

SETTLEMENT AGREEMENT & RELEASE—NATURAL ORGANICS, INC.

This Settlement Agreement and Release (“Agreement”) is between the Center for Environmental Health (“CEH”) and Natural Organics, Inc. (“Natural Organics”). CEH and Natural Organics are referred to collectively as the “Parties.”

1. INTRODUCTION

1.1 Natural Organics is a corporation that employs ten (10) or more persons and that has manufactured, distributed, and/or sold shampoo containing coconut oil diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the State of California in the past.

1.2 On January 3, 2014, CEH 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.*) (“Notice”) to Natural Organics, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo and liquid soaps that are manufactured, distributed, and/or sold by Natural Organics.

1.3 The Parties agree that any action based on an alleged violation of this Agreement shall be brought in the Superior Court of California in Alameda County. For purposes of this Agreement, 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.

1.4 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 any other legal proceeding. This Agreement is the product of negotiation and compromise and is accepted by

the Parties for purposes of settling, compromising, and resolving issues disputed by the Parties concerning the claims asserted in the Notice.

2. DEFINITIONS

2.1 “Covered Products” means shampoo and liquid soaps manufactured, distributed, or sold by Natural Organics.

2.2 “Effective Date” means the date on which this Agreement is fully executed by the Parties.

3. INJUNCTIVE RELIEF

3.1 **Reformulation of Covered Products.** As of the Effective Date, Natural Organics 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 as disclosed on the label of a Covered Product

3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective Date, Natural Organics 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. Provided however, this requirement shall not apply to any supplier that is already providing Covered Products to Natural Organics as of the Effective Date which do not contain cocamide DEA.

3.3 Action Regarding Specific Products.

3.3.1 On or before the Effective Date, Natural Organics shall cease selling the Ultra Hair Conditioning Shampoo, SKU No. 0-97467-06010-4, Product No. 6010 (“Section 3.3 Product”) in California if it contains cocamide DEA. Natural Organics shall also: (i) cease shipping on or before the Effective Date the Section 3.3 Product to any of its stores and/or customers that resell the Section 3.3 Product in California if the Section 3.3 Product contains cocamide DEA; and (ii) send instructions within sixty (60) days of the Effective Date 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 Natural Organics for destruction, (b) directly destroy the Section 3.3 Product, if the Section 3.3 Product contains cocamide DEA , or (c) affix with a sticker to the container of each individual unit of the Section 3.3 Product a warning that contains the language specified in 27 Cal. Code Regs. § 25603.2(a)(1)¹ and that is displayed with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling as to render the warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of such product.

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

3.3.3 Within ninety (90) days of the Effective Date, Natural Organics shall provide CEH with written certification from Natural Organics confirming compliance with the requirements of this Section 3.3.

4. ENFORCEMENT

4.1 In the event of any dispute regarding Natural Organics' compliance with Section 3, prior to filing an action to enforce the requirements of Section 3 above, CEH shall provide Natural Organics with a Notice of Violation and a copy of any test results which purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding the basis for CEH's anticipated action to attempt to resolve it informally, including providing Natural Organics a reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail, CEH may file its enforcement action. This Agreement may only be enforced by the Parties.

5. PAYMENTS

5.1 **Payments by Natural Organics.** Within fifteen (15) business days of the Effective Date, Natural Organics shall pay the total sum of \$12,000 as a settlement payment.

¹ That warning states as follows: "WARNING: This product contains a chemical known to the State of California to cause cancer."

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

5.1.1 \$1,320 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 \$1,800 as a payment in lieu of civil penalty to CEH 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 Natural Organics' 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. The payment pursuant to this Section shall be made payable to the Center for Environmental Health.

5.1.3 \$8,880 as reimbursement of a portion of CEH's reasonable attorneys' fees and costs. A check for \$7,680 shall be made payable to the Lexington Law Group, and a check for \$1,200 shall be made payable to the Center for Environmental Health.

6. MODIFICATION

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

7. CLAIMS COVERED AND RELEASED

7.1 CEH on behalf of itself releases and discharges Natural Organics, and its parents, subsidiaries, affiliated entities that are under common ownership (including but not

limited to Nature's Plus, Inc.), 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 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees") from all claims for any violation of Proposition 65 that was or could have been asserted against Natural Organics, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged exposure to cocamide DEA contained in Covered Products that were distributed or sold by Natural Organics prior to the Effective Date.

7.2 The Parties agree that compliance with the terms of this Agreement by Natural Organics shall constitute compliance with Proposition 65 by Natural Organics, Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to warn about cocamide DEA in Covered Products manufactured, distributed, or sold by Natural Organics after 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 Natural Organics, Defendant Releasees, or Downstream Defendant Releasees.

8. NOTICE

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

Mark Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

8.2 When Natural Organics is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail to:

Philip M. Kazin, Esq.
General Counsel
Natural Organics, Inc.
548 Broadhollow Road
Melville, New York 11747

With a copy to:

Sarah Esmaili
Arnold & Porter LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
sarah.esmaili@aporter.com

8.3 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.

9. ATTORNEYS' FEES

9.1 In the event of an enforcement action regarding Natural Organics' compliance with this Agreement, if CEH prevails in any such enforcement action, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such enforcement action. Should Natural Organics prevail in any such enforcement action, Natural Organics shall be awarded its reasonable attorneys' fees and costs as a result of such enforcement action upon a finding by the Court that CEH lacked substantial justification for the action. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

9.2 Except as otherwise provided in this Agreement, each Party shall bear its own attorneys' fees and costs.

9.3 Nothing in this Section 9 shall preclude a Party from seeking an award of sanctions pursuant to law.

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 Natural Organics, 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. 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 release, or in any way affect any rights that Natural Organics might have against any other party, whether or not that party is a Natural Organics.

10.5 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 enter into and execute the Agreement on behalf of the Party represented and legally to bind that Party.

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.

CENTER FOR ENVIRONMENTAL HEALTH

By:  _____
Charlie Pizarro
Associate Director
Date 9/11/2014

NATURAL ORGANICS, INC.

By: _____
Signature

Printed Name

Title

Date

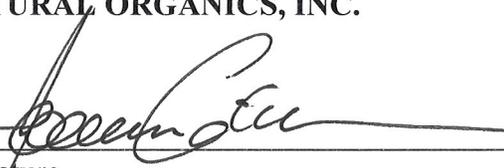
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CENTER FOR ENVIRONMENTAL HEALTH

By: _____
Charlie Pizarro
Associate Director

Date

NATURAL ORGANICS, INC.

By:  _____
Signature

James P. Gibbons _____
Printed Name

President _____
Title

Sept. 10, 2014 _____
Date