

**LEXINGTON LAW GROUP**

Mark N. Todzo, State Bar No. 168389  
Mary Haley Ousley, State Bar No. 332711  
503 Divisadero Street  
San Francisco, CA 94117  
Telephone: (415) 913-7800  
Facsimile: (415) 759-4112  
mtodzo@lexlawgroup.com  
mhousley@lexlawgroup.com

**FILED**  
San Francisco County Superior Court

MAR 04 2025  
CLERK OF THE COURT  
By: MM Deputy Clerk

Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,  
a non-profit corporation,

Case No. CGC-24-619214

Plaintiff,

~~[PROPOSED]~~ **CONSENT JUDGMENT  
AS TO DEFENDANT ECOLAB USA,  
INC.**

v.

ECOLAB USA, INC., et al.,  
Defendants.

1     **1.     INTRODUCTION**

2             1.1           The parties to this Consent Judgment (“Parties”) are the Center for  
3     Environmental Health (“CEH”) and Defendant Ecolab USA, Inc. (“Settling Defendant”). CEH  
4     and Settling Defendant are referred to collectively as the “Parties.”

5             1.2           CEH alleges that Settling Defendant is a corporation that employs ten (10) or  
6     more persons and that manufactures, distributes, and/or sells shampoo that contains 1,4-Dioxane  
7     in the State of California or have done so in the past.

8             1.3           On March 7, 2024 CEH served a 60-Day Notice of Violation under  
9     Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
10    & Safety Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendant, the California Attorney  
11    General, the District Attorneys of every County in the State of California, and the City Attorneys  
12    for every City in the State of California with a population greater than 750,000. The Notice  
13    alleges violations of Proposition 65 with respect to the presence of 1,4-Dioxane in shampoo that  
14    is distributed and/or sold by Settling Defendant.

15            1.4           On October 24, 2024, CEH filed the above-captioned action in the Superior  
16    Court of California for San Francisco County, naming Settling Defendant as a defendant in this  
17    action.

18            1.5           For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
19    Court has jurisdiction over the allegations of violations contained in the operative Complaint in  
20    the above-captioned action (“Complaint”) and personal jurisdiction over Settling Defendant as to  
21    the acts alleged in the Complaint; (ii) venue is proper in the County of San Francisco; and (iii)  
22    this Court has jurisdiction to enter this Consent Judgment.

23            1.6           Nothing in this Consent Judgment is or shall be construed as an admission by  
24    the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance  
25    with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
26    conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
27    prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
28    other legal proceeding. This Consent Judgment is the product of negotiation and compromise and

1 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
2 this action.

3 **2. DEFINITIONS**

4 2.1 "Compliance Date" means the date that is twelve months following the  
5 Effective Date.

6 2.2 "Covered Products" means shampoo manufactured, distributed, and/or sold by  
7 Settling Defendant in California.

8 2.3 "Effective Date" means the date on notice of entry of this Consent Judgment  
9 by the Court is served on Settling Defendant.

10 2.4 "Optional Lower Reformulation Level" means 3 parts per million ("ppm")  
11 1,4-Dioxane.

12 2.5 "Reformulation Level" means 10 ppm 1,4-Dioxane.

13 **3. INJUNCTIVE RELIEF**

14 3.1 **Reformulation of Covered Products.** On and after the Compliance Date,  
15 Settling Defendant shall not manufacture, distribute, sell, or offer for sale in California any  
16 Covered Product that contains 1,4-Dioxane in excess of the Reformulation Level as determined  
17 using Headspace Gas Chromatography/Mass Spectrometry, or similar method agreed upon by the  
18 Parties to this Consent Judgment, except as provided in Section 3.2.

19 3.2 **Sell-Through for Existing Inventory.** The reformulation requirements of  
20 Sections 3.1 and 3.3 shall not apply to Covered Products that Settling Defendant had purchased or  
21 manufactured prior to the Compliance Date, including but not limited to Covered Products in  
22 distribution centers, in inventory, or at retail locations.

23 3.3 **Optional Lower Reformulation Level.** Should Settling Defendant elect to  
24 comply with the Optional Lower Reformulation Level, it shall inform CEH of such election upon  
25 execution of this Consent Judgment and shall comply with the provisions of this section and  
26 subsection in lieu of Section 3.1 above and make the reduced Settlement Payment as set forth on  
27 Exhibit A.

28

1                   3.3.1   **Optional Lower Reformulation Level Requirements.** On and after the  
2 Compliance Date, if Settling Defendant chooses to comply with the Optional Lower  
3 Reformulation Level, it shall not manufacture, distribute, sell, or offer for sale in California any  
4 Covered Product that contains 1,4-Dioxane in excess of the Optional Lower Reformulation Level  
5 as determined using Headspace Gas Chromatography/Mass Spectrometry, or similar method  
6 agreed upon by the Parties to this Consent Judgment, except as provided in Section 3.2.

7                   3.3.2   In the event that Settling Defendant chooses to comply with the Optional  
8 Lower Reformulation Level and is unable to do so, it may notify CEH on or before the  
9 Compliance Date and make a payment equal to the difference between the payment for the  
10 Reformulation Level and Optional Lower Reformulation Level as set forth on Exhibit A. The  
11 additional payment shall be paid and delivered in accordance with the provisions of Section 5.1  
12 within 15 days following the Compliance Date.

13   **4.       ENFORCEMENT**

14               4.1       CEH may, by motion or application for an order to show cause before the  
15 Superior Court of the County of San Francisco, enforce the terms and conditions contained in this  
16 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of  
17 Section 3 above, CEH shall provide Settling Defendant with a Notice of Violation setting forth  
18 the basis for the alleged violation, including, at a minimum, an analytical report demonstrating  
19 1,4-Dioxane content above the applicable standard set forth in Section 3. The Parties shall then  
20 meet and confer regarding the basis for CEH's anticipated motion or application in an attempt to  
21 resolve it informally. Should such attempts at meeting and conferring fail, after 30 days from  
22 CEH's delivery of the aforementioned Notice of Violation CEH may file its enforcement motion  
23 or application. In ruling on any motion to enforce the terms of this Section, the Court may, in  
24 addition to ordering compliance with the terms of this Consent Judgment, employ such remedies  
25 as necessary to ensure compliance with Proposition 65 including, but not limited to, requiring  
26 Settling Defendant to provide warnings. Should CEH prevail on any motion or application to  
27 enforce a material violation of this Consent Judgment under this Section, CEH shall be entitled to  
28 its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should

1 Settling Defendant prevail on any motion or application under this Section, Settling Defendant  
2 may be awarded its reasonable attorneys' fees and costs as a result of such motion or application  
3 upon a finding by the court that CEH's prosecution of the motion or application was not in good  
4 faith. Notwithstanding any of the above, upon CEH's first motion or application to enforce the  
5 requirements of Section 3 above, Settling Defendants' monetary liability and CEH's total  
6 monetary recovery shall be limited to its reasonable attorneys' fees and costs incurred as a result  
7 of a such motion or application, and CEH shall not seek to impose a civil penalty on Settling  
8 Defendant.

9 **5. PAYMENTS**

10 5.1 **Total Settlement Payment.** Within fifteen (15) days of the Effective Date,  
11 Settling Defendant shall pay the total settlement amount as described in Exhibit A. As set forth  
12 therein, the total settlement amount for Settling Defendant shall be paid in five separate checks in  
13 the amounts specified on Exhibit A for Settling Defendant and delivered as set forth  
14 below. Unless excused by Force Majeure or exceptional circumstances reasonably beyond the  
15 control of Settling Defendant, any failure by Settling Defendant to comply with the payment  
16 terms herein shall be subject to a stipulated late fee to be paid by Settling Defendant in the  
17 amount of \$100 for each day the full payment is not received after the applicable payment due  
18 date set forth above. The late fees required under this Section shall be recoverable, together with  
19 reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this  
20 Consent Judgment. The Settlement Payment shall be divided as among the following:

21 5.1.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil  
22 penalty shall be apportioned in accordance with Health & Safety Code §25249.12 (25% to CEH  
23 and 75% to the State of California's Office of Environmental Health Hazard Assessment  
24 ("OEHHA")). This payment shall be delivered as follows:

25 For United States Postal Service Delivery:

26 Attn: Mike Gyurics  
27 Fiscal Operations Branch Chief  
28 Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS #19B

1 Sacramento, CA 95812-4010

2 For Non-United States Postal Service Delivery:

3 Attn: Mike Gyurics  
4 Fiscal Operations Branch Chief  
5 Office of Environmental Health Hazard Assessment  
6 1001 I Street, MS #19B  
7 Sacramento, CA 95814

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

11 5.1.2 An Additional Settlement Payment ("ASP") in lieu of civil penalty  
12 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §  
13 3204. CEH will use such funds to continue its work educating and protecting people from  
14 exposures to toxic chemicals, including 1,4-Dioxane, in personal care products. CEH may also  
15 use a portion of such funds to monitor compliance with this Consent Judgment and to purchase  
16 and test Settling Defendant's products to confirm compliance. CEH shall obtain and maintain  
17 adequate records to document that ASPs are spent on these activities and CEH agrees to provide  
18 such documentation to the Attorney General within thirty days of any request from the Attorney  
19 General. The payment pursuant to this Section shall be made payable to the Center for  
20 Environmental Health and associated with taxpayer identification number 94-3251981. This  
21 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
22 94117.

23 5.1.3 A reimbursement of a portion of CEH's reasonable attorneys' fees and  
24 costs. The attorneys' fees and cost reimbursement shall be made in two separate checks with a  
25 portion payable to the Lexington Law Group, LLP and associated with taxpayer identification  
26 number 88-4399775; and the remainder payable to the Center for Environmental Health and  
27 associated with taxpayer identification number 94-3251981. Both of these payments shall be  
28 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2 If Settling Defendant is unable to comply with the Optional Lower Reformulation Level, Settling Defendant shall make an additional payment of \$10,000 to be split between a civil penalty and ASP as set forth in Exhibit A. Of the additional payment, \$5,000 shall be a civil penalty, apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment of \$3,750 shall be made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set forth in section 5.1.1 above. The CEH portion of the additional civil penalty payment of \$1,250 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. \$1,500 of the additional payment shall be made payable to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117 for fees and costs associated with the additional payment. The remaining \$3,500 of the additional payment shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981 and shall be used as set forth in Section 5.1.2 above. Both payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

## **6. MODIFICATION**

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

6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall provide notice to and attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

## **7. CLAIMS COVERED AND RELEASED**

7.1 Provided that Settling Defendant complies in full with its obligations under Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders,

1 successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Settling  
2 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,  
3 retailers as well as franchisees, suppliers, licensors and licensees ("Downstream Defendant  
4 Releasees"), of any violation of Proposition 65 based on failure to warn about alleged exposure to  
5 1,4-Dioxane contained in Covered Products that were sold by Settling Defendant prior to the  
6 Effective Date. For purposes hereof, Defendant Releasees and Downstream Defendant Releasees  
7 shall be collectively referred to as "Releasees".

8           7.2           Provided that Settling Defendant complies in full with its obligations under  
9 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives, covenants not to  
10 sue, and forever discharges any and all claims against Settling Defendant and all Releasees  
11 arising from any violation of Proposition 65 or any other statutory or common law claims that  
12 have been or could have been asserted by CEH individually regarding the failure to warn about  
13 exposure to 1,4-Dioxane contained in Covered Products (i) sold by Settling Defendant prior to the  
14 Compliance Date or (ii) which Settling Defendant purchased prior to the Effective Date.

15           7.3           Compliance with the terms of this Consent Judgment by Settling Defendant  
16 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,  
17 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to  
18 warn about 1,4-Dioxane in Covered Products manufactured, distributed, or sold by Settling  
19 Defendant after the Effective Date.

20           7.4           Nothing in this Section 7 affects CEH's right to commence or prosecute an  
21 action under Proposition 65 against any person other than Settling Defendant, Defendant  
22 Releasees, or Downstream Defendant Releasees.

## 23   8.   NOTICE

24           8.1           When CEH is entitled to receive any notice under this Consent Judgment, the  
25 notice shall be sent by first class and electronic mail to:  
26  
27  
28



1 Mark N. Todzo  
2 Lexington Law Group  
3 503 Divisadero Street  
4 San Francisco, CA 94117  
5 mtodzo@lexlawgroup.com

6 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
7 Judgment, the notice shall be sent by first class and electronic mail to:

8 Greg Sperla  
9 DLA Piper LLP  
555 Mission Street, Suite 2400  
San Francisco, CA 94105  
Greg.Sperla@us.dlapiper.com

10 8.3 Any Party may modify the person and address to whom the notice is to be sent  
11 by sending the other Party notice by first class and electronic mail.

12 **9. COURT APPROVAL**

13 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
14 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
15 shall support entry of this Consent Judgment.

16 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
17 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
18 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

19 **10. GOVERNING LAW AND CONSTRUCTION**

20 10.1 The terms of this Consent Judgment shall be governed by the laws of the State  
21 of California.

22 **11. ATTORNEYS' FEES**

23 11.1 Except as otherwise provided in this Consent Judgment, each Party shall bear  
24 its own attorneys' fees and costs.

25 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of  
26 sanctions pursuant to law.

1 **12. ENTIRE AGREEMENT**

2 12.1 This Consent Judgment contains the sole and entire agreement and  
3 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
4 discussions, negotiations, commitments or understandings related thereto, if any, are hereby  
5 merged herein and therein. There are no warranties, representations or other agreements between  
6 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
7 implied, other than those specifically referred to in this Consent Judgment have been made by any  
8 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
9 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
10 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
11 any of the Parties hereto only to the extent that they are expressly incorporated herein. No  
12 supplementation, modification, waiver or termination of this Consent Judgment shall be binding  
13 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
14 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
15 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **13. SUCCESSORS AND ASSIGNS**

17 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling  
18 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or  
19 assigns of any of them.

20 **14. RETENTION OF JURISDICTION**

21 1.14 This Court shall retain jurisdiction of this matter to implement or modify the  
22 Consent Judgment.

23 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

24 15.1 Each signatory to this Consent Judgment certifies that he or she is fully  
25 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
26 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
27 Party.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS SO ORDERED:**

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Judge of the Superior Court

**IT IS SO STIPULATED:**

Dated: November 8, 2024

**CENTER FOR ENVIRONMENTAL HEALTH**



\_\_\_\_\_  
Kizzy Charles-Guzman  
Chief Executive Officer

Dated: \_\_\_\_\_, 2024

**ECOLAB USA, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO ORDERED:

*made 4 days*  
*[Signature]*  
Judge of the Superior Court  
HON. BARBARA RIVERO  
VISITING JUDGE

IT IS SO STIPULATED:

Dated: \_\_\_\_\_, 2024

CENTER FOR ENVIRONMENTAL HEALTH

Kizzy Charles-Guzman  
Chief Executive Officer

Dated: November 6, 2024

ECOLAB USA, INC.

*[Signature]*  
Signature

*Sandeem M. Boone*  
Printed Name

*General Counsel*  
Title

# EXHIBIT A

| Payee                              | Type            | Amount<br>Reformulation<br>Level<br>(10ppm) | Amount<br>Optional Lower<br>Reformulation<br>Level (3ppm) | Deliver To                 |
|------------------------------------|-----------------|---|---|----------------------------|
| OEHHA                              | Penalty         | \$ 6,750                                    | \$ 3,000  | OEHHA per<br>Section 5.1.1 |
| Center For Environmental<br>Health | Penalty         | \$ 2,250                                    | \$ 1,000  | LLG                        |
| Center For Environmental<br>Health | ASP             | \$ 6,050                                    | \$ 2,550  | LLG                        |
| Lexington Law Group                | Fee and<br>Cost | \$ 21,250                                   | \$ 19,750   | LLG                        |
| Center For Environmental<br>Health | Fee and<br>Cost | \$ 3,700                                    | \$ 3,700  | LLG                        |

1611107540.2