

1 Daniel N. Greenbaum, Esq. (SBN 268104)
LAW OFFICE OF DANIEL N. GREENBAUM
2 1467 South Holt Avenue #2
Los Angeles, CA 90035
3 Telephone: (310) 200-2631
Facsimile: (818) 788-3847
4 Email: danielgreenbaumesq@gmail.com

5 Attorney for Alisa Schochet

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF LOS ANGELES
9 CENTRAL DISTRICT

10 ALISA SCHOCHET,

11 Plaintiff,

12 vs.

13 SODASTREAM USA, INC.,

14 Defendant

) Case No.: BC502990

) **[PROPOSED] CONSENT JUDGMENT**

) Judge Soussan G. Bruguera

15
16 **1. DEFINITIONS**

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

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

23 The term “Multi-Trip Box” means the box that is used to ship (1) full replacement
24 carbonators from SodaStream to retailers and empty carbonators from retailers back to
25 SodaStream, and (2) full replacement carbonators used for demonstration and training purposes
26 to SodaStream employees in California and empty carbonators back to SodaStream in
27 compliance with U.S. Department of Transportation requirements.
28

1 The term “Parties” means Plaintiff Alisa Schochet and Defendant SodaStream USA, Inc.

2 The term “Reverse Logistics Process” means the return of a Covered Product, including
3 (1) the customer’s exchange of an empty carbonator for a filled replacement carbonator at the
4 retailer and (2) the retailer’s shipment of the Multi-Trip Box to SodaStream in compliance with
5 U.S. Department of Transportation regulations.

6 The Term “Safe Harbor Level” means the Maximum Allowable Daily Limit for lead of
7 0.5 micrograms per day ($\mu\text{g}/\text{day}$) established by the Office of Environmental Health Hazard
8 Assessment (“OEHHA”).

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

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

17 On or about August 8, 2012, Schochet served SodaStream, Staples, Inc. (“Staples”) and
18 various public enforcement agencies with a document entitled “60-Day Notice of Violation”
19 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that SodaStream and
20 Staples were in violation of Proposition 65. Schochet’s Notice alleges that SodaStream and
21 Staples have manufactured, distributed, and/or offered for sale in California certain soda
22 accessories that expose consumers to lead and lead compounds without the requisite Proposition
23 65 warnings. Lead and lead compounds (the “Listed Chemical”) are listed pursuant to
24 Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and
25 other reproductive harm. The Notice alleges that SodaStream’s and Staples’s conduct violates
26 Health & Safety Code §25249.6, the warning provision of Proposition 65.
27

28 On March 14, 2013, Plaintiff filed the action entitled *Schochet v. Sodastream USA, Inc.*,

1 Case No. BC502990, alleging violations of Proposition 65 and the Unfair Competition Act.

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

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

13
14 Upon approval of this Consent Judgment, the Parties waive their respective rights to a
15 hearing or a trial on the allegations of the Complaint.

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

19 **3. INJUNCTIVE RELIEF**

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

22 SodaStream engaged an environmental consulting firm, Exponent, Inc., to evaluate
23 whether Listed Chemicals present in the brass carbonator valves would produce an exposure in
24 excess of the Proposition 65 Safe Harbor Level established by the Office of Environmental
25 Health Hazard Assessment ("OEHHA"), the lead agency for the implementation of Proposition
26 65. For reproductive and developmental toxins, the Safe Harbor Level is referred to as the
27 Maximum Allowable Dose Level ("MADL"). OEHHA has developed an MADL for lead of 0.5
28 micrograms per day ($\mu\text{g}/\text{day}$). OEHHA has also developed a no-significant-risk level of 15

1 $\mu\text{g}/\text{day}$ for lead based on cancer.

2 When the carbonator is empty, the consumer brings it to a retail location to exchange it
3 for a full one. The customer brings the used carbonator to the retailer's customer service counter
4 and hands it to the customer service clerk. The clerk removes a full carbonator from a
5 SodaStream Multi-Trip Box behind the counter and places the used carbonator in its place. The
6 valve on the full carbonator is covered by a plastic cap and tamper evident shrink wrap;
7 therefore, there is no exposure to or touching of the valve.

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

21
22 Consumers come into contact with empty carbonators when they exchange them for
23 replacement carbonators. Because this happens only once every few weeks or months, the
24 Parties agree that any exposure of a consumer who engages in typical use of Covered Products
25 falls within the Safe Harbor Level and no consumer warning is required.

26 Without conceding the existence of any exposures, SodaStream recognizes the possibility
27 that the exposure of one who handles multiple carbonators per day through the Reverse Logistics
28 Process or as a SodaStream employee providing training and demonstrations could exceed the

1 Safe Harbor Level.

2 Accordingly, a Multi-Trip Box containing multiple Covered Products that is shipped by
3 SodaStream for sale or for use in training and demonstration purposes in California on or after
4 180 days after the Effective Date shall include a warning as provided below.

5 Product Labeling. The following warning statement shall be affixed to multi-trip boxes
6 used in California in the manner described below:

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

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

13
14 **4. SETTLEMENT PAYMENTS**

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

18 Civil Penalty: \$ 2,000.00 as a civil penalty pursuant to Health and Safety Code
19 Section 25249.7(b). Schochet shall remit 75% of the civil penalty to the California Office of
20 Environmental Health Hazard Assessment (“OEHHA”), pursuant to Health and Safety Code
21 Section 25192.

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

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

1 **5. CLAIMS COVERED AND RELEASED**

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

21 In further consideration of the promises and agreements herein contained, the injunctive
22 relief commitments set forth in Section 3, and for the payments to be made pursuant to Section 4,
23 Schochet, on behalf of herself, her past and current agents, representatives, attorneys, including
24 but not limited to the Daniel Greenbaum, Esq., successors, and/or assignees, hereby waives all
25 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
26 claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,
27 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
28 but not limited to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever,

1 whether known or unknown, fixed, or contingent (collectively “Claims”) that were brought or
2 could have been brought against SodaStream, the Defendant Releasees, and the Downstream
3 Defendant Releasees based on claims arising under Proposition 65 with respect to Listed
4 Chemicals in the Covered Products, as such claims relate to the alleged failure to warn under
5 Health & Safety Code Section 25249.6.

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

10 Compliance with the terms of this Consent Judgment by SodaStream resolves any
11 issue, now and in the future, raised by the parties to this Consent Judgment or any other person
12 suing in the public interest pursuant to § 25249.7(d) concerning compliance by SodaStream,
13 the Defendant Releasees, and the Downstream Defendant Releasees with the requirements of
14 with Proposition 65 with respect to lead and lead compounds in any Covered Products that are
15 manufactured, shipped, or sold by SodaStream, the Defendant Releasees, or the Downstream
16 Defendant Releasees following the Effective Date.

17 For avoidance of doubt, the Parties expressly state that Staples is a third-party beneficiary
18 of this Section 5.

19
20 **6. ENFORCEMENT**

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

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.

8 **8. ENTIRE AGREEMENT**

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

19 **9. GOVERNING LAW AND APPLICATION**

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

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

28 The Parties, including their counsel, have participated in the preparation of this Consent

1 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
2 Consent Judgment was subject to revision and modification by the Parties and has been
3 accepted and approved as to its final form by all Parties and their counsel.

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

7 **10. PROVISION OF NOTICE**

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

10 For Schochet:

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

12 For SodaStream:

13 Seth Goldberg, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036;
14 and Eyal Shohat, SodaStream USA, Inc., 200 E. Park Drive, Suite 600, Mt. Laurel, NJ 08054.

15 **11. ATTORNEY'S FEES**

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

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

23 **12. EXECUTION AND COUNTERPARTS**

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

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

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

3 **15. COURT APPROVAL**

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

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

10 **15. AUTHORIZATION**

11 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
12 party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
13 Consent Judgment on behalf of the party represented and legally bind that party.
14

15
16
17 The undersigned have read, understand and agree to all of the terms and conditions of this
18 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
19 costs.

20 AGREED TO: Dated:



Alisa Schochet

21
22 Approved as to form



Daniel Greenbaum.


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Dated: SodaStream USA, Inc.

By: 

Approved as to form.

Attorney for SodaStream.



Seth Goldberg