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7 CENTER FOR ENVIRONMENTAL HEALTH

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

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 CENTRAL**
17) **SOLUTIONS, INC.**
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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 defendant Central Solutions, Inc. (“Settling Defendant”).
23 CEH and Settling Defendant are referred to collectively as the “Parties.”

24 1.2 Settling Defendant is a corporation that employs ten (10) or more persons and
25 that manufactures, distributes, and/or sells shampoo and liquid soaps that contain coconut oil
26 diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the
27 State of California or has done so in the past.

1 1.3 On March 7, 2014, CEH served a 60-Day Notice of Violation under
2 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
3 & Safety Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendant, the California Attorney
4 General, the District Attorneys of every County in the State of California, and the City Attorneys
5 for every City in the State of California with a population greater than 750,000. The Notice
6 alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo
7 and liquid soaps manufactured, distributed, and/or sold by Settling Defendant.

8 1.4 On May 28, 2014, CEH filed the action entitled *CEH v. Biopelle, Inc., et al.*,
9 Case No. RG 14-726-964, in the Superior Court of California for Alameda County, naming
10 Settling Defendant as a defendant in that action. On July 7, 2014, the *Biopelle* action was
11 coordinated with several other related Proposition 65 actions in the *Proposition 65 Cocamide*
12 *DEA Cases*, Case No. JCCP 4765, currently pending before this Court.

13 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
14 Court has jurisdiction over the allegations of violations contained in the operative Complaint
15 applicable to Settling Defendant (“Complaint”) and personal jurisdiction over Settling Defendant
16 as to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii)
17 this Court has jurisdiction to enter this Consent Judgment.

18 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
19 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
20 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
21 conclusion of law, issue of law, or violation of law, such being specifically denied by Settling
22 Defendant. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
23 remedy, argument, or defense the Parties may have in any other legal proceeding. This Consent
24 Judgment is the product of negotiation and compromise and is accepted by the Parties for
25 purposes of settling, compromising, and resolving issues disputed in this action.

26 **2. DEFINITIONS**

27 2.1 “Covered Products” means shampoo and liquid soaps manufactured,
28 distributed and/or sold by Settling Defendant.

1 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
2 the Court.

3 **3. INJUNCTIVE RELIEF**

4 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
5 Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product that
6 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
7 purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
8 intentionally added ingredient in the product and/or part of the product formulation. CEH
9 acknowledges that settling Defendant’s representation that it has already completed reformulation
10 of all Covered Products it sells so that they do not contain cocamide DEA.

11 3.2 **Specification to Suppliers.** Settling Defendant currently manufactures the
12 Covered Products. However, if at some point in the future Settling Defendant contracts out the
13 manufacture of the Covered Products to a third party supplier, Settling Defendant shall issue
14 specifications to such supplier of Covered Products requiring that Covered Products not contain
15 any cocamide DEA, and shall instruct each such supplier to use reasonable efforts to eliminate
16 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 Derma Cen Lotionized Foaming Hand Soap, Item No. 13902REV0906, Reorder No.
20 DERM13902 (“Section 3.3 Product”) in California. On or before the Effective Date, Settling
21 Defendant shall also: (i) cease shipping any Section 3.3 Product that contains cocamide DEA to
22 any of its stores and/or customers that resell the Section 3.3 Product in California; and (ii) send
23 instructions to its stores and/or customers that resell any Section 3.3 Product containing cocamide
24 DEA in California instructing them either to: (a) return all such Section 3.3 Product to Settling
25 Defendant for destruction, or (b) directly destroy such Section 3.3 Product.

26 3.3.2 Any destruction of the Section 3.3 Product containing cocamide DEA shall
27 be in compliance with all applicable laws.

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1 3.3.3 Within sixty days of the Effective Date, Settling Defendant shall provide
2 CEH with written certification from Settling Defendant confirming compliance with the
3 requirements of this Section 3.3.

4 **4. ENFORCEMENT**

5 4.1 CEH may, by motion or application for an order to show cause before the
6 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
7 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
8 above, CEH shall provide Settling Defendant with a Notice of Violation and a copy of any test
9 results and all other evidence which purportedly support CEH's Notice of Violation. The Parties
10 shall then meet and confer regarding the basis for CEH's anticipated motion or application in an
11 attempt to resolve it informally, including providing Settling Defendant a reasonable opportunity
12 of at least thirty (30) days to cure any alleged violation. Should such attempts at informal
13 resolution fail, CEH may file its enforcement motion or application. This Consent Judgment may
14 only be enforced by the Parties.

15 **5. PAYMENTS**

16 5.1 **Payments by Settling Defendant.** Within five (5) business days of the
17 Effective Date, Settling Defendant shall pay the total sum of \$15,000 as a settlement payment.
18 The total settlement amount for Settling Defendant shall be paid in four separate checks delivered
19 to counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
20 Defendant shall be allocated between the following categories:

21 5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
22 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
23 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
24 Assessment). The civil penalty check shall be made payable to the Center for Environmental
25 Health.

26 5.1.2 \$2,250 as a payment in lieu of civil penalty to CEH pursuant to Health &
27 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
28 such funds to continue its work educating and protecting people from exposures to toxic

1 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
2 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In
3 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
4 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
5 educate and protect people from exposures to toxic chemicals. The method of selection of such
6 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
7 this Section shall be made payable to the Center for Environmental Health.

8 5.1.3 \$11,100 as reimbursement of a portion of CEH's reasonable attorneys' fees
9 and costs. A check for \$9,600 shall be made payable to the Lexington Law Group, and a check
10 for \$1,500 shall be made payable to the Center for Environmental Health.

11 **6. MODIFICATION**

12 6.1 **Written Consent.** This Consent Judgment may be modified from time to
13 time by express written agreement of the Parties with the approval of the Court, or by an order of
14 this Court upon motion and in accordance with law.

15 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
16 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
17 modify the Consent Judgment.

18 **7. CLAIMS COVERED AND RELEASED**

19 7.1 This Consent Judgment is a full, final, and binding resolution between CEH on
20 behalf of itself and the public interest, and Settling Defendant, its parents, subsidiaries, affiliated
21 entities that are under common ownership, directors, officers, employees, and attorneys
22 ("Defendant Releasees"), and each entity to whom they directly or indirectly distribute or sell
23 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
24 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees")
25 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
26 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
27 to warn about alleged exposure to cocamide DEA contained in Covered Products that were sold
28 by Settling Defendant prior to the Effective Date.

1 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
2 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
3 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
4 warn about cocamide DEA in Covered Products manufactured, distributed, or sold by Settling
5 Defendant after the Effective Date.

6 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
7 action under Proposition 65 against any person other than Settling Defendant, Defendant
8 Releasees, or Downstream Defendant Releasees.

9 7.4 CEH, on its own behalf only, hereby releases any claims against Settling
10 Defendant, Defendant Releasees, and Downstream Defendant Releasees that could have been
11 raised in a 60-day Notice concerning any alleged failure to provide warnings for occupational
12 exposures to cocamide DEA that may result from the sale and /or use of Settling Defendant’s
13 Covered Products.

14 **8. NOTICE**

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

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

22 8.2 When Settling Defendant is entitled to receive any notice under this Consent
23 Judgment, the notice shall be sent by first class and electronic mail to:
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Mark Nobrega
Central Solutions
401 Funston Road
Kansas City, KS 66115

With Copy To:

J. Robert Maxwell
Rogers Joseph O'Donnell
311 California Street, 10th Floor
San Francisco, CA 94104
jmaxwell@rjo.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. COURT APPROVAL

9.1 This Consent Judgment shall become effective upon entry by the Court. CEH 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.

10. ATTORNEYS' FEES

10.1 Should CEH prevail on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should 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 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

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1 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
2 its own attorneys' fees and costs.

3 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
4 sanctions pursuant to law.

5 **11. OTHER TERMS**

6 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
7 of California.

8 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
9 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or
10 assigns of any of them.

11 11.3 This Consent Judgment contains the sole and entire agreement and
12 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
13 discussions, negotiations, commitments, or understandings related hereto, if any, are hereby
14 merged herein. There are no warranties, representations, or other agreements between the Parties
15 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
16 other than those specifically referred to in this Consent Judgment have been made by any Party
17 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
18 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,
19 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by
20 the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall
21 be deemed or shall constitute a waiver of any of the other provisions hereof whether or not
22 similar, nor shall such waiver constitute a continuing waiver.

23 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
24 that Settling Defendant might have against any other party, whether or not that party is a settling
25 defendant.

26 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

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1 11.6 The stipulations to this Consent Judgment may be executed in counterparts
2 and by means of facsimile or portable document format (pdf), which taken together shall be
3 deemed to constitute one document.

4 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
6 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
7 Party.

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

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1 **IT IS SO STIPULATED:**

2 **CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro
Associate Director

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CENTRAL SOLUTIONS, INC.

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Signature

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12

Printed Name

13

14

15

Title

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IT IS SO ORDERED:

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Dated: _____, 2014

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Judge of the Superior Court

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IT IS SO STIPULATED:
CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro
Associate Director

CENTRAL SOLUTIONS, INC.

Mark Nobrega

Signature

Mark Nobrega

Printed Name

President

Title

IT IS SO ORDERED:

Dated: _____, 2014

Judge of the Superior Court