

**SETTLEMENT AGREEMENT & RELEASE – BIOLAB INTERNATIONAL INC.**

**1. INTRODUCTION**

**1.1.** This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and Biolab International Inc. (“Biolab International”). CEH and Biolab International are referred to collectively as the “Parties.”

**1.2.** On July 19, 2013, CEH, a nonprofit corporation acting in the public interest, served a 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) to Biolab International, the California Attorney General, the District Attorneys of every county in California, and the City Attorneys of every California city with a population greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of coconut oil diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in shampoo and liquid soaps manufactured, distributed, and/or sold by Biolab International.

**1.3.** Nothing in this Agreement is or 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. This Agreement is the product of negotiation and compromise and is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in this action.

**2. DEFINITIONS**

**2.1.** “Covered Products” means shampoo and liquid soaps.

**2.2.** “Effective Date” means the date on which this Agreement is executed.

### **3. INJUNCTIVE RELIEF**

**3.1. Reformulation of Covered Products.** As of the Effective Date, Biolab International 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 Agreement, a product “contains cocamide DEA” if cocamide DEA is an intentionally added ingredient in the product and/or part of the product formulation.

**3.2. Specification to Suppliers.** No more than thirty (30) days after the Effective Date, Biolab International 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.

### **3.3. Action Regarding Specific Products.**

**3.3.1.** On or before the Effective Date, Biolab International shall cease selling the Pure Passion Coconut Lime Handsoap, SKU No. 400088264781, Item No. 8674, (“Section 3.3 Product”) in California. On or before the Effective Date, Biolab International shall also: (i) cease shipping the Section 3.3 Product to any of its stores and/or customers that resell the Section 3.3 Product in California; and (ii) send instructions to its stores and/or customers that resell the Section 3.3 Product in California instructing them either to: (a) return all the Section 3.3 Product to Biolab International for destruction, or (b) directly destroy the Section 3.3 Product.

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

**3.3.3.** Within sixty (60) days of the Effective Date, Biolab International shall provide CEH with written certification from Biolab International confirming compliance with the requirements of this Section 3.3.

#### **4. ENFORCEMENT**

**4.1. Venue, Jurisdiction, and Attorneys' Fees.** 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. The prevailing party on any action to enforce the terms of this Agreement shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

**4.2. 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.

#### **5. PAYMENTS**

**5.1. Payments by Biolab International.** In consideration of the mutual covenants and releases provided in this Agreement, within five (5) business days of execution of this Agreement, Biolab International shall pay a total of \$12,500 as a settlement payment. This total

shall be paid in four separate checks delivered to counsel for CEH at the address set forth in Section 9.1 below, and shall be made payable and allocated between the following categories:

**5.1.1.** Biolab International shall pay \$1,375 as a civil penalty pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment). The civil penalty check shall be made payable to the Center for Environmental Health.

**5.1.2.** Biolab International 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. CEH may also use a portion of such funds to monitor compliance with this Agreement and to purchase and test Biolab International's products to confirm compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent (4%) 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](http://www.ceh.org/justicefund). The payment in lieu of penalty check shall be made payable to the Center for Environmental Health.

**5.1.3.** Biolab International shall pay \$9,250 to reimburse CEH and its attorneys for their reasonable attorneys' fees and costs. 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.

## **6. MODIFICATION**

**6.1. Written Consent.** This Agreement may be modified only by express written agreement of the Parties.

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

**7.1.** This Agreement is a full, final, and binding resolution between CEH on behalf of itself and the public interest and Biolab International, and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, and attorneys (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell Covered Products, including but not limited to Ross Stores, Inc. and its other distributors, wholesalers, customers, and retailers, franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”) of any violation of Proposition 65 that was or could have been asserted against Biolab International, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged exposure to cocamide DEA contained in Covered Products that were sold by Biolab International prior to the Effective Date.

**7.2.** Compliance with the terms of this Agreement by Biolab International and its Releasees shall constitute compliance with Proposition 65 by Biolab International, its Releasees, and its Downstream Releasees with respect to any alleged failure to warn about cocamide DEA in Covered Products manufactured, distributed, and/or sold by Biolab International on or before the Effective Date.

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

## **8. SPECIFIC PERFORMANCE**

**8.1.** The Parties expressly recognize that Biolab International's obligations under this Agreement are unique. In the event that Biolab International is found to be in breach of this Agreement for failure to comply with the provisions of Section 3, 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 Biolab International expressly waives the defense that a remedy in damages will be adequate.

## **9. 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 Biolab International:

Benjamin Bien  
Biolab International Inc.  
130 Deninson Street  
Markham, ON L3R 1B6  
benny@pqiint.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. OTHER TERMS**

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

**10.2.** This Agreement shall apply to and be binding upon CEH and Biolab International, and its respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any of them.

**10.3.** 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.

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

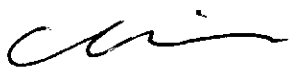
**10.5.** The stipulations to this Agreement may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

10.6. 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.

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

**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**

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

Dated: 6/20/2017

**BIOLAB INTERNATIONAL INC.**

\_\_\_\_\_  
Benjamin Bien  
Managing Director

Dated: \_\_\_\_\_



10.6. 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.

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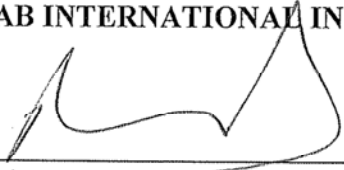
**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**

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

Dated: \_\_\_\_\_

**BIOLAB INTERNATIONAL INC.**

  
\_\_\_\_\_  
Benjamin Bien  
Managing Director

Dated: June 11/14