills Lawyers & Associates  
21 9461 Charleville Blvd. #613  
22 Beverly Hills, CA 90212  
aml@bh-la.com

23 **8.1.2. Notices to Plaintiff.** The persons for CEH to receive notices pursuant to  
24 this Consent Judgment shall be:

25 Mark Todzo  
26 Lexington Law Group  
27 503 Divisadero Street  
San Francisco, CA 94117  
mtodzo@lexlawgroup.com

1           **8.2.** Any Party may modify the person and address to whom the notice is to be sent by  
2 sending the other Parties notice by first class and electronic mail.

3           **9. COURT APPROVAL**

4           **9.1.** This Consent Judgment shall become effective on the Effective Date, provided  
5 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
6 Settling Defendant shall support approval of such Motion.

7           **9.2.** If this Consent Judgment is not entered by the Court, it shall be of no force or  
8 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
9 purpose.

10          **10. GOVERNING LAW AND CONSTRUCTION**

11          **10.1.** The terms and obligations arising from this Consent Judgment shall be construed  
12 and enforced in accordance with the laws of the State of California.

13          **11. ENTIRE AGREEMENT**

14          **11.1.** This Consent Judgment contains the sole and entire agreement and understanding  
15 of CEH and Settling Defendant with respect to the entire subject matter hereof, and any and all  
16 prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
17 merged herein and therein.

18          **11.2.** There are no warranties, representations, or other agreements between CEH and  
19 Settling Defendant except as expressly set forth herein. No representations, oral or otherwise,  
20 express or implied, other than those specifically referred to in this Consent Judgment have been  
21 made by any Party hereto.

22          **11.3.** No other agreements not specifically contained or referenced herein, oral or  
23 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
24 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
25 any of the Parties hereto only to the extent that they are expressly incorporated herein.

26          **11.4.** No supplementation, modification, waiver, or termination of this Consent  
27 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

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1           **11.5.** No waiver of any of the provisions of this Consent Judgment shall be deemed or  
2 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
3 such waiver constitute a continuing waiver.

4           **12. RETENTION OF JURISDICTION**

5           **12.1.** This Court shall retain jurisdiction of this matter to implement or modify the  
6 Consent Judgment.

7           **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

8           **13.1.** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
9 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
10 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

11           **14. NO EFFECT ON OTHER SETTLEMENTS**

12           **14.1.** Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
13 against another entity on terms that are different from those contained in this Consent Judgment.

14           **15. EXECUTION IN COUNTERPARTS**

15           **15.1.** The stipulations to this Consent Judgment may be executed in counterparts and by  
16 means of facsimile, which taken together shall be deemed to constitute one document.

17  
18 **IT IS SO STIPULATED:**

19 **CENTER FOR ENVIRONMENTAL HEALTH**

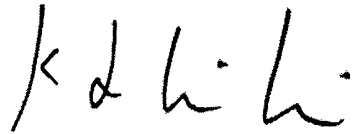
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PHD MARKETING, INC.



Signature

Khajadour Semikian

Printed Name

General Manager

Title

**IT IS SO ORDERED:**

Dated: 12/8, 2016



Judge of the Superior Court

GEORGE C. HERNANDEZ, JR.