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Public Interest Alliance LLC

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

THE PUBLIC INTEREST ALLIANCE, LLC, a California limited liability company)	Case No. RG13697992
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT RE:
)	STILA STYLES, LLC
vs.)	(Cal. Health & Safety Code section 25249.6 <i>et</i>
ACCESS BUSINESS GROUP LLC, et al.)	<i>seq.</i>)
Defendants.)	

1. INTRODUCTION

1.1 **Parties.** This Consent Judgment is entered into by and between plaintiff The Public Interest Alliance LLC ("PIA") and Stila Styles, LLC dba Stila Cosmetics ("Stila"), with PIA and Stila collectively referred to as the "Parties."

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

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

1.4 **General Allegations**

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

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

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

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

1.6 **Complaint.** On October 3, 2013, PIA filed a Complaint in the Superior Court in and for the County of Alameda styled, *PIA v. Access Business Group, LLC, et al.*, Case No. RG13697992, alleging violations of Proposition 65 arising from unwarned exposures to the Listed Chemical when the Covered Products are used (the “Complaint”). On May 14, 2014, Stila filed an Answer to the

Complaint, containing a general denial and multiple affirmative defenses.

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

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

2. **DEFINITIONS**

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

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

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

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

3. **COVENANTS IN LIEU OF INJUNCTION**

3.1 **Reformulation Covenant.** Stila agrees that, subject to the terms of this Consent Judgment and commencing on March 26, 2015, it shall not distribute or sell to California Customers,

manufacture or import for distribution or sale to California Customers or cause to be manufactured or imported for distribution or sale to California Customers, any Covered Products that are not Reformulated Products or unless and until Stila complies with the provisions of Paragraph 3.5., below (Product Warnings) (the "Reformulation Covenant").

3.2 **Intentionally Deleted.**

3.3 **Intentionally Deleted.**

3.4 **No Inventory.** Commencing on March 26, 2015, and continuing into the future, Stila shall not sell, offer to sell, or otherwise distribute any Covered Product in California or to a California Customer unless such product is certified as complying with the Reformulation Covenant or contains a clear and reasonable warning as set forth in Section 3.5 below.

3.5 **Product Warnings.**

3.5.1 **Product Labeling.** If Stila sells any Covered Products after March 26, 2015, that are not Reformulated Products, Stila shall provide a warning under this Consent Judgment, which shall be (1) affixed to the exterior packaging of such product or (2) affixed to the Covered Product itself in immediate proximity to any marketing, ownership or pricing tags or labels or, if none, to a surface of the product that would be immediately visible to a purchaser or user upon inspection or use. Each warning shall be of such size, color and font and shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase. Each warning shall be provided in a manner such that the consumer or user understands to which specific product the warning applies, so as to minimize the risk of consumer confusion. A warning provided pursuant to this Consent Judgment shall state:

WARNING: This product contains a chemical known to the State of California to cause cancer.

3.5.2 **Internet Website Warning.** After March 26, 2015, a warning shall be given in conjunction with any offer to sell or sale by Stila of Covered Products that are not Reformulated Products to California residents via the internet, which warning shall appear on one or more web pages displayed to a purchaser prior to completing payment and/or during the "checkout" process. The

following warning statement shall be used and shall appear in the same type size or larger than the text describing such Covered Products that are not Reformulated Products:

WARNING: This product contains a chemical known to the State of California to cause cancer.

4. **MONETARY PAYMENTS**

4.1 **Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**. In settlement of all the claims referred to in this Consent Judgment, Stila shall pay a civil penalty in the amount of Seven Thousand Five Hundred U.S. Dollars (\$7,500.00) in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to "Judd Law Group LLP in Trust for Public Interest Alliance LLC." All penalty payments shall be made within five (5) business days after this Consent Judgment has been entered by the Court, and delivered to the addresses listed in Section 4.3 below. Any failure by Stila to deliver the required civil penalty payments to either OEHHA or Judd Law Group LLP within two business days of the required date, absent force majeure, shall result in imposition of a 10% simple interest assessment on the undelivered payment(s) until delivery.

4.1.1 **Additional Penalty for Unreasonably Incorrect Representation Of Sales Data.** Stila understands that the sales data it provided to PIA was a material factor upon which PIA has relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment. After a reasonable inquiry and diligent review, Stila represents, to the best of its knowledge, that the sales data provided by it to PIA are full and complete, and are a true and accurate reflection of sales of the Covered Products in California during the relevant period. If, within (9) nine months after the Effective Date, PIA discovers and presents to Stila evidence that prior to execution of this Consent Judgment the Covered Products were distributed by Stila in sales volumes materially different than those identified by Stila prior to execution of this Consent Judgment, then Stila shall be liable for an additional penalty amount as well as additional attorney fees expended by PIA in the public interest. In the event PIA believes there is evidence that any of the Covered Products

have been distributed by Stila in sales volumes materially different than those identified by Stila, PIA shall provide Stila with a written demand for additional penalties and attorney fees under this Section. After service of such demand, Stila shall have thirty (30) days to meet and confer with PIA about the demand. Should this 30-day period pass without any resolution between the Parties, PIA shall be entitled to file a noticed motion, and the prevailing party shall be entitled to all reasonable attorney fees and costs relating to that action. Any additional penalty or attorney fee payments must be approved by the Court and comply with Title 11, California Code of Regulations section 3000, et seq., including provision of at least 45 days' notice to the Attorney General's office prior to the hearing date.

4.2 **Reimbursement of Fees and Costs.** Stila and PIA have agreed on the compensation due PIA under the principles of Code of Civil Procedure Section 1021.5. Stila agrees to pay attorney fees and costs incurred as a result of investigating, bringing this matter to Stila's attention, negotiating a settlement in the public interest, and seeking court approval in the amount of Twenty-Six Thousand Dollars (\$26,000). Stila further agrees that it shall not oppose Plaintiffs' application to the court for approval of such fees. All attorney fee and cost reimbursement payments shall be made within five (5) business days after the Effective Date and delivered to the addresses listed in Section 4.3 below. Any failure by Stila to deliver the required attorney fee and cost reimbursement payment to Judd Law Group LLP within two (2) days after the required date shall result in imposition of a 10% simple interest assessment on the undelivered payment(s) until delivery.

4.3 **Payment Procedures**

4.3.1 **Issuance of Payments**

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

JUDD LAW GROUP LLP
2 Embarcadero Center, Suite 610
San Francisco, CA 94111

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

For United States Postal Service Delivery:

Fiscal Operations Branch Chief
OEHHHA
P.O. Box 4010

Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery: Fiscal Operations Branch Chief
OEHHA
1001 I Street
Sacramento, CA 95814

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

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

5. **CLAIMS COVERED AND RELEASED**

5.1 **PIA's Release of Proposition 65 Claims.** PIA, acting on its own behalf and in the public interest, releases Stila, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Stila directly or indirectly distributed or sold Covered Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed Chemicals in the Covered Products, as set forth in the NOV and Complaint. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemicals from the Covered Products, as set forth in the NOVs. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than affiliates of Stila.

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

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

6. **PRESERVATION OF COMPETITIVENESS.** The intent of this section 6 is to protect the competitive interests of Stila arising from PIA's claims and to ensure that by settling the allegations in the NOV and the Complaint, Stila is not disadvantaged with respect to its competitors. Specifically, the parties agree that should any agreement or consent judgment be entered into by PIA, the California Office of Environmental Health Hazard Assessment, or the California Attorney General's Office concerning personal care products similar to the Covered Products that contains provisions that would materially impact the terms of this Agreement, such benefits shall accrue to Stila and this Agreement shall be amended by a stipulation and proposed order, a copy of which shall be provided to the Attorney General's office at least five (5) business days prior to submission to the Court to provide Stila the benefit thereof. Further, should there be a court decision involving any other person or entity that received a Proposition 65 60-Day Notice of Violation alleging Titanium Dioxide in personal care products similar to the Covered Products and such decision is in whole or in part favorable to the defendant(s) in such action, then that decision shall be incorporated into this Agreement by a stipulation and proposed order, a copy of which shall be provided to the Attorney General's office at least five (5) business days prior to submission to the Court. Further, should any consent judgment establish a "No Significant Risk Level" for Titanium Dioxide (airborne, unbound particles of respirable size) and provide for other parties to opt-in, any payments Stila has made pursuant to this Agreement shall be offset against any opt-in payment requirements of such consent judgment. Should PIA in the future become aware of facts or circumstances that have not been publicly disclosed that, in PIA's opinion affect Stila's competitiveness, it shall so notify Stila's counsel by email within forty-five (45) days after PIA becomes aware of such non-public facts or circumstances. PIA shall prepare all such stipulations and proposed orders, at PIA's sole expense, and shall make reasonable efforts to

obtain the parties' signatures thereto.

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

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

9. **GOVERNING LAW.** The terms of this Consent Judgment shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered Products, then Stila may make a formally noticed motion to this Court for relief from this Agreement or provisions of this Agreement, with the requisite written notice to PIA, and shall only have no further obligations pursuant to this Consent Judgment to the extent of any Court order so excusing or eliminating such obligation. Nothing in this Consent Judgment shall be interpreted to relieve Stila from any obligation to comply with any pertinent state or federal law or regulation.

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

To Stila:

Tivadar Szegletes
STILA STYLES, LLC
111 West Wilson Avenue
Glendale, CA 91203

To PIA:

Public Interest Alliance, LLC
c/o Jeffrey M. Judd
2 Embarcadero Center, Suite 610
San Francisco, CA 94111

With a copy to:

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

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

11. **COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**. This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.
12. **COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**. PIA and its attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code section 25249.7(f).
13. **POST EXECUTION**. PIA and Stila each agrees to mutually employ its best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which PIA shall draft and file, and Stila shall join. If any third party objection to the noticed motion is filed, PIA and Stila shall work together to file a joint reply and appear at any hearing before the Court. The Court shall maintain jurisdiction under Code of Civil Procedure section 664.4 and, if after entry of a Consent Judgment, either party determines that the other is in breach of this Agreement, such party shall provide to the other written notice of such alleged breach pursuant to Section 10, above, and the noticed party shall thereafter have thirty (30) days within which to attempt to cure or otherwise resolve the alleged breach (the "Cure Period"). If the alleged breach is not resolved or cured to the satisfaction

of the noticing party during the Cure Period, the noticing party may thereafter bring a noticed motion to have the Court resolve the dispute by order, including, as applicable, an order awarding the prevailing party reasonable attorney fees and costs incurred in connection with the motion. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

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

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

Dated: October 24, 2014

PUBLIC INTEREST ALLIANCE LLC

By: 

Daniel P. Madison
Managing Member

Dated: October 24, 2014

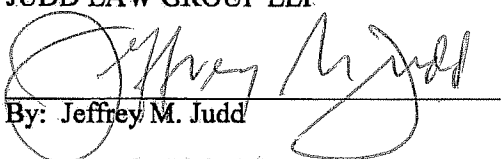
STILA STYLES, LLC

By: 

Name: Tivadar Szegletes
Title: Chief Financial Officer

Approved as to form:


JUDD LAW GROUP LLP


By: Jeffrey M. Judd

Attorneys for Plaintiff
PUBLIC INTEREST ALLIANCE LLC

Dated: October 24, 2014

LKP Global Law, LLP


By: Albert T. Liou

Dated: October 24, 2014

Attorneys for Defendant
STILA STYLES, LLC

EXHIBIT A

COVERED PRODUCTS

Stila Set & Illuminate Baked Powder Trio
Set and Correct Powder
Set & Bronze Powder