

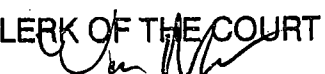
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Attorneys for Plaintiff
CENTER FOR ADVANCED PUBLIC AWARENESS

FILED
San Francisco County Superior Court

JUN 17 2021

CLERK OF THE COURT
BY: 
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

CENTER FOR ADVANCED PUBLIC
AWARENESS,

Plaintiff,

v.

REDMOND TRADING COMPANY, L.C.;
et al.,

Defendants.

Case No. CGC-21-590800

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**

Date: June 17, 2021
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Ethan P. Schulman

1 In the above-entitled action, Plaintiff Center for Advanced Public Awareness and
2 Defendant Redmond Trading Company, L.C., having agreed through their respective counsel that
3 Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent
4 Judgment, and following this Court's issuance of an Order approving this Proposition 65
5 settlement and Consent Judgment, -

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California
7 Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment
8 is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**.
9 By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under
10 Code of Civil Procedure § 664.6.

11
12 **IT IS SO ORDERED.**

13
14 Dated: 6/17/21

Richard B. Ulmer
15 JUDGE OF THE SUPERIOR COURT
16 **RICHARD B. ULMER**

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5 CENTER FOR ADVANCED PUBLIC AWARENESS

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8 San Francisco, CA 94111
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9 ann.grimaldi@grimaldilawoffices.com

10 Attorneys for Defendant
11 REDMOND TRADING COMPANY, L.C.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 CENTER FOR ADVANCED PUBLIC
17 AWARENESS,

18 Plaintiff,

19 v.

20 REDMOND TRADING COMPANY, L.C.;
and DOES 1-30, inclusive,

21 DEFENDANTS.
22

Case No. CGC-21-590800

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Center for Advanced Public
3 Awareness (“CAPA”) and defendant Redmond Trading Company, L.C. (“Redmond”), with CAPA
4 and Redmond each individually referred to as a “Party” and collectively, as the “Parties,” to resolve
5 the allegations in the September 9, 2020 60-Day Notice of Violation in compliance with the Safe
6 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.*
7 (“Proposition 65”):

8 **1.1 The Parties**

9 CAPA is a California-based non-profit organization proceeding in the public interest pursuant
10 to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of
11 California to cause cancer, birth defects or other reproductive harm are properly disclosed in or
12 eliminated from consumer products sold in California. Redmond is a person in the course of doing
13 business for purposes of California Health & Safety Code § 25249.11(b).

14 **1.2 Consumer Product Description**

15 CAPA alleges that Redmond manufactures, processes, sells and distributes for sale in
16 California baby powder containing the heavy metal, Lead, including, but not limited to, Amazingly
17 Natural Baby Powder, collectively referred to hereinafter as the “Product(s),” without providing a
18 compliant health hazard warning that CAPA alleges is required by Proposition 65. Lead is listed
19 pursuant to Proposition 65 as a chemical known to the State of California to cause reproductive harm
20 and developmental harm. Redmond asserts that the Products were sold with a Proposition 65
21 warning titled “[California Residents] Proposition 65 WARNING” that described the Products as
22 containing Lead and that identified Lead as a substance known to the State of California to cause
23 birth defects or other reproductive harm. CAPA asserts that the warning does not comply with the
24 Proposition 65 safe harbor warning regulations. The Parties dispute whether the warning is “clear
25 and reasonable” within the meaning of Proposition 65.

26 **1.3 Notices of Violation**

27 On September 9, 2020, CAPA served Redmond (incorrectly identified as “Redmond,
28 Incorporated”), the California Attorney General, and the requisite public enforcement agencies with

1 a 60-Day Notice of Violation (“Notice”), alleging that Redmond violated Proposition 65 when it
2 failed to provide compliant warnings to its customers and consumers in California that its Products
3 can expose users to Lead. No public enforcer has commenced and is diligently prosecuting an action
4 to enforce the allegations set forth in the Notice. On January 20, 2021, CAPA served an amended
5 Notice of Violation correctly identifying Redmond as “Redmond Trading Company, L.C.” (the
6 “Corrected Notice”). The Notice and Corrected Notice are collectively referred to herein as the
7 “Notices.” The Parties enter into this Consent Judgment for the purpose of resolving CAPA’s
8 claims asserted in the Notices and to avoid prolonged and costly litigation.

9 **1.4 Complaint**

10 On April 2, 2021, CAPA commenced the instant action (“Complaint”), naming Redmond
11 Trading Company, L.C. as a defendant for the alleged violations of Proposition 65 that are the
12 subject of the Notices.

13 **1.5 No Admission**

14 Redmond denies the material, factual, and legal allegations contained in the Notices and
15 Complaint, and maintains that all products it has sold or distributed for sale in California, including
16 the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment
17 shall be construed as, nor shall compliance with this Consent Judgment constitute or be construed as,
18 an admission by Redmond of any fact, finding, conclusion of law, issue of law, or violation of law.
19 This section shall not, however, diminish or otherwise affect Redmond’s obligations, responsibilities,
20 and duties under this Consent Judgment.

21 **1.6 Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Redmond as to the allegations contained in the Complaint, that venue is proper in
24 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions
25 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

26 **1.7 Execution Date**

27 The term “Execution Date” shall mean the date on which all parties have signed this Consent
28 Judgment.

1 **1.8 Effective Date**

2 The term "Effective Date" shall mean the date on which the Court approves this Consent
3 Judgment and enters judgment pursuant to its terms.

4 **2. INJUNCTIVE RELIEF: WARNINGS**

5 **2.1 Commitment to Provide Clear and Reasonable Warnings**

6 Each Product Redmond manufactures, processes, distributes for sale or otherwise sells,
7 directly or through third parties, to consumers in California shall be accompanied by a clear and
8 reasonable warning pursuant to Section 2.2.

9 **2.2 Clear and Reasonable Warnings**

10 Commencing on or before the Execution Date, Redmond shall provide clear and reasonable
11 warnings for all Products provided for sale to customers in California in accordance with this Section
12 pursuant to Title 27 California Code of Regulations § 25600, et seq. Each warning shall be
13 prominently placed with such conspicuousness as compared with other words, statements, or designs
14 as to render it likely to be read and understood by an ordinary individual under customary conditions
15 before purchase or use and shall be provided in a manner such that it is clearly associated with the
16 specific Product to which the warning applies.

17 **(a) Warning.** The Warning shall consist of the following statement:

18 **⚠ WARNING:** This product can expose you to lead, which is known to the
19 State of California to cause cancer and birth defects or other reproductive
20 harm. For more information go to www.P65Warnings.ca.gov.

21 **(b) Short-Form Warning.** As an alternative to the warning set forth in subsection
22 2.3(a) above, Redmond may, but is not required to, use the following short-form warning as set forth
23 in this subsection 2.2(b) ("**Short-Form Warning**"), and subject to the additional requirements in
24 Section 2.3 as follows:

25 **⚠ WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

26 **(c) Foreign Language Requirement.** Where a consumer product sign, label or
27 shelf tag used to provide a warning includes consumer information, as that term is defined in Title 27
28 California Code of Regulations § 25600.1(c) ("**Consumer Information**"), in languages other than
English, the warning must also be provided in those languages in addition to English.

1 **2.3 Product Warnings**

2 Redmond shall affix a warning to the Product label or otherwise directly on each Product
3 provided for sale directly, or indirectly through customers with retail outlets in California, mail order
4 catalogs and/or e-commerce websites, to consumers located in California. For the purpose of this
5 agreement, "**Product label**" means a display of written, printed or graphic material that is printed on
6 or affixed to a Product or its immediate container or wrapper. A warning provided pursuant to
7 section 2.2(a) or (b) must print the word "**WARNING:**" in all capital letters and in bold font. The
8 warning symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow
9 equilateral triangle with a black outline, except that if the labeling does not use the color yellow, then
10 the symbol may be in black and white. For the short form warning, the entire warning shall appear in
11 a type size of at least 6-point type and no smaller than the largest type size used for other Consumer
12 Information on the product.

13 **2.4 Internet Warnings**

14 If, after the Effective Date, Redmond sells Products via the internet directly, or indirectly
15 through customers with e-commerce websites, to customers located in California, Redmond shall
16 provide warnings for each Product both on the Product label in accordance with Sections 2.2 and 2.3,
17 and, for its own website or third-party websites through which it sells Products and also is capable of
18 directly providing warnings, by including either the warning or a clearly marked hyperlink using the
19 word "**WARNING**" on the product display page, or by otherwise prominently displaying the warning
20 to the purchaser prior to completing the purchase and without requiring the purchaser to search for the
21 warning in the general content of the website. If Redmond sells Products directly to customers with
22 e-commerce websites, Redmond shall inform those customers in writing of their obligation to provide
23 online warnings consistent with Title 27 California Code of Regulations § 25602(b) in conjunction
24 with Products sold to customers located in California. The internet warning may use the Short-Form
25 Warning content described in Section 2.2(b) if the warning provided on the Product label also uses
26 the Short-Form Warning content.

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty**

3 Pursuant to Health and Safety Code § 25249.7(b), Redmond agrees to pay a civil penalty of
4 \$18,000. Redmond's civil penalty payment will be allocated according to Health and Safety Code
5 § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
6 Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five
7 percent (25%) retained by CAPA. Redmond shall issue its payment in two checks made payable to:
8 (1) "OEHHA" in the amount of \$13,500; and (2) "Center for Advanced Public Awareness" in the
9 amount of \$4,500. CAPA's counsel shall deliver to OEHHA and CAPA their respective portion of
10 the penalty payment.

11 **3.2 Reimbursement of Attorneys' Fees and Costs**

12 CAPA and its counsel offered to resolve the allegations in the Notices and Complaint without
13 reaching terms on the amount of reimbursement of their attorneys' fees and costs. Shortly after the
14 Parties finalized the other material settlement terms, they negotiated and reached an accord on the
15 amount of reimbursement to be paid to CAPA's counsel, under general contract principles and the
16 private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all
17 work performed through the mutual execution and reporting of this Consent Judgment to the Office
18 of the California Attorney General and to move the Court for approval of and entry of Judgment
19 pursuant to its terms, but exclusive of fees and costs on appeal, if any. Redmond agrees to issue a
20 check in the amount of \$37,500 payable to "Seven Hills LLP" for all fees and costs incurred
21 investigating, bringing this matter to Redmond's attention, litigating, negotiating a settlement in the
22 form of a Consent Judgment in the public interest, and obtaining the Court's approval of its terms
23 pursuant to Section 5.

24 **3.3 Payments Due**

25 All payments payable and due under this Consent Judgment shall be delivered to CAPA's
26 counsel at the address listed in Section 3.4 within five (5) business days of the Effective Date.

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1 **3.4 Delivery Address**

2 All payments required by this Consent Judgment shall be delivered to the following address:

3 Seven Hills LLP
4 Attn: Laralei Paras
5 4 Embarcadero Center, Suite 1400
6 San Francisco, CA 94111

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 CAPA's Release of Proposition 65 Claims**

8 This Consent Judgment is a full, final and binding resolution of the claims that were or could
9 have been asserted by CAPA arising out of the allegations in the Notices and in the Complaint.
10 CAPA, acting on its own behalf and in the public interest, and on behalf of its past and current
11 agents, representatives, attorneys, successors and assignees ("**Releasors**") releases Redmond, its past
12 and present parents, subsidiaries, affiliated entities under common ownership, directors, officers,
13 employees, attorneys, and each entity to whom Redmond directly or indirectly distributes or sells
14 Products including its downstream distributors, wholesalers, marketplace hosts, customers, retailers,
15 franchisees, cooperative members, and licensees ("**Releasees**") based on the failure to provide a
16 clear and reasonable warning about alleged exposures to Lead contained in the Products that were
17 manufactured, processed, distributed, sold and/or offered for sale in California before the Effective
18 Date, as set forth in the Notices and Complaint. The Parties further agree that compliance with
19 Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65 with respect to
20 alleged exposures to Lead in the Products.

21 **4.2 CAPA's Individual Release of Claims**

22 CAPA, in its individual capacity only and *not* in his representative capacity, also provides a
23 release to Redmond and Releasees which shall be effective as a full and final accord and satisfaction,
24 as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
25 claims, liabilities and demands of CAPA of any nature, character or kind, whether known or
26 unknown, suspected or unsuspected, arising out of alleged or actual failure to provide a clear and
27 reasonable warning about exposures to Lead, in Products manufactured, processed, distributed or
28 sold to consumers in California before the Effective Date. Nothing in this section shall affect

1 CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does
2 not involve Redmond' Products.

3 **4.3 Redmond' Release of CAPA**

4 Redmond, on behalf of itself, its past and current agents, representatives, attorneys,
5 successors, and assignees, hereby waives any and all claims against CAPA and its attorneys and
6 other representatives, for any and all actions taken or statements made (or those that could have been
7 taken or made) by CAPA and its attorneys and other representatives in the course of investigating
8 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
9 Products.

10 **5. COURT APPROVAL**

11 Pursuant to California Health and Safety Code § 25249.7(f)(4), CAPA shall file a noticed
12 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their
13 best efforts, and those of their counsel, to support entry of a judgment pursuant to the terms of this
14 Consent Judgment, and to obtain judicial approval of their settlement in the form of this Consent
15 Judgment in a timely manner. For purposes of this section, "best efforts" shall include, at a
16 minimum, supporting the motion for approval, responding to any third-party objection, and
17 appearing at the hearing before the Court if so requested.

18 **6. SEVERABILITY**

19 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
20 provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the
21 remaining provisions shall not be adversely affected.

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of California
24 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
25 rendered inapplicable by reason of law generally, or as to the Products, then Redmond may provide
26 CAPA with written notice of any asserted change in the law, and shall have no further injunctive
27 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
28 are so affected. If the Office of Environmental Health Hazard Assessment ("OEHHA") amends any

1 of the Proposition 65 warning regulations (beginning at Title 27, California Code of Regulations,
2 Section 25600), Redmond may, at its sole discretion, implement the applicable provisions of such
3 amended regulations for the Products without being deemed in violation of this Consent Judgment.
4 Nothing in this Consent Judgment shall be interpreted to relieve Redmond from its obligation to
5 comply with any pertinent state or federal law or regulation.

6 **8. NOTICE**

7 Unless specified herein, all correspondence and notice required by this Consent Judgment
8 shall be in writing and, in addition to being sent to the email addresses sent forth below, sent by: (i)
9 first-class registered or certified mail, return receipt requested; or (ii) a recognized overnight courier
10 to any Party by the other at the following addresses:

11 For Redmond:

12 Kenneth Taylor
13 Redmond
14 475 West 910 South
Heber City, UT 84032
kenneth@redmondinc.com

For CAPA:

Laralei Paras
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laralei@sevenhillsllp.com

15 Ann G. Grimaldi
16 Grimaldi Law Offices
17 75 Broadway Street, Suite 202
San Francisco, CA 94111
ann.grimaldi@grimaldilawoffices.com

18 Any Party may, from time to time, specify in writing to the other Party a change of address to which
19 all notices and other communications shall be sent.

20 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by portable document format
22 (pdf) signature, each of which shall be deemed an original and, all of which, when taken together,
23 shall constitute one and the same document.

24 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

25 CAPA and its counsel agree to comply with the reporting form requirements referenced in
26 California Health and Safety Code § 25249.7(f).

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1 **11. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
5 therein. There are no warranties, representations, or other agreements between the Parties except as
6 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
7 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
8 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
9 exist or to bind any of the Parties hereto.

10 **12. MODIFICATION**

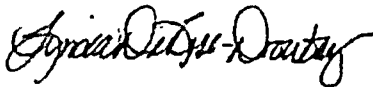
11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
12 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
13 any party and the entry of a modified Consent Judgment by the Court thereon.

14 **13. AUTHORIZATION**

15 The undersigned are authorized to execute this Consent Judgment on behalf of their
16 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
17 Consent Judgment.


18 **AGREED TO:**

19 Date: 4/8/21

20 By: 
21 Linda DeRose-Droubay, Executive Director
22 CENTER FOR ADVANCED
23 PUBLIC AWARENESS

AGREED TO:

24 Date: 4/20/21

25 By: 
26 Jason Nielsen, President
27 REDMOND TRADING COMPANY, L.C.