

1 Mark N. Todzo, State Bar No. 168389
2 Howard Hirsch, State Bar No. 213209
3 LEXINGTON LAW GROUP
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 mtodzo@lexlawgroup.com
9 hhirsch@lexlawgroup.com

6 Counsel for Plaintiff
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 STERIS**
17) **CORPORATION**

17 *Center for Environmental Health v. Biopelle,*
18 *Inc., et al., A.C.S.C. Case No. RG 14-726964*

20 **1. INTRODUCTION**

21 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
22 Environmental Health (“CEH”) and defendant STERIS Corporation (“Settling Defendant”). CEH
23 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 April 11, 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 *Center for Environmental*
9 *Health v. Biopelle, Inc., et al.*, Case No. RG 14-726964, in the Superior Court of California for
10 Alameda County. On July 7, 2014, the *Biopelle* action was coordinated with several other related
11 Proposition 65 actions in the *Proposition 65 Cocamide DEA Cases*, Case No. JCCP 4765,
12 currently pending before this Court. On July 10, 2014, CEH named Settling Defendant as a
13 defendant in the *Biopelle* action pursuant to California Code of Civil Procedure § 474.

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

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

27 **2. DEFINITIONS**

28 2.1 “Covered Products” means shampoo and liquid soaps.

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, subject to
5 Section 3.3 below, Settling Defendant shall not manufacture, distribute, sell, or offer for sale any
6 Covered Product that contains cocamide DEA and that will be sold or offered for sale to
7 California consumers. For purposes of this Consent Judgment, a product “contains cocamide
8 DEA” if cocamide DEA is an intentionally added ingredient in the product and/or part of the
9 product formulation.

10 3.2 **Action Regarding Specific Products.**

11 3.2.1 On or before the Effective Date, Settling Defendant shall cease selling the
12 Kindest Kare Hand & Body Wash Total Body Cleanser, SKU No. (01)00724995-012731 in
13 California unless such product includes a warning as specified in Section 3.3 below. On or before
14 the Effective Date, unless such product includes a warning as specified in Section 3.3 below,
15 Settling Defendant shall also: (i) cease shipping the Section 3.2 Product to any of its stores and/or
16 customers that resell the Section 3.2 Product in California ; and (ii) send instructions to its stores
17 and/or customers that resell the Section 3.2 Product in California instructing them either to: (a)
18 return all the Section 3.2 Product to Settling Defendant for destruction, or (b) directly destroy the
19 Section 3.2 Product.

20 3.2.2 To the extent necessary, any destruction of Section 3.2 Product shall be in
21 compliance with all applicable laws.

22 3.2.3 Within sixty (60) days of the Effective Date, Settling Defendant shall
23 provide CEH with written certification from Settling Defendant confirming compliance with the
24 requirements of this Section 3.2.

25 3.3 **Warnings for Covered Products.**

26 3.3.1 **Warning Option.** A Covered Product purchased, imported, or
27 manufactured by Settling Defendant may, as an alternative to meeting the reformulation
28

1 requirements of Section 3.1, be sold or offered for retail sale in California with a Clear and
2 Reasonable Warning that complies with the provisions of Section 3.3.2.

3 **3.3.2 Proposition 65 Warnings.** A Clear and Reasonable Warning under this
4 Consent Judgment shall state:

5 **WARNING:** This product contains a chemical known to the State of California to
6 cause cancer.

7 A Clear and Reasonable Warning may only be provided for a Covered Product if such Covered
8 Product contains cocamide DEA. This statement shall be prominently displayed on the label or
9 the packaging of the Covered Product in such a manner that it is likely to be read and understood
10 by an ordinary individual prior to use. For internet sales, the warning statement shall: (a) be
11 displayed before a California consumer commits to purchasing the Covered Product and without
12 the need for the California consumer to follow any additional hyperlinks beyond those required as
13 part of the ordinary purchasing process; (b) be set out in a text, box on a separate line or in a
14 separate paragraph; (c) be displayed in a font size in which the smallest character is no less than
15 the equivalent of the height of the equivalent characters in 12 point arial font; and (d) be
16 displayed with such conspicuousness, as compared with other words, statements, or designs as to
17 render it likely to be read and understood by an ordinary individual. The warning statement shall
18 not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its
19 conspicuousness to an ordinary individual, or that qualifies or interprets the required text, such as
20 “legal notice required by law.”

21 **4. ENFORCEMENT**

22 4.1 CEH may, by motion or application for an order to show cause before the
23 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
24 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
25 above, CEH shall provide Settling Defendant with a Notice of Violation and a copy of any test
26 results which purportedly support CEH’s Notice of Violation. The Parties shall then meet and
27 confer regarding the basis for CEH’s anticipated motion or application in an attempt to resolve it
28 informally, including providing Settling Defendant a reasonable opportunity of at least thirty (30)

1 days to cure any alleged violation. Should such attempts at informal resolution fail, CEH may
2 file its enforcement motion or application. This Consent Judgment may only be enforced by the
3 Parties.

4 **5. PAYMENTS**

5 5.1 **Payments by Settling Defendant.** Within five (5) business days of the
6 Effective Date, Settling Defendant shall pay the total sum of \$32,500 as a settlement payment.
7 The total settlement amount for Settling Defendant shall be paid in four separate checks delivered
8 to counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
9 Defendant shall be allocated between the following categories:

10 5.1.1 \$3,575 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
11 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
13 Assessment). The civil penalty check shall be made payable to the Center for Environmental
14 Health.

15 5.1.2 \$4,875 as a payment in lieu of civil penalty to CEH pursuant to Health &
16 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
17 such funds to continue its work educating and protecting people from exposures to toxic
18 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
19 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In
20 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
21 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
22 educate and protect people from exposures to toxic chemicals. The method of selection of such
23 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
24 this Section shall be made payable to the Center for Environmental Health.

25 5.1.3 \$24,050 as reimbursement of a portion of CEH's reasonable attorneys' fees
26 and costs. A check for \$20,800 shall be made payable to the Lexington Law Group, and a check
27 for \$3,250 shall be made payable to the Center for Environmental Health.

28

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 distributors, wholesalers, customers, retailers,
14 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”),
15 of any violation of Proposition 65 that was or could have been asserted in the Complaint against
16 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
17 to warn about alleged exposure to cocamide DEA contained in Covered Products that were sold
18 by Settling Defendant prior to the Effective Date.

19 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
20 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
21 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
22 warn about cocamide DEA in Covered Products manufactured, distributed, or sold by Settling
23 Defendant after the Effective Date.

24 7.3 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
25 action under Proposition 65 against any person other than Settling Defendant, Defendant
26 Releasees, or Downstream Defendant Releasees.

27 **8. NOTICE**

28 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the

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

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

7 8.2 When Settling Defendant is entitled to receive any notice under this Consent
8 Judgment, the notice shall be sent by first class and electronic mail to:

9 Rebecca L. Woodson
10 McKenna Long & Aldridge LLP
11 One Market Plaza
12 Spear Tower, 24th Floor
13 San Francisco, CA 94105
14 rwoodson@mckennalong.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 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

18

19 **IT IS SO STIPULATED:**

20 **CENTER FOR ENVIRONMENTAL HEALTH**

21

22



23

Charlie Pizarro
Associate Director

24

25

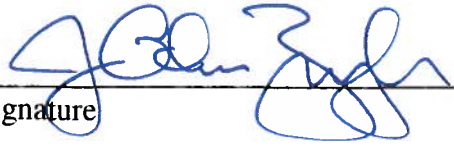
26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STERIS CORPORATION


Signature

J. Adam Zangerle

Printed Name

Vice President, General Counsel & Corporate Secretary

Title

IT IS SO ORDERED:

Dated: _____, 2015

Judge of the Superior Court

USW 804809067.1