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CENTER FOR ENVIRONMENTAL HEALTH
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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA
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17 CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG 13-693280
a non-profit corporation,)
18 Plaintiff,)
19 vs.) [PROPOSED] CONSENT
JUDGMENT AS TO COLGATE-
20 LAKE CONSUMER PRODUCTS, INC., *et al.*,) PALMOLIVE COMPANY
21 Defendant.)
22)
23

24 1. INTRODUCTION

25 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
26 Environmental Health (“CEH”) and defendant Colgate-Palmolive Company (“Settling
27 Defendant”). CEH and Settling Defendant are referred to collectively as the “Parties.”
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1 1.2 Settling Defendant is a corporation that employs ten (10) or more persons and
2 that manufactures, distributes and sells shampoos that contain coconut oil diethanolamine
3 condensate (cocamide diethanolamine), as listed under Proposition 65 (hereinafter, “cocamide
4 DEA”) in the State of California or has done so in the past.

5 1.3 On June 24, 2013, CEH served a 60-Day Notice of Violation under
6 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
7 & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) to Settling Defendant, the California Attorney
8 General, the District Attorneys of every County in the State of California, and the City Attorneys
9 for every City in the State of California with a population greater than 750,000. The Notice
10 alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo
11 manufactured, distributed and/or sold by Settling Defendant.

12 1.4 On August 27, 2013, CEH filed the action entitled *CEH v. Lake Consumer*
13 *Products, Inc., et al.*, Case No. RG 13-693280, in the Superior Court of California for Alameda
14 County. On September 4, 2013, CEH named Settling Defendant as a defendant in that action
15 pursuant to California Code of Civil Procedure §474. Upon entry of this Consent Judgment, the
16 Complaint shall be deemed amended as to Settling Defendant only to limit the definition of
17 Products in the Complaint to shampoos.

18 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
19 Court has jurisdiction over the allegations of violations contained in the operative Complaint
20 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling
21 Defendant as to the acts alleged in the Complaint; (ii) that venue is proper in the County of
22 Alameda; and (iii) that this Court has jurisdiction to enter this Consent Judgment.

23 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
24 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
25 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
26 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
27 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
28 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and

1 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
2 this action.

3 **2. DEFINITIONS**

4 2.1 "Covered Products" means shampoos.

5 2.2 "Effective Date" means the date on which this Consent Judgment is entered by
6 the Court.

7 **3. INJUNCTIVE RELIEF**

8 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
9 Defendant shall not manufacture, distribute, sell or offer for sale any Covered Product that
10 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
11 purposes of this Consent Judgment, a Covered Product "contains cocamide DEA" if cocamide
12 DEA is an intentionally added ingredient in the Covered Product and/or part of the Covered
13 Product formulation.

14 3.2 **Grace Period for Products Manufactured Prior to the Effective Date.**
15 Liability for Covered Products that were manufactured and distributed for retail sale prior to the
16 Effective Date shall be subject to the release of liability pursuant to Section 7 of this Consent
17 Judgment, without regard to when such Covered Products were, or are in the future, sold to
18 consumers.

19 **4. ENFORCEMENT**

20 4.1 CEH may, by motion or application for an order to show cause before the
21 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
22 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
23 above, CEH shall provide Settling Defendant with a Notice of Violation and a copy of any test
24 results which purportedly support CEH's Notice of Violation. The Parties shall then meet and
25 confer regarding the basis for CEH's anticipated motion or application in an attempt to resolve it
26 informally, including providing Settling Defendant a reasonable opportunity of at least thirty (30)
27 days to cure any alleged violation. Should such attempts at informal resolution fail, CEH may
28 file its enforcement motion or application. The prevailing party on any motion to enforce this

1 Consent Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result
2 of such motion or application. This Consent Judgment may only be enforced by the Parties.

3 **5. PAYMENTS**

4 5.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective
5 Date, Settling Defendant shall pay the total sum of \$15,000 as a settlement payment. The total
6 settlement amount for Settling Defendant shall be paid in four separate checks delivered to
7 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
8 Defendant shall be allocated between the following categories:

9 5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
10 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
11 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
12 Assessment). The civil penalty check shall be made payable to the Center For Environmental
13 Health.

14 5.1.2 \$2,250 as a payment in lieu of civil penalty to CEH pursuant to Health &
15 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
16 such funds to continue its work educating and protecting people from exposures to toxic
17 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
18 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In
19 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
20 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
21 educate and protect people from exposures to toxic chemicals. The method of selection of such
22 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
23 this Section shall be made payable to the Center For Environmental Health.

24 5.1.3 \$11,100 as reimbursement of a portion of CEH's reasonable attorneys' fees
25 and costs. A check for \$9,600 shall be made payable to the Lexington Law Group, and a check
26 for \$1,500 shall be made payable to the Center For Environmental Health.

27 **6. MODIFICATION**

28 6.1 **Written Consent.** This Consent Judgment may be modified from time to

1 time by express written agreement of the Parties with the approval of the Court, or by an order of
2 this Court upon motion and in accordance with law.

3 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
4 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
5 modify the Consent Judgment.

6 **7. CLAIMS COVERED AND RELEASED**

7 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
8 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
9 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
10 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell
11 Covered Products, including but not limited to Save Mart Supermarkets, distributors, wholesalers,
12 customers, retailers, franchisees, cooperative members, licensors, and licensees (“Downstream
13 Defendant Releasees”) of any violation of Proposition 65 that was or could have been asserted in
14 the Complaint against Settling Defendant, Defendant Releasees, and Downstream Defendant
15 Releasees, based on failure to warn about alleged exposure to cocamide DEA contained in
16 Covered Products that were sold by Settling Defendant prior to the Effective Date.

17 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
18 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling
19 Defendant, its Defendant Releasees and their Downstream Defendant Releasees with respect to
20 any alleged failure to warn about cocamide DEA in Covered Products manufactured, distributed,
21 or sold by Settling Defendant after the Effective Date.

22 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
23 action under Proposition 65 against any person other than Settling Defendant, Defendant
24 Releasees, or Downstream Defendant Releasees.

25 **8. NOTICE**

26 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
27 notice shall be sent by first class and electronic mail to:
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1 Mark Todzo
2 Lexington Law Group
3 503 Divisadero Street
4 San Francisco, CA 94117
5 mtodzo@lexlawgroup.com

6 8.2 When Settling Defendant is entitled to receive any notice under this Consent
7 Judgment, the notice shall be sent by first class and electronic mail to:

8 Judith Praitis
9 Sidley Austin LLP
10 555 West Fifth Street
11 Los Angeles, CA 90013
12 jpraitis@sidley.com

13 Clifford E. Wilkins
14 Colgate-Palmolive Company
15 Vice President, Division General Counsel- North America
16 300 Park Avenue, New York, NY 10022
17 Clifford_Wilkins@COLPAL.COM

18 8.3 Any Party may modify the person and address to whom the notice is to be sent
19 by sending the other Party notice by first class and electronic mail.

20 **9. COURT APPROVAL**

21 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
22 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
23 shall support entry of this Consent Judgment.

24 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
25 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
26 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

27 **10. ATTORNEYS' FEES**

28 10.1 Should CEH prevail on any motion, application for an order to show cause or
other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
Settling Defendant prevail on any motion application for an order to show cause or other
proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result

1 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
2 or application lacked substantial justification. For purposes of this Consent Judgment, the term
3 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
4 Code of Civil Procedure §§ 2016, *et seq.*

5 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
6 its own attorneys' fees and costs.

7 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
8 sanctions pursuant to law.

9 **11. OTHER TERMS**

10 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
11 of California.

12 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
13 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
14 assigns of any of them.

15 11.3 This Consent Judgment contains the sole and entire agreement and
16 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
17 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
18 merged herein and therein. There are no warranties, representations, or other agreements between
19 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
20 implied, other than those specifically referred to in this Consent Judgment have been made by any
21 Party hereto. No other agreements not specifically contained or referenced herein, oral or
22 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
23 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
24 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
25 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
26 whether or not similar, nor shall such waiver constitute a continuing waiver.

27 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
28 that Settling Defendant might have against any other party, whether or not that party is a Settling

1 Defendant.

2 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 11.6 The stipulations to this Consent Judgment may be executed in counterparts
5 and by means of facsimile or portable document format (pdf), which taken together shall be
6 deemed to constitute one document.

7 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
8 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
9 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
10 Party.

11 11.8 The Parties, including their counsel, have participated in the preparation of
12 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
13 This Consent Judgment was subject to revision and modification by the Parties and has been
14 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
15 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
16 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
17 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
18 be resolved against the drafting Party should not be employed in the interpretation of this Consent
19 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

20 11.9 If any term of this Consent Judgment is determined to be void, unenforceable
21 or invalid, such term shall be stricken and the remainder of the Consent Judgment shall remain in
22 full force and effect and shall be unaffected by such stricken term.

23 **IT IS SO STIPULATED:**

24 **CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro
Associate Director

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COLGATE-PALMOLIVE COMPANY


Signature

CLIFFORD E. WILKINS JR.
Printed Name

VP - Division General Counsel - North America
Title

IT IS SO ORDERED:

Dated: _____, 2013

Judge of the Superior Court