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FILED
Superior Court of California
County of San Francisco

DEC 05 2023

CLERK OF THE COURT

BY: *Debra K. ...*
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DONATUS MCCOY,

Plaintiff,

v.

ALOE CARE INTERNATIONAL, LLC, WEST
MARINE PRODUCTS, INC.,

Defendants.

Case No.: CGC-22-601262

**[PROPOSED] CONSENT
JUDGMENT**

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: December 5, 2023

Hearing Time: 9:30 AM

Complaint Filed: August 15, 2022

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Donatus McCoy (“McCoy” or “Plaintiff”) and Aloe Care International, LLC (“Aloe Care” or “Defendant”) with McCoy and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Plaintiff is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Aloe Care is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** McCoy alleges that Defendant has exposed individuals to diethanolamine (DEA) from its sales of Aloe Up White Collection SPF 50 Sunscreen Lotion, Lot # 22721 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEA is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 **Notice of Violation/Complaint.** On or about November 4, 2021, McCoy served Defendant, West Marine Products, Inc., West Marine Products – Florida, Inc. (collectively, “West Marine”), and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”). The Notice provided Defendant, West Marine, and such others, including public enforcers, with notice that alleged that Defendant Aloe Care was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products (defined herein) will expose them to DEA. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On August 15, 2022, McCoy filed a complaint (the “Complaint”) in the matter.

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendants as to the allegations contained in the Notice and Complaint filed in this matter, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims which were or could have been raised in the Complaint based on the facts

1 alleged therein and/or in the Notice.

2 1.5 Defendants deny the material allegations contained in the Notice and Action and
3 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
4 construed as an admission by Defendants of any fact, finding, issue of law, or violation of law; nor
5 shall compliance with this Consent Judgment constitute or be construed as an admission by
6 Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
7 denied by Defendants. However, this section shall not diminish or otherwise affect the obligations,
8 responsibilities, and duties of Defendants under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means Aloe Up White Collection
11 SPF 50 Sunscreen Lotion, Lot # 22721, that was distributed, sold or offered for sale in California
12 by Defendant.

13 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
14 entered as a Judgment of the Court.

15 **3. INJUNCTIVE RELIEF; COMMITMENT NOT TO SELL**

16 3.1 **Commitment not to sell Covered Products.** Commencing within sixty (60) days
17 after the Effective Date, and continuing thereafter, Defendant agrees that it shall not manufacture
18 for sale, offer for sale, sell, or distribute Covered Products in or to California.

19 **4. MONETARY TERMS**

20 4.1 **Civil Penalty.** Defendant shall pay \$2,000.00 as a Civil Penalty pursuant to Health
21 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
22 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
23 Civil Penalty remitted to Plaintiff, as provided by California Health & Safety Code § 25249.12(d).

24 4.1.1 Within ten (10) business days of the Effective Date, Defendant shall issue
25 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00;
26 and to (b) "Donatus McCoy" in the amount of \$500. Payment owed to McCoy pursuant to this
27 Section shall be delivered to the following payment address:

1 Evan J. Smith, Esquire
2 Brodsky Smith, LLC
3 Two Bala Plaza, Suite 805
4 Bala Cynwyd, PA 19004

5 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
6 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

7 For United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010
12 Sacramento, CA 95812-4010

13 For Non-United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street
18 Sacramento, CA 95814

19 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
20 above as proof of payment to OEHHA.

21 4.2 **Attorneys' Fees.** Within ten (10) business days of the Effective Date, Defendant
22 Aloe Care shall pay \$31,000.00 to Brodsky Smith as complete reimbursement for Plaintiff's
23 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Defendant's
24 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
25 interest, pursuant to Code of Civil Procedure § 1021.5.

26 **5. RELEASE OF ALL CLAIMS**

27 5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiff
28 acting on his own behalf, and on behalf of the public interest, and Defendant, and its parents,
subsidaries, shareholders, affiliates and each of their members, directors, officers, managers,
employees, representatives, agents, attorneys, divisions, subdivisions, and their predecessors,
successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to
whom they directly or indirectly distribute or sell Covered Products, including West Marine, and
including but not limited to manufacturers, suppliers, distributors, wholesalers, customers,

1 licensors, licensees retailers, franchisees, and cooperative members, ("Downstream Releasees"), of
2 all claims for violations of Proposition 65 based on exposure to DEA from use of Covered Products,
3 including any Covered Products manufactured or imported by Defendant prior to 30 days after the
4 Effective Date. It is the Parties' intention that this Consent Judgment shall have preclusive effect
5 such that no other actions by private enforcers, whether purporting to act in his, her, or its interests
6 or the public interest shall be permitted to pursue and/or take any action with respect to any violation
7 of Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to
8 the Notice against Defendant and/or the Downstream Releasees of the Covered Products, including
9 West Marine, re exposure to DEA from use of Covered Products ("Proposition 65 Claims").

10 5.2 In addition to the foregoing, Plaintiff, on behalf of himself, his past and current
11 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
12 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
13 legal action and releases Defendant, Defendant Releasees, and Downstream Releasees, from any
14 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
15 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
16 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
17 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
18 from Covered Products manufactured, distributed, or sold by Defendant, Defendant Releasees or
19 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
20 Plaintiff specifically waives any and all rights and benefits he now has, or in the future may have,
21 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
22 follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
24 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
25 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
26 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
27 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
28 DEBTOR OR RELEASED PARTY.

29 5.3 Defendant waives any and all claims against Plaintiff, his attorneys and other
30 representatives, for any and all actions taken, or statements made (or those that could have been

1 taken or made) by Plaintiff and his attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this Action,
3 and/or with respect to Covered Products.

4 **6. INTEGRATION**

5 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
6 prior negotiations and understandings related hereto shall be deemed to have been merged within
7 it. No representations or terms of agreement other than those contained herein exist or have been
8 made by any Party with respect to the other Party or the subject matter hereof.

9 **7. GOVERNING LAW**

10 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
12 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
13 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
14 that, Covered Products are so affected.

15 **8. NOTICES**

16 8.1 Unless specified herein, all correspondence and notices required to be provided
17 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
18 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
19 by the other party at the following addresses:

20 For Defendant:

21 Anne T. Regan
22 Hellmuth & Johnson, PLLC
23 8050 W 78th St.,
Minneapolis, MN 55439

24 For Plaintiff:

25 Evan Smith
26 Brodsky Smith, LLC
27 9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

28 Any party, from time to time, may specify in writing to the other party a change of address to which

1 all notices and other communications shall be sent.

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

3 9.1 This Consent Judgment may be executed in counterparts and by facsimile or
4 electronically (such as by PDF), each of which shall be deemed an original, and all of which, when
5 taken together, shall constitute one and the same document.

6 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
7 **APPROVAL**

8 10.1 Plaintiff agrees to comply with the requirements set forth in California Health &
9 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
10 Defendant agrees it shall not oppose such Motion unless such Motion is materially inconsistent
11 with the terms of this Consent Judgment.

12 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
13 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
14 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
15 days, the case shall proceed on its normal course.

16 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
17 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
18 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
19 its normal course on the trial court's calendar.

20 **11. MODIFICATION AND ENFORCEMENT**

21 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
22 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

23 11.2 If a dispute arises with respect to either Party's compliance with the terms of this
24 Consent Judgment, the Parties shall meet and confer in writing and endeavor to resolve the dispute
25 in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt
26 to resolve the dispute beforehand, which shall not be less than thirty (30) days. No private enforcer
27 other than Plaintiff may enforce the terms of this Consent Judgment.

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12. ATTORNEY'S FEES

12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 6-13-23
By: Donatus Mccoy
DONATUS MCCOY

Date: 6/23/2023
By: [Signature] CEO
ALOE CARE INTERNATIONAL, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 6/25/23

[Signature]
Judge of Superior Court

RICHARD B. ULMER