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Counsel for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

vs.

COMMONWEALTH SOAP & TOILETRIES
COMPANY, *et al.*,

Defendant.

Case No. RG 13-698427

**[PROPOSED] CONSENT
JUDGMENT AS TO SOMERSET
TOILETRY COMPANY, LTD.**

1. INTRODUCTION

1.1 The parties to this Consent Judgment (“Parties”) are the Center for Environmental Health (“CEH”) and defendant Somerset Toiletry Company, Ltd. (“Settling Defendant”). CEH and Settling Defendant are referred to collectively as 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 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 26, 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 liquid
11 soaps manufactured, distributed and/or sold by Settling Defendant.

12 1.4 On October 15, 2013, in the action entitled *Center for Environmental Health*
13 *v. Commonwealth Soap & Toiletries Company, Inc., et al.*, Case No. RG 13-698427, in the
14 Superior Court of California for Alameda County, CEH named Settling Defendant as a defendant
15 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) that venue is proper in the County of
20 Alameda; and (iii) that 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 Products” means shampoo and liquid soaps including but not limited
3 to hand soaps and hand washes manufactured, distributed, or sold by Settling Defendant.

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

17 3.3 **Action Regarding Specific Products.**

18 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the
19 Asquith & Somerset English Rose Moisturising Hand Wash, SKU No. 6-39136-81429-0 (the
20 “Section 3.3 Product”) in California if it contains cocamide DEA as an ingredient. On or before
21 the Effective Date, Settling Defendant shall also: (i) cease shipping the Section 3.3 Product to any
22 of its stores and/or customers that resell the Section 3.3 Product in California if the Section 3.3
23 Product contains cocamide DEA as an ingredient, and, to the extent it has not done so already, (ii)
24 send instructions to its stores and/or customers that resell the Section 3.3 Product in California
25 instructing them either to: (a) return all the Section 3.3 Product to Settling Defendant for
26 destruction if it is labeled as containing cocamide DEA; or (b) directly destroy the Section 3.3
27 Product if it is labeled as containing cocamide DEA.

28

1 3.3.2 Any destruction of Section 3.3 Product shall be in compliance with all
2 applicable laws.

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

6 **4. ENFORCEMENT**

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

18 **5. PAYMENTS**

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

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

1 5.1.2 \$2,250 as a payment in lieu of civil penalty to CEH pursuant to Health &
2 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
3 such funds to continue its work educating and protecting people from exposures to toxic
4 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
5 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In
6 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
7 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
8 educate and protect people from exposures to toxic chemicals. The method of selection of such
9 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
10 this Section shall be made payable to the Center For Environmental Health.

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

14 **6. MODIFICATION**

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

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, directors, officers, employees, and attorneys
25 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
26 Covered Products, including but not limited to distributors, wholesalers, customers, retailers
27 (including but not limited to The TJX Companies, Inc. and T.J. Maxx of CA, LLC) franchisees,
28 cooperative members, licensors and licensees ("Downstream Defendant Releasees") of any

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

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

10 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
11 action under Proposition 65 against any person other than Settling Defendant, Defendant
12 Releasees, or Downstream Defendant Releasees.

13 **8. NOTICE**

14 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by first class and electronic mail to:

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

21 8.2 When Settling Defendant is entitled to receive any notice under this Consent
22 Judgment, the notice shall be sent by first class and electronic mail to:

23 Trenton H. Norris
24 Sarah Esmaili
25 Arnold & Porter LLP
26 Three Embarcadero Center, 7th Floor
27 San Francisco, CA 94111-4024
28 Trent.Norris@aporter.com
Sarah.Esmaili@aporter.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 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 In any motion, application for an order to show cause or other proceeding to
10 enforce a violation of this Consent Judgment, the prevailing Party shall be entitled to its
11 reasonable attorneys' fees and costs incurred as a result of such motion or application. As used
12 in this Consent Judgment, the term "prevailing Party" means the Party who is successful in
13 obtaining relief more favorable to it than the relief that the other Party was amenable to providing
14 during the Parties' good faith attempt to resolve the dispute that is the subject of such a motion,
15 application, or other enforcement proceeding.

16 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
17 its own attorneys' fees and costs.

18 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
19 sanctions pursuant to law.

20 **11. OTHER TERMS**

21 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
22 of California.

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

26 11.3 This Consent Judgment contains the sole and entire agreement and
27 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
28 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby

1 merged herein and therein. There are no warranties, representations, or other agreements between
2 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
3 implied, other than those specifically referred to in this Consent Judgment have been made by any
4 Party hereto. No other agreements not specifically contained or referenced herein, oral or
5 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
6 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
7 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
8 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
9 whether or not similar, nor shall such waiver constitute a continuing waiver.

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

13 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
14 Consent Judgment.

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

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

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

1 be resolved against the drafting Party should not be employed in the interpretation of this Consent
2 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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4 **IT IS SO STIPULATED:**

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6 **CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro
Associate Director

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12 **SOMERSET TOILETY COMPANY, LTD.**

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Signature

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17

Printed Name

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19

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Title

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23 **IT IS SO ORDERED:**

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Dated: _____, 2013

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Judge of the Superior Court

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1 be resolved against the drafting Party should not be employed in the interpretation of this Consent
2 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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4 **IT IS SO STIPULATED:**

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6 **CENTER FOR ENVIRONMENTAL HEALTH**

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9 _____
Charlie Pizarro
Associate Director

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12 **SOMERSET TOILETY COMPANY, LTD.**

13
14 _____
Signature

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16 _____
Printed Name

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18 _____
Title

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23 **IT IS SO ORDERED:**

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25 Dated: _____, 2013

26 _____
Judge of the Superior Court

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