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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11
12 Coordination Proceeding Special Title:) Judicial Council Coordination
13 PROPOSITION 65 COCAMIDE DEA CASES) Proceeding
14) Case No. 4765

15 This Document Relates To:) **[PROPOSED] CONSENT**
16) **JUDGMENT AS TO ALBERTO-**
17) **CULVER USA, INC. AND TIGI**
18) **LINEA CORP.**
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20 **1. INTRODUCTION**

21 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
22 Environmental Health (“CEH”) and defendants Alberto-Culver USA, Inc. and TIGI Linea Corp.
23 (“Settling Defendants”). CEH and Settling Defendants are referred to collectively as the
24 “Parties.”

25 1.2 Settling Defendants are companies that operate under a corporation that
26 employs ten (10) or more persons and that manufacture, distribute, and/or sell shampoo and/or
27

1 liquid soaps that contain coconut oil diethanolamine condensate (cocamide diethanolamine)
2 (hereinafter, “cocamide DEA”) in the State of California or have done so in the past.

3 1.3 On July 19, 2013, CEH served a 60-Day Notice of Violation under Proposition
4 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
5 Code §§ 25249.5, *et seq.*) (“Notice”) to Alberto-Culver USA, Inc., the California Attorney
6 General, the District Attorneys of every County in the State of California, and the City Attorneys
7 for every City in the State of California with a population greater than 750,000. This Notice
8 alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo
9 and liquid soaps that are or were manufactured, distributed, and/or sold by Alberto-Culver USA,
10 Inc. On November 15, 2013, CEH served a 60-Day Notice of Violation under Proposition 65 to
11 TIGI Linea Corp., the California Attorney General, the District Attorneys of every County in the
12 State of California, and the City Attorneys for every City in the State of California with a
13 population greater than 750,000. This Notice alleges violations of Proposition 65 with respect to
14 the presence of cocamide DEA in shampoo and liquid soaps that are or were manufactured,
15 distributed, and/or sold by TIGI Linea Corp.

16 1.4 On September 30, 2013, CEH filed the action entitled *CEH v. Alberto-Culver*
17 *USA, Inc., et al.*, A.C.S.C. Case No. RG 13-697455, in the Superior Court of California for
18 Alameda County, naming Alberto-Culver USA, Inc. as a defendant in that action. On December
19 4, 2013, the *Alberto-Culver* action was coordinated with several other related Proposition 65
20 actions in the *Proposition 65 Cocamide DEA Cases*, Case No. JCCP 4765, currently pending
21 before this Court. On March 12, 2014, CEH filed the action entitled *CEH v. ABACO Partners*
22 *LLC, et al.*, A.C.S.C. Case No. RG 14-717127, in the Superior Court of California for Alameda
23 County, naming TIGI Linea Corp. as a defendant in that action. On April 1, 2014, the *ABACO*
24 action was coordinated with several other related Proposition 65 actions in the *Proposition 65*
25 *Cocamide DEA Cases*, Case No. JCCP 4765, currently pending before this Court.¹

26
27 ¹ Also included in the *Proposition 65 Cocamide DEA Cases*, Case No. JCCP 4765 is an action entitled *Shefa v. Ross*
28 *Stores, et al.*, Los Angeles Superior Court Case No. BC521400 filed on September 16, 2013. Settling Defendant
TIGI Linea Corp. was added as DOE 15 to that action on January 16, 2014.

1 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
2 Court has jurisdiction over the allegations of violations contained in the operative Complaints
3 applicable to Settling Defendants (“Complaints”) and personal jurisdiction over Settling
4 Defendants as to the acts alleged in the Complaints; (ii) venue is proper in the County of
5 Alameda; and (iii) this Court has jurisdiction to enter this Consent Judgment.

6 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
7 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
8 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
9 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
11 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
12 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
13 this action.

14 **2. DEFINITIONS**

15 2.1 “Covered Products” means shampoo and liquid soaps.

16 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
17 the Court.

18 **3. INJUNCTIVE RELIEF**

19 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
20 Defendants shall not manufacture, distribute, sell, or offer for sale any Covered Product that
21 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
22 purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
23 intentionally added ingredient in the product and/or part of the product formulation.

24 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
25 Date, Settling Defendants shall issue specifications to its suppliers of Covered Products requiring
26 that Covered Products not contain any cocamide DEA, and shall instruct each supplier to use
27 reasonable efforts to eliminate Covered Products containing cocamide DEA on a nationwide
28 basis.

1 **3.3 Action Regarding Specific Products.**

2 3.3.1 On or before the Effective Date, Settling Defendants shall cease
3 selling the following products: (i) the Folicuré Dandruff Moisturizing Shampoo, SKU No. 0-
4 15228-13089-7; and (ii) the Bed Head TIGI Brunette Goddess Shampoo, SKU No. 0-90174-
5 44817-3 (“Section 3.3 Products”). On or before the Effective Date, Settling Defendants shall
6 also: (i) cease shipping the Section 3.3 Products to any of their stores and/or customers that resell
7 the Section 3.3 Products in California; and (ii) send instructions to their reasonably identifiable
8 stores and/or customers that resell the Section 3.3 Products in California instructing them either
9 to: (a) return all the Section 3.3 Products to Settling Defendants for destruction, or (b) directly
10 destroy the Section 3.3 Products.

11 3.3.2 Any destruction of the Section 3.3 Products shall be in compliance
12 with all applicable laws.

13 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendants
14 shall provide CEH with written certification from Settling Defendants confirming compliance
15 with the requirements of this Section 3.3.

16 **4. ENFORCEMENT**

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

27 **5. PAYMENTS**

28 5.1 **Payments by Settling Defendants.** Within five (5) business days of the

1 Effective Date, Settling Defendants shall pay the total sum of \$25,000 as a settlement payment.

2 The total settlement amount for Settling Defendants shall be paid in four separate checks
3 delivered to counsel for CEH at the address set forth in Section 8.1 below. The funds paid by
4 Settling Defendants shall be allocated between the following categories:

5 5.1.1 \$2,750 as a civil penalty pursuant to Health & Safety Code §
6 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code §
7 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
8 Hazard Assessment). The civil penalty check shall be made payable to the Center for
9 Environmental Health.

10 5.1.2 \$3,750 as a payment in lieu of civil penalty to CEH pursuant to
11 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b).
12 CEH will use such funds to continue its work educating and protecting people from exposures to
13 toxic chemicals. CEH may also use a portion of such funds to monitor compliance with this
14 Consent Judgment and to purchase and test Settling Defendants' products to confirm compliance.
15 In 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 \$18,500 as reimbursement of a portion of CEH's reasonable
21 attorneys' fees and costs. A check for \$16,000 shall be made payable to the Lexington Law
22 Group, and a check for \$2,500 shall be made payable to the Center for Environmental Health.

23 **6. MODIFICATION**

24 6.1 **Written Consent.** This Consent Judgment may be modified from time to
25 time by express written agreement of the Parties with the approval of the Court, or by an order of
26 this Court upon 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 the public interest and Settling Defendants, and their parents, subsidiaries,
5 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
6 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell
7 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
8 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”),
9 of any violation of Proposition 65 that was or could have been asserted in the Complaints against
10 Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees, based on
11 failure to warn about alleged exposure to cocamide DEA contained in Covered Products that were
12 sold by Settling Defendants prior to the Effective Date.

13 7.2 Compliance with the terms of this Consent Judgment by Settling Defendants
14 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendants,
15 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
16 warn about cocamide DEA in Covered Products manufactured, distributed, or sold by Settling
17 Defendants after the Effective Date.

18 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
19 action under Proposition 65 against any person other than Settling Defendants, Defendant
20 Releasees, or Downstream Defendant Releasees.

21 **8. NOTICE**

22 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
23 notice shall be sent by first class and electronic mail to:

24 Mark N. Todzo
25 Lexington Law Group
26 503 Divisadero Street
27 San Francisco, CA 94117
28 mtodzo@lexlawgroup.com

8.2 When Settling Defendants are entitled to receive any notice under this Consent

1 Judgment, the notice shall be sent by first class and electronic mail to:

2 Paul H. Burleigh
3 LeClairRyan LLP
4 725 S. Figueroa Street, Suite 350
5 Los Angeles, CA 90017
6 paul.burleigh@leclairryan.com

7 8.3 Any Party may modify the person and address to whom the notice is to be sent
8 by sending the other Party notice by first class and electronic mail.

9 **9. COURT APPROVAL**

10 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
11 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
12 shall support entry of this Consent Judgment.

13 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
14 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
15 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

16 **10. ATTORNEYS' FEES**

17 10.1 Should CEH prevail on any motion, application for an order to show cause, or
18 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
19 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
20 Settling Defendants prevail on any motion application for an order to show cause or other
21 proceeding, Settling Defendants may be awarded its reasonable attorneys' fees and costs as a
22 result of such motion or application upon a finding by the Court that CEH's prosecution of the
23 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
24 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
25 1986, Code of Civil Procedure §§ 2016, *et seq.*

26 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
27 its own attorneys' fees and costs.

28 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
sanctions pursuant to law.

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11. OTHER TERMS

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

11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling Defendants, and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any of them.

11.3 This Consent Judgment 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 Consent Judgment 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. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment 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.

11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights that Settling Defendants might have against any other party, whether or not that party is a settling defendant.

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

11.6 The stipulations to this Consent Judgment 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.

11.7 Each signatory to this Consent Judgment certifies that he or she is fully

1 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
2 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
3 Party.

4 11.8 The Parties, including their counsel, have participated in the preparation of
5 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
6 This Consent Judgment was subject to revision and modification by the Parties and has been
7 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
8 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
9 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
10 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
11 be resolved against the drafting Party should not be employed in the interpretation of this Consent
12 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

13
14 **IT IS SO STIPULATED:**
15 **CENTER FOR ENVIRONMENTAL HEALTH**

16
17 
18 _____
19 Charlie Pizarro
Associate Director

20 **ALBERTO-CULVER USA, INC.**
21
22 _____
23 Signature
24
25 _____
26 Printed Name
27
28 _____
Title

1 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
2 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
3 Party.

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

13
14 **IT IS SO STIPULATED:**

15 **CENTER FOR ENVIRONMENTAL HEALTH**

16
17
18 _____
19 Charlie Pizarro
Associate Director

20 **ALBERTO-CULVER USA, INC.**

21
22 Courtney Ozer
23 Signature

24 Courtney Ozer
25 Printed Name

26
27 Senior Counsel - Litigation,
28 Title Unilever United States, Inc.

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TIGI LINEA CORP.

Courtney Ozer
Signature

Courtney Ozer
Printed Name

Senior Counsel - Litigation,
Title Unilever United States, Inc.

IT IS SO ORDERED:

Dated: _____, 2014

Judge of the Superior Court