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

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

16 _____)
17 This Document Relates To:) **[PROPOSED] CONSENT**
18 *Center for Environmental Health v. Noevir*) **JUDGMENT AS TO**
19 *U.S.A., Inc., et al., A.C.S.C. Case No. RG 14-*) **TRANSNATIONAL FOODS, INC.**
739157)

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21 **1. INTRODUCTION**

22 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
23 Environmental Health (“CEH”) and defendant Transnational Foods, Inc. (“Settling Defendant”).
24 CEH and Settling Defendant are referred to collectively as the “Parties.”

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

3 1.3 On December 18, 2014, CEH served a 60-Day Notice of Violation under
4 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
5 & Safety Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendant, 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. The Notice
8 alleges violations of Proposition 65 with respect to the presence of cocamide DEA in shampoo
9 and liquid soaps that are manufactured, distributed, and/or sold by Settling Defendant.

10 1.4 On September 3, 2014, CEH filed the action entitled *CEH v. Noevir*
11 *U.S.A., Inc., et al.*, Case No. RG 14-739157, in the Superior Court of California for Alameda
12 County. On October 6, 2014, the *Noevir* action was coordinated with several other related
13 Proposition 65 actions in the *Proposition 65 Cocamide DEA Cases*, Case No. JCCP 4765,
14 currently pending before this Court. On June 16, 2015, CEH named Settling Defendant as a
15 defendant in that action pursuant to California Code of Civil Procedure § 474.

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

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

1 **2. DEFINITIONS**

2 2.1 “Covered Products” means shampoo and liquid soaps.

3 2.2 “Effective Date” means the date on which this Consent Judgment is
4 entered by the Court.

5 **3. INJUNCTIVE RELIEF**

6 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
7 Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product that
8 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
9 purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
10 intentionally added ingredient in the product and/or part of the product formulation.

11 3.2 **Specification to Suppliers.** No more than thirty (30) days after the
12 Effective Date, Settling Defendant shall issue specifications to its suppliers of Covered Products
13 requiring that Covered Products to be sold or offered for sale to California consumers not contain
14 any cocamide DEA, and shall request that each supplier eliminate Covered Products containing
15 cocamide DEA on a nationwide basis.

16 3.3 **Action Regarding Specific Products.**

17 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the
18 Chiffon Dream Shower Gel Premier Collection Vitta Soft Care, SKU No. 8-76941-00636-0
19 containing cocamide DEA (the “Section 3.3 Product”) in California. On or before the Effective
20 Date, Settling Defendant shall also: (i) cease shipping the Section 3.3 Product to any of their
21 stores and/or customers that resell the Section 3.3 Product in California; and (ii) send instructions
22 to their stores and/or customers that resell the Section 3.3 Product in California instructing them
23 either to: (a) return all the Section 3.3 Product to Settling Defendant for destruction, or (b)
24 directly destroy the Section 3.3 Product.

25 3.3.2 Any destruction of the Section 3.3 Product shall be in compliance with all
26 applicable laws.

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1 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall
2 provide 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 which purportedly support CEH's Notice of Violation. The Parties shall then meet and
10 confer regarding the basis for CEH's anticipated motion or application in an attempt to resolve it
11 informally, including providing Settling Defendant a reasonable opportunity of at least thirty (30)
12 days to cure any alleged violation. Should such attempts at informal resolution fail, CEH may
13 file its enforcement motion or application. This Consent Judgment may only be enforced by the
14 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 \$17,500 as a settlement payment.
18 Each settlement payment from Settling Defendant shall be paid in three (3) separate checks
19 delivered to counsel for CEH at the address set forth in Section 8.1 below. The funds paid by
20 Settling Defendant shall be allocated between the following categories:

21 5.1.1 \$1,925 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). This check shall be made payable to the Center for Environmental Health.

25 5.1.2 \$2,625 as payment in lieu of civil penalty to CEH pursuant to Health &
26 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
27 such funds to continue its work educating and protecting people from exposures to toxic
28 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent

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

7 5.1.3 \$12,950 as reimbursement of a portion of CEH's reasonable attorneys' fees
8 and costs. This check shall be made payable to the Lexington Law Group.

9 **6. MODIFICATION**

10 6.1 **Written Consent.** This Consent Judgment may be modified from time to
11 time by express written agreement of the Parties with the approval of the Court, or by an order of
12 this Court upon motion and in accordance with law.

13 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment
14 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
15 modify the Consent Judgment.

16 **7. CLAIMS COVERED AND RELEASED**

17 7.1 This Consent Judgment is a full, final, and binding resolution between
18 CEH on behalf of itself and the public interest and Settling Defendant, and its parents,
19 subsidiaries, affiliated entities that are under common ownership (including but not limited to
20 Pampa Beverages, LLC), directors, officers, employees, and attorneys ("Defendant Releasees"),
21 and each entity to whom they directly or indirectly distribute or sell Covered Products, including
22 but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative
23 members, licensors, and licensees ("Downstream Defendant Releasees") of any violation of
24 Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant,
25 Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about
26 alleged exposure to cocamide DEA contained in Covered Products that were sold by Settling
27 Defendant prior to the Effective Date.

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1 7.2 CEH, in its individual capacity only and *not* in any representative
2 capacity, provides a release herein which shall be effective as a full and final accord and
3 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
4 damages, losses, claims, liabilities, and demands of any nature, character, or kind, whether known
5 or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
6 cocamide DEA in Covered Products manufactured, imported, distributed, or sold by Settling
7 Defendant prior to the Effective Date.

8 7.3 Waiver of California Civil Code Section 1542. This is a full and final
9 release applying to all unknown and/or unanticipated claims, penalties, damages and injunctive
10 terms relating to or arising out of the claims alleged in the Notice and Complaint, as well as those
11 now known, whether or not disclosed, and CEH, on its own behalf only and *not* in any
12 representative capacity, and with regard to the claims alleged in the Notice and Complaint, hereby
13 relinquishes and waives all rights or benefits conferred upon it by the provisions of Section 1542
14 of the California Civil Code, which states as follows:

15 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
16 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
17 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
18 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**
19 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
20 **WITH THE DEBTOR.**

21 7.4 Compliance with the terms of this Consent Judgment by Settling
22 Defendant and Defendant Releasees shall constitute compliance with Proposition 65 by Settling
23 Defendant, Defendant Releasees, and Downstream Defendant Releasees with respect to any
24 alleged failure to warn about cocamide DEA in Covered Products manufactured, distributed, or
25 sold by Settling Defendant after the Effective Date.

26 7.5 Nothing in this Section 7 affects CEH's right to commence or prosecute
27 an action under Proposition 65 against any person other than Settling Defendant, Defendant
28 Releasees, or Downstream Defendant Releasees.

8. NOTICE

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

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

9 Jeffrey Goldman
10 Pepper Hamilton LLP
11 4 Park Plaza, Suite 1200
12 Irvine, CA 92614
13 goldmanj@pepperlaw.com

14 With a copy to:

15 AnnMarie Sanford
16 Pepper Hamilton LLP
17 4000 Town Center, Suite 1800
18 Southfield, MI 48075
19 sanforda@pepperlaw.com

20 8.3 Any Party may modify the person and address to whom the notice is to be
21 sent by sending the other Party notice by first class and electronic mail.

22 **9. COURT APPROVAL**

23 9.1 This Consent Judgment shall become effective upon entry by the Court.
24 CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling
25 Defendant shall support entry of this Consent Judgment.

26 9.2 If this Consent Judgment is not entered by the Court, it shall be of no
27 force or effect and shall never be introduced into evidence or otherwise used in any proceeding
28 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.

1 Should Settling Defendant prevail on any motion, application for an order to show cause, or other
2 proceeding, Settling Defendant shall be entitled to its reasonable attorneys' fees and costs as a
3 result of such motion or application as provided by law. For purposes of this Consent Judgment,
4 the term substantial justification shall carry the same meaning as used in the Civil Discovery Act
5 of 1986, Code of Civil Procedure § 2016, *et seq.*

6 10.2 Except as otherwise provided in this Consent Judgment, each Party shall
7 bear its own attorneys' fees and costs.

8 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award
9 of sanctions pursuant to law.

10 **11. OTHER TERMS**

11 11.1 The terms of this Consent Judgment shall be governed by the laws of the
12 State of California.

13 11.2 This Consent Judgment shall apply to and be binding upon CEH and
14 Settling Defendant, and their respective divisions, subdivisions, and subsidiaries, and the
15 successors or assigns of any of them.

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

28 11.4 Nothing in this Consent Judgment shall release, or in any way affect any

1 rights that Settling Defendant might have against any other party, whether or not that party is a
2 settling defendant.

3 11.5 This Court shall retain jurisdiction of this matter to implement or modify
4 the Consent Judgment.

5 11.6 The stipulations to this Consent Judgment may be executed in
6 counterparts and by means of facsimile or portable document format (pdf), which taken together
7 shall be deemed to constitute one document.

8 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
10 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
11 Party.

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

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22 **IT IS SO STIPULATED:**

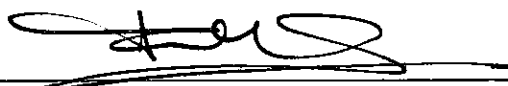
23 **CENTER FOR ENVIRONMENTAL HEALTH**

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26 _____
27 Charlie Pizarro
28 Associate Director

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TRANSNATIONAL FOODS, INC.



Signature **TRANSNATIONAL FOODS ,INC.**
Francisco Young
Vice- President

Printed Name

EVP

Title

IT IS SO ORDERED:

Dated: _____, 2015

Judge of the Superior Court