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5 Attorney for Alisa Schochet

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 FOR THE COUNTY OF LOS ANGELES
8

9) Case No.: BC502990
10) [PROPOSED] CONSENT JUDGMENT
11) Judge Soussan G. Bruguera
12)
13)
14)
Plaintiff,)
vs.)
Defendant)

15 **1. DEFINITIONS**

16 The products covered by this Consent Judgment shall be designated “Covered
17 Products.” The Covered Products are SodaStream gas carbonators (aluminum cylinders with a
18 brass valve).
19

20 The term “Effective Date” means the date this Consent Judgment is approved by the
21 Superior Court of the State of California, County of Los Angeles – Central District.
22

23 The term “Listed Chemical” means lead and lead compounds.

24 The term “Multi-Trip Box” means the box that is used to ship 18 full replacement
25 carbonators from SodaStream to retailers, and empty carbonators from retailers back to
26 SodaStream, in compliance with U.S. Department of Transportation requirements.
27

28 The term “Parties” means Plaintiff Alisa Schochet and Defendants SodaStream USA, Inc.

The term “Reverse Logistics Process” means the return of a Covered Product, including

1 (1) the customer’s exchange of an empty carbonator for a filled replacement carbonator at the
2 retailer and (2) the retailer’s shipment of the Multi-Trip Box to SodaStream in compliance with
3 U.S. Department of Transportation regulations.

4 The Term “Safe Harbor Level” means the Maximum Allowable Daily Limit for lead of
5 0.5 micrograms per day ($\mu\text{g}/\text{day}$) established by the Office of Environmental Health Hazard
6 Assessment (“OEHHA”).
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9 **2. INTRODUCTION**

10 This Consent Judgment is entered into by and between Plaintiff Alisa Schochet
11 (“Schochet”) and Defendant SodaStream USA, Inc., (“SodaStream”). Schochet and SodaStream
12 are collectively referred to as the “Parties.”
13

14 Schochet is an individual residing in California who is acting as a private enforcer
15 pursuant to California Health & Safety Code § 25249.7(d).

16 For purposes of this Consent Judgment, SodaStream employs 10 or more persons and is a
17 person doing business in California for the purpose of Proposition 65.

18 On or about August 8, 2012, Schochet served SodaStream, Staples, Inc. (“Staples”) and
19 various public enforcement agencies with a document entitled “60-Day Notice of Violation”
20 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that SodaStream and
21 Staples were in violation of Proposition 65. Schochet’s Notice alleges that SodaStream and
22 Staples have manufactured, distributed, and/or offered for sale in California certain soda
23 accessories that expose consumers to lead and lead compounds without the requisite Proposition
24 65 warnings. Lead and lead compounds (the “Listed Chemical”) are listed pursuant to
25 Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and
26 other reproductive harm. The Notice alleges that SodaStream’s and Staples’s conduct violates
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1 Health & Safety Code §25249.6, the warning provision of Proposition 65.

2 On March 14, 2013, Plaintiff filed the action entitled *Schochet v. Sodastream USA, Inc.*,
3 Case No. BC502990, alleging violations of Proposition 65 and the Unfair Competition Act.

4 SodaStream denies the material, factual, and legal allegations contained in the Notice and
5 Complaint, and maintains that all products sold, distributed, or offered for sale in California have
6 been and are in compliance with all laws, including, without limitation, Proposition 65.

7
8 The Parties enter into this Consent Judgment to resolve all Proposition 65 claims
9 concerning SodaStream's products set forth in Schochet's Notice and all Proposition 65 and
10 Unfair Competition Act claims set forth in Plaintiff's Complaint, including claims against
11 SodaStream's customer, Staples. By executing this Consent Judgment, the Parties do not admit
12 any facts or conclusions or law. It is the Parties' intent that nothing in this Consent Judgment
13 shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or
14 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as
15 an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.
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18 Upon approval of this Consent Judgment, the Parties waive their respective rights to a
19 hearing or a trial on the allegations of the Complaint.

20 Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,
21 argument, or defense the Parties may have in any other or future legal proceedings, except as
22 provided in this Consent Judgment.

24 **3. INJUNCTIVE RELIEF**

25 The brass carbonator valves are the only portion of the Covered Product with the
26 potential to cause exposures to Listed Chemicals. Accordingly, this case concerns the valves.

27 SodaStream engaged an environmental consulting firm, Exponent, Inc. to evaluate
28

1 whether Listed Chemicals present in the brass carbonator valves would produce an exposure in
2 excess of the Proposition 65 Safe Harbor Level established by the Office of Environmental
3 Health Hazard Assessment (“OEHHA”), the lead agency for the implementation of Proposition
4 65. For reproductive and developmental toxins, the Safe Harbor Level is referred to as the
5 Maximum Allowable Does Level (“MADL”). OEHHA has developed an MADL for lead of 0.5
6 micrograms per day ($\mu\text{g}/\text{day}$). OEHHA has also developed a no-significant-risk level of 15
7 $\mu\text{g}/\text{day}$ for lead based on cancer.
8

9 Depending on the size of the carbonator, each Covered Product will make up to 60 or 130
10 liters of sparkling water. A household of four might need to replace a 130-liter carbonator every
11 3-4 months, and a 60-liter carbonator every 6-8 weeks, depending on usage.
12

13 When the carbonator is empty, the consumer brings it to a retail location to exchange it
14 for a full one. The customer brings the used carbonator to the retailer’s customer service counter
15 and hands it to the customer service clerk. The clerk removes a full carbonator from a
16 SodaStream Multi-Trip Box behind the counter and places the used carbonator in its place. The
17 valve on the full carbonator is covered by a plastic cap and tamper evident shrink wrap;
18 therefore, there is no exposure to or touching of the valve.
19

20 The parties agree that the only possible route of exposure to Listed Chemicals from
21 Covered Products is incidental ingestion via finger-to-mouth contact that may occur if the
22 carbonator is touched or handled. The individual would need to handle the carbonator and have
23 fingertip-to-mouth contact immediately after handling the carbonator more than seven (7) times
24 in one day, with three fingers contacting the mouth each time. During use, the valves do not
25 emit lead vapors or generate lead particles that can become airborne or inhaled; therefore,
26 inhalation is not a relevant pathway. Skin contact with lead is not known to affect the health of
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1 people or animals, because lead does not easily penetrate the skin under normal conditions.
2 Even though the carbonator valve does not come into direct contact with liquid beverages,
3 Exponent, Inc. evaluated this potential pathway by analyzing the amount of lead present in
4 carbonated water following typical use of the Covered Products. There were no detectable levels
5 of lead found in any of the pre-carbonation or post-carbonation water samples, confirming that
6 there is no exposure to lead from the carbonator valve in carbonated water.
7

8 Consumers come into contact with empty carbonators when they exchange them for
9 replacement carbonators. Because this happens only once every few weeks or months, the
10 Parties agree that any exposure of a consumer who engages in typical use of Covered Products
11 falls within the Safe Harbor Level and no consumer warning is required.
12

13 Without conceding the existence of any exposures, SodaStream recognizes the possibility
14 that the exposure of an employee who handles multiple carbonators per day could exceed the
15 Safe Harbor Level.
16

17 Accordingly, a Covered Product that is shipped by SodaStream for sale in California on or
18 after 180 days after the Effective Date shall include a warning as provided below.

19 Product Labeling. The following warning statement shall be provided to retail workers
20 likely to handle more than seven (7) Covered Products within a day:

21 “WARNING: The valves contain a chemical known to the State of California to cause
22 cancer, and birth defects or other reproductive harm.”
23

24 This warning may be provided by printing a label measuring approximately 85 to 86
25 mm (3.3 x 3.4 in.) on the top flap of the Multi-Trip Box in which full Covered Products are
26 shipped and/or empty covered products are returned for refilling used by SodaStream for its
27 Reverse Logistics Process. The label will be printed on the box in black text.
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1 **4. SETTLEMENT PAYMENTS**

2 SodaStream shall pay a total settlement amount of \$40,000 to Schochet, to be
3 allocated between the following two categories by Schochet as follows. The allocation is
4 based on the Parties' agreement that the potential for any exposure to occur is limited.
5

6 Civil Penalty: \$ 2,000.00 as a civil penalty pursuant to Health and Safety Code
7 Section 25249.7(b). Schochet shall remit 75% of the civil penalty to the California Office of
8 Environmental Health Hazard Assessment ("OEHHA"), pursuant to Health and Safety Code
9 Section 25192.
10

11 Attorneys' Fees and Costs: \$38,000 to reimburse Schochet and her attorneys for their
12 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result
13 of investigating, bringing this matter to SodaStream's attention, litigating and negotiating a
14 settlement, pursuant to Code of Civil Procedure Section 1021.5.
15

16 Payments. SodaStream has delivered the payments required under this section to
17 Daniel Greenbaum, Esq. Client Trust Account. These funds shall remain in the trust account
18 pending judicial approval of this Consent Judgment.

19 **5. CLAIMS COVERED AND RELEASED**

20 This Consent Judgment is a full, final, and binding resolution between Schochet on
21 behalf of herself, her past and current attorneys, agents, representatives, successors, assigns,
22 and any other person acting in the public interest pursuant to Health & Safety Code §
23 25249.7(d) on the one hand; and SodaStream, and its parents, shareholders, divisions,
24 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and
25 assigns ("Defendant Releasees"), all entities to whom they directly or indirectly distribute or
26 sell or have in the past directly or indirectly distributed or sold Covered Products, including
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1 but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative
2 members, and Defendant Releasees' licensors and licensees, including but not limited to
3 Staples ("Downstream Defendant Releasees"), on the other hand; regarding any violation of
4 Proposition 65 or the Unfair Competition Act that was or could have been asserted against
5 SodaStream, Defendant Releasees, and Downstream Defendant Releasees, with respect to the
6 failure to warn about any Covered Products manufactured, shipped, distributed or sold by
7 SodaStream, Defendant Releasees or Downstream Defendant Releasees prior to the Effective
8 Date. The Parties further understand and agree that this release shall not extend upstream to
9 any entities that manufactured the Covered Products or any component parts thereof for
10 SodaStream or to any distributors or suppliers who sold the Covered Products or any
11 component parts thereof to SodaStream.
12

13
14 In further consideration of the promises and agreements herein contained, the injunctive
15 relief commitments set forth in Section 3, and for the payments to be made pursuant to Section 4,
16 Schochet, on behalf of herself, her past and current agents, representatives, attorneys, including
17 but not limited to the Daniel Greenbaum, Esq., successors, and/or assignees, hereby waives all
18 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
19 claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,
20 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
21 but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever,
22 whether known or unknown, fixed, or contingent (collectively "Claims") that were brought or
23 could have been brought against SodaStream, the Defendant Releasees, and the Downstream
24 Defendant Releasees based on claims arising under Proposition 65 with respect to Listed
25 Chemicals in the Covered Products, as such claims relate to the alleged failure to warn under
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1 Health & Safety Code Section 25249.6.

2 On behalf of itself and Defendant Releasees, SodaStream waives all rights to institute any
3 form of action against Schochet, her attorneys, consultants, and representatives for all actions
4 taken or statements made in the course of this Action prior to the date of the execution of this
5 Consent Judgment.
6

7 Compliance with the terms of this Consent Judgment by SodaStream resolves any
8 issue, now and in the future, raised by the parties to this Consent Judgment or any other person
9 suing in the public interest pursuant to § 25249.7(d) concerning compliance by SodaStream,
10 the Defendant Releasees, and the Downstream Defendant Releasees with the requirements of
11 with Proposition 65 with respect to lead and lead compounds in any Covered Products that are
12 manufactured, shipped, or sold by SodaStream, the Defendant Releasees, or the Downstream
13 Defendant Releasees following the Effective Date.
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15 For avoidance of doubt, the Parties expressly state that Staples is a third-party beneficiary
16 of this Section 5.
17

18 **6. ENFORCEMENT**

19 Any Party may file suit to enforce the terms and conditions contained in this Consent
20 Judgment, as provided in this paragraph. A Party may enforce any of the terms and conditions of
21 this Consent Judgment only after that Party first provides 30 days written notice to the Party
22 allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts
23 to resolve such Party's failure to comply in an open and good faith manner. The Parties agree
24 that the requirements of this paragraph shall also apply to any alleged failures to comply with the
25 terms and conditions of this Consent Judgment by Downstream Defendant Releasees, in which
26 case notice of such alleged failures shall be given to SodaStream.
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1 **7. MODIFICATION**

2 This Consent Judgment may be modified from time to time by express written agreement
3 of the Parties, with the approval of the Court, or by an order of this Court upon motion and in
4 accordance with law. A Party seeking to modify this Consent Judgment shall attempt in good
5 faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent
6 Judgment. The Attorney General shall be served with notice of any proposed modification to
7 this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.
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9 **8. ENTIRE AGREEMENT**

10 This Consent Judgment contains the sole and entire agreement and understanding of the
11 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
12 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
13 and therein. No representations, oral or otherwise, express or implied, other than those
14 specifically referred to in this Consent Judgment have been made by any Party hereto. No
15 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
16 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
17 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
18 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.
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22 **9. GOVERNING LAW AND APPLICATION**

23 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and shall apply only to Covered Products that are sold or offered for sale in the State
25 of California. In the event that Proposition 65 is repealed, preempted, or otherwise rendered
26 inapplicable by reason of law generally, or as to the Products, then SodaStream shall have no
27 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
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1 Products are so effected.

2 This Consent Judgment shall apply to and be binding upon Schochet and SodaStream and
3 its divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns.

4 The Parties, including their counsel, have participated in the preparation of this Consent
5 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
6 Consent Judgment was subject to revision and modification by the Parties and has been
7 accepted and approved as to its final form by all Parties and their counsel.

8 *Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be*
9 *interpreted against any Party as a result of the manner of the preparation of this Consent*
10 *Judgment.*

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13 **10. PROVISION OF NOTICE**

14 All notices required pursuant to this Consent Judgment and correspondence shall be sent
15 to the following:

16 For Schochet:

17 Daniel Greenbaum, Esq., 1467 South Holt Ave. #2, Los Angeles, CA 90035

18 For SodaStream:

19 Seth Goldberg, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036;

20 and Eyal Shohat, SodaStream USA, Inc., 200 E. Park Drive, Suite 600, Mt. Laurel, NJ 08054.

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23 **11. ATTORNEY'S FEES**

24 A party who unsuccessfully brings or contests an action arising out of this Consent
25 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
26 unless the unsuccessful party has acted with substantial justification. For purposes of this
27 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
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1 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

2 Nothing in this Section 12 shall preclude a Party from seeking an award of sanctions
3 pursuant to law.

4
5 **12. EXECUTION AND COUNTERPARTS**

6 The stipulations to this Consent Judgment may be executed in counterparts and by means
7 of facsimile and/or portable document format (pdf), which taken together shall be deemed to
8 constitute one document.

9
10 **14. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(t)**

11 Schochet agrees to comply with the reporting form requirements referenced in California
12 Health and Safety Code § 25249.7(f).

13 **15. COURT APPROVAL**

14 This Consent Judgment shall become effective upon entry by the Court. Plaintiff shall
15 prepare and file a Motion for Approval of this Consent Judgment and Defendant SodaStream
16 shall support entry of this Consent Judgment.

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

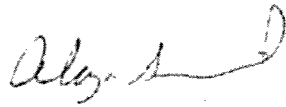
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22 **15. AUTHORIZATION**

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

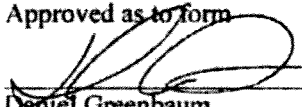
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The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO: Dated:




Alisa Schochet

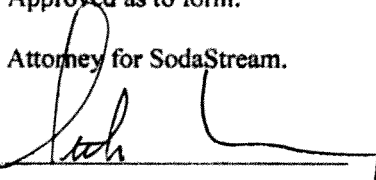
Approved as to form


Daniel Greenbaum.

Dated: SodaStream USA, Inc.

By: 

EYAL SHOHAT

Approved as to form.
Attorney for SodaStream.


Seth Goldberg

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