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CENTER FOR ENVIRONMENTAL HEALTH  
11

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA  
15

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17 CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )

18 Plaintiff, )

19 vs. )

20 ACCESSORY ZONE, LLC, *et al.*, )

21 Defendants. )  
22 )  
23 )

Case No. RG 13-699752 \_\_\_\_\_

**[PROPOSED] CONSENT  
JUDGMENT AS TO MICHEL  
DESIGN WORKS LTD.**

24 **1. INTRODUCTION**

25 1.1 The parties to this Consent Judgment (“Parties”) are the Center for  
26 Environmental Health (“CEH”) and defendant Michel Design Works Ltd. (“Settling Defendant”).  
27 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 that has manufactured, distributed and/or sold Covered products that contain coconut oil  
3 diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the  
4 State of California in the past.

5           1.3           On August 2, 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 Covered  
11 Products manufactured, distributed and/or sold by Settling Defendant.

12           1.4           On October 18, 2013, CEH filed the action entitled *CEH v. Accessory Zone,*  
13 *LLC, et al.*, Case No. RG 13-699752, in the Superior Court of California for Alameda County,  
14 naming Settling Defendant as a defendant in that action. Upon entry of this Consent Judgment,  
15 the Complaint shall be deemed amended as to Settling Defendant only to limit the definition of  
16 Products in the Complaint to liquid soaps, shower gels and bubble bath.

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

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

1 this action.

2 **2. DEFINITIONS**

3 2.1 “Covered Products” means liquid soaps, shower gels and bubble bath.

4 2.2 “Effective Date” means the date on which this Consent Judgment is entered  
5 by 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,  
13 Settling Defendant shall issue specifications to its suppliers of Covered Products requiring that  
14 Covered Products not contain any cocamide DEA, and shall instruct each supplier to use  
15 reasonable efforts to eliminate Covered Products containing cocamide DEA on a nationwide  
16 basis.

17 **4. ENFORCEMENT**

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

1     **5.     PAYMENTS**

2             **5.1     Payments by Settling Defendant.** Within five (5) business days of the Effective  
3 Date, Settling Defendant shall pay the total sum of \$15,000 as a settlement payment. The total  
4 settlement amount for Settling Defendant shall be paid in four separate checks delivered to  
5 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling  
6 Defendant shall be allocated between the following categories:

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

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

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

1       **6.       MODIFICATION**

2               6.1               **Written Consent.** This Consent Judgment may be modified from time to  
3 time by express written agreement of the Parties with the approval of the Court, or by an order of  
4 this Court upon motion and in accordance with law.

5               6.2               **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
6 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
7 modify the Consent Judgment.

8       **7.       CLAIMS COVERED AND RELEASED**

9               7.1               This Consent Judgment is a full, final and binding resolution between CEH on  
10 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,  
11 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
12 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell  
13 Covered Products, including but not limited to Bristol Farms and any other distributors,  
14 wholesalers, customers, retailers, franchisees, cooperative members, licensors and licensees  
15 (“Downstream Defendant Releasees”) of any violation of Proposition 65 that was or could have  
16 been asserted in the Complaint against Settling Defendant, Defendant Releasees, and  
17 Downstream Defendant Releasees, based on failure to warn about alleged exposure to cocamide  
18 DEA contained in Covered Products that were sold by Settling Defendant prior to the Effective  
19 Date.

20              7.2              Compliance with the terms of this Consent Judgment by Settling Defendant  
21 shall constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees  
22 and their Downstream Defendant Releasees with respect to any alleged failure to warn about  
23 cocamide DEA in Covered Products manufactured, distributed, or sold by Settling Defendant  
24 after the Effective Date.

25              7.3              Nothing in this Section 7 affects CEH’s right to commence or prosecute an  
26 action under Proposition 65 against any person other than Settling Defendant, Defendant  
27 Releasees, or Downstream Defendant Releasees.

28       **8.       NOTICE**

1           8.1           When CEH is entitled to receive any notice under this Consent Judgment, the  
2 notice shall be sent by first class and electronic mail to:

3                           Mark Todzo  
4                           Lexington Law Group  
5                           503 Divisadero Street  
6                           San Francisco, CA 94117  
7                           mtodzo@lexlawgroup.com

8           8.2           When Settling Defendant is entitled to receive any notice under this Consent  
9 Judgment, the notice shall be sent by first class and electronic mail to:

10                           Laura M. Duncan  
11                           Beveridge & Diamond P.C.  
12                           456 Montgomery St., Suite 1800  
13                           San Francisco, CA 94104  
14                           lduncan@bdlaw.com

15           8.3           Any Party may modify the person and address to whom the notice is to be sent  
16 by sending the other Party notice by first class and electronic mail.

17 **9. COURT APPROVAL**

18           9.1           This Consent Judgment shall become effective upon entry by the Court. CEH  
19 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
20 shall support entry of this Consent Judgment.

21           9.2           If this Consent Judgment is not entered by the Court, it shall be of no force or  
22 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
23 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

24 **10. ATTORNEYS' FEES**

25           10.1           Should CEH prevail on any motion, application for an order to show cause or  
26 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its  
27 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
28 Settling Defendant prevail on any motion application for an order to show cause or other  
proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result  
of such motion or application upon a finding by the Court that CEH's prosecution of the motion  
or application lacked substantial justification. For purposes of this Consent Judgment, the term

1 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
2 Code of Civil Procedure §§ 2016, *et seq.*

3 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear  
4 its own attorneys' fees and costs.

5 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of  
6 sanctions pursuant to law.

7 **11. OTHER TERMS**

8 11.1 The terms of this Consent Judgment shall be governed by the laws of the State  
9 of California.

10 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
11 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or  
12 assigns of any of them.

13 11.3 This Consent Judgment contains the sole and entire agreement and  
14 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
15 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
16 merged herein and therein. There are no warranties, representations, or other agreements between  
17 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
18 implied, other than those specifically referred to in this Consent Judgment have been made by any  
19 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
20 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,  
21 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
22 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
23 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
24 whether or not similar, nor shall such waiver constitute a continuing waiver.

25 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights  
26 that Settling Defendant might have against any other party, whether or not that party is a Settling  
27 Defendant.

28 11.5 This Court shall retain jurisdiction of this matter to implement or modify the

1 Consent Judgment.

2 11.6 The stipulations to this Consent Judgment may be executed in counterparts  
3 and by means of facsimile or portable document format (pdf), which taken together shall be  
4 deemed to constitute one document.

5 11.7 Each signatory to this Consent Judgment certifies that he or she is fully  
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
7 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
8 Party.

9 11.8 The Parties, including their counsel, have participated in the preparation of  
10 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
11 This Consent Judgment was subject to revision and modification by the Parties and has been  
12 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
13 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
14 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
15 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
16 be resolved against the drafting Party should not be employed in the interpretation of this Consent  
17  
18 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

19  
20 **IT IS SO STIPULATED:**

21  
22 **CENTER FOR ENVIRONMENTAL HEALTH**

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25 \_\_\_\_\_  
26 Charlie Pizarro  
27 Associate Director

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**MICHEL DESIGN WORKS LTD.**

Anne Rieschich

Signature

Anne Rieschich

Printed Name

Operations Manager

Title

**IT IS SO ORDERED:**

Dated: \_\_\_\_\_, 2013

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