

SETTLEMENT AGREEMENT & RELEASE—GENOMMA LAB USA, INC.

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and Genomma Lab USA, Inc. (“Genomma”) (together, the “Parties”).

1. INTRODUCTION

1.1 On June 24, 2013, CEH, a non-profit corporation acting in the public interest, provided a “Notice of Violation of Proposition 65” to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Genomma regarding the presence of coconut oil diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in shampoo (the “Covered Products”) manufactured, distributed or sold by Genomma (the “Notice”).

1.2 The Notice alleges that Genomma’s Covered Products contain cocamide DEA. The Notice alleges that such Covered Products expose people who use the Covered Products to cocamide DEA, a chemical known to the State of California to cause cancer, without first providing clear and reasonable warning to such persons regarding the carcinogenic hazards associated with cocamide DEA. The Notice alleges that such conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65.

1.3 The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Covered Products manufactured, distributed and/or sold by Genomma. By executing this Agreement, the Parties do not admit any facts or conclusions of law. It is the Parties’ intent that nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor

shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

2. INJUNCTIVE RELIEF

2.1 Reformulation of Covered Products. Upon execution of this Agreement, Genomma shall not manufacture, distribute, sell or offer for sale any Covered Product that contains cocamide DEA and that will be sold or offered for sale to California consumers. For purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an intentionally added ingredient in the product and/or part of the product formulation.

2.2 Specification Compliance Date. To the extent it has not already done so, no more than 30 days after execution of this Agreement, Genomma shall issue specifications to its suppliers of Covered Products requiring that Covered Products not contain any cocamide DEA, and shall instruct each supplier to use reasonable efforts to eliminate Covered Products containing cocamide DEA on a nationwide basis.

2.3 Action Regarding Specific Products.

2.3.1 Upon execution of this Agreement, Genomma shall cease selling the Vanart Clasic Herbal Essence Shampoo, SKU No. 8-42646-02004-8 (the “Specifically Noticed Product”), in California if it contains cocamide DEA as an ingredient. Upon execution of this Agreement, Genomma shall also cease shipping the Specifically Noticed Product to any of its customers that resell the Specifically Noticed Product in California. To the extent that Genomma has not done so already, Genomma shall send instructions to any of its

customers that resell the Specifically Noticed Product in California instructing them to return all the Specifically Noticed Products or to cease selling them in California.

2.3.2 Any destruction of the Specifically Noticed Product by Genomma shall be in compliance with all applicable laws.

2.3.3 Within sixty days of execution of this Agreement, Genomma shall provide CEH with written certification from Genomma confirming compliance with the requirements of this Section 2.3.

3. ENFORCEMENT OF SETTLEMENT AGREEMENT

3.1 The Parties agree that the any action based on violation of this Agreement shall be brought in the Superior Court of California in Alameda County. For purposes of this Agreement, notwithstanding Section 1.3 above, the Parties agree that the Superior Court of California in Alameda County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of Alameda. Should a Party to this Agreement prevail on any action to enforce the terms of this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

3.2 Enforcement Procedures. Prior to bringing any action to enforce the terms of this Agreement, a Party seeking to enforce shall provide the violating Party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may, by new action before the Superior Court of California in Alameda County, seek to enforce the terms and conditions contained in this Agreement.

4. SETTLEMENT PAYMENTS

4.1 In consideration of the mutual covenants and releases provided in this Agreement, within five (5) business days of execution of this Agreement, Genomma shall pay a total of \$12,500 as a settlement payment. This total shall be paid in three separate checks delivered to counsel for CEH at the address set forth in Section 9.1 below, and shall be made payable and allocated as follows.

4.2 Civil Penalty. Genomma shall pay \$1,375 as a penalty pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center for Environmental Health.

4.3 Monetary Payment in Lieu of Civil Penalty. Genomma shall pay \$1,875 as payment to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the Center for Environmental Health.

4.3.1 Attorneys' Fees and Costs. Genomma shall pay \$9,250 to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Genomma's attention, litigating and negotiating a settlement in the public interest. A check for \$8,000 shall

be made payable to the Lexington Law Group, and a check for \$1,250 shall be made payable to the Center for Environmental Health.

5. MODIFICATION OF SETTLEMENT AGREEMENT

5.1 This Agreement may be modified only by written agreement of the Parties.

6. APPLICATION OF SETTLEMENT AGREEMENT

6.1 This Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

7. CLAIMS COVERED

7.1 Except as otherwise provided herein, CEH hereby releases and discharges Genomma with respect to any violation of Proposition 65 (or any other claim related to failure to warn about exposures to cocamide DEA in the Covered Products) that was or could have been asserted against Genomma, or its parents, subsidiaries, directors, officers, employees, agents, and all entities to whom they distribute or sell Covered Products, including but not limited to distributors (including but not limited to Midway Importing, Inc.), wholesalers, customers, retailers, franchisees, cooperative members, and licensees, regarding the failure to warn about exposures to cocamide DEA arising in connection with Covered Products manufactured, distributed or sold by Genomma on or before the execution of this Agreement.

7.2 Compliance with the terms of this Agreement constitutes compliance with Proposition 65 for purposes of exposures to cocamide DEA from the Covered Products.

7.3 Within five (5) business days of full execution of this Agreement by the Parties, CEH shall file a request for dismissal without prejudice as to *Midway Importing*,

Inc. in the action entitled Center for Environmental Health v. Lake Consumer Products, Inc., et al., Alameda County Superior Court No. RG13-693280.

8. SPECIFIC PERFORMANCE

8.1 The Parties expressly recognize that Genomma's obligations under this Agreement are unique. In the event that Genomma is found to be in breach of this Agreement for failure to comply with the provisions of Section 3 hereto, the Parties agree that it would be extremely impracticable to measure any resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and Genomma expressly waives the defense that a remedy in damages will be adequate.

9. PROVISION OF NOTICE

9.1 All notices required pursuant to this Agreement and correspondence shall be sent by first class and electronic mail to the following:

For CEH:

Mark Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

For Genomma:

Trenton H. Norris
Sarah Esmaili
Arnold & Porter LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Trent.Norris@aporter.com
Sarah.Esmaili@aporter.com

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

10. GOVERNING LAW

10.1 The terms of this Agreement shall be governed by the laws of the State of California.

11. ENTIRE AGREEMENT

11.1 This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12. NO EFFECT ON OTHER SETTLEMENTS

12.1 Nothing in this Agreement shall preclude CEH from resolving any claim against any entity that is not Genomma on terms that are different than those contained in this Agreement.

13. EXECUTION IN COUNTERPARTS

13.1 The stipulations to this Agreement may be executed in counterparts by electronic mail, which taken together shall be deemed to constitute one document.

14. AUTHORIZATION

14.1 Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the Party represented and legally bind that Party. The undersigned have read, understand and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each Party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

Dated: 11/15/13

GENOMMA LAB USA, INC.

Dated: _____

[Name]

[Title]

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro
Associate Director

Dated: _____

GENOMMA LAB USA, INC.

Bradley N. Johnson

Dated: NOV 13 '13

BRADLEY N. JOHNSON

[Name]

DIRECTOR, QUALITY + REGULATORY
[Title] AFFAIRS