

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and Perfect Image, LLC (“Perfect Image”) (together, the “Parties”).

1. INTRODUCTION

1.1. On October 6, 2014, CEH, a non-profit corporation acting in the public interest, provided a “Notice of Violation of Proposition 65” (the “Notice”) to Perfect Image, the California Attorney General, the District Attorneys of every county in California, and the City Attorneys of every California city with a population greater than 750,000. The Notice alleges violations of Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*), with respect to the presence of trichloroacetic acid (“TCA”) in chemical facial peels (the “Covered Products”). Specifically, the Notice alleges that Perfect Image exposes people who use the Covered Products to TCA, a chemical known to the State of California to cause cancer, without first providing a clear and reasonable warning to such persons regarding the carcinogenicity of TCA. Perfect Image manufactures, distributes, and/or sells Covered Products.

1.2. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Covered Products manufactured, distributed, and/or sold by Perfect Image. By executing this Agreement, the Parties do not admit any facts or conclusions of law. Nothing in this Agreement 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 this or any other or future legal proceedings.

2. INJUNCTIVE RELIEF

2.1. Covered Products. Beginning sixty (60) days following the date this Agreement is executed (the “Effective Date”), Perfect Image shall not sell or offer for sale to California consumers any Covered Products that contain TCA without first providing a Clear and Reasonable Warning regarding the carcinogenicity of TCA.

2.2 Proposition 65 Warnings. A Clear and Reasonable Warning under this Agreement shall state:

WARNING: This product contains trichloroacetic acid (TCA), a chemical known to the State of California to cause cancer.

This statement shall be prominently displayed on the packaging of the Covered Products with such conspicuousness, as compared with other words, statements or designs, as to render it likely to be read and understood by an ordinary individual prior to sale. For internet, catalog or any other sale where the consumer is not physically present, the warning statement shall be displayed in such a manner that it is likely to be read and understood by an ordinary individual prior to potential exposure.

3. SETTLEMENT PAYMENTS

3.1. In consideration of the mutual covenants and releases provided in this Agreement, within five (5) business days of the Effective Date, Perfect Image shall pay a total of \$27,500 as a settlement payment (the “Settlement Sum”). Any failure by Perfect Image to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by Perfect Image in the amount of \$100 for each day the full payment is not received after the applicable payment date. The late fees required under this Section shall be recoverable, together with reasonable attorneys’

fees, in an enforcement proceeding brought pursuant to Section 5 of this Agreement. The Settlement Sum total shall be paid in four separate checks delivered to the addresses set forth in Section 10.1 and below, and shall be made payable and allocated as follows:

3.2. Civil Penalty. Perfect Image shall pay \$3,600 total as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned 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 (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty payment for \$2,700 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The CEH portion of the civil penalty payment for \$900 shall be made payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to the Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

3.3. Payment in Lieu of Civil Penalty. Perfect Image shall pay \$5,400 as a payment to CEH in lieu of civil penalty 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, including heavy metals. 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 in lieu of penalty check shall be made payable to the Center for Environmental Health and delivered to the Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

3.4. Attorneys' Fees and Costs. Perfect Image shall pay \$18,500 to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating the alleged violations, bringing this matter to Perfect Image's attention, and negotiating a settlement in the public interest. This fees and costs check shall be made payable to the Lexington Law Group and delivered to the Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4. MODIFICATION OF SETTLEMENT AGREEMENT

4.1. This Agreement may be modified only by written agreement of the Parties.

5. ENFORCEMENT OF SETTLEMENT AGREEMENT

5.1. The Parties agree that any action based on a violation of this Agreement shall be brought in the Superior Court of California in Alameda County. For purposes of this Agreement, notwithstanding Section 1.2 above, 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. Should a party to this Agreement prevail on any action to enforce the terms of this

Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

5.2. Enforcement Procedures. Prior to bringing any action to enforce the terms of this Agreement, a Party seeking to enforce shall provide the violating Party fifteen (15) days advanced written notice of its intent to enforce the alleged violation. The Parties shall meet and confer during such fifteen (15) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. After such fifteen (15) day period, the Party seeking to enforce may, by new action before the Superior Court of California in Alameda County, seek to enforce the terms and conditions contained in this Agreement.

6. APPLICATION OF SETTLEMENT AGREEMENT

6.1. This Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions, and subsidiaries, and the successors or assigns of any of them.

7. CLAIMS COVERED

7.1 This Agreement is a full, final, and binding resolution between CEH on behalf of itself and the public interest and Perfect Image, and its parents, subsidiaries, affiliated entities that are under common ownership, 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 Walgreen Co., and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, other distributors, wholesalers, customers, and retailers, franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 that was or could have been asserted against Perfect Image, Defendant Releasees, and Downstream Defendant Releasees, based on failure to provide a Proposition 65 warning about alleged

exposure to TCA contained in Covered Products that were sold by Perfect Image prior to the Effective Date.

7.2 Compliance with the terms of this Agreement by Perfect Image and its Releasees shall constitute compliance with Proposition 65 by Perfect Image, its Releasees, and its Downstream Releasees with respect to any alleged failure to provide a Proposition 65 warning about TCA in the Covered Products manufactured, distributed, and/or sold by Perfect Image on or before 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 Perfect Image, Defendant Releasees, or Downstream Defendant Releasees.

8. SPECIFIC PERFORMANCE

8.1. The Parties expressly recognize that Perfect Image's obligations under this Agreement are unique. In the event that Perfect Image is found to be in breach of this Agreement for failure to comply with the provisions of Section 2, the Parties agree that it would be extremely impracticable to measure any resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and Perfect Image expressly waives the defense that a remedy in damages will be adequate.

9. GOVERNING LAW

9.1. The terms of this Agreement shall be governed by the laws of the State of California.

10. PROVISION OF NOTICE

10.1. All notices required pursuant to this Agreement and correspondence shall be sent by first class and electronic mail to the following:

For CEH:

Eric S. Somers
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
esomers@lexlawgroup.com

For Perfect Image:

Jonathan W. Peters
The Shafer Law Group
210 Magnolia Avenue
Auburn, CA 95603
jshafer@shaferlawgroup.com

10.2 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.

11. ENTIRE AGREEMENT

11.1. 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. 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. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. 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.

12. NO EFFECT ON OTHER SETTLEMENTS

12.1. Nothing in this Agreement shall preclude CEH from resolving any claim against any entity that is not Perfect Image on terms that are different from those contained in this Agreement.

13. EXECUTION IN COUNTERPARTS

13.1. The stipulations to this Agreement may be executed in counterparts by electronic mail, which taken together shall be deemed to constitute one document.

14. AUTHORIZATION

14.1. Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the party represented and legally bind that party. The undersigned have read, understand, and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

Dated: SEP 25 2015

PERFECT IMAGE, LLC

David Petrillo, Manager

Dated: _____

waiver constitute a continuing waiver.

12. NO EFFECT ON OTHER SETTLEMENTS

12.1. Nothing in this Agreement shall preclude CEH from resolving any claim against any entity that is not Perfect Image on terms that are different from those contained in this Agreement.

13. EXECUTION IN COUNTERPARTS

13.1. The stipulations to this Agreement may be executed in counterparts by electronic mail, which taken together shall be deemed to constitute one document.

14. AUTHORIZATION

14.1. Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the party represented and legally bind that party. The undersigned have read, understand, and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro
Associate Director

Dated: _____

PERFECT IMAGE, LLC



David Petriflo, Manager

Dated: 9/21/15