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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA
15

16 Coordination Proceeding Special Title:
17 PROPOSITION 65 COCAMIDE DEA CASES
18

Judicial Council Coordination
Proceeding
No. 4765

19 _____
20 This Document Relates To:
21 *Center for Environmental Health v. Fantasia*
22 *Industries Corporation, et al.*, Case No. RG 13-
696756
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**[PROPOSED] CONSENT
JUDGMENT RE: GOLDEN SUN,
INC., DBA NEWHALL
LABORATORIES, INC.**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and defendant Golden Sun, Inc. dba Newhall Laboratories, Inc.
4 (“Settling Defendant”). CEH and Settling Defendant are referred to collectively as the “Parties.”

5 1.2 Settling Defendant is a corporation that employs ten (10) or more persons and
6 that manufactures, distributes and/or sells shampoo and liquid soaps that contain coconut oil
7 diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the
8 State of California or has done so in the past.

9 1.3 On July 15, 2013, CEH served a 60-Day Notice of Violation under Proposition
10 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
11 Code §§ 25249.5, *et seq.*) (the “CEH Notice”) to Settling Defendant, the California Attorney
12 General, the District Attorneys of every County in the State of California, and the City Attorneys
13 for every City in the State of California with a population greater than 750,000. The CEH Notice
14 alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo
15 and liquid soaps manufactured, distributed and/or sold by Settling Defendant.

16 1.4 On September 24, 2013, CEH filed the action entitled *CEH v. Fantasia*
17 *Industries Corporation, et al.*, Case No. RG 13-696756, in the Superior Court of California for
18 Alameda County, naming Settling Defendant as a defendant in that action.

19 1.5 On July 31, 2013, Shefa LMV, LLC served a 60-Day Notice of Violation
20 under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California
21 Health & Safety Code §§ 25249.5, *et seq.*) (the “Shefa Notice”) to Settling Defendant, the
22 California Attorney General, the District Attorneys of every County in the State of California, and
23 the City Attorneys for every City in the State of California with a population greater than
24 750,000. The Shefa Notice alleges violations of Proposition 65 with respect to the presence of
25 cocamide DEA in shampoo and liquid soaps manufactured, distributed and/or sold by Settling
26 Defendant.

27 1.6 On December 4, 2013, the Superior Court of the State of California, Alameda

1 County, granted a petition to coordinate the *CEH v. Fantasia* case with a series of related cases in
2 Judicial Council Coordination Proceeding Number 4765. For purposes of this Consent Judgment
3 only, the Parties stipulate that: (i) this Court has jurisdiction over the allegations of violations
4 contained in the operative Complaint applicable to Settling Defendant (the “Complaint”) and
5 personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii) that
6 venue is proper in the County of Alameda; and (iii) that this Court has jurisdiction to enter this
7 Consent Judgment.

8 1.7 Nothing in this Consent Judgment is or shall be construed as an admission by
9 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
10 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
11 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
12 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
13 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
14 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
15 this action.

16 **2. DEFINITIONS**

17 2.1 “Covered Products” means shampoo and liquid soaps offered for sale and/or
18 sold in California.

19 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
20 the Court.

21 **3. INJUNCTIVE RELIEF**

22 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
23 Defendant shall not manufacture, distribute, sell or offer for sale any Covered Product that
24 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
25 purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
26 intentionally added ingredient in the product and/or part of the product formulation.

27 Notwithstanding the above, and subject to Paragraph 3.3.1 below, the reformulation requirements

1 under this Paragraph are not applicable to any Covered Products that Settling Defendant
2 manufactured, distributed and/or sold to distributors and/or retailers prior to the Effective Date,
3 and which are sold to California consumers after the Effective Date. In other words, this
4 Paragraph does not apply to Covered Products already in the marketplace as of the Effective
5 Date.

6 3.2 **Specification to Suppliers.** No more than 30 days after the Effective Date,
7 Settling Defendant shall issue specifications to its suppliers of Covered Products requiring that
8 Covered Products not contain any cocamide DEA, and shall instruct each supplier to use
9 reasonable efforts to eliminate Covered Products containing cocamide DEA on a nationwide
10 basis.

11 3.3 **Action Regarding Specific Products.**

12 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the
13 La Bella Professional Formula Placenta and Vitamin E Moisturizing Shampoo with Panthenol,
14 SKU No. 0-76973-95106-9 (the "Section 3.3 Product") in California. On or before the Effective
15 Date, Settling Defendant shall also: (i) cease shipping the Section 3.3 Product to any of its stores
16 and/or customers that resell the Section 3.3 Product in California, and (ii) send instructions to its
17 stores and/or customers that resell the Section 3.3 Product in California instructing them either to:
18 (a) return all the Section 3.3 Product to Settling Defendant for destruction or other handling; or
19 (b) directly destroy the Section 3.3 Product. Notwithstanding the above, the requirements under
20 this Paragraph are not applicable to any sales of the Section 3.3 Product to California consumers
21 by third parties who did not purchase the Section 3.3. Product directly from Settling Defendant.

22 3.3.2 Any destruction of Section 3.3 Product shall be in compliance with all
23 applicable laws.

24 3.3.3 Within sixty days of the Effective Date, Settling Defendant shall provide
25 CEH with written certification from Settling Defendant confirming compliance with the
26 requirements of this Section 3.3.

1 **4. ENFORCEMENT**

2 4.1 CEH may, by motion or application for an order to show cause before the
3 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
4 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
5 above, CEH shall provide Settling Defendant with a Notice of Violation and a copy of any test
6 results which purportedly support CEH's Notice of Violation. The Parties shall then meet and
7 confer regarding the basis for CEH's anticipated motion or application in an attempt to resolve it
8 informally, including providing Settling Defendant a reasonable opportunity of at least thirty (30)
9 days to cure any alleged violation. Should such attempts at informal resolution fail, CEH may
10 file its enforcement motion or application. The prevailing party on any motion to enforce this
11 Consent Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result
12 of such motion or application. This Consent Judgment may only be enforced by the Parties.

13 **5. PAYMENTS**

14 5.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective
15 Date, Settling Defendant shall pay the total sum of \$15,000 as a settlement payment. The total
16 settlement amount for Settling Defendant shall be paid in four separate checks delivered to
17 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
18 Defendant shall be allocated between the following categories:

19 5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
20 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
21 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
22 Assessment). The civil penalty check shall be made payable to the Center For Environmental
23 Health.

24 5.1.2 \$2,250 as a payment in lieu of civil penalty to CEH pursuant to Health &
25 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
26 such funds to continue its work educating and protecting people from exposures to toxic
27 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
28

1 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In
2 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
3 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
4 educate and protect people from exposures to toxic chemicals. The method of selection of such
5 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
6 this Section shall be made payable to the Center For Environmental Health.

7 5.1.3 \$11,100 as reimbursement of a portion of CEH's reasonable attorneys' fees
8 and costs. The check for shall be made payable to the Lexington Law Group.

9 **6. MODIFICATION**

10 6.1 **Written Consent.** This Consent Judgment may be modified from time to
11 time by express written agreement of the Parties with the approval of the Court, or by an order of
12 this Court upon motion and in accordance with law.

13 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
14 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
15 modify the Consent Judgment.

16 **7. CLAIMS COVERED AND RELEASED**

17 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
18 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
19 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
20 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
21 Covered Products, including but not limited to 99 Cents Only Stores and distributors,
22 wholesalers, customers, retailers, franchisees, cooperative members, licensors and licensees
23 ("Downstream Defendant Releasees") of any violation of Proposition 65 that was or could have
24 been asserted in the Complaint against Settling Defendant, Defendant Releasees, and
25 Downstream Defendant Releasees, based on failure to warn about alleged exposure to cocamide
26 DEA contained in Covered Products that were sold by Settling Defendant prior to the Effective
27 Date.

1 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
2 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling
3 Defendant, its Defendant Releasees and their Downstream Defendant Releasees with respect to
4 any alleged failure to warn about cocamide DEA in Covered Products manufactured, distributed,
5 or sold by Settling Defendant after the Effective Date.

6 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
7 action under Proposition 65 against any person other than Settling Defendant, Defendant
8 Releasees, or Downstream Defendant Releasees.

9
10 **8. NOTICE**

11 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by first class and electronic mail to:

13 Mark Todzo
14 Lexington Law Group
15 503 Divisadero Street
16 San Francisco, CA 94117
17 mtodzo@lexlawgroup.com

18 8.2 When Settling Defendant is entitled to receive any notice under this Consent
19 Judgment, the notice shall be sent by first class and electronic mail to:

20 Allan I. Zackler
21 Zackler & Associates
22 3824 Grand Avenue
23 Oakland, CA 94610
24 azackler@zacklerlaw.com

25 8.3 Any Party may modify the person and address to whom the notice is to be sent
26 by sending the other Party notice by first class and electronic mail.

27 **9. COURT APPROVAL**

28 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
shall support entry of this Consent Judgment.

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.

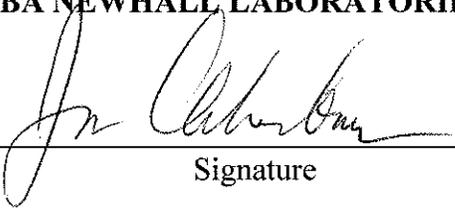
11 11.8 The Parties, including their counsel, have participated in the preparation of
12 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
13 This Consent Judgment was subject to revision and modification by the Parties and has been
14 accepted and approved 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

21 **IT IS SO STIPULATED:**

22 **CENTER FOR ENVIRONMENTAL HEALTH**

23
24 
25 _____
26 Charlie Pizarro
27 Associate Director
28

1 **GOLDEN SUN, INC.**
2 **DBA NEWHALL LABORATORIES, INC.**

3 
4 _____
5 Signature

6 **Jon ACHENBAUM**
7 _____
8 Printed Name

9 **PRESIDENT + CEO**
10 _____
11 Title

12 **IT IS SO ORDERED:**

13
14 Dated: _____, 2014

15 _____
16 Judge of the Superior Court