

Michael Freund SBN 99687
Law Office of Michael Freund
1915 Addison Street
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

Attorney for Plaintiff
David Steinman

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DAVID STEINMAN,

Plaintiff

v.

THE PROCTER AND GAMBLE
DISTRIBUTING LLC and DOES 1-100

Defendants..

Case No. CGC-11-508757

**[PROPOSED] AMENDED CONSENT
JUDGMENT**

Date: May 5, 2011
Time: 9:30 a.m.
Dept.: 301

Honorable Judge Peter J. Busch

I. INTRODUCTION

1.1 On or about August 31, 2010, Plaintiff David Steinman (“Plaintiff”) as a private attorney general and in the public interest filed a Complaint for Injunctive and Declaratory Relief and Civil Penalties against Defendant The Procter & Gamble Distributing LLC (“Procter & Gamble”). The Complaint alleges that Procter & Gamble violated Health and Safety Code section 25249.6 of the Safe Drinking Water and Toxic Enforcement Act of 1986 (also known as “Proposition 65,”) through the sale of the hair care product under the name Pantene Pro V Nature Fusion Shampoo (“Covered Product”) by failing to provide a clear and reasonable warning.

1.2 The Complaint is based on allegations contained in a Notice of Violation dated August 31, 2010 served on the California Attorney General, other public enforcers and Procter & Gamble. A true and correct copy of the Notices of Violation is attached hereto as Exhibit A.

1.3 Plaintiff David Steinman is an individual interested in the enforcement of Proposition 65.

1.4 Defendant Procter & Gamble is a business entity that employs ten or more persons in the course of doing business for purposes of Proposition 65.

1.5 The Parties enter into this Consent Judgment in order to achieve a full settlement of disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged and expensive litigation. Plaintiff David Steinman has diligently prosecuted this matter and is settling this case in the public interest.

1.6 Procter & Gamble denies the material factual and legal allegations contained in Plaintiff's August 31, 2010 Notice of Violation and Complaint and maintains that the Covered Product that Procter & Gamble has manufactured, distributed or offered for sale or use in California have been and are in compliance with all laws, including Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Procter & Gamble of any fact, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Procter & Gamble of any fact, issue of law or violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy or defense that Procter & Gamble may have in any other or further legal proceedings. Nothing in this Consent Judgment or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by Procter & Gamble as to any fault, wrongdoing or liability whatsoever.

II. JURISDICTION AND VENUE

2.1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the subject matter of this action and personal jurisdiction over the allegations of violation contained in the Notice of Violation and Complaint and personal jurisdiction over the Parties as to the facts alleged in the Complaint, that venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment pursuant to the terms set forth herein.

III. INJUNCTIVE RELIEF -REFORMULATION AND TESTING

3.1 Reformulation of Covered Products

3.1.1 As of January 1, 2011, Procter & Gamble shall not manufacture for sale in California and for sale to a third party for retail sale in California any Covered Product that contains more than 10 ppm of 1,4-dioxane, allowing for normal analytical variability as defined by the quality control methodology set forth in Exhibit B. To the extent Procter & Gamble is in compliance with the obligations imposed by Sections 3.2 and 3.3 of this Consent Judgment, no Proposition 65 warning shall be required, except as specified therein.

3.2 Clear and Reasonable Warning

3.2.1 In the event that Procter & Gamble obtains information, through a source other than the testing set out in section 3.3 of this Consent Judgment, that one or more lots of Covered Products manufactured after January 1, 2011, for sale in California or for distribution to a third party for retail sale in California contains more than 10 ppm of 1, 4-dioxane, Procter & Gamble shall have thirty (30) days after receipt of the data, product specifications including product lot code information, and analysis substantiating such levels in which to verify such information. Hereinafter, this date shall be referred to as the “verification date.” If the information is demonstrated to be accurate, through testing following the protocol specified in Exhibit B,

Procter & Gamble shall take steps to ensure that further production lots of the Covered Product contain no more than 10 ppm of 1, 4-dioxane, allowing for normal analytical variability as defined by the quality control methodology set forth in Exhibit B. If Procter & Gamble cannot, within ninety (90) days of the verification date, ensure that the Covered Product contains no more than 10 ppm of 1,4-dioxane, allowing for normal analytical variability as defined by the quality control methodology set forth in Exhibit B, then within 120 days of the verification date, Procter & Gamble may elect either to discontinue the distribution for sale in California of that specific product or to provide a clear and reasonable warning on any such lots in Procter & Gamble's possession which are intended for sale within California with the following language: **“WARNING:** This product contains a chemical known to the State of California to cause cancer.”

In the event that this warning is required, the warning shall be prominently affixed to or printed on the container, cap, label or unit package of the Covered Product so as to be clearly conspicuous, as compared with other statements or designs on the label as to render it likely to be read and understood by an ordinary purchaser or user of the product.

3.3 Testing

3.3.1 Commencing no later than thirty (30) days after the Notice of Entry of Judgment is served on Procter & Gamble, the company shall undertake testing of the Covered Product. Procter & Gamble shall, on a quarterly basis, randomly select at least three (3) samples of the Covered Products for testing to confirm that the Covered Product conforms to the reformulation standard set out in section 3.1. If any sample yields a test result of greater than 10 ppm of 1,4-dioxane, then Procter & Gamble will retest the same product in duplicate to determine the impact of normal analytical variability, and Procter & Gamble will also test two (2) additional

random samples of that specific Covered Product. Procter & Gamble shall perform all testing pursuant to this Consent Judgment using the protocol set out in Exhibit B to this document.

Procter & Gamble shall be required to conduct no further testing of the Covered Product as long as that product meets the reformulation standard set out in section 3.1.1 for four consecutive quarters.

3.3.2 If any Covered Product is found during the first four (4) consecutive quarters to not meet the reformulation standards set out in section 3.1, Procter & Gamble shall continue to test that specific Covered Product(s) for an additional four (4) consecutive quarters or until the specific Covered Product meets the reformulation standard set out in Section 3.1 for four (4) consecutive quarters, whichever occurs first.

If after eight (8) quarters of testing, any specific Covered Product fails to comply with the reformulation standard set out in section 3.1 for four (4) consecutive quarters, then Procter & Gamble shall, within sixty (60) days of the last test, provide the warning set out in section 3.2, above or discontinue distribution for sale in California of the Covered Product.

Procter & Gamble shall retain copies of its test data obtained pursuant to sections 3.3.1 and 3.3.2 for a period of three years from the date testing commenced and shall provide all test data to David Steinman upon written request and consummation of a satisfactory confidentiality agreement that permits enforcement of this Consent Judgment and protects the information shared from non-mandatory public disclosure.

IV. PAYMENT

In full and final satisfaction of David Steinman's costs of litigation, attorney's fees and all other expenses, Procter & Gamble shall make a total payment of \$50,000.00, payable within

fifteen (15) business days of receiving the Notice of Entry of Consent Judgment. Said payments shall be for the following:

A. \$7,500.00 as civil penalties payable to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and \$2,500.00 payable to Freedom Press pursuant to Health & Safety Code Section 25249.12. Upon receiving Procter & Gamble’s civil penalty, plaintiff’s counsel shall provide Procter & Gamble with a copy of the transmittal letter of the funds sent by Freedom Press to OEHHA.

B. \$ 29,238.00 payable to Freedom Press which includes:

i) activities directly related to the investigation and research of consumer products in the marketplace that may contain Proposition 65 listed chemicals, the purchasing, organizing and storage of these products, the testing of those products for 1,4-dioxane, formaldehyde, lead and other toxic chemicals, research into alternatives to the use of toxic chemicals and the promotion of those alternatives, the enforcement of Proposition 65 and post settlement activities including organization expenses for press conferences, travel, and post-event activities; and

ii) reimbursement of out of pocket expenses of \$282.00 . The Tax Identification No. for Freedom Press is 95-4736088.

C. \$10,762.00 payable to Michael Freund as reimbursement of David Steinman’s attorney’s fees in the amount of \$10,312.00 and for reimbursement of costs in the amount of \$450.00. Procter & Gamble’s payments shall be mailed to the Law Office of Michael Freund.

V. RELEASE AND CLAIMS COVERED

This Consent Judgment is a full, final and binding resolution and release between David Steinman, acting in the public interest pursuant to Health & Safety Code Section 25249.7 (d) and Procter & Gamble, and each of its parents, subsidiaries, affiliates, divisions, subdivisions,

distributors, wholesalers, customers, officers, directors, shareholders, employees, agents, attorneys, suppliers, manufacturers, distributors, retailers, successors and assigns (“Released Parties”) of any known alleged violation of Proposition 65, its implementing regulations or any other statutory or common law claims that have been or could have been asserted in the Complaint for failure to provide clear and reasonable warnings of exposure to 1,4-dioxane from the handling, use or consumption of the Covered Product, or any other claim based on the facts or conduct alleged in the Complaint as to such product. Procter & Gamble waives any claims against David Steinman, his agents, representatives employees, attorneys, successors and assigns and representatives (“the Releasees”) for all actions or statements made or undertaken by the Releasees in the course of seeking enforcement of Proposition 65 in this Action.

It is the intention of the Parties to this release that, upon entry of this Consent Judgment by the Court, this Consent Judgment shall be effective as a full and final accord and satisfaction and Release of every released claim up to and including the date of entry of the Consent Judgment. In furtherance of this intention, Plaintiff acknowledges that he is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

David Steinman, on his own behalf and on behalf of his past or current agents,

representatives, employees, attorneys, successors and assigns, hereby waives and relinquishes all of the rights and benefits that Plaintiff has, or may have, under California Civil Code section 1542 (as well as any similar rights and benefits which they may have by virtue of any similar statute or rule of law in any other state or territory of the United States). David Steinman hereby acknowledges that he may hereafter discover facts in addition to, or different from, those which he now knows or believes to be true with respect to the subject matter of this Consent Judgment and the Consent Judgment entered by the Court and the released claims, but that notwithstanding the foregoing, it is David Steinman's intention hereby to fully, finally, completely and forever settle and release each, every and all released claims, and that in furtherance of such intention, the release herein given shall be and remain in effect as a full and complete general release, notwithstanding the discovery or existence of any such additional or different facts. David Steinman hereby warrants and represents to Procter & Gamble that (a) he has not previously assigned any released claim, and (b) he has the right, ability and power to release each released claim.

VI. CONTINUING OBLIGATIONS

Nothing herein shall be construed as diminishing Procter & Gamble's continuing obligations to comply with Proposition 65. Further, in the event of any allegation of failure to comply, both parties shall use best efforts to resolve such differences prior to seeking judicial intervention.

VII. SEVERABILITY OF UNENFORCEABLE PROVISIONS

In the event that, after entry of this Consent Judgment in its entirety, any of the provisions hereof are subsequently held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

VIII. ENFORCEMENT OF CONSENT JUDGMENT

David Steinman may, by motion or as otherwise provided for enforcement of Judgments, seek relief from this Superior Court of the State of California to enforce the terms and conditions contained in this Consent Judgment after its entry by the Court.

IX. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment entered by the Court shall apply to, be binding upon and inure to the benefit of Procter & Gamble, its parents, subsidiaries, affiliates, divisions, subdivisions, officers, directors, shareholders, employees, agents, attorneys, suppliers, manufacturers, successors and assigns, and upon David Steinman on his own behalf and on behalf of the general public and the public interest, as well as Mr. Steinman's agents, representatives, employees, attorneys, successors and assigns.

X. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment entered by the Court may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a regularly noticed motion of any Party to the Consent Judgment as provided by law and upon entry of a modified Consent Judgment by the Court.

XI. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter to enforce, modify or terminate the Consent Judgment.

XII. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

XIII. COURT APPROVAL

This Consent Judgment shall be effective only after it has been executed by the Court.

Otherwise, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

XIV. EXECUTION IN COUNTERPARTS

This Consent Judgment may be executed in counterparts and/or by facsimile, which taken together shall be deemed to constitute one document.

XV. NOTICES

All notices required to be given to either Party to this Consent Judgment by the other shall be sent, via either (a) first-class, registered, certified mail, return receipt requested, (ii) overnight courier, or (iii) personal messenger to the following agents:

FOR DAVID STEINMAN:

David Steinman
120 N. Topanga Canyon, Suite 107,
Topanga, CA 90290

Michael Bruce Freund
Law Offices of Michael Freund
1915 Addison Street Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

FOR THE PROCTER & GAMBLE LLC:

Joseph P. Suarez
The Procter and Gamble Company
Legal Division, S9-115 GO
299 E. Sixth Street
Cincinnati, OH 45202

Carolyn Collins
NIXON PEABODY LLP
One Embarcadero Center, 18th Floor
San Francisco, CA 94111-3600
Telephone: (415) 984-8200
Facsimile: (415) 984-9300

XVI. REPORTING REQUIREMENTS

David Steinman agrees to comply with the reporting form requirements referenced in California Health & Safety Code §25249.7(f).

XVII. GOVERNING LAW

The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California.

XVIII. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for the Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment entered thereon, the terms and provisions shall not be construed against either Party.

XIX. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

In the event a dispute arises with respect to either party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

XX. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

XXI. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT

This settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this settlement and, being fully informed regarding the matters which are the subject of this action, to:

- (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and
- (2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the Settlement and approve this Consent Judgment.

IT IS SO STIPULATED: THE PROCTER & GAMBLE DISTRIBUTING LLC

Dated: _____, 2011

Steven W. Miller
The Procter & Gamble Distributing LLC
Vice President and Secretary

Dated: _____, 2011

David Steinman

APPROVED AS TO FORM:

Dated: _____, 2011

NIXON PEABODY LLP

Carolyn Collins
Attorney for Defendant
The Procter & Gamble Distributing LLC

Dated: _____, 2011

LAW OFFICE OF MICHAEL FREUND

Michael Freund
Attorney for Plaintiff
David Steinman

IT IS SO ORDERED:

Dated: _____, 2011

JUDGE, SUPERIOR COURT

EXHIBIT B

PROTOCOL

Summary of Method:

An aliquot of sample (~1 g) is accurately weighed into a vial with 5 mL water and one gram of sodium sulfate. Internal standard (5 $\mu\mu\text{g}$ 1,4-Dioxane-d8) is added. The vial is capped and heated at 95 °C for 60 minutes. A one mL aliquot of the headspace over the sample is analyzed by direct injection using the following GCMS conditions or equivalent.

GCMS Conditions

Instrument: Agilent 5973N

Column: 25 m x 0.20 mm HP-624, 1.12 micron film

Column Temp: 40 °C (hold 3 min) to 100 °C at 10 °C/min, then to 180 °C at 25 °C/min (hold 5 min)

Injector Temp: 220 °C

Mass Range: Selected ion monitoring: masses 43, 58 and 88 (dioxane): 64 and 96 (dioxane-d8);
1.72 cycles per second

Quality control shall include at a minimum

1. Calibration using a blank and 4 standards over the range of 0.5 to 10 micrograms of 1,4-dioxane with a regression fit R squared >0.995.
2. A method blank analyzed just prior to the samples must be free of 1,4-dioxane (<1 ppm)
3. Continuing calibration standards should be analyzed after every 10 or fewer samples, and the result must be within 10% of the initial calibration.
4. With each batch of 20 or fewer samples, one of the samples must be analyzed in duplicate and as a spiked sample. QC limits for duplicates which exceed 5 ppm is <25% relative percent difference. QC limits for spiked samples is 75-125% recovery when the amount spiked is greater than or equal to the background in the unspiked sample.