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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

12 THE PUBLIC INTEREST ALLIANCE, LLC, a) Case No. RG13697992
13 California limited liability company)
14 Plaintiff,) [PROPOSED] CONSENT JUDGMENT RE:
15 vs.) JOSIE MARAN COSMETICS, LLC
16 ACCESS BUSINESS GROUP LLC, et al.) (Cal. Health & Safety Code section 25249.6 et
17 Defendants.) seq.)
18

19 1. INTRODUCTION

20 1.1 **Parties.** This Consent Judgment is entered into by and between plaintiff The Public
21 Interest Alliance LLC (“PIA”) and Josie Maran Cosmetics, LLC (“Josie Maran”), with PIA and Josie
22 Maran collectively referred to as the “Parties.”

23 1.2 **Public Interest Alliance LLC.** The Public Interest Alliance LLC is a California limited
24 liability company dedicated to improving human health, preserving the natural environment, and
25 promoting compliance with environmental and consumer disclosure laws..

26 1.3 **Josie Maran.** Josie Maran employs ten or more persons and is a “person in the course
27 of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
28 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

1 1.4 **General Allegations**

2 1.4.1 PIA alleges that Josie Maran manufactured, imported, sold and/or distributed for
3 sale in California, cosmetic and personal care powders that contain Titanium Dioxide (“TiO2”). PIA
4 alleges that, during use, some TiO2 is released into the air, exposing consumers to unbound TiO2
5 particles of respirable size without the health hazard warnings that Proposition 65 requires. The
6 products that are the subject of this Consent Judgment are identified on Exhibit A attached hereto (the
7 “Covered Products”). TiO2 is a chemical widely used as a whitening agent in a wide range of
8 consumer products, including, without limitation, paper, paints, printers’ inks, toothpaste, cosmetics,
9 and personal care products. In 2010, the International Agency for Research on Cancer (“IARC”) issued
10 Monograph 93, which concluded that TiO2 is “possibly carcinogenic” to humans when inhaled.

11 1.4.2 Pursuant to Proposition 65, on September 2, 2011, California identified and
12 listed Titanium Dioxide (airborne, unbound chemicals of respirable size) as a chemical known to cause
13 cancer. Titanium Dioxide (airborne, unbound chemicals of respirable size) became subject to the
14 “clear and reasonable warning” requirements of the Act one year later on September 2, 2012. Cal.
15 Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

16 1.4.4 Titanium Dioxide (airborne, unbound chemicals of respirable size) is hereinafter
17 referred to as the “Listed Chemical.” PIA alleges that the Listed Chemical is released into the air when
18 the Covered Products are applied to the skin by brush, pad or sponge, leading to human exposures.

19 1.5 **Notice of Violation.** On or about June 12, 2013, PIA served Josie Maran and certain
20 requisite public enforcement agencies with Proposition 65 60-Day Notices of Violation and
21 Proposition 65 Supplemental Notices of Violation (the “NOV”) that provided the recipients with notice
22 of alleged violations of Proposition 65 based on the recipient’s alleged failure to warn customers and
23 consumers, workers and other individuals that the Covered Products exposed users in California to the
24 Listed Chemical. To the best of the Parties’ knowledge, no public enforcer has commenced or is
25 diligently prosecuting the allegations set forth in the NOV’s.

26 1.6 **Complaint.** On October 3, 2013, PIA filed a Complaint in the Superior Court in and for
27 the County of Alameda styled, *PIA v. Access Business Group, LLC, et al.*, Case No. RG13697992,
28 alleging violations of Proposition 65 arising from unwarned exposures to the Listed Chemical when

1 the Covered Products are used (the "Complaint"). On May 14, 2014, Josie Maran filed an Answer to
2 the Complaint, containing a general denial and multiple affirmative defenses.

3 1.7 **No Admission**. Josie Maran denies the material factual and legal allegations contained
4 in the NOV and Complaint, and maintains that all products it has manufactured, imported, distributed,
5 and/or sold in California, including the Covered Products, have been and are in compliance with all
6 laws. Nothing in this Consent Judgment shall be construed as an admission by Josie Maran of any fact,
7 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
8 constitute or be construed as an admission by Josie Maran of any fact, finding, conclusion, issue of
9 law, or violation of law. This section shall not, however, diminish or otherwise affect Josie Maran's
10 obligations, responsibilities, and duties under this Consent Judgment.

11 1.8 **Consent to Jurisdiction**. For purposes of this Consent Judgment only, the Parties
12 stipulate that this Court has jurisdiction over Josie Maran as to the allegations contained in the
13 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter
14 and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of
15 Civil Procedure § 664.6.

16 2. **DEFINITIONS**

17 2.1 **California Customers**. "California Customer" shall mean any customer that Josie
18 Maran reasonably understands is located in California, has a California warehouse or distribution
19 center, maintains a retail outlet in California or has made any internet sales into California between
20 September 2, 2012, and the Effective Date, inclusive.

21 2.2 **Effective Date**. "Effective Date" shall mean the date this Court enters this Consent
22 Judgment.

23 2.3 **Reformulated Products**. "Reformulated Products" shall mean Covered Products that
24 contain no Titanium Dioxide that was intentionally added as a product ingredient.

25 2.4 **Retailer**. "Retailer" means a Josie Maran authorized entity or person or entity that
26 offers a Product for retail sale to consumers in the State of California.

27 3. **COVENANTS IN LIEU OF INJUNCTION**

28 3.1 **Reformulation Covenant**. Since approximately September 2013, Josie Maran has not

1 sold or otherwise distributed any Covered Product in California or to a California Customer, and Josie
2 Maran agrees that, subject to the terms of this Consent Judgment, it shall not distribute or sell to
3 California Customers, manufacture or import for distribution or sale to California Customers or cause
4 to be manufactured or imported for distribution or sale to California Customers, any Covered Products
5 that are not Reformulated Products or unless and until Josie Maran complies with the provisions of
6 Paragraph 3.5., below (Product Warnings) (the "Reformulation Covenant").

7 3.2 Intentionally Deleted.

8 3.3 Intentionally Deleted.

9 3.4 No Current Inventory. PIA and its counsel acknowledge that Josie Maran has
10 provided PIA and its counsel with evidence supporting the conclusion that since approximately
11 September 2013, Josie Maran has not sold or otherwise distributed any Covered Product in California
12 or to a California Customer. To Josie Maran's best knowledge, as of the Effective Date, no Retailers
13 have any Covered Products remaining in inventory for sale in California or to a California Customer.

14 3.5 Product Warnings.

15 3.5.1 **Product Labeling.** If Josie Maran sells any Covered Products in the future that
16 are not Reformulated Products, Josie Maran shall provide a warning under this Consent Judgment,
17 which shall be (1) affixed to the exterior packaging of such product or (2) affixed to the Covered
18 Product itself in immediate proximity to any marketing, ownership or pricing tags or labels or, if none,
19 to a surface of the product that would be immediately visible to a purchaser or user upon inspection or
20 use. Each warning shall be of such size, color and font and shall be prominently placed with such
21 conspicuousness as compared with other words, statements, designs, or devices as to render it likely to
22 be read and understood by an ordinary individual under customary conditions before purchase. Each
23 warning shall be provided in a manner such that the consumer or user understands to which specific
24 product the warning applies, so as to minimize the risk of consumer confusion. A warning provided
25 pursuant to this Consent Judgment shall state:

26 **WARNING:** This product contains chemicals known to the State of
27 California to cause cancer.

28 3.5.2 **Internet Website Warning.** A warning shall be given in conjunction with any

1 offer to sell or sale by Josie Maran of Covered Products that are not Reformulated Products to
2 California residents via the internet, which warning shall appear on one or more web pages displayed
3 to a purchaser prior to completing payment and/or during the "checkout" process. The following
4 warning statement shall be used and shall appear in the same type size or larger than the text describing
5 such Covered Products that are not Reformulated Products:

6 **WARNING:** This product contains chemicals known to the State of
7 California to cause cancer.

8 4. **MONETARY PAYMENTS**

9 4.1 **Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**. In settlement of all
10 the claims referred to in this Consent Judgment, Josie Maran shall pay a civil penalty in the amount of
11 One Thousand Five Hundred U.S. Dollars (\$1,500.00) in accordance with this Section. The penalty
12 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and
13 (d), with seventy-five percent (75%) of the funds remitted to the California Office of Environmental
14 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to "Judd Law
15 Group LLP in Trust for Public Interest Alliance LLC." All penalty payments shall be made within five
16 (5) business days after this Consent Judgment has been entered by the Court, and delivered to the
17 addresses listed in Section 4.3 below. Any failure by Josie Maran to deliver the required civil penalty
18 payments to either OEHHA or Judd Law Group LLP within two business days of the required date,
19 absent force majeure, shall result in imposition of a 10% simple interest assessment on the undelivered
20 payment(s) until delivery.

21 4.1.1 **Additional Penalty for Unreasonably Incorrect Representation Of Sales**

22 **Data.** Josie Maran understands that the sales data it provided to PIA was a material factor upon which
23 PIA has relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code §
24 25249.7 in this Consent Judgment. After a reasonable inquiry and diligent review, Josie Maran
25 represents, to the best of its knowledge, that the sales data provided by it to PIA are full and complete,
26 and are a true and accurate reflection of sales of the Covered Products in California during the relevant
27 period. If, within (9) nine months after the Effective Date, PIA discovers and presents to Josie Maran
28 evidence that prior to execution of this Consent Judgment the Covered Products were distributed by

1 Josie Maran in sales volumes materially different than those identified by Josie Maran prior to
2 execution of this Consent Judgment, then Josie Maran shall be liable for an additional penalty amount
3 as well as additional attorney fees expended by PIA in the public interest. In the event PIA believes
4 there is evidence that any of the Covered Products have been distributed by Josie Maran in sales
5 volumes materially different than those identified by Josie Maran, PIA shall provide Josie Maran with
6 a written demand for additional penalties and attorney fees under this Section. After service of such
7 demand, Josie Maran shall have thirty (30) days to meet and confer with PIA about the demand.
8 Should this 30-day period pass without any resolution between the Parties, PIA shall be entitled to file
9 a noticed motion, and the prevailing party shall be entitled to all reasonable attorney fees and costs
10 relating to that action. Any additional penalty or attorney fee payments must be approved by the Court
11 and comply with Title 11, California Code of Regulations section 3000, et seq., including provision of
12 at least 45 days' notice to the Attorney General's office prior to the hearing date.

13 4.2 Reimbursement of Fees and Costs. Josie Maran and PIA have agreed on the
14 compensation due PIA under the principles of Code of Civil Procedure Section 1021.5. Josie Maran
15 agrees to pay attorney fees and costs incurred as a result of investigating, bringing this matter to Josie
16 Maran's attention, negotiating a settlement in the public interest, and seeking court approval in the
17 amount of Thirteen Thousand Five Hundred Dollars (\$13,500). Josie Maran further agrees that it shall
18 not oppose Plaintiffs' application to the court for approval of such fees. All attorney fee and cost
19 reimbursement payments shall be made within five (5) business days after the Effective Date and
20 delivered to the addresses listed in Section 4.3 below. Any failure by Josie Maran to deliver the
21 required attorney fee and cost reimbursement payment to Judd Law Group LLP within two (2) days
22 after the required date shall result in imposition of a 10% simple interest assessment on the undelivered
23 payment(s) until delivery.

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1 4.3 Payment Procedures

2 4.3.1 Issuance of Payments

3 (a) All payments owed to PIA and its counsel, pursuant to Sections 4.1 and 4.2 shall be
4 delivered to the following payment address:

5 JUDD LAW GROUP LLP
6 222 Sutter Street, Suite 600
7 San Francisco, CA 94108

8 (b) All payments owed to OEHHHA, pursuant to Section 4.1, shall be delivered directly to
9 OEHHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

10 For United States Postal Service Delivery: Fiscal Operations Branch Chief
11 OEHHHA
12 P.O. Box 4010
13 Sacramento, CA 95812-4010

14 For Non-United States Postal Service Delivery: Fiscal Operations Branch Chief
15 OEHHHA
16 1001 I Street
17 Sacramento, CA 95814

18 4.3.2 Proof of Payment to OEHHHA. A copy of each check payable to OEHHHA shall
19 be mailed, simultaneous with payment, to Judd Law Group LLP at the address set forth in Section
20 4.3.1(a) above, as proof of payment to OEHHHA.

21 4.3.3 Tax Documentation. Josie Maran shall issue a separate 1099 form for each
22 payment required by this Section to: (a) PIA (EIN 46-3826361), to the address set forth in Section
23 4.3.1(a) above; (b) OEHHHA, who shall be identified as "California Office of Environmental Health
24 Hazard Assessment" (EIN 68-0284486) in the 1099 form, to be delivered directly to OEHHHA, P.O.
25 Box 4010, Sacramento, CA 95814, and (c) "Judd Law Group LLP" (EIN: 90-0789749) to the address
26 set forth in Section 4.3.1(a) above.

27 5. CLAIMS COVERED AND RELEASED

28 5.1 PIA's Release of Proposition 65 Claims. PIA, acting on its own behalf and in the
public interest, releases Josie Maran, its parents, subsidiaries, affiliated entities that are under common
ownership, directors, officers, employees, attorneys, and each entity to whom Josie Maran directly or
indirectly distributed or sold Covered Products, including, but not limited, to downstream distributors,
wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees

1 (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date
2 based on unwarned exposures to the Listed Chemicals in the Covered Products, as set forth in the NOV
3 and Complaint. Compliance with the terms of this Consent Judgment constitutes compliance with
4 Proposition 65 with respect to exposures to the Listed Chemicals from the Covered Products, as set
5 forth in the NOV's. The Parties further understand and agree that this Section 5.1 release shall not
6 extend upstream to any entities, other than affiliates of Josie Maran.

7 As of the Effective Date, PIA represents to Josie Maran that PIA is not in possession of
8 information pertaining to any other alleged violations by Josie Maran or Releasees of Proposition 65
9 covered by the NOV and Complaint.

10 **5.2 Josie Maran's Release of PIA.** Josie Maran, on behalf of itself, its past and current agents,
11 representatives, attorneys, successors, and assignees, hereby waives any and all claims against PIA and
12 its attorneys and other representatives, for any and all actions taken or statements made (or those that
13 could have been taken or made) by PIA and its attorneys and other representatives, whether in the
14 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
15 with respect to the Covered Products.

16 **6. PRESERVATION OF COMPETITIVENESS.** The intent of this section 6 is to protect the
17 competitive interests of Josie Maran arising from PIA's claims and to ensure that by settling the
18 allegations in the NOV and the Complaint, Josie Maran is not disadvantaged with respect to its
19 competitors. Specifically, the parties agree that should any agreement or consent judgment be entered
20 into by PIA, the California Office of Environmental Health Hazard Assessment, or the California
21 Attorney General's Office concerning personal care products similar to the Covered Products that
22 contains provisions that would materially impact the terms of this Agreement, such benefits shall
23 accrue to Josie Maran and this Agreement shall be amended by a stipulation and proposed order, a
24 copy of which shall be provided to the Attorney General's office at least five (5) business days prior to
25 submission to the Court to provide Josie Maran the benefit thereof. Further, should there be a court
26 decision involving any other person or entity that received a Proposition 65 60-Day Notice of
27 Violation alleging Titanium Dioxide in personal care products similar to the Covered Products and
28 such decision is in whole or in part favorable to the defendant(s) in such action, then that decision shall

1 be incorporated into this Agreement by a stipulation and proposed order, a copy of which shall be
2 provided to the Attorney General's office at least five (5) business days prior to submission to the
3 Court. Further, should any consent judgment establish a "No Significant Risk Level" for Titanium
4 Dioxide (airborne, unbound particles of respirable size) and provide for other parties to opt-in, any
5 payments Josie Maran has made pursuant to this Agreement shall be offset against any opt-in payment
6 requirements of such consent judgment. Should PIA in the future become aware of facts or
7 circumstances that have not been publicly disclosed that, in PIA's opinion affect Josie Maran's
8 competitiveness, it shall so notify Josie Maran's counsel by email within forty-five (45) days after PIA
9 becomes aware of such non-public facts or circumstances. PIA shall prepare all such stipulations and
10 proposed orders, at PIA's sole expense, and shall make reasonable efforts to obtain the parties'
11 signatures thereto.

12 7. **COURT APPROVAL.** This Consent Judgment is not effective until it is entered by the Court
13 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
14 year after it has been fully executed by all Parties. If the Court does not approve the Consent Judgment,
15 the Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the
16 Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal
17 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate
18 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment. If
19 the Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal
20 course on the Court's trial calendar.

21 8. **SEVERABILITY.** If, subsequent to the Court's approval and entry of this Consent Judgment,
22 any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of
23 the enforceable provisions remaining shall not be adversely affected.

24 9. **GOVERNING LAW.** The terms of this Consent Judgment shall be governed by the laws of
25 the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
26 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
27 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
28 rendered inapplicable by reason of law generally as to the Covered Products, then Josie Maran may

1 make a formally noticed motion to this Court for relief from this Agreement or provisions of this
2 Agreement, with the requisite written notice to PIA, and shall only have no further obligations
3 pursuant to this Consent Judgment to the extent of any Court order so excusing or eliminating such
4 obligation. Nothing in this Consent Judgment shall be interpreted to relieve Josie Maran from any
5 obligation to comply with any pertinent state or federal law or regulation.

6 10. **NOTICES.** Unless specified herein, all correspondence and notices required to be provided
7 pursuant to this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class
8 registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the other
9 party at the following addresses:

10 To Josie Maran:

11 Mike Davis
12 JOSIE MARAN COSMETICS, LLC
13 6165 Santa Monica Blvd.
Los Angeles, CA 90038

14 Ali Alborzi
15 JOSIE MARAN COSMETICS, LLC
6165 Santa Monica Blvd.
Los Angeles, CA 90038

To PIA:

Public Interest Alliance, LLC
c/o Jeffrey M. Judd
222 Sutter Street, Suite 600
San Francisco, CA 94108

16 With a copy to:

17 Mr. Albert T. Liou
18 LKP Global Law, LLP
19 1901 Avenue of the Stars, Suite 480
Los Angeles, California 90067

20 Any Party, from time to time, may specify in writing to the other Party a change of address to
21 which all notices and other communications shall be sent.

22 11. **COUNTERPARTS, FACSIMILE AND PDF SIGNATURES.** This Consent Judgment may
23 be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an
24 original, and all of which, when taken together, shall constitute one and the same document. A
25 facsimile or pdf signature shall be as valid as the original.

26 12. **COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f).** PIA and its
27 attorneys agree to comply with the reporting form requirements referenced in California Health &
28 Safety Code section 25249.7(f).

1 13. POST EXECUTION. PIA and Josie Maran each agrees to mutually employ its best efforts to
2 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
3 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California Health
4 & Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this Consent
5 Judgment, which PIA shall draft and file, and Josie Maran shall join. If any third party objection to the
6 noticed motion is filed, PIA and Josie Maran shall work together to file a joint reply and appear at any
7 hearing before the Court. The Court shall maintain jurisdiction under Code of Civil Procedure section
8 664.4 and, if after entry of a Consent Judgment, either party determines that the other is in breach of
9 this Agreement, such party shall provide to the other written notice of such alleged breach pursuant to
10 Section 10, above, and the noticed party shall thereafter have thirty (30) days within which to attempt
11 to cure or otherwise resolve the alleged breach (the "Cure Period"). If the alleged breach is not
12 resolved or cured to the satisfaction of the noticing party during the Cure Period, the noticing party
13 may thereafter bring a noticed motion to have the Court resolve the dispute by order, including, as
14 applicable, an order awarding the prevailing party reasonable attorney fees and costs incurred in
15 connection with the motion. This provision is a material component of the Consent Judgment and shall
16 be treated as such in the event of a breach.

17 14. MODIFICATION. This Consent Judgment may be modified only: (1) by written agreement
18 of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a
19 successful motion of any party and entry of a modified Consent Judgment by the Court.

20 15. AUTHORIZATION. The undersigned are authorized to execute this Consent Judgment on
21 behalf of their respective parties and have read, understood, and agree to all of the terms and
22 conditions of this Consent Judgment.

23 Dated: ^{AUGUST 6} July __, 2014

PUBLIC INTEREST ALLIANCE LLC

24
25 By: 

26 Daniel P. Madison
27 Managing Member
28

1 Dated: July 31, 2014

JOSIE MARAN COSMETICS, LLC

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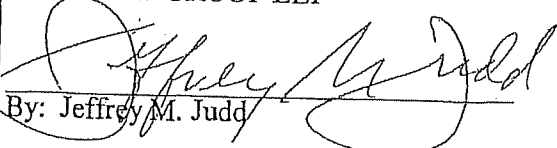
By:



—
Ali Alborzi
COO

1 Approved as to form:

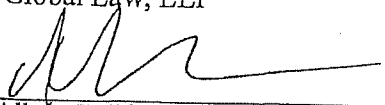
2 JUDD LAW GROUP LLP

3 
4 By: Jeffrey M. Judd

AUGUST 6
Dated: July , 2014

5 Attorneys for Plaintiff
6 PUBLIC INTEREST ALLIANCE LLC

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8 LKP Global Law, LLP

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10 By: Albert T. Liou

August 5
Dated: July , 2014

11 Attorneys for Defendant
12 JOSIE MARAN COSMETICS, LLC

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