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FILING WINDOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ENVIRONMENTAL WORLD WATCH, INC.,
a DELAWARE corporation,

Plaintiff,

v.

SCHERING-PLOUGH HEALTHCARE
PRODUCTS, INC., a DELAWARE corporation,

Defendant.

Case No. BC 312642

[Hon. Judith C. Chirlin]

**[PROPOSED] CONSENT
JUDGMENT AND ORDER**

2nd Amended Complaint Filed: July 1, 2004

Hearing: August 29, 2005

Time: 8:30 a.m.

Location: Dept. 89

ENVIRONMENTAL WORLD WATCH, INC.,
a DELAWARE corporation,

Plaintiff,

v.

NOVARTIS CONSUMER HEALTH, INC., a
DELAWARE corporation,

Defendant.

Related Case No. BC 312643

1 This Consent Judgment is entered into by and between ENVIRONMENTAL WORLD
2 WATCH, INC., plaintiff in this matter (“EWW” or “Plaintiff”), and defendants SCHERING-
3 PLOUGH HEALTHCARE PRODUCTS, INC. (“Schering-Plough”) and Novartis Consumer
4 Health, Inc. (“Novartis”) (collectively “Defendants”).

5 **1. Definitions**

6 As used in this Consent Judgment, the following definitions shall apply:

7 **1.1** “Products” are (a) topical foot care products manufactured, distributed or sold by
8 Schering-Plough; and (b) Lamisil AT Odor Guard Deodorant Powder and Desenex Antifungal
9 Powder products manufactured, distributed or sold by Novartis.

10 **1.2** Except as specified in paragraphs 3.1 and 3.2 of this Consent Judgment, all
11 Products of each Defendant subject to this Consent Judgment, including Products which are
12 manufactured by or on behalf of each Defendant for sale to California consumers within 120
13 days after the date of entry of this Consent Judgment, shall be collectively known as the
14 “Products.”

15 **1.3** “Acrylamide” means the chemical acrylamide listed as subject to Proposition 65
16 regulation in Title 22, California Code of Regulations, section 12000.

17 **1.4** “Lead” means the chemicals lead and lead compounds listed as subject to
18 Proposition 65 regulation in Title 22, California Code of Regulations, section 12000.

19 **1.5** “ppm” means parts-per-million.

20 **1.6** Plaintiff and each Defendant will be referred to herein collectively as the “Parties”
21 or individually as a “Party.”

22 **2. Background**

23 **2.1** EWW is a Delaware corporation acting pursuant to Proposition 65, California
24 Health & Safety Code section 25249.7(d).

25 **2.2** On or about July 24, 2003 and April 21, 2004 respectively, EWW served two 60-
26 Day “Notice of Violation of Proposition 65” (the “Notices”) on the California Attorney General,
27 the District Attorneys of every county in California, the City Attorneys of every California city
28 with a population greater than 750,000, and on each Defendant, alleging that each Defendant

1 was in violation of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
2 Safety Code §§ 25249.5 et seq. (“Proposition 65”) for failing to warn purchasers of Defendants’
3 Products sold in California, that use of these Products exposes users to Acrylamide and/or Lead.
4 None of the public enforcement agencies responded to EWW’s Notices or otherwise filed a
5 lawsuit.

6 **2.3** On March 24, 2004, EWW filed a complaint against Schering-Plough entitled
7 *Environmental World Watch, Inc. v. Schering-Plough HealthCare Products, Inc.*, in the Los
8 Angeles County Superior Court, No. BC 312642 (the “Schering-Plough Action”), as well as a
9 complaint against Novartis entitled *Environmental World Watch, Inc. v. Novartis Consumer*
10 *Health, Inc.*, L.A. Sup. Ct. Case No. BC 312643 (the “Novartis Action”). On July 1, 2004
11 EWW filed second amended complaints in both the Schering-Plough Action and the Novartis
12 Action.

13 **2.4** On September 28, 2004, the Schering-Plough Action and Novartis Action were
14 determined and ordered by the Court to be related cases.

15 **2.5** For purposes of this Consent Judgment only, the Parties stipulate that this Court
16 has jurisdiction over the allegations of the violations contained in the Notices and the
17 Complaints and personal jurisdiction over Defendants as to the acts or omissions alleged in the
18 Complaints; that venue is proper in the County of Los Angeles; and that this Court has
19 jurisdiction to enter this Consent Judgment. No public prosecutor has commenced an action
20 regarding the matters raised in the Notices or the Complaints.

21 **2.6** Each Defendant denies that its Products have been or are in violation of
22 Proposition 65 or any other law, and further contends that all its Products have been and are safe
23 for use as directed. However, each Defendant wishes to resolve this matter without further
24 litigation or cost.

25 **2.7** The Parties enter into this Consent Judgment to settle certain disputed claims as
26 alleged in the Notices and the Complaints, to avoid prolonged and costly litigation, and to
27 promote the public interest. By executing and complying with this Consent Judgment, no Party
28 admits any facts or conclusions of law including, but not limited to, any facts or conclusions of

1 law regarding any violations of Proposition 65, the Unfair Competition Law or any other
2 statutory, common law or equitable claim or requirement relating to or arising from Defendants'
3 respective Products. This Consent Judgment shall not be construed as an admission by either
4 Defendant as to any of the allegations in the Notices or the Complaints.

5 **3. Injunctive Relief**

6 **3.1 Reformulation**

7 Each Defendant agrees, within sixty (60) days of the entry of this Consent Judgment, to
8 establish new, revised ingredient specifications for the ingredients in each of its Products that
9 contain either Acrylamide and/or Lead, as follows:

10 (a) For Acrylamide: From 5 ppm to no more than 4.5 ppm; and

11 (b) For Lead: From 10 ppm to no more than 7 ppm.

12 (c) The specification for lead set forth in paragraph 3.1(b) shall not apply to: (1) zinc
13 oxide, which the parties agree for purposes of this Consent Judgment alone is governed by the
14 consent judgment previously entered in *Center for Environmental Health v. Bristol-Myers*
15 *Squibb Co., et al.*; San Francisco Superior Court No. 307981, filed April 23, 2003; or (2) Minor
16 Ingredients, which are those ingredients that are present at concentrations of ten percent (10%)
17 or less in the finished Product (e.g., kaolin and hectorite). Minor Ingredients shall contain no
18 intentionally added Lead.
19

20 **3.2 No Warning Required**

21 Subject to compliance with paragraphs 3.1 or 8, no Proposition 65 warning is required for
22 any Product.

23 **4. Settlement Payments**

24 In keeping with the concept of, but in lieu of, the statutory penalties and/or restitution
25 required under the statutes set forth in the Complaints, Defendants jointly shall pay to the Trust
26 Account of the Carrick Law Group P.C., by wire transfer in immediately available funds, the
27 sum of \$180,000.00. This settlement amount shall be due and payable within five (5) business
28

1 days from service of the notice of entry of this Consent Judgment, and, in that regard, all Parties
2 hereto waive the right to appeal or other review of this Consent Judgment. The sum of
3 \$180,000.00 shall be disbursed by the Carrick Law Group P.C. as follows:

4 **4.1 To EWW**

5 \$25,000.00, to be used by EWW for its on-going compliance monitoring costs of this
6 Consent Judgment, and to reimburse EWW for EWW's enforcement efforts on behalf of the
7 public interest and the general public in conformity with Health and Safety Code §25192(a)(2).

8 **4.2 To The Carrick Law Group**

9 \$14,851.00 in costs and \$140,149.00 in attorneys' fees.

10 **5. Termination of All Claims**

11 **5.1 Claims Covered and Release**

12 This Consent Judgment includes the resolution of actual and potential claims that were
13 considered or could have been brought by EWW in the public interest and on behalf of the
14 general public regarding Acrylamide and/or Lead in each Defendant's Products. This Consent
15 Judgment is a final and binding resolution between EWW in the public interest and on behalf of
16 the general public, and each Defendant, its parents, subsidiaries, affiliates, divisions,
17 subdivisions, successors, predecessors and assigns, and the directors, officers, employees,
18 counsel, and agents of each of them, of any and all alleged violations of Proposition 65 and Civil
19 Code sections 1750 et seq. (the Consumer Legal Remedies Act), or any other claim relating to
20 alleged failure to warn about or disclose the presence of Lead and/or Acrylamide that was or
21 could have been asserted in the Notices or Complaint by EWW in the public interest and on
22 behalf of the general public against any Defendant, its parents, subsidiaries, affiliates, divisions,
23 subdivisions, successors, predecessors and assigns, all suppliers, distributors, wholesalers,
24 retailers, customers and contract manufacturers, and all of their respective directors, officers,
25 employees, counsel, and agents, arising from or related to the Products up through the date of
26 entry of this Consent Judgment. EWW, in the public interest and on behalf of the general public,
27 hereby releases each Defendant, its parents, subsidiaries, affiliates, divisions, subdivisions,
28 successors, predecessors and assigns, all suppliers, distributors, wholesalers, retailers, customers

1 and contract manufacturers, and all of their respective directors, officers, employees, counsel,
2 and agents, from and against the claims described in this paragraph to the extent such claims do,
3 did, or could arise from or relate the Products; however, EWW cannot and does not release any
4 claims, including specifically any personal injury or directly related claims, that could be
5 brought by any individual or organization other than EWW. Each Defendant hereby releases
6 EWW from and against any claims arising out of its filing or prosecution of this action.

7 **5.2 Waiver and Release of Unknown Claims**

8 To the extent that California Civil Code section 1542 or similar provisions of law are
9 deemed to apply to the release by EWW set forth above, EWW acknowledges and agrees that
10 the release set forth above applies to all its claims for injuries, damages, restitution, penalties or
11 losses related to or arising from Defendants' Products, whether those for injuries, damages,
12 restitution, penalties or losses are known or unknown, foreseen or unforeseen, or patent or latent.
13 EWW certifies that it has read California Civil Code section 1542. EWW hereby knowingly and
14 expressly waives its rights, on behalf of the public interest and the general public, under
15 California Civil Code section 1542, which provides as follows:

16 A general release does not extend to claims which the creditor does not know or suspect
17 to exist in his favor at the time of executing the release which, if known by him must have
18 materially affected his settlement with the debtor.

19 To the extent that California Civil Code section 1542 or similar provisions of law are
20 deemed to apply to the release by each Defendant set forth above, each Defendant separately
21 acknowledges and agrees that the release set forth above applies to any claim for malicious
22 prosecution, abuse of process, damages, or other similar claim related to or arising out of
23 EWW's filing or prosecution of this action. Each Defendant hereby knowingly and expressly
24 waives any rights under California Civil Code section 1542, the text of which is set forth above.

25 **6. Covenant Not To Sue**

26 EWW and each Defendant covenant and agree that with regard to those matters that
27 EWW has herein released and that are described above, neither EWW nor either Defendant will
28 ever institute a lawsuit or administrative proceedings against another Party, its parents,

1 subsidiaries, affiliates, divisions, subdivisions, successors, predecessors and assigns, all
2 suppliers, distributors, wholesalers, retailers, customers and contract manufacturers, and all of
3 their respective directors, officers, employees, counsel, and agents, nor shall any Party assert any
4 claim of any nature against any person or entity hereby released with regard to any such matters
5 which have been released. Nothing in this paragraph shall be interpreted to preclude
6 enforcement of this Consent Judgment pursuant to Section 7 below.

7 **7. Enforcement of Consent Judgment**

8 Any Party may, by noticed motion or order to show cause before the Superior Court of
9 Los Angeles, enforce this Consent Judgment. To enforce this Consent Judgment, any Party must
10 first give written notice of any violation of this Consent Judgment alleged to have occurred to
11 the Party alleged to be in violation, with a copy to all other Parties. The involved Parties shall
12 meet and confer in good faith and attempt to resolve the alleged violation. If a resolution is not
13 reached within sixty (60) days of the date of the notice, the aggrieved Party may move the Court
14 to hear and resolve the dispute. The Party moving to enforce this Consent Judgment bears the
15 initial burden of proof, absent any express provision to the contrary in this Consent Judgment.

16 **8. Modification/Termination of Consent Judgment**

17 This Consent Judgment may be modified or terminated upon written agreement of the
18 Defendants and EWW, with approval of the Court, or upon noticed motion for good cause
19 shown. Such "good cause" shall include, but not be limited to, any change in applicable law or
20 the entry of any judgment, including, but not limited to, a consent judgment, relating to
21 Proposition 65 within the State of California that, should its terms be applicable to products
22 similar to the Products or to ingredients of the Products, would materially alter the obligations of
23 Defendant hereunder in a manner more favorable to Defendant than the terms of this Consent
24 Judgment. If any of the statutes at issue in this action are individually or collectively amended
25 by the California Legislature in the future, or if regulations implementing these statutes are
26 lawfully adopted and/or amended by the appropriate administrative agency, each Defendant shall
27 comply with that provision of law or regulation as then-amended, and if that provision of law or
28 regulation is repealed by the California Legislature, the appropriate administrative agency or by

1 appellate court order, this stipulated Consent Judgment's injunctive relief that relies upon such
2 provisions of law or regulation as set forth in this Consent Judgment shall become void and of
3 no effect on the effective date of the repeal of that provision of law or regulation, or on the
4 effective date of the appellate court order. If the appropriate administrative agency modifies the
5 regulations implementing Proposition 65 to increase the no significant risk level for acrylamide
6 above 0.2 micrograms per day, the injunctive relief relating to acrylamide shall become void and
7 of no effect on the effective date of the modified regulation. If any of the statutes at issue in this
8 action are individually or collectively amended by the California Legislature in the future, or if
9 regulations implementing these statutes are lawfully adopted and/or amended by the appropriate
10 administrative agency, Defendants shall comply with that provision of law or regulation as then-
11 amended.

12 **9. Governing Law**

13 This Consent Judgment shall be governed by, and construed in accordance with, the laws
14 of the State of California.

15 **10. Entire Agreement**

16 The Parties declare and represent that no promise, inducement or other agreement has
17 been made conferring any benefit upon any party except those contained herein and that this
18 Consent Judgment contains the entire agreement pertaining to the subject matter hereof. This
19 Consent Judgment supersedes any prior or contemporaneous negotiations, representations,
20 agreements and understandings of the Parties with respect to such matters, whether written or
21 oral. Parole evidence shall be inadmissible to show agreement by, between or among the Parties
22 to any term or condition contrary to or in addition to the terms and conditions contained in this
23 Consent Judgment. The Parties acknowledge that each has not relied on any promise,
24 representation or warranty, expressed or implied, not contained in this Consent Judgment except
25 for those contained in the Confidentiality Undertaking.

26 **11. Challenges**

27 Subject to their rights to apply for a modification of this Consent Judgment for good
28 cause shown under paragraph 8 hereof, or Defendant's right to terminate the same under Section

1 9 hereof, the Parties agree that they, individually or collectively, will not seek to challenge or to
2 have determined invalid, void or unenforceable any provision of this Consent Judgment or this
3 Consent Judgment itself. The Parties understand that this Consent Judgment contains the
4 relinquishment of legal rights and each Party has, as each has deemed appropriate, sought the
5 advice of legal counsel, which each of the Parties has encouraged the other to seek. Further, no
6 Party has reposed trust or confidence in any other Party so as to create a fiduciary, agency or
7 confidential relationship.

8 **12. Construction**

9 This Consent Judgment has been jointly negotiated and drafted. The language of this
10 Consent Judgment shall be construed as a whole according to its fair meaning and not strictly for
11 or against any Party.

12 **13. Authority to Stipulate to Consent Judgment**

13 Each signatory to this Consent Judgment represents and warrants that each signatory has
14 all requisite power, authority and legal right necessary to execute and deliver this Consent
15 Judgment and to perform and carry out the transactions contemplated by this Consent Judgment.
16 Each signatory to this Consent Judgment represents that each has been duly authorized to
17 execute this Consent Judgment. No other or further authorization or approval from any person
18 will be required for the validity and enforceability of the provisions of this Consent Judgment.

19 **14. Cooperation and Further Assurances**

20 The Parties hereby will execute such other documents and take such other actions as may
21 be necessary to further the purposes and fulfill the terms of this Consent Judgment.

22 **15. Counterparts**

23 This Consent Judgment may be executed in counterparts and has the same force and
24 effect as if all the signatures were obtained in one document. .

25 **16. Notices**

26 16.1 All correspondence and notices required by this Consent Judgment to Plaintiff
27 EWW shall be sent to:

28 ///

1 Roger Lane Carrick
2 The Carrick Law Group, P.C.
3 350 S. Grand Avenue, Suite 2930
4 Los Angeles, CA 90071-3406
5 Tel: (213) 346-7930
6 Fax: (213) 346-7931
7 E-mail: roger@carricklawgroup.com

8 16.2 All correspondence and notices required by this Consent Judgment to Defendants
9 shall be sent to Defendants as follows:

10 SCHERING-PLOUGH
11 HEALTHCARE PRODUCTS, INC.

12 Morgan M.W. Weber, Esq.
13 Schering-Plough HealthCare Products,
14 Inc.
15 Law Department
16 2000 Galloping Hill Road
17 Kenilworth, NJ 07033-0530
18 Tel.: (908) 298-2945
19 Fax: (908) 298-5310

20 with a copy to:

21 Michael J. Steel, Esq.
22 Pillsbury Winthrop Shaw Pittman LLP
23 50 Fremont Street, 5th Floor
24 San Francisco, California 94105
25 Tel.: (415) 983-1000
26 Fax: (415) 983-1200
27 E-mail: michael.steel@pillsburylaw.com

28 NOVARTIS CONSUMER
HEALTH, INC.

Greg Tole, Esq.
Novartis Consumer Health, Inc.
200 Kimball Drive
Parsippany, New Jersey 07054

With a copy to:

Gene Livingston, Esq.
Livingston & Mattesich Law Corporation
1201 K Street, Suite 1100
Sacramento, CA 95814-3938
Tel.: (916) 442-1111
Fax: (916) 448-1709
E-mail: glivingston@lmlaw.net

17. **Entry of Stipulation For Entry of Consent Judgment Required**

This Consent Judgment shall be null and void, and without any force or effect, unless fully approved as required by law and entered by the Court. If the Court does not enter this

1 Consent Judgment, the execution thereof by Defendant or EWW shall not be construed as an
2 admission by Defendant or EWW of any fact, issue of law or violation of law.

3 **18. Jurisdiction**

4 This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

5 **19. Compliance with Reporting Requirements**

6 EWW shall comply with the reporting form requirements referenced in Health and Safety
7 Code section 25249.7(f) and established in 11 California Code of Regulations §§ 3000-3008.

8 Copies of all such reports shall be supplied as provided in Section 17.2.


9 **20. Non-Interference in Settlement Approval Process**

10 EWW will seek and Defendants will support securing approval of this Consent Judgment
11 by the Attorney General and the Court

12 **IT IS SO STIPULATED.**

13 DATED: July 8, 2005
14 W.P.

ENVIRONMENTAL WORLD WATCH, INC.

15 By: 
16 WILLIAM P. DUNLAP
17 PRESIDENT
ENVIRONMENTAL WORLD WATCH, INC.

18 DATED: June ____, 2005

SCHERING-PLOUGH LABORATORIES, INC.

19
20 By: _____
21 [NAME]
22 [TITLE]
SCHERING-PLOUGH HEALTHCARE
PRODUCTS, INC.

23 DATED: June ____, 2005

NOVARTIS CONSUMER HEALTH, INC.

24
25
26 By: _____
27 [NAME]
28 [TITLE]
NOVARTIS CONSUMER HEALTH, INC.

1 Consent Judgment, the execution thereof by Defendant or EWW shall not be construed as an
2 admission by Defendant or EWW of any fact, issue of law or violation of law.

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12 **IT IS SO STIPULATED.**

13 DATED: June __, 2005

ENVIRONMENTAL WORLD WATCH, INC.

14

15

By: _____

16

WILLIAM P. DUNLAP
PRESIDENT
ENVIRONMENTAL WORLD WATCH, INC.

17

18 DATED: June 30, 2005

SCHERING-PLOUGH LABORATORIES, INC.

19

20

By: John M. Clayton

21

[NAME] John M. Clayton
[TITLE] Senior Vice President
SCHERING-PLOUGH HEALTHCARE
PRODUCTS, INC.

22

23

24

25

26

27

28

DATED: June __, 2005

NOVARTIS CONSUMER HEALTH, INC.

By: _____

[NAME]
[TITLE]
NOVARTIS CONSUMER HEALTH, INC.

1 **19. Compliance with Reporting Requirements**

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7 by the Attorney General and the Court

8 **IT IS SO STIPULATED.**

9 DATED: June __, 2005

ENVIRONMENTAL WORLD WATCH, INC.

11 By: _____
12 WILLIAM P. DUNLAP
13 PRESIDENT
14 ENVIRONMENTAL WORLD WATCH, INC.


14 DATED: June __, 2005

SCHERING-PLOUGH LABORATORIES, INC.

16 By: _____
17 [NAME]
18 [TITLE]
19 SCHERING-PLOUGH HEALTHCARE
20 PRODUCTS, INC.

19 DATED: June 23, 2005

NOVARTIS CONSUMER HEALTH, INC.

21 By: 
22 [NAME] _____
23 [TITLE] Global QA + compliance, etc
24 NOVARTIS CONSUMER HEALTH, INC.

25 APPROVED AS TO
26 LEGAL FORM
27 
28 LAW DEPT.

1 **THE COURT HEREBY FINDS:**

2 1. To effectuate the settlement set forth in the foregoing stipulated Consent
3 Judgment, the Court consolidates *Environmental World Watch, Inc. v. Novartis Consumer*
4 *Health, Inc.*, L.A. Sup. Ct. Case No. BC 312643, ("*EWV v. Novartis*") and *Environmental*
5 *World Watch, Inc. v. Schering-Plough Healthcare Products, Inc.*, L.A. Sup. Ct. Case No.
6 BC 312642, ("*EWV v. Schering-Plough*") for the purpose of entering the foregoing stipulated
7 Consent Judgment.

8 2. Because no warnings are required by the foregoing stipulated Consent Judgment,
9 this Court does not have to make any finding regarding compliance with warnings under the
10 provisions of Health & Safety Code §§ 25249.5-25249.13.

11 3. The Parties' agreement that no civil penalties are warranted is in accord with the
12 criteria set forth in Health & Safety Code § 25249.7(b)(2), in that payments totaling \$25,000.00
13 in lieu of such penalties to EWW provides the funds for its compliance monitoring of this
14 Consent Judgment, as well as for its future investigational and enforcement activities regarding
15 toxic chemicals and Proposition 65, in a manner that is consistent with the private enforcement
16 mechanism and funds allocation scheme established by Health & Safety Code § 25192 and
17 § 25249.7 *et. seq.*

18 4. The Court finds that from the total of \$180,000.00 being paid in this settlement,
19 the Plaintiff will pay its attorneys' fees in the amount of \$140,149.00 plus its attorneys' costs of
20 \$14,851.00. The Court finds that these attorneys' fees and costs are reasonable and appropriate
21 in this action.

22 5. This Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this
23 Court.

24 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

25
26 DATED: _____
27

28 _____
JUDITH C. CHIRLIN
JUDGE OF THE SUPERIOR COURT