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FILED
ALAMEDA COUNTY

MAY 08 2021

CLERK OF THE SUPERIOR COURT
By Carroll Robinson
Deputy

Counsel for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)
Plaintiff,)
v.)
CHANEL, INC., *et al.*)
Defendant.)

Case No. RG 19-038937

~~PROPOSED~~ CONSENT
JUDGMENT AS TO CHANEL, INC.

1. INTRODUCTION

1.1 The parties to this Consent Judgment (“Parties”) are the Center for Environmental Health (“CEH”) and defendant Chanel, Inc. (“Settling Defendant”). CEH and Settling Defendant are referred to collectively as the “Parties.”

1.2 Settling Defendant is a corporation that employs ten (10) or more persons and that manufactures, distributes, and/or sells makeup foundation in the State of California or has done so in the past.

1 1.3 On April 15, 2019, CEH sent a 60-Day Notice of Violation under Proposition 65
2 (The Safe Drinking Water and Toxic Enforcement Act of 1986; California Health & Safety Code
3 §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendant, the California Attorney General, the
4 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
6 violations of Proposition 65 with respect to the presence of perfluorooctanoic acid (“PFOA”) in
7 makeup foundation manufactured, distributed, and/or sold by Settling Defendant.

8 1.4 On October 11, 2019, CEH filed the Complaint in the above-captioned matter,
9 naming Settling Defendant as a defendant.

10 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
11 Court has jurisdiction over the allegations of violations contained in the operative Complaint
12 applicable to Settling Defendant (“Complaint”) and personal jurisdiction over Settling Defendant
13 as to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii)
14 this Court has jurisdiction to enter this Consent Judgment.

15 1.6 Chanel maintains that it reformulated its products to eliminate ingredients that
16 might result in trace contamination with PFOA well in advance of the effective date for the
17 warning requirement under Proposition 65, and well in advance of the Notice sent by CEH. CEH
18 maintains that it nevertheless found PFOA in significant levels in Chanel makeup foundation sold
19 in California without a Proposition 65 warning after the applicable statutory effective date.

20 1.7 Nothing in this Consent Judgment is or shall be construed as an admission by the
21 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
22 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
23 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
24 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
25 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
26 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
27 this action.

28

1 **2. DEFINITIONS**

2 2.1 “Covered Products” means makeup foundation.

3 2.2 “Effective Date” means the date on which this Consent Judgment is entered by the
4 Court.

5 **3. INJUNCTIVE RELIEF**

6 3.1 **Reformulation of Covered Products.**

7 3.1.1 As of the Effective Date, Settling Defendant shall not (1) manufacture or
8 cause to be manufactured any Covered Product that will be sold or offered for sale to California
9 consumers, or (2) distribute, sell, or offer for sale any Covered Product to California retailers or
10 consumers, that contains (i) any intentionally added PFOA, or (ii) any intentionally added
11 flourinated ingredient that causes PFOA to be in a Covered Product, including but not limited to
12 C9-15 fluoroalcohol phosphate.

13 3.1.2 No more than thirty (30) days after the Effective Date, Settling Defendant
14 shall provide CEH a written certification that, as of the date of such certification, all of its present
15 formulations of each Covered Product comply with the reformulation requirement in Section
16 3.1.1.

17 **4. ENFORCEMENT**

18 4.1 CEH may, by motion or application for an order to show cause before the Superior
19 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.
20 This Consent Judgment may only be enforced by the Parties.

21 4.2 Should CEH acquire data indicating that a Covered Product is not compliant with
22 Section 3.1 or contains PFOA, it may exercise its enforcement right pursuant to this Section 4.2.

23 4.2.1 At least 60 days prior to bringing any motion or application to enforce the
24 requirements of Section 3 above, CEH shall provide Settling Defendant with (1) a Notice of
25 Violation, (2) a copy of any test results which purportedly support CEH’s Notice of Violation, (3)
26 the name and address of the entity from which the Covered Product was purchased, and (4) any
27 evidence CEH has supporting the allegation that the Covered Product was distributed or sold by
28 Settling Defendant. The Parties shall then meet and confer regarding the basis for CEH’s

1 anticipated motion or application in an attempt to resolve it informally. Should such attempts at
2 informal resolution fail; CEH may file its enforcement motion or application.

3 4.2.2 If Settling Defendant responds to a Notice of Violation with evidence
4 that, notwithstanding the presence of PFOA in the Covered Products, Settling Defendant has
5 complied with Section 3.1, the Parties shall meet and confer as to the source of the PFOA in the
6 Covered Products and what additional measures, if any, Settling Defendant must take to ensure
7 that no unwarned exposures to PFOA from Covered Products occurs thereafter. Should the
8 Parties reach agreement on a proposal to eliminate future exposures to PFOA from Covered
9 Products thereafter, they shall seek modification of the Consent Judgment to include the proposal
10 pursuant to Section 6. Should the Parties be unable to reach such agreement within the applicable
11 meet-and-confer period, the Parties shall submit simultaneous briefs to the Court for a binding
12 determination regarding any appropriate modification to the Consent Judgment to ensure
13 compliance with Proposition 65 as to PFOA exposures from Covered Products.

14 **5. PAYMENTS**

15 5.1 **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective
16 Date, Settling Defendant shall pay the total sum of \$32,000 as a settlement payment as further set
17 forth in this Section 5.

18 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
19 be paid in five (5) separate checks in the amounts specified below and delivered as set forth
20 below. Any failure by Settling Defendant to comply with the payment terms herein shall be
21 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each
22 day the full payment is not received after the payment due date set forth in Section 5.1. The late
23 fees required under this Section 5 shall be recoverable, together with reasonable attorneys' fees,
24 in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The funds
25 paid by Settling Defendant shall be allocated as set forth below between the following categories
26 and made payable as follows:

27 5.2.1 \$3,704 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
28 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §

1 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
2 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
3 payment for \$2,778 shall be made payable to OEHHA and associated with taxpayer identification
4 number 68-0284486. This payment shall be delivered as follows:

5 For United States Postal Service Delivery:

6 Attn: Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010, MS #19B
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Attn: Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street, MS #19B
16 Sacramento, CA 95814

17 The CEH portion of the civil penalty payment for \$926 shall be made payable to the
18 Center for Environmental Health and associated with taxpayer identification number 94-3251981.
19 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
20 CA 94117.

21 5.2.2 Settling Defendant shall pay the sum of \$2,776 as an Additional
22 Settlement Payment ("ASP") to CEH pursuant to Health & Safety Code § 25249.7(b), and
23 California Code of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH's
24 Toxics and Youth Fund and use them to support CEH programs and activities that seek to educate
25 the public about PFOA and other toxic chemicals in consumer products that are marketed to
26 youth, expand its use of social media to communicate with youth in California about the risks of
27 exposures to PFOA and other toxic chemicals in the products they use and about ways to reduce
28 those exposures, work with industries that market products to youth to reduce exposure to PFOA
and other toxic chemicals, and thereby reduce the public health impacts and risks of exposure to
PFOA and other toxic chemicals in consumer products that are marketed to youth in California.
CEH shall obtain and maintain adequate records to document that ASP funds are spent on these
activities and CEH agrees to provide such documentation to the Attorney General within thirty

1 days of any request from the Attorney General. The payment pursuant to this Section 5.2.2 shall
2 be made payable to the Center for Environmental Health and associated with taxpayer
3 identification number 94-3251981.

4 5.2.3 \$25,520 as a reimbursement of a portion of CEH's reasonable attorneys'
5 fees and costs (including but not limited to expert and investigative costs). The attorneys' fees
6 and cost reimbursement shall be made in two separate checks as follows: (a) \$20,780 payable to
7 the Lexington Law Group and associated with taxpayer identification number 94-3317175; and
8 (b) \$4,740 payable to the Center for Environmental Health and associated with taxpayer
9 identification number 94-3251981. These payments shall be delivered to Lexington Law Group,
10 503 Divisadero Street, San Francisco, CA 94117.

11 **6. MODIFICATION**

12 6.1 **Written Consent.** This Consent Judgment may be modified from time to time by
13 express written agreement of the Parties with the approval of the Court, or by an order of this
14 Court upon motion and in accordance with law.

15 6.2 **Meet and Confer.** A Party seeking to modify this Consent Judgment shall
16 attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the
17 Consent Judgment.

18 **7. CLAIMS COVERED AND RELEASED**

19 7.1 Provided that Settling Defendant complies in full with its obligations under
20 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on
21 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,
22 affiliated entities that are under common ownership, directors, officers, employees, agents,
23 shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which
24 Settling Defendant directly or indirectly distributes or sells Covered Products, including but not
25 limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees
26 ("Downstream Defendant Releasees"), of any violation of Proposition 65 based on failure to warn
27 about alleged exposure to PFOA contained in Covered Products that were sold, distributed, or
28 offered for sale by Settling Defendant prior to the Effective Date.

1 7.2 Provided that Settling Defendant complies in full with its obligations under
2 Section 5 hereof, CEH, for itself and its agents, successors, and assigns; releases; waives, and
3 forever discharges any and all claims against Settling Defendant, Defendant Releasees, and
4 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
5 statutory or common law claims that have been or could have been asserted by CEH individually
6 or in the public interest regarding the failure to warn about exposure to PFOA arising in
7 connection with Covered Products manufactured, distributed, or sold by Settling Defendant prior
8 to the Effective Date.

9 7.3 Provided that Settling Defendant complies in full with its obligations under
10 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall
11 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
12 Downstream Defendant Releasees with respect to any alleged failure to warn about PFOA in
13 Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective
14 Date.

15 **8. NOTICE**

16 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
17 notice shall be sent by first class and electronic mail to:

18 Howard Hirsch
19 Lexington Law Group
20 503 Divisadero Street
21 San Francisco, CA 94117

21 hhirsch@lexlawgroup.com

22 8.2 When Settling Defendant is entitled to receive any notice under this Consent
23 Judgment, the notice shall be sent by first class and electronic mail to:

24 Law Department
25 Chanel, Inc.
26 9 West 57th Street
27 New York, NY 10019
28 lora.moffatt@chanel.com

27 With a copy to:

1 Michael Steel
2 Morrison & Foerster LLP
3 425 Market Street, 31st Floor
4 San Francisco, CA 94105
5 MSteel@mofo.com

6 8.3 Any Party may modify the person and address to whom the notice is to be sent by
7 sending the other Party notice by first class and electronic mail.

8 **9. COURT APPROVAL**

9 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
10 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
11 shall support entry of this Consent Judgment.

12 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
13 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
14 purpose other than to allow the Court to determine if there was a material breach of Section 9.1

15 **10. ATTORNEYS' FEES**

16 10.1 Should any Party prevail on any motion, application for an order to show cause, or
17 other proceeding to enforce a violation of this Consent Judgment, that Party may apply to the
18 Court for an award of reasonable attorneys' fees and costs incurred as a result of such motion or
19 application, which the Court may grant or deny in accordance with governing law.

20 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
21 own attorneys' fees and costs.

22 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
23 sanctions pursuant to law.

24 **11. OTHER TERMS**

25 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California.

27 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
28 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
assigns of any of them.

1 11.3 This Consent Judgment contains the sole and entire agreement and understanding
2 of the Parties with respect to the entire subject matter hereof; and any and all prior discussions,
3 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
4 and therein. There are no warranties, representations, or other agreements between the Parties
5 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
6 other than those specifically referred to in this Consent Judgment have been made by any Party
7 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
8 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,
9 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by
10 the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall
11 be deemed or shall constitute a waiver of any of the other provisions hereof whether or not
12 similar, nor shall such waiver constitute a continuing waiver.

13 11.4 Nothing in this Consent Judgment shall release any claims, or in any way affect
14 any rights that either Party might have against any other entity, except as otherwise provided
15 herein.

16 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
17 Consent Judgment.

18 11.6 The stipulations to this Consent Judgment may be executed in counterparts and by
19 means of facsimile or portable document format (pdf), which taken together shall be deemed to
20 constitute one document.

21 11.7 Each signatory to this Consent Judgment certifies that he or she is fully authorized
22 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
23 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

24 11.8 The Parties, including their counsel, have participated in the preparation of this
25 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
26 Consent Judgment was subject to revision and modification by the Parties and has been accepted
27 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
28 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result

1 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
2 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
3 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
4 this regard, the Parties hereby waive California Civil Code § 1654.

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[SIGNATURES NEXT PAGE]

1 **IT IS SO STIPULATED:**

2 Dated: December 18, 2020

**CENTER FOR ENVIRONMENTAL
HEALTH**

3
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5
6 _____
Signature

7 Michael Green

8 _____
Printed Name

9 CEO

10 _____
Title

11
12 Dated: _____, 2020

CHANEL, INC.

13
14
15 _____
Signature

16
17 _____
Printed Name

18
19
20 _____
Title

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22 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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25 Dated: _____

_____ Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: _____, 2020

CENTER FOR ENVIRONMENTAL
HEALTH

Signature

Printed Name

Title

Dated: December 17, 2020

CHANEL, INC.

Barbara Menarguez

Signature

Barbara Menarguez
Printed Name

General Manager of Fragrance & Beauty
Title

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: 5-6-21

Julia A. Spain

Judge of the Superior Court *DL*
JULIA A. SPAIN