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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

Coordination Proceeding Special Title: PROPOSITION 65 COCAMIDE DEA CASES	Judicial Council Coordination Proceeding Case No. 4765 **[PROPOSED] CONSENT JUDGMENT AS TO SIGNATURE CLUB A LTD. INC.**
This Document Relates To: *Center for Environmental Health v. Noevir U.S.A., Inc., et al.*, A.C.S.C. Case No. RG 14-739157	

1. INTRODUCTION

1.1 The parties to this Consent Judgment ("Parties") are the Center for Environmental Health ("CEH") and defendant Signature Club A Ltd. Inc. ("Settling Defendant"). CEH and Settling Defendant are referred to collectively as the "Parties."

1.2 Settling Defendant is a corporation that manufactures, distributes, and/or sells shampoo and liquid soaps that contain coconut oil diethanolamine condensate (cocamide

diethanolamine) (hereinafter, "cocamide DEA") in the State of California or has done so in the past.

1.3 On February 13, 2015, CEH served a 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*) ("Notice") to Settling Defendant, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo and liquid soaps that are manufactured, distributed, and/or sold by Settling Defendant.

1.4 On September 3, 2014, CEH filed the action entitled *CEH v. Noevir U.S.A., Inc., et al.*, Case No. RG 14-739157, in the Superior Court of California for Alameda County. On October 6, 2014, the *Noevir* action was coordinated with several other related Proposition 65 actions in the *Proposition 65 Cocamide DEA Cases*, Case No. JCCP 4765, currently pending before this Court. On or about April 27, 2015, CEH named Settling Defendant as a defendant in that action pursuant to California Code of Civil Procedure § 474.

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

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

2. DEFINITIONS

2.1 "Covered Products" means shampoo and liquid soaps.

2.2 "Effective Date" means the date on which this Consent Judgment is entered by the Court.

3. INJUNCTIVE RELIEF

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

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

3.3 **Action Regarding Specific Products.**

3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the following products: (i) the Signature Club A Precious Moroccan Argan Oil & Pomegranate Shampoo/Conditioner, Item No. 153341; (ii) the Signature Club A Vanilla Meringue Hair Thickening Shampoo/Conditioner, Item No. 375091; and (iii) the Signature Club A Rapid Transport C Infused Hair Thickening Shampoo/Conditioner, Item No. 157364 (the "Section 3.3 Products"). On or before the Effective Date, Settling Defendant shall also: (i) cease shipping the Section 3.3 Products to any of its stores and/or customers that resell the Section 3.3 Products in California; and (ii) send instructions to its stores and/or customers that resell the Section 3.3 Products in California instructing them either to: (a) return all the Section 3.3 Products to Settling Defendant for destruction, or (b) directly destroy the Section 3.3 Products.

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

3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall provide CEH with written certification from Settling Defendant confirming compliance with the requirements of this Section 3.3.

4. ENFORCEMENT

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

5. PAYMENTS

5.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective Date, Settling Defendant shall pay the total sum of $32,500 as a settlement payment. Each settlement payment from Settling Defendant shall be paid in four separate checks delivered to counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling Defendant shall be allocated between the following categories:

5.1.1 $3,575 as a civil penalty pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment). This check shall be made payable to the Center for Environmental Health.

5.1.2 $4,875 as payment in lieu of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent

Judgment and to purchase and test Settling Defendant's products to confirm compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. This check shall be made payable to the Center for Environmental Health.

5.1.3 $24,050 as reimbursement of a portion of CEH's reasonable attorneys' fees and costs. A check for $20,800 shall be made payable to the Lexington Law Group, and a check for $3,250 shall be made payable to the Center for Environmental Health.

6. MODIFICATION

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

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

7. CLAIMS COVERED AND RELEASED

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

Date.

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

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

8. NOTICE

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

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

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

Jane Kroesche
Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue
Palo Alto, CA 94301
jane.kroesche@skadden.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 may be awarded its reasonable attorneys' fees and costs as a result of such motion or application upon a finding by the Court that CEH's prosecution of the motion or application lacked substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

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 sanctions pursuant to law.

11. OTHER TERMS

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

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

11.3 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or

implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

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

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

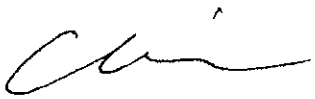
11.6 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

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

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

SIGNATURE CLUB A LTD. INC.

Signature

Printed Name

Title

IT IS SO ORDERED:

Dated: _____, 2015

Judge of the Superior Court

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

_____
Charlie Pizarro
Associate Director

SIGNATURE CLUB A LTD. INC.

_____
Signature

Jeffrey Glassman
Printed Name

General Manager/CFO
Title

IT IS SO ORDERED:

Dated: 10/23, 2015

_____
Judge of the Superior Court