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11 CENTER FOR ENVIRONMENTAL HEALTH

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

17 CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 13-693280
18 a non-profit corporation,)	
19)	
20)	
21)	
22)	
23)	

18 Plaintiff,

19 vs.

20 LAKE CONSUMER PRODUCTS, INC., *et al.*,

21 Defendant.

22)

23)

**[PROPOSED] CONSENT
JUDGMENT AS TO TODD
CHRISTOPHER INTERNATIONAL,
INC. DBA VOGUE
INTERNATIONAL**

24 **1. INTRODUCTION**

25 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
26 Environmental Health (“CEH”) and defendant Todd Christopher International, Inc. dba Vogue
27 International (“Settling Defendant”). CEH and Settling Defendant are referred to collectively as
28 the “Parties.”

1 1.2 Settling Defendant is a corporation that employs ten (10) or more persons and
2 that manufactures, distributes and/or sells shampoo and body wash which Vogue manufactures or
3 causes to be manufactured for distribution and/or sale to consumers in California that may contain
4 coconut oil diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide
5 DEA”) in the State of California or has done so in the past.

6 1.3 On June 24, 2013, CEH served a 60-Day Notice of Violation under
7 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
8 & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) to Settling Defendant, the California Attorney
9 General, the District Attorneys of every County in the State of California, and the City Attorneys
10 for every City in State of California with a population greater than 750,000. Settling Defendant
11 agreed to accept service of the Notice as of June 25, 2013 by e-mail correspondence of the same
12 date. The Notice alleges violations of Proposition 65 with respect to the presence of cocamide
13 DEA in shampoo manufactured, distributed and/or sold by Settling Defendant.

14 1.4 On August 27, 2013, CEH filed the action entitled *CEH v. Lake Consumer*
15 *Products, Inc., et al.*, Case No. RG 13-693280, in the Superior Court of California for Alameda
16 County, naming Settling Defendant as a defendant in that action.

17 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
18 Court has jurisdiction over the allegations of violations contained in the operative Complaint
19 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling
20 Defendant as to the acts alleged in the Complaint; (ii) that venue is proper in the County of
21 Alameda; and (iii) that this Court has jurisdiction to enter this Consent Judgment.

22 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
23 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
24 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
25 conclusion of law, issue of law, or violation of law. Except with respect to the releases in section
26 7 herein, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
27 argument or defense the Parties may have in any other legal proceeding. This Consent Judgment
28 is the product of negotiation and compromise and is accepted by the Parties for purposes of

1 settling, compromising and resolving issues disputed in this action.

2 **2. DEFINITIONS**

3 2.1 “Covered Products” means shampoo and body wash.

4 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
5 the Court.

6 **3. INJUNCTIVE RELIEF**

7 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
8 Defendant shall not manufacture, distribute, sell or offer for sale any Covered Product that
9 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
10 purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
11 intentionally added ingredient in the product and/or part of the product formulation.

12 3.2 **Specification to Suppliers.** To the extent it has not already done so, no more
13 than 30 days after the Effective Date, Settling Defendant shall issue specifications to its suppliers
14 of Covered Products requiring that Covered Products for sale in California not contain any
15 cocamide DEA, and shall instruct each supplier to use reasonable efforts to eliminate Covered
16 Products containing cocamide DEA in California.

17 3.3 **Grace Period for Products Manufactured Prior to Manufacturing Date.**
18 Liability for Covered Products that were manufactured and distributed for retail sale prior to the
19 Effective Date shall be subject to the release of liability pursuant to Section 7 of this Consent
20 Judgment, without regard to when such Covered Products were, or are in the future, sold to
21 consumers.

22 **4. ENFORCEMENT**

23 4.1 CEH may, by motion or application for an order to show cause before the
24 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
25 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
26 above, CEH shall provide Settling Defendant with a Notice of Violation and a copy of any test
27 results which purportedly support CEH’s Notice of Violation. The Parties shall then meet and
28 confer regarding the basis for CEH’s anticipated motion or application in an attempt to resolve it

1 informally, including providing Settling Defendant a reasonable opportunity of at least sixty (60)
2 days to cure any alleged violation. Should such attempts at informal resolution fail, CEH may
3 file its enforcement motion or application. The prevailing party on any motion to enforce this
4 Consent Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result
5 of such motion or application. This Consent Judgment may only be enforced by the Parties.

6 **5. PAYMENTS**

7 **5.1 Payments by Settling Defendant.** Within five (5) business days of entry of this
8 Consent Judgment, Settling Defendant shall pay the total sum of \$15,000 as a settlement
9 payment. The total settlement amount for Settling Defendant shall be paid in three separate
10 checks delivered to the offices of the Lexington Law Group (Attn: Mark Todzo), 503 Divisadero
11 Street, San Francisco, California 94117. The funds paid by Settling Defendant shall be allocated
12 between the following categories:

13 5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
14 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
15 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
16 Assessment). The civil penalty check shall be made payable to the Center For Environmental
17 Health.

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

28 5.1.3 \$11,100 as reimbursement of a portion of CEH's reasonable attorneys' fees

1 and costs. A check for \$9,600 shall be made payable to the Lexington Law Group, and a check
2 for \$1,500 shall be made payable to the Center For Environmental Health.

3 **6. MODIFICATION**

4 6.1 **Written Consent.** This Consent Judgment may be modified from time to
5 time by express written agreement of the Parties with the approval of the Court, or by an order of
6 this Court upon motion and in accordance with law.

7 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
8 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
9 modify the Consent Judgment.

10 **7. CLAIMS COVERED AND RELEASED**

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

23 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
24 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling
25 Defendant, its Defendant Releasees and their Downstream Defendant Releasees with respect to
26 any alleged failure to warn about cocamide DEA in Covered Products manufactured, distributed,
27 or sold by Settling Defendant after the Effective Date.

28 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an

1 action under Proposition 65 against any person other than Settling Defendant, Defendant
2 Releasees, or Downstream Defendant Releasees.

3 **8. NOTICE**

4 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
5 notice shall be sent by first class and electronic mail to:

6 Mark Todzo
7 Lexington Law Group
8 503 Divisadero Street
9 San Francisco, CA 94117
10 mtodzo@lexlawgroup.com

11 8.2 When Settling Defendant is entitled to receive any notice under this Consent
12 Judgment, the notice shall be sent by first class and electronic mail to:

13 Thomas G. Long
14 Barnett, Bolt, Kirkwood, Long & McBride, P.A.
15 601 Bayshore Boulevard, Suite 700
16 Tampa, FL 33606
17 tlong@barnettbolt.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 each 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

1 proceeding, Settling Defendant shall be entitled to its reasonable attorneys' fees and costs
2 incurred as a result of such motion or application.

3 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
4 its own attorneys' fees and costs.

5 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
6 sanctions pursuant to law.

7 **11. OTHER TERMS**

8 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
9 of California.

10 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
11 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
12 assigns of any of them.

13 11.3 This Consent Judgment contains the sole and entire agreement and
14 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
15 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
16 merged herein and therein. There are no warranties, representations, or other agreements between
17 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
18 implied, other than those specifically referred to in this Consent Judgment have been made by any
19 Party hereto. No other agreements not specifically contained or referenced herein, oral or
20 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
21 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
22 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
23 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
24 whether or not similar, nor shall such waiver constitute a continuing waiver.

25 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
26 that Settling Defendant might have against any other party, whether or not that party is a Settling
27 Defendant.

28 11.5 This Court shall retain jurisdiction of this matter to implement or modify the

1 Consent Judgment.

2 11.6 The stipulations to this Consent Judgment may be executed in counterparts
3 and by means of facsimile or portable document format (pdf), which taken together shall be
4 deemed to constitute one document.

5 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
7 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
8 Party.

9 11.8 In the event that any of the provisions of this Consent Judgment are held by a
10 court to be unenforceable, the validity of the enforceable provisions shall not be adversely
11 affected and shall remain in full force and effect.

12 11.9 The Parties, including their counsel, have participated in the preparation of
13 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
14 This Consent Judgment was subject to revision and modification by the Parties and has been
15 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
16 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
17 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
18 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
19 be resolved against the drafting Party should not be employed in the interpretation of this Consent
20 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

21

22 **IT IS SO STIPULATED:**

23 **CENTER FOR ENVIRONMENTAL HEALTH**

24

25



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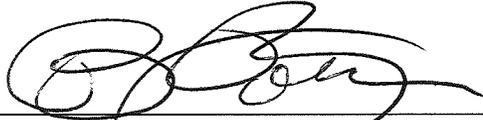
Charlie Pizarro
Associate Director

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**TODD CHRISTOPHER INTERNATIONAL, INC.
DBA VOGUE INTERNATIONAL**



Signature

Bill Rohr

Printed Name

CFO

Title

IT IS SO ORDERED:

Dated: _____, 2013

Judge of the Superior Court