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Attorneys for Plaintiff

FILED
San Francisco County Superior Court

JUN 23 2023 *vs*

CLERK OF THE COURT

BY: *Guana Gonzales*
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

PRECILA BALABBO,
Plaintiff,
v.
INSPIRED BEAUTY BRANDS, INC., CVS
PHARMACY, INC.,
Defendants.

Case No.: CGC-22-602057

CONSENT JUDGMENT

Judge: Richard B. Ulmer *Curtis E.A. KARNOW*
Dept.: 302
Hearing Date: June 23, 2023
Hearing Time: 9:30 AM
Complaint Filed: September 29, 2022

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and Inspired Beauty Brands, Inc.
4 (“Inspired Beauty” or “Defendant”) with Balabbo and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Balabbo is an individual residing in California that seeks
6 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products. Inspired Beauty is alleged to be
8 a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
9 §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
11 individuals to coconut oil diethanolamine condensate (Cocamide DEA) from its sales of Hask
12 Hemp Oil & Agave Moisturizing Shampoo without providing a clear and reasonable exposure
13 warning pursuant to Proposition 65. Cocamide DEA is listed under Proposition 65 as a chemical
14 known to the State of California to cause cancer.

15 1.3 **Notice of Violation/Complaint.** On or about November 24, 2021, Balabbo served
16 Inspired Beauty, CVS Pharmacy, Inc., and various public enforcement agencies with documents
17 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
18 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
19 customers that use of Hask Shampoo expose users in California to Cocamide DEA. No public
20 enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On September
21 29, 2022, Balabbo filed a complaint (the “Complaint”) in the matter.

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
25 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
26 of all claims which were or could have been raised in the Complaint based on the facts alleged
27 therein and/or in the Notice.
28

1 1.5 Defendant denies the material allegations contained in Balabbo's Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means Hask Hemp Oil & Agave
10 Moisturizing Shampoos that are manufactured, distributed and/or offered for sale in California by
11 Inspired Beauty.

12 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
13 entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: COMMITMENT NOT TO SELL**

15 3.1 Commitment not to sell. Defendant has ceased manufacturing, distributing, or
16 offering for sale the Covered Products. As of the date this Consent Judgment is signed by both
17 Parties, and continuing thereafter, Defendant agrees that it shall not manufacture, distribute, sell or
18 offer for sale Covered Products in California.

19 **4. MONETARY TERMS**

20 4.1 **Civil Penalty.** Inspired Beauty shall pay \$4,000.00 as a Civil Penalty pursuant to
21 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
22 & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
23 remaining 25% of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety
24 Code § 25249.12(d).

25 4.1.1 Within ten (10) days of the Effective Date, Inspired Beauty shall issue two
26 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$3,000.00; and
27

28

1 to (b) "Precila Balabbo" in the amount of \$1,000.00. Payment owed to Balabbo pursuant to this
2 Section shall be delivered to the following payment address:

3 Evan J. Smith, Esquire
4 Brodsky & Smith
5 Two Bala Plaza, Suite 805
6 Bala Cynwyd, PA 19004

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

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

23 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Inspired Beauty shall
24 pay \$41,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for
25 Balabbo's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
26 Inspired Beauty attention, litigating and negotiating and obtaining judicial approval of a settlement
27 in the public interest, pursuant to Code of Civil Procedure § 1021.5.

28 **5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
acting on her own behalf, and on behalf of the public interest, and Inspired Beauty, and its parents,
shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their

1 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
2 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
3 not limited to CVS Pharmacy, Inc., manufacturers, suppliers, distributors, wholesalers, customers,
4 licensors, licensees retailers, franchisees, and cooperative members (“Downstream Releasees”), of
5 all claims for violations of Proposition 65 based on exposure to Cocamide DEA from use of the
6 Covered Products as set forth in the Notice, with respect to any Covered Products manufactured,
7 distributed, or sold by Inspired Beauty prior to the Effective Date. It is the Parties’ intention that
8 this Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
9 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
10 pursue and/or take any action with respect to any violation of Proposition 65 based on exposure to
11 Cocamide DEA that was alleged in the Complaint, or that could have been brought pursuant to the
12 Notice against Inspired Beauty and/or the Downstream Releasees of the Covered Products
13 (“Proposition 65 Claims”).

14 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
15 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative
16 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
17 legal action and releases Inspired Beauty, Defendant Releasees, and Downstream Releasees from
18 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
19 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
20 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
21 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
22 from exposure to Cocamide DEA from Covered Products manufactured, distributed, or sold by
23 Inspired Beauty, Defendant Releasees or Downstream Releasees. With respect to the foregoing
24 waivers and releases in this paragraph, Balabbo hereby specifically waives any and all rights and
25 benefits which she now has, or in the future may have, conferred by virtue of the provisions of §
26 1542 of the California Civil Code, which provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
2 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
3 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
4 DEBTOR OR RELEASED PARTY.

5 5.3 Inspired Beauty waives any and all claims against Balabbo, her attorneys and other
6 representatives, for any and all actions taken, or statements made (or those that could have been
7 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
8 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
9 and/or with respect to Cocamide DEA exposure from Covered Products.

10 **6. INTEGRATION**

11 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
12 prior negotiations and understandings related hereto shall be deemed to have been merged within
13 it. No representations or terms of agreement other than those contained herein exist or have been
14 made by any Party with respect to the other Party or the subject matter hereof.

15 **7. GOVERNING LAW**

16 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
18 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
19 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
20 that, Covered Products are so affected.

21 **8. NOTICES**

22 8.1 Unless specified herein, all correspondence and notices required to be provided
23 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
24 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
25 by the other party at the following addresses:

26 For Defendant:

27 Josh Baskin
28 Wilson Sonsini Goodrich & Rosati
 One Market Plaza, Spear Tower, Suite 3300
 San Francisco, CA 94105

 And

1 For Balabbo:

2 Evan Smith
3 Brodsky & Smith
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212

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

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

9 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
10 which shall be deemed an original, and all of which, when taken together, shall constitute one and
11 the same document.

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

14 10.1 Balabbo agrees to comply with the requirements set forth in California Health &
15 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
16 Defendant agrees it shall support approval of such Motion.

17 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
18 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
19 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
20 days, the case shall proceed on its normal course.

21 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
22 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
23 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
24 its normal course on the trial court's calendar.

25 **11. MODIFICATION**

26 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
27 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.
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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: _____

Date: _____

DocuSigned by:
Peter LaFleche
0000195339294F4...

By: _____
PRECILA BALABBO

By: _____
Peter LaFleche
INSPIRED BEAUTY BRANDS, INC.

April 27, 2023

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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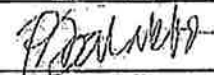
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AGREED TO:

AGREED TO:

Date: 5/5/23

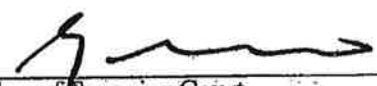
Date: _____

By: 
PRECILA BALABBO

By: _____
INSPIRED BEAUTY BRANDS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: June 23 2023


Judge of Superior Court

CURTIS E.A. KARNOW