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8 SUPERIOR COURT, STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 AMERICAN ENVIRONMENTAL SAFETY
11 INSTITUTE, a non-profit California
corporation,

12 Plaintiff,

13 v.

14 THE PROCTER & GAMBLE
15 DISTRIBUTING COMPANY, an Ohio
corporation, et al.,

16 Defendants.

CASE NO. BC 334309

[Hon. Mary Thornton House]

**[PROPOSED] CONSENT JUDGMENT
ONLY AS TO DEFENDANT JASON
NATURAL PRODUCTS, INC.**

Complaint Filed: June 1, 2005
Location: Department: 17
Trial Date: October 14, 2008

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18 This Consent Judgment is entered into by and between the plaintiff American
19 Environmental Safety Institute (“AESI”), on the one hand, and defendant Jason Natural Products,
20 Inc., a California corporation (“Jason” or “Settling Defendant”), on the other hand.

21 1. **Definitions.** As used in this Consent Judgment, the following definitions shall apply:

22 1.1. **“Toothpaste-Tooth Gel Products”** includes any Toothpaste-Tooth Gel products
23 previously (*i.e.*, at any time up to or prior to the entry of this Consent Judgment) sold in
24 California by Jason, whether or not such products continue to be sold, as well as all Toothpaste-
25 Tooth Gel products sold by Jason in or into California in the future (*i.e.*, at any time after entry of
26 this Consent Judgment).

27 1.2. **“Lead”** means the chemical element lead (Pb) and lead compounds as defined in
28 section 12000 of Title 22 of the California Code of Regulations.

1 **1.3. “Precipitated Silica”** is a material used as a gentle abrasive in the Toothpaste-
2 Tooth Gel Products.

3 **1.4. “ppm”** means parts per million.

4 **1.5. “Party”** shall mean AESI and Jason, and when used in the plural shall mean both
5 of them.

6 **2. Background.**

7 **2.1.** AESI is a non-profit California corporation dedicated to investigating
8 environmental and public health hazards affecting children and adults in their regular daily lives.
9 AESI is based in Palo Alto, California, and was incorporated under the laws of the State of
10 California in 1998. AESI is a “person” within the meaning of Health & Safety Code
11 § 25249.11(a), and brought this enforcement action in the public interest pursuant to Health &
12 Safety Code § 25249.7(d).

13 **2.2.** AESI served a 60-day “Notice of Violation” (the “Notice”) on Jason. AESI served
14 the Notice on June 2, 2005, pursuant to California Health and Safety Code section 25249.7(d)
15 and section 12903 of Title 22 of the California Code of Regulations.

16 **2.3.** The Notice alleged, among other things, that Jason was in violation of the Safe
17 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections
18 25249.5 *et seq.* (“Proposition 65”) for failing to warn purchasers of Toothpaste Products sold in
19 California that the products allegedly expose users to Lead.

20 **2.4.** For purposes of this Consent Judgment only, the Parties stipulate that this Court
21 has jurisdiction over the allegations of the violations contained in the Notice, that venue is proper
22 in the County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment.
23 No public prosecutor has commenced an action regarding the matters raised in the Notice.

24 **2.5.** Jason denies that any Toothpaste-Tooth Gel Products have been or are in violation
25 of Proposition 65 or any other law, and further contend that all of their Toothpaste-Tooth Gel
26 Products have been and are safe for use as directed. Jason, however, wishes to resolve this matter
27 without further litigation or cost.

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1 **2.6.** The Parties enter into this Consent Judgment to settle claims alleged in the Notice
2 and AESI's complaint (the "Complaint") in this action against Jason, to avoid prolonged and
3 costly litigation, and to promote the public interest. By executing and complying with this
4 Consent Judgment, no party admits any facts or conclusions of law including, but not limited to,
5 any facts or conclusions of law regarding any violations of Proposition 65, or any other statutory,
6 common law or equitable claim or requirement relating to or arising from the Toothpaste-Tooth
7 Gel Products. This Consent Judgment shall not be construed as an admission by Jason as to any
8 of the allegations in the Notice and/or the Complaint.

9 **3. Injunctive Relief.**

10 **3.1. Actions as to Lead Content in Precipitated Silica.**

11 (a) Within 60 days of the entry of this Consent Judgment by the Court, Jason
12 shall establish and thereafter maintain a Lead (Pb) specification of 4.5 parts per million ("ppm"),
13 or less, for any Precipitated Silica to be used in Jason' Toothpaste-Tooth Gel Products that is
14 obtained by Jason 60 days after its Lead specification is established.

15 (b) The 4.5 ppm Lead standard shall be demonstrated by Jason using the
16 following testing protocol:

17 (1) once every six months, Jason's precipitated silica supplier shall
18 select five (5) randomly chosen grab samples from a lot of precipitated silica that is
19 to be used in the finished Jason Toothpaste-Tooth Gel products for shipment to
20 Jason, and the supplier shall test a composite of the 5 grab samples;

21 (2) using a sample preparation method that permits recovery of at least
22 that amount of Lead in the sample that is bioavailable to humans, test the prepared
23 sample using Inductively Coupled Plasma/Mass Spectrometry ("ICP/MS") or
24 Inductively Coupled Plasma/Optical Emission Spectrometry ("ICP/OES")
25 laboratory equipment and protocols for Lead detection to demonstrate compliance
26 with the 4.5 ppm specification for Lead in precipitated silica for use in Jason's
27 Toothpaste-Tooth Gel products;

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1 (3) failure of this testing protocol shall require rejection by the supplier
2 of the test lot, with written notice of that rejection provided to Jason, and a re-
3 view by the supplier of its methods then in use to meet the 4.5 ppm Lead
4 specification; and

5 (4) the test protocol set forth above must then be conducted on the next
6 three lots of precipitated silica in succession; if any of these three additional lots
7 fails this test protocol, then the next five lots must be tested, until all lots in a test
8 group of five demonstrate compliance with the 4.5 ppm Lead specification.

9 (c) Jason cannot ensure that Precipitated Silica used to achieve a Lead
10 specification of 4.5 ppm, or less, for Toothpaste-Tooth Gel products will be commercially
11 feasible at all times. If Precipitated Silica used with a Lead specification of 4.5 ppm, or less,
12 becomes commercially unfeasible, Jason will make every reasonable effort to use Precipitated
13 Silica that would meet Jason's quality and volume requirements. Any Party choosing to use
14 Precipitated Silica that does not meet the Lead specification of 4.5 ppm, or less, shall provide
15 prompt notice to AESI of that election.

16 **3.2. Feasibility.** The term "feasible" as used in this Consent Judgment means
17 "reasonable" considering: (1) the availability and reliability of a supply to Jason of Precipitated
18 Silica that would ensure Jason's Toothpaste-Tooth Gel products meet the Lead specification of
19 not exceeding 4.5 ppm; (2) the cost to Jason of using such Precipitated Silica; (3) the
20 performance characteristics, including, but not limited to, formulation compatibility,
21 performance, safety, taste, efficacy and stability, of an ingredient in any Toothpaste-Tooth Gel
22 Product or the Toothpaste-Tooth Gel Products as a whole; (4) the lawfulness of the alternative
23 (for example, no such alternative can be allowed to render Jason's Toothpaste-Tooth Gel
24 Products unlawful under state or federal law); and (5) other reasonable considerations.
25 Notwithstanding any other provision in this Consent Judgment, Jason shall be required to fulfill
26 only those obligations respecting Lead in their Toothpaste-Tooth Gel Products that are feasible as
27 described in this paragraph.

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1 **3.3. Naturally Occurring Lead.** Any Lead remaining in Jason’s Toothpaste-Tooth
2 Gel Products after Jason has undertaken those actions required by Paragraphs 3.1 and 3.2, above,
3 is deemed “naturally occurring” within the meaning of section 12501 of Title 22 of the California
4 Code of Regulations.

5 **3.4. Confirmation of Compliance.** AESI, at its sole expense, shall have the right for
6 three (3) years after the date of the entry of this Consent Judgment to request samples of the
7 Precipitated Silica manufactured to the specification level of 4.5 ppm, or less, and perform
8 independent testing of the material.

9 **3.5. Injunctive Relief Applies Only in California.** All of the foregoing injunctive
10 relief shall apply only to Toothpaste-Tooth Gel Products sold for use within California.

11 **3.6. Full and Complete Compliance.** Compliance by Jason with the terms of this
12 Consent Judgment shall be deemed to constitute its full and complete compliance with
13 Proposition 65 with respect to the provision of warnings for chemicals contained in or otherwise
14 associated with its Toothpaste-Tooth Gel Products.

15 **4. Settlement Payments.**

16 **4.1** In keeping with the concept of, but in lieu of, statutory penalties and/or restitution,
17 under the statutes set forth in the Complaint, Jason shall pay to the Trust Account of the Carrick
18 Law Group, P.C. in immediately available funds the sum of \$60,000.00 (“Settlement Proceeds”)
19 within five (5) days from the entry of this Consent Judgment. Carrick Law Group P.C. shall
20 disburse these funds to AESI (a) to pay its attorneys’ fees of \$28,800.00 pursuant to those parties’
21 written contingent fee agreement; and (b) to further the remedial purposes established under
22 Proposition 65 by providing funds for AESI’s ongoing costs of monitoring compliance with this
23 Consent Judgment, as well as for its future investigational and enforcement activities regarding
24 toxic chemicals and Proposition 65, in a manner that is consistent with the private enforcement
25 mechanism and funds allocation scheme established by Health & Safety Code §§ 25249.7(d) and
26 25249.12(d) and AESI’s non-profit mission.

27 **4.2 Attorney’s Fees and Costs.** Apart from the payments to be made pursuant to
28 paragraph 4.1 above, each party shall bear its own attorneys’ fees and costs.

1 **5. Termination of All Claims; Claims Covered and Released.**

2 **5.1.** This Consent Judgment includes the resolution of all claims asserted in the Notice
3 and the Complaint, as well as all potential claims that were considered or could have been
4 brought by AESI on behalf of the public interest and the general public regarding Lead in Jason's
5 Toothpaste-Tooth Gel Products. This Consent Judgment is a final and binding resolution
6 between AESI, on behalf of the public interest and the general public, and Jason, of any and all
7 alleged violations of Proposition 65 and any other statutory or common law claims that were or
8 could have been asserted by AESI against Jason or purchasers or sellers of Jason's Toothpaste-
9 Tooth Gel Products arising from or related to Lead in Jason's Toothpaste-Tooth Gel Products up
10 through the date of entry of this Consent Judgment, including, but not limited to, any claims for
11 attorneys' fees and costs. AESI hereby releases Jason, their affiliated companies, officers,
12 directors and employees and their suppliers, distributors, wholesales, and retailers from and
13 against the claims described in this paragraph relating to Jason's Toothpaste-Tooth Gel Products;
14 however, AESI expressly does not release any claims which AESI does not have the authority to
15 release, including specifically and without limitation any personal injury claims (or claims
16 directly related to personal injuries).

17 **6. Covenant Not To Sue.** AESI and Jason agree that with regard to those matters that AESI
18 has herein released and that are described above, neither AESI nor Jason will ever institute a
19 lawsuit or administrative proceedings against any other Party, nor shall any Party assert any
20 claim of any nature against any person or entity hereby released, with regard to any such matters
21 which have been released.

22 **7. Application of Consent Judgment.** Paragraphs 5 and 6 of this Consent Judgment shall
23 apply to, be binding upon, and inure to the benefit of, the Parties, their divisions, subdivisions,
24 subsidiaries, affiliates, merged entities, acquired entities, successors, predecessors and assigns,
25 and the directors, officers, employees, counsel, and agents of each of them, as applicable, and
26 will inure to the benefit of the Parties' parent companies, and all of their suppliers, distributors,
27 wholesalers, retailers and contract manufacturers, and all of their respective directors, officers,
28 employees, counsel, and agents.

1 **8. Modification of Consent Judgment.**

2 **8.1.** This Consent Judgment may be modified or terminated upon written agreement of
3 Jason and AESI, with approval of the Court, or upon noticed motion for good cause shown. The
4 grounds for modification of this Consent Judgment include, but are not limited to, the
5 infeasibility of obtaining or using Precipitated Silica with a lead specification of 4.5 ppm, or less,
6 in Jason's Toothpaste-Tooth Gel Products as outlined in Paragraphs 3.1(b) and 3.2; provided that,
7 in such case of infeasibility, Jason is permitted, but not required, to seek modification of this
8 Consent Judgment. Any party seeking to modify this Consent Judgment must first give notice to
9 each other Party in writing of any proposed modification of this Consent Judgment with the basis
10 for the proposed modification. The Parties shall meet and confer in good faith and attempt to
11 reach agreement on proposed modifications of the Consent Judgment. If a resolution is not
12 reached within forty-five (45) days of the notice, the Party seeking modification may move the
13 Court to modify this Consent Judgment.

14 **8.2.** The Parties agree that if AESI enters into a settlement agreement with another
15 toothpaste manufacturer or distributor in the future that imposes injunctive relief that is less
16 burdensome from the provisions contained in this Consent Judgment and the settlement
17 agreement is entered as a Consent Judgment, Jason has the right to seek modification of the
18 Consent Judgment pursuant to Paragraph 8.1 to allow Jason to modify this Consent Judgment to
19 provide for the same injunctive relief imposed on the other toothpaste manufacturer or
20 distributor.

21 **9. Governing Law.** This Consent Judgment shall be governed by, and construed in
22 accordance with, the laws of the State of California, without regard to conflict of laws principles.

23 **10. Entire Agreement.** The Parties declare and represent that no promise, inducement or
24 other agreement has been made conferring any benefit upon any party except those contained
25 herein and that this Consent Judgment contains the entire agreement pertaining to the subject
26 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,
27 representations, agreements and understandings of the Parties with respect to such matters,
28 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between, or

1 among the Parties to any term or condition contrary to or in addition to the terms and conditions
2 contained in this Consent Judgment. The Parties acknowledge that each has not relied on any
3 promise, representation or warranty, expressed or implied, not contained in this Consent
4 Judgment.

5 **11. Challenges.** Subject to their rights to apply for a modification of this Consent Judgment
6 for good cause shown under Paragraph 8 hereof, the Parties agree that they, individually or
7 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any
8 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that
9 this Consent Judgment contains the relinquishment of legal rights and each Party has, as each has
10 deemed appropriate, sought the advice of legal counsel, which each of the Parties has encouraged
11 the other to seek. Further, no Party has reposed trust or confidence in any other Party so as to
12 create a fiduciary, agency, or confidential relationship.

13 **12. Construction.** This Consent Judgment has been jointly negotiated and drafted. The
14 language of this Consent Judgment shall be construed as a whole according to its fair meaning
15 and not strictly for or against any Party.

16 **13. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment
17 represents and warrants that the signatory has all requisite authorization, power, and legal right
18 necessary to execute and deliver this Consent Judgment and to perform and carry out the
19 transactions contemplated by this Consent Judgment. No other or further authorization or
20 approval from any person will be required for the validity and enforceability of the provisions of
21 this Consent Judgment.

22 **14. Cooperation and Further Assurances.** The Parties hereby will execute such other
23 documents and take such other actions as may be necessary to further the purposes and fulfill the
24 terms of this Consent Judgment.

25 **15. Counterparts.** This Consent Judgment may be executed in counterparts and has the same
26 force and effect as if all the signatures were obtained in one document.

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1 **16. Notices.**

2 **16.1** All correspondence and notices required by this Consent Judgment to AESI shall
3 be sent to:

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

10 **16.2** All correspondence and notices required by this Consent Judgment to Jason shall
11 be sent to Jason as follows:

12 JASON NATURAL PRODUCTS, INC.
13 315 Eastham Drive
14 Culver City, CA 90232

15 With a copy to:
16 Scott A. Cox, Esq.
17 Law Offices of Scott A. Cox
18 27240 Turnberry Lane, Suite 200
19 Valencia, CA 91355
20 Phone: (661) 362-0822
21 Fax: (661) 362-0823
22 E-mail: lawofsac@aol.com

23 **17. Motion for Approval of Consent Judgment.** Following the execution of this Consent
24 Judgment by the Parties, counsel for AESI shall promptly prepare and submit to the Court a
25 motion seeking the Court’s approval of this Consent Judgment.

26 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent
27 Judgment shall be null and void, and without any force or effect, unless fully approved as
28 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the
execution thereof by Jason or AESI shall not be construed as an admission by Jason or AESI of
any fact, issue of law or violation of law.

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

20. Compliance with Reporting Requirements. AESI shall comply with the reporting form
requirements referred to in Health and Safety Code section 25249.7(f) and established in Title 11
of the California Code of Regulations sections 3000-3008. Copies of all such reports shall be
supplied to Jason as provided in Paragraph 16.2.

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1 21. Non-Interference in Settlement Approval Process. The Parties will cooperate, as well
2 as use their respective best efforts, to secure the Attorney General's approval of this Consent
3 Judgment, and not to seek his disapproval of any portion of this Consent Judgment.

4 IT IS SO STIPULATED:

5 DATED: July 16, 2008 AMERICAN ENVIRONMENTAL SAFETY
6 INSTITUTE, a non-profit California corporation

7 By: 

8 Title: PRESIDENT

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11 DATED: _____ JASON NATURAL PRODUCTS, INC.

12 By: _____
13 Ira Lamel

14 Title: Executive Vice President and Chief Financial
15 Officer

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21. Non-Interference in Settlement Approval Process. The Parties will cooperate, as well as use their respective best efforts, to secure the Attorney General's approval of this Consent Judgment, and not to seek his disapproval of any portion of this Consent Judgment.

IT IS SO STIPULATED:

DATED: _____

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California corporation

By: _____

Title: _____

DATED: 7-14-08

JASON NATURAL PRODUCTS, INC.

By: *Ira Lamel*
Ira Lamel

Title: Executive Vice President and Chief Financial Officer

1 **THE COURT HEREBY FINDS AND ORDERS:**

2 1. In light of the findings below, and based upon the Court's review of the proposed
3 Consent Judgment executed by the Plaintiff AESI and Defendant Jason, and the papers filed in
4 support of this Motion to Enter the proposed Consent Judgment, and in a manner consistent with
5 Code of Civil Procedure § 664.6, the Court finds that this settlement agreement is just, and serves
6 and will serve the public interest, as follows:

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

10 3. The Parties' agreement that no civil penalties are warranted is in accord with the
11 criteria set forth in Health & Safety Code §§ 25249.7(b)(2) and 25249.7(f)(4)(C), in that
12 payments as set forth in section 4 of the Consent Judgment totaling \$60,000.00, in lieu of such
13 penalties, to Plaintiff (a) to pay its attorneys' fees of \$28,800.00, and (b) to further the remedial
14 purposes established under Proposition 65 by providing funds for Plaintiff's ongoing costs of
15 monitoring compliance with this Consent Judgment, as well as for its future investigational and
16 enforcement activities regarding toxic chemicals and Proposition 65, are consistent with the
17 private enforcement mechanism and funds allocation scheme established by Health & Safety
18 Code §§ 25249.7(d) and 25249.12(d) and AESI's non-profit mission.

19 4. Pursuant to Health & Safety Code §25249.7(f)(4)(B) and Code of Civil Procedure
20 §1033.5, the Court finds that the Consent Judgment's contractual provision at section 4 for the
21 Plaintiff to pay, pursuant to its written contingent fee agreement, to Carrick Law Group, P.C.,
22 attorneys' fees of \$28,800.00 from the financial relief set forth in section 4 of the Consent
23 Judgment, as well as the amount of these fees and costs, are reasonable under California law.

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