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10 Counsel for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH
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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA
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16
17 CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG 13-698427
a non-profit corporation,)
18)
Plaintiff,)
19)
vs.) [PROPOSED] CONSENT
20) JUDGMENT AS TO PHARMACA
COMMONWEALTH SOAP & TOILETRIES,) INTEGRATIVE PHARMACY, INC.
21 INC., *et al.*,)
22)
Defendant.)
23

24 **1. INTRODUCTION**

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

1 1.2 Settling Defendant is a corporation that employs ten (10) or more persons and
2 is a retail seller that has distributed and/or sold shampoo and liquid soaps that contained coconut
3 oil diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the
4 State of California.

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 (the “Noticed Products”) manufactured, distributed and/or sold by Settling Defendant.

12 1.4 On October 8, 2013, CEH filed the action entitled *CEH v. Commonwealth*
13 *Soap & Toiletries, Inc., et al.*, Case No. RG 13-698427, in the Superior Court of California for
14 Alameda County (the “Action”), naming Settling Defendant as a defendant in that Action.

15 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
16 Court has jurisdiction over the allegations of violations contained in the operative Complaint
17 applicable to Settling Defendant (the “Complaint”) and personal jurisdiction over Settling
18 Defendant as to the acts alleged in the Complaint; (ii) that venue is proper in the County of
19 Alameda; and (iii) that this Court has jurisdiction to enter this Consent Judgment.

20 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
21 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
22 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
23 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
24 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
25 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
26 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
27 this Action.

28

1 **2. DEFINITIONS**

2 2.1 “Covered Products” means the products identified on the attached Exhibit A.

3 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
4 the Court.

5 **3. INJUNCTIVE RELIEF**

6 3.1 **Reformulation of Noticed Products.** As of the Effective Date, Settling
7 Defendant shall not manufacture, distribute, sell or offer for sale to California consumers any
8 Noticed Product that contains cocamide DEA. For purposes of this Consent Judgment, a product
9 “contains cocamide DEA” if cocamide DEA is an intentionally added ingredient in the product
10 and/or part of the product formulation.

11 3.2 **Specification to Suppliers.** No more than 30 days after the Effective Date,
12 Settling Defendant shall issue specifications to its suppliers of Noticed Products requiring that
13 Noticed Products not contain cocamide DEA, and shall request each supplier to use reasonable
14 efforts to eliminate cocamide DEA from Noticed Products on a nationwide basis.

15 **4. ENFORCEMENT**

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

27 **5. PAYMENTS**

28 5.1 **Payments by Settling Defendant.** Within 15 business days of the Effective Date,

1 Settling Defendant shall pay the total sum of \$15,000 as a settlement payment. The total
2 settlement amount for Settling Defendant shall be paid in four separate checks delivered to
3 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
4 Defendant shall be allocated between the following categories:

5 5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
6 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
7 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
8 Assessment). The civil penalty check shall be made payable to the Center For Environmental
9 Health.

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

20 5.1.3 \$11,100 as reimbursement of a portion of CEH's reasonable attorneys' fees
21 and costs. A check for \$9,600 shall be made payable to the Lexington Law Group, and a check
22 for \$1,500 shall be made payable to the Center For Environmental Health.

23 **6. MODIFICATION**

24 6.1 **Written Consent.** This Consent Judgment may be modified only by express
25 written agreement of the Parties with the approval of the Court, or by an order of this Court upon
26 motion and in accordance with law.

27 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
28 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to

1 modify the Consent Judgment.

2 **7. CLAIMS COVERED AND RELEASED**

3 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
4 behalf of itself and in the public interest, and Settling Defendant and its parents, subsidiaries,
5 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
6 (“Defendant Releasees”), of any violation of Proposition 65 that was or could have been asserted
7 in the Complaint against Settling Defendant and Defendant Releasees, based on failure to warn
8 about alleged exposure to cocamide DEA contained in Noticed Products, including but not
9 limited to the Covered Products, that were sold by Settling Defendant prior to the Effective Date.

10 7.2 CEH, on behalf of itself (“Releasor”) hereby irrevocably and unconditionally
11 releases, acquits and forever discharges Defendant Releasees and Aromaland, Inc. from any and
12 all claims, rights, remedies, demands, collections, controversies, actions, causes of action,
13 injunctions, suits, complaints, indebtedness, liens, encumbrances, obligations, liabilities, contracts
14 and agreements, promises, damages, costs, fees and expenses (including attorneys’ costs, fees and
15 expenses), penalties, losses or relief of any nature, amount or kind, in law or in equity, past or
16 present, known or unknown, suspected or unsuspected, matured or unmatured, in respect of any
17 action, omission or event occurring from the beginning of time through the Effective Date,
18 against any of the Defendant Releasees and Aromaland, Inc., which any Releasor has had, now
19 has or may in the future have, against or with respect to any of the Defendant Releasees and
20 Aromaland, Inc. arising out of or relating to the Noticed Products sold by Defendant Releasees
21 prior to the Effective Date, including but not limited to the Covered Products, the Notice, or the
22 Action.

23 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant
24 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling
25 Defendant and its Defendant Releasees with respect to any alleged failure to warn about
26 cocamide DEA in Noticed Products manufactured, distributed, or sold by Settling Defendant after
27 the Effective Date.

28 7.4 Nothing in this Section 7 affects CEH’s right to commence or prosecute an

1 action under Proposition 65 against any person other than Settling Defendant, Defendant
2 Releasees and Aromaland.

3 **8. NOTICE**

4 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
5 notice shall be sent by first class and electronic mail to:

6 Mark Todzo
7 Lexington Law Group
8 503 Divisadero Street
9 San Francisco, CA 94117
10 mtodzo@lexlawgroup.com

11 8.2 When Settling Defendant is entitled to receive any notice under this Consent
12 Judgment, the notice shall be sent by first class and electronic mail to:

13 Nancy Hoopes
14 Vice President, Human Resources, Legal and Administration
15 4940 Pearl East Circle, Suite 301
16 Boulder, CO 80301
17 nhoopes@pharmaca.com

18 and

19 Sean M. Sherlock
20 Snell & Wilmer L.L.P.
21 600 Anton Boulevard, Suite 1400
22 Costa Mesa, CA 92626
23 ssherlock@swlaw.com

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

26 **9. COURT APPROVAL**

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

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

1 **10. ATTORNEYS' FEES**

2 10.1 In the event any motion, application, or other action is brought to enforce,
3 interpret, or modify this Consent Judgment, the party prevailing on such motion, application, or
4 other action shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such
5 motion, application, or other action.

6 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
7 its own attorneys' fees and costs.

8 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
9 sanctions pursuant to law for enforcement of this Consent Judgment pursuant to Section 10.1.

10 **11. OTHER TERMS**

11 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
12 of California.

13 11.2 This Consent Judgment shall apply to and be binding upon CEH on behalf of
14 itself and acting in the public interest, Settling Defendant, and its respective divisions,
15 subdivisions, and subsidiaries, and the successors or assigns of any of them.

16 11.3 This Consent Judgment contains the sole and entire agreement and
17 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
18 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
19 merged herein and therein. There are no warranties, representations, or other agreements between
20 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
21 implied, other than those specifically referred to in this Consent Judgment have been made by any
22 Party hereto. No other agreements not specifically contained or referenced herein, oral or
23 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
24 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
25 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
26 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
27 whether or not similar, nor shall such waiver constitute a continuing waiver.

28 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights

1 that Settling Defendant might have against any other party, whether or not that party is a Settling
2 Defendant.

3 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
4 Consent Judgment.

5 11.6 The stipulations to this Consent Judgment may be executed in counterparts
6 and by means of facsimile or portable document format (pdf), which taken together shall be
7 deemed to constitute one document.

8 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
10 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
11 Party.

12 11.8 The Parties, including their counsel, have participated in the preparation of
13 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
14 This Consent Judgment was subject to revision and modification by the Parties and has been
15 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
16 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
17 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
18 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
19 be resolved against the drafting Party should not be employed in the interpretation of this Consent
20 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

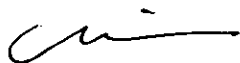
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22 **IT IS SO STIPULATED:**

23 **CENTER FOR ENVIRONMENTAL HEALTH**

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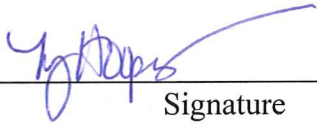
Charlie Pizarro
Associate Director

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PHARMACA INTEGRATIVE PHARMACY, INC.



Signature

Nancy Hoopes

Printed Name

Vice President

Title

IT IS SO ORDERED:

Dated: _____, 2014

Judge of the Superior Court

EXHIBIT A
Covered Products

SKU Brand	Name	
400333301575	Pharmaca	BODY WASH YLANG YLANG & GINGER
400333301544	Pharmaca	BODY WASH LAVENDER
400333301551	Pharmaca	BODY WASH LEMONGRASS & SAGE
400333301568	Pharmaca	BODY WASH ROSEMARY & MINT
400333301735	Pharmaca	BODY WASH UNSCENTED
400333301308	Pharmaca	SHAMPOO LAVENDER
400333301315	Pharmaca	SHAMPOO LEMONGRASS & SAGE
400333301322	Pharmaca	SHAMPOO ROSEMARY & MINT
400333301728	Pharmaca	SHAMPOO UNSCENTED
400333301339	Pharmaca	SHAMPOO YLANG YLANG & GINGER
400333301346	Pharmaca	SHAMPOO LAVENDER
400333301353	Pharmaca	SHAMPOO LEMONGRASS & SAGE
400333301759	Pharmaca	SHAMPOO UNSCENTED
400333301582	Pharmaca	BODY WASH LAVENDER
400333301599	Pharmaca	BODY WASH LEMONGRASS & SAGE
400333301773	Pharmaca	BODY WASH UNSCENTED
400333301797	Pharmaca	TRAVEL KIT LAVENDER
400333301346	Pharmaca	SHAMPOO LAVENDER
400333301582	Pharmaca	BODY WASH LAVENDER
081738363056	Shikai	SHOWER GEL YUZU FRUIT