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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA  
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17 Coordination Proceeding Special Title: ) Judicial Council Coordination Proceeding  
)  
18 PROPOSITION 65 COCAMIDE DEA CASES ) Case No. 4765  
)  
19 \_\_\_\_\_ )  
)  
20 This Document Relates To: ) **[PROPOSED] CONSENT**  
) **JUDGMENT AS TO UPPER**  
21 *CEH v. Commonwealth Soap and Toiletries, Inc.,* ) **CANADA SOAP & CANDLE**  
*et al., A.C.S.C. Case No. RG1369 8427\_\_\_\_\_* ) **MAKERS CORPORATION**  
22 \_\_\_\_\_ )  
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23  
24 **1. INTRODUCTION**

25 1.1 The parties to this Consent Judgment (“Parties”) are the Center for  
26 Environmental Health (“CEH”) and defendant Upper Canada Soap & Candle Makers Corporation  
27 (“Settling 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/or sells shampoo and liquid soaps that contain coconut oil  
3 diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the  
4 State of California or has done so in the past.

5           1.3           On July 19, 2013, CEH served a 60-Day Notice of Violation under Proposition  
6 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety  
7 Code §§ 25249.5, *et seq.*) (the “Notice”) to Settling Defendant, the California Attorney General,  
8 the District Attorneys of every County in the State of California, and the City Attorneys for every  
9 City in the State of California with a population greater than 750,000. The Notice alleges  
10 violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo and  
11 liquid soaps manufactured, distributed and/or sold by Settling Defendant.

12           1.4           On October 13, 2013, CEH filed the action entitled *CEH v. Commonwealth*  
13 *Soap and Toiletries, Inc., et al.*, A.C.S.C. Case No. RG1369 8427, in the Superior Court of  
14 California for Alameda County, naming Settling Defendant as a defendant in that action. On  
15 November 25, 2013, this action was coordinated with several other related Proposition 65 actions  
16 in the *Proposition 65 Cocamide DEA Cases*, Case No. JCCP 4765, currently pending before this  
17 Court.

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 shampoo and liquid soaps.

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 product “contains cocamide DEA” if cocamide DEA is an  
12 intentionally added ingredient in the product and/or part of the product formulation.

13 3.2 **Specification to Suppliers.** No more than 30 days after the Effective Date,  
14 Settling Defendant shall issue specifications to its suppliers of Covered Products requiring that  
15 Covered Products not contain any cocamide DEA, and shall instruct each supplier to use  
16 reasonable efforts to eliminate Covered Products containing cocamide DEA on a nationwide  
17 basis.

18 3.3 **Action Regarding Specific Products.**

19 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling  
20 units of the Amelie’s Garden French Lavender Hand and Body Wash Gift Set and Brompton and  
21 Langley Lemon Handwash Gift Set that contain cocamide DEA (the “Section 3.3 Products”) in  
22 California. On or before the Effective Date, Settling Defendant shall also: (i) cease shipping the  
23 Section 3.3 Products to any of its stores and/or customers that resell the Section 3.3 Products in  
24 California, and (ii) send instructions to its stores and/or customers that resell the Section 3.3  
25 Products in California instructing them either to: (a) return all the Section 3.3 Products to Settling  
26 Defendant for destruction; or (b) directly destroy the Section 3.3 Products.

27 3.3.2 Any destruction of Section 3.3 Product shall be in compliance with all  
28 applicable laws.

1                   3.3.3 Within sixty days of the Effective Date, Settling Defendant shall provide  
2 CEH with written certification from Settling Defendant confirming compliance with the  
3 requirements of this Section 3.3.

4       **4. ENFORCEMENT**

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

16       **5. PAYMENTS**

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

22                   5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),  
23 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12  
24 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard  
25 Assessment). The civil penalty check shall be made payable to the Center For Environmental  
26 Health.

27                   5.1.2 \$2,250 as a payment in lieu of civil penalty to CEH pursuant to Health &  
28 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use

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

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

## 12 **6. MODIFICATION**

13           6.1 **Written Consent.** This Consent Judgment may be modified from time to  
14 time by express written agreement of the Parties with the approval of the Court, or by an order of  
15 this Court upon motion and in accordance with law.

16           6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
17 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
18 modify the Consent Judgment.

## 19 **7. CLAIMS COVERED AND RELEASED**

20           7.1 This Consent Judgment is a full, final and binding resolution between 1) CEH  
21 on behalf of itself and the public interest and 2) Settling Defendant, as well as Settling  
22 Defendant's parents, subsidiaries, affiliated entities that are under common ownership, directors,  
23 officers, employees, attorneys, as well as any retailers, customers, or distributors of Covered  
24 Products distributed or sold by Settling Defendant ("Defendant Releasees"), of any violation of  
25 Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant  
26 or Defendant Releasees, based on failure to warn about alleged exposure to cocamide DEA  
27 contained in Covered Products that were sold by Settling Defendant or Defendant Releasees prior  
28 to the Effective 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 and its Defendant Releasees with respect to any alleged failure to warn about  
4 cocamide DEA in Covered Products manufactured, distributed, or sold by Settling Defendant  
5 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 and Defendant  
8 Releasees.

9       **8.    NOTICE**

10          8.1           When CEH is entitled to receive any notice under this Consent Judgment, the  
11 notice shall be sent by first class and electronic mail to:

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

17          8.2           When Settling Defendant is entitled to receive any notice under this Consent  
18 Judgment, the notice shall be sent by first class and electronic mail to:

19                               Stephen Flatt  
20                               1510A Caterpillar Road  
21                               Mississauga, ON L4X 2W9  
22                               Sflatt@uppercanadasoap.com

23          8.3           Any Party may modify the person and address to whom the notice is to be sent  
24 by sending the other Party notice by first class and electronic mail.

25       **9.    COURT APPROVAL**

26          9.1           This Consent Judgment shall become effective upon entry by the Court. CEH  
27 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
28 shall support entry of this Consent Judgment.

1           9.2           If this Consent Judgment is not entered by the Court, it shall be of no force or  
2 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
3 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

4       **10.    ATTORNEYS' FEES**

5           10.1           Should CEH prevail on any motion, application for an order to show cause or  
6 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
7 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
8 Settling Defendant prevail on any motion application for an order to show cause or other  
9 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
10 of such motion or application upon a finding by the Court that CEH's prosecution of the motion  
11 or application lacked substantial justification. For purposes of this Consent Judgment, the term  
12 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
13 Code of Civil Procedure §§ 2016, *et seq.*

14           10.2           Except as otherwise provided in this Consent Judgment, each Party shall bear  
15 its own attorneys' fees and costs.

16           10.3           Nothing in this Section 10 shall preclude a Party from seeking an award of  
17 sanctions pursuant to law.

18       **11.    OTHER TERMS**

19           11.1           The terms of this Consent Judgment shall be governed by the laws of the State  
20 of California.

21           11.2           This Consent Judgment shall apply to and be binding upon CEH and Settling  
22 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or  
23 assigns of any of them.

24           11.3           This Consent Judgment contains the sole and entire agreement and  
25 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
26 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
27 merged herein and therein. There are no warranties, representations, or other agreements between  
28 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or

1 implied, other than those specifically referred to in this Consent Judgment have been made by any  
2 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
3 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
4 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
5 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
6 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
7 whether or not similar, nor shall such waiver constitute a continuing waiver.

8           11.4       Nothing in this Consent Judgment shall release, or in any way affect any rights  
9 that Settling Defendant might have against any other party, whether or not that party is a Settling  
10 Defendant.

11           11.5       This Court shall retain jurisdiction of this matter to implement or modify the  
12 Consent Judgment.

13           11.6       The stipulations to this Consent Judgment may be executed in counterparts  
14 and by means of facsimile or portable document format (pdf), which taken together shall be  
15 deemed to constitute one document.

16           11.7       Each signatory to this Consent Judgment certifies that he or she is fully  
17 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
18 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
19 Party.

20           11.8       The Parties, including their counsel, have participated in the preparation of  
21 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
22 This Consent Judgment was subject to revision and modification by the Parties and has been  
23 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
24 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
25 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
26 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
27 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
28 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.



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**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**



\_\_\_\_\_  
Charlie Pizarro  
Associate Director

**UPPER CANADA SOAP AND CANDLE MAKERS CORPORATION**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Stephen Flatt

\_\_\_\_\_  
President

**IT IS SO ORDERED:**

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Judge of the Superior Court

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**IT IS SO STIPULATED:**

**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_  
Charlie Pizarro  
Associate Director

**UPPER CANADA SOAP AND CANDLE MAKERS CORPORATION**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Stephen Flatt

\_\_\_\_\_  
President

**IT IS SO ORDERED:**

Dated: May 5, 2014

\_\_\_\_\_  
Judge of the Superior Court