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FILED
Superior Court of California
County of San Francisco

JAN 02 2024

CLERK OF THE COURT

BY: *Debra Harris*
Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 SABATINO NORTH AMERICA, LLC,

15 Defendant.

Case No.: CGC-23-603898

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: December 20, 2023

Hearing Time: 9:30 AM

Complaint Filed: January 9, 2023

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 Sabatino North America, LLC
4 (“Sabatino” or “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties”
5 and each of them as a “Party.” Balabbo is an individual residing in California that seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. Sabatino is alleged to be a person in the
8 course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et
9 seq.

10 **1.2 Allegations and Representations.** Balabbo alleges that Defendant has exposed
11 individuals to coconut oil diethanolamine (Cocamide DEA) from sales of *Skin & Co.*® umbrian
12 truffle super soothing shower oils, UPC # 888265609141, without providing a clear and reasonable
13 exposure warning pursuant to Proposition 65. Cocamide DEA is listed pursuant to Proposition 65
14 as a chemical known to the State of California to cause cancer.

15 **1.3 Notice of Violation/Action.** On or about January 12, 2022, Balabbo served Sabatino
16 and various public enforcement agencies with documents entitled “60-Day Notice of Violation”
17 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated
18 Proposition 65 for failing to warn consumers and customers that use of *Skin & Co.*® umbrian truffle
19 super soothing shower oils, UPC # 888265609141, expose users in California to Cocamide DEA.
20 No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
21 January 9, 2023, Balabbo filed a complaint (the “Complaint”).

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 Action 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 Action based on the facts alleged therein
27 and 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 *Skin & Co.*® umbrian
10 truffle super soothing shower oils, UPC # 888265609141, that are manufactured, distributed,
11 shipped into California and/or offered for sale in California by Sabatino.

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.** Commencing within thirty (30) days of the Effective
16 Date, and continuing thereafter, Defendant agrees that it shall not manufacture, distribute, sell, or
17 offer Covered Products for sale in California. Covered Products that have been manufactured,
18 packaged, or put into commerce prior to the Effective Date shall be subject to the release of liability
19 pursuant to this Consent Judgment without regarding to when such Covered Products were
20 distributed or sold to customers.

21 **4. MONETARY TERMS**

22 4.1 **Civil Penalty.** Sabatino shall pay \$1,000.00 as a Civil Penalty pursuant to Health
23 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
24 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
25 Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

26 4.1.1 Within ten (10) days of the Effective Date, Sabatino shall issue two
27 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to
28

(b) "Brodsky Smith in Trust for Balabbo" in the amount of \$250.00. Payment owed to Balabbo pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Sabatino shall pay \$14,000.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention of Sabatino, litigating and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

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 Sabatino, and its parents, shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they

1 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
2 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
3 retailers, including but not limited to, its parents, subsidiaries, and affiliates, franchisees, and
4 cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65
5 based on exposure to cocamide DEA from use of the Covered Products manufactured, distributed,
6 or sold by Sabatino prior to the Effective Date, or within 90 days after the Effective Date, as set
7 forth in the Notice. It is the Parties' intention that this Consent Judgment shall have preclusive
8 effect such that no other actions by private enforcers, whether purporting to act in his, her, or its
9 interests or the public interest shall be permitted to pursue and take any action with respect to any
10 violation of Proposition 65 based on exposure to cocamide DEA from use of the Covered Products
11 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against
12 Sabatino and the Downstream Releasees ("Proposition 65 Claims"). Sabatino's compliance with
13 the terms of this Consent Judgment constitutes compliance by Sabatino with Proposition 65 with
14 regard to exposure to cocamide DEA from use of the Covered Products.

15 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
16 agents, representatives, attorneys, and successors and assignees, and not in her representative
17 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
18 legal action and releases Sabatino, Defendant Releasees, and Downstream Releasees from any and
19 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
20 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
21 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
22 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
23 Products manufactured, distributed, or sold by Sabatino, Defendant Releasees or Downstream
24 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
25 specifically waives any and all rights and benefits which she now has, or in the future may have,
26 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
27 follows:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
2 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
4 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
5 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
6 DEBTOR OR RELEASED PARTY.

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

12 **6. INTEGRATION**

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

17 **7. GOVERNING LAW**

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

23 **8. NOTICES**

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

28 For Defendant:

Sophia Castillo
Keller and Heckman LLP
Three Embarcadero Center, Ste. 1420
San Francisco, CA 94111

1 And

2 For Balabbo:

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

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

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

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

26 **11. MODIFICATION**

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

1 **12. ATTORNEY'S FEES**

2 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **14. AUTHORIZATION**

10 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood, and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16
17 Date: _____

Date: 8/28/2023

18 By: _____

By: [Signature]

19 PRECILA BALABBO

SABATINO NORTH AMERICA, LLC

20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23 Dated: _____

Judge of Superior Court

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12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16
17 Date: 10/31/2023

Date: _____

18 By: [Signature]
19 PRECILA BALABBO

By: _____
SABATINO NORTH AMERICA, LLC

20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23 Dated: 1/2/24

[Signature]
Judge of Superior Court

RICHARD ULMER