

1 Mark N. Todzo, State Bar No. 168389  
Victoria Hartanto, State Bar No. 259833  
2 LEXINGTON LAW GROUP  
503 Divisadero Street  
3 San Francisco, CA 94117  
Telephone: (415) 913-7800  
4 Facsimile: (415) 759-4112  
mtodzo@lexlawgroup.com  
5 vhartanto@lexlawgroup.com

6 Rick Franco, State Bar No. 170970  
Center for Environmental Health  
7 2201 Broadway, Suite 302  
Oakland, California 94612  
8 Telephone: (510) 655-3900  
Facsimile: (510) 655-9100  
9 rick@ceh.org

10 Counsel for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH  
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12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA  
15

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17 CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 13- 707833  
a non-profit corporation, )  
18 )  
Plaintiff, )  
19 ) [PROPOSED] CONSENT  
vs. ) JUDGMENT AS TO HATCHBEAUTY  
20 ) PRODUCTS, LLC  
MUDLARK PAPERS INC., *et al.*, )  
21 )  
Defendant. )  
22 )

23  
24 **1. INTRODUCTION**

25 1.1 The parties to this Consent Judgment are the Center for Environmental Health  
26 (“CEH”) and defendant Hatchbeauty Products, LLC (“Settling Defendant”). CEH and Settling  
27 Defendant are referred to collectively as the “Parties.”  
28

1           1.2           Settling Defendant is a limited liability corporation that employs ten (10) or  
2 more persons and that manufactures, distributes, and/or sells 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 October 11, 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 certain  
11 liquid soaps manufactured, distributed, and/or sold by Settling Defendant in the State of  
12 California.

13           1.4           On December 23, 2013, CEH filed the action entitled *CEH v. Mudlark Papers*  
14 *Inc., et al.*, Case No. RG 13707833, in the Superior Court of California for Alameda County,  
15 naming Settling Defendant as a defendant in that action.

16           1.5           For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
17 Court has jurisdiction over the allegations of violations contained in the operative Complaint  
18 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling  
19 Defendant as to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda;  
20 and (iii) this Court has jurisdiction to enter this Consent Judgment.

21           1.6           Nothing in this Consent Judgment is or shall be construed as an admission by  
22 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance  
23 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
24 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
25 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
26 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
27 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
28 this action.

1     **2.     DEFINITIONS**

2             2.1             “Covered Product(s)” means liquid soaps containing cocamide DEA that are  
3 manufactured by or for, and/or sold by, Settling Defendant in the State of California, including,  
4 but not limited to, Trader Joe’s Next To Godliness Lemon Kitchen Hand Soap. For purposes of  
5 this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA itself is an  
6 intentionally added ingredient in the product and/or part of the product formulation.

7             2.2             “Effective Date” means the date on which this Consent Judgment is entered by  
8 the Court.

9     **3.     INJUNCTIVE RELIEF**

10            3.1            **Reformulation of Covered Products.** To the extent it has not already done  
11 so, as of the Effective Date, Settling Defendant shall not manufacture, distribute, sell, or offer for  
12 sale any Covered Product that will be sold or offered for sale in California to consumers.

13            3.2            **Specification to Suppliers and/or Manufacturers.** To the extent it has not  
14 already done so, no more than thirty (30) days after the Effective Date, Settling Defendant shall  
15 issue specifications to its suppliers and/or manufacturers of Covered Products requiring that  
16 products supplied to or manufactured for Settling Defendant not contain any cocamide DEA, and  
17 shall instruct each supplier and/or manufacturer to use reasonable efforts to eliminate cocamide  
18 DEA as an added ingredient from Settling Defendant’s Products on a nationwide basis.

19            3.3            **Action Regarding Specific Products.**

20                    3.3.1    On or before the Effective Date, Settling Defendant shall also: (i) cease  
21 shipping Covered Products to any of its stores and/or customers that resell Covered Products in  
22 California; and (ii) send instructions to its stores and/or customers that resell Covered Products in  
23 California instructing them either to: (a) return all of the Covered Products to Settling Defendant  
24 for destruction; or (b) directly destroy Covered Products.

25                    3.3.2    Any destruction of Covered Products shall be in compliance with all  
26 applicable laws.

27  
28

1                   3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall  
2 provide CEH with written certification from Settling Defendant confirming compliance with the  
3 requirements of this Section 3.3.

4       **4. ENFORCEMENT**

5                   CEH may, by motion or application for an order to show cause before the Superior Court  
6 of Alameda County, enforce the terms and conditions contained in this Consent Judgment. Prior  
7 to bringing any motion or application to enforce the requirements of Section 3 above, CEH shall  
8 provide Settling Defendant with a Notice of Violation and a copy of any test results which  
9 purportedly support CEH’s Notice of Violation. The Parties shall then meet and confer regarding  
10 the basis for CEH’s anticipated motion or application in an attempt to resolve it informally, and  
11 CEH shall provide Settling Defendant with a reasonable opportunity of at least thirty (30) days to  
12 cure any alleged violation. Should such attempts at informal resolution fail, CEH may file its  
13 enforcement motion or application. The prevailing party on any motion to enforce this Consent  
14 Judgment shall be entitled to its reasonable attorneys’ fees and costs incurred as a result of such  
15 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 \$25,000 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     \$2,750 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 (“OEHHA”). The civil penalty check shall be made payable to the Center For  
26 Environmental Health.

27                   5.1.2     \$3,750 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 \$18,500 as reimbursement of a portion of CEH's reasonable attorneys' fees  
10 and costs. A check for \$16,000 shall be made payable to the Lexington Law Group, and a check  
11 for \$2,500 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. If the Parties agree that this Consent  
16 Judgment should no longer apply to the Covered Products, the Parties may modify the Consent  
17 Judgment via Stipulation and Proposed Order.

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

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

22           7.1 This Consent Judgment is a full, final, and binding resolution between CEH on  
23 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
24 affiliated entities that are under common ownership, and each of their directors, officers,  
25 shareholders, members, employees, and attorneys ("Defendant Releasees"), and each entity to  
26 whom they directly or indirectly sell or sold or distributed Covered Products, including, but not  
27 limited to, Trader Joe's and any and all of Settling Defendant's other distributors, wholesalers,  
28 customers, retailers, franchisees, cooperative members, licensors, and licensees of Covered

1 Products (“Downstream Defendant Releasees”) of any violation of Proposition 65 that was or  
2 could have been asserted in the Complaint against Settling Defendant, Defendant Releasees, and  
3 Downstream Defendant Releasees, based on failure to warn about alleged exposure to cocamide  
4 DEA contained in Covered Products that were sold by Settling Defendant prior to the Effective  
5 Date.

6 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant  
7 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling  
8 Defendant, its Defendant Releasees, and each of their Downstream Defendant Releasees with  
9 respect to any alleged failure to warn about cocamide DEA in Covered Products manufactured,  
10 distributed, or sold by Settling Defendant after the Effective Date.

11 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an  
12 action under Proposition 65 against any person other than Settling Defendant, Defendant  
13 Releasees, or Downstream Defendant Releasees.

14 **8. NOTICE**

15 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
16 notice shall be sent by first class and/or electronic mail to:

17 Mark Todzo  
18 Lexington Law Group  
19 503 Divisadero Street  
20 San Francisco, CA 94117  
21 mtodzo@lexlawgroup.com

22 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
23 Judgment, the notice shall be sent by first class and/or electronic mail to:

24 Ronie M. Schmelz  
25 Edwards Wildman Palmer LLP  
26 1901 Avenue of the Stars, Ste. 1700  
27 Los Angeles, CA 90067  
28 rschmelz@edwardswildman.com

29 8.3 Any Party may modify the person and address to whom the notice is to be sent  
30 by sending the other Party notice by first class and/or electronic mail.

1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
3 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
4 shall support entry of this Consent Judgment.

5 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
6 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
7 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

8 **10. ATTORNEYS' FEES**

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

18 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear  
19 its own attorneys' fees and costs.

20 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of  
21 sanctions pursuant to law.

22 **11. OTHER TERMS**

23 11.1 The terms of this Consent Judgment shall be governed by the laws of the State  
24 of California.

25 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
26 Defendant and each of its respective divisions, subdivisions, and subsidiaries, and the successors  
27 and assigns of each of them.

28 11.3 This Consent Judgment contains the sole and entire agreement and

1 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
2 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
3 merged herein. There are no warranties, representations, or other agreements between or among  
4 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
5 implied, other than those specifically referred to in this Consent Judgment have been made by any  
6 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
7 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
8 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
9 writing by the Parties. No waiver of any of the provisions of this Consent Judgment shall be  
10 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,  
11 nor shall such waiver constitute a continuing waiver.

12 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights  
13 that Settling Defendant might have against any other party, whether or not that party is a Settling  
14 Defendant.

15 11.5 This Court shall retain jurisdiction of this matter to implement or modify the  
16 Consent Judgment.

17 11.6 This Consent Judgment may be executed in counterparts and by means of  
18 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
19 one document.

20 11.7 Each signatory to this Consent Judgment certifies that he or she is fully  
21 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
22 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
23 Party.

24 11.8 The Parties, including their counsel, have participated in the preparation of  
25 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
26 This Consent Judgment was subject to revision and modification by the Parties and has been  
27 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
28 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any



1 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
2 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
3 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
4 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

5

6 **IT IS SO STIPULATED:**

7

8 **CENTER FOR ENVIRONMENTAL HEALTH**

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10 

11 Charlie Pizarro  
12 Associate Director

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16 **HATCHBEAUTY PRODUCTS, LLC**

17

18

19 \_\_\_\_\_  
20 Signature

21

22 \_\_\_\_\_  
23 Printed Name

24

25

26 \_\_\_\_\_  
27 Title

28

29 **IT IS SO ORDERED:**

30

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

32

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

33

1 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
2 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
3 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
4 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

5  
6 **IT IS SO STIPULATED:**

7  
8 **CENTER FOR ENVIRONMENTAL HEALTH**

9  
10  
11 \_\_\_\_\_  
12 Charlie Pizarro  
13 Associate Director

14 **HATCHBEAUTY PRODUCTS, LLC**  
15   
16 \_\_\_\_\_  
17 Signature

18  
19 *Tracy M. Holland*  
20 \_\_\_\_\_  
21 Printed Name

22 *Managing Partner*  
23 \_\_\_\_\_  
24 Title

25 **IT IS SO ORDERED:**

26 Dated: \_\_\_\_\_ 2014  
27 \_\_\_\_\_  
28 Judge of the Superior Court