

## **SETTLEMENT AGREEMENT & RELEASE – ISO BEAUTY, INC.**

### **1. INTRODUCTION**

**1.1.** This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and ISO Beauty, Inc. (“Settling Defendant”). The Agreement resolves certain allegations by CEH that Settling Defendant violated the Safe Drinking Water & Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.* (“Proposition 65”) and the California Organic Products Act of 2003, California Health & Safety Code §§ 110810, *et seq.* (“COPA”). CEH and Settling Defendant are referred to collectively as the “Parties.”

**1.2.** On August 11, 2017, CEH, a non-profit corporation acting in the public interest, served a 60-Day Notice of Violation under Proposition 65 (the “Notice”) to Settling Defendant, 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 with respect to the presence of coconut oil diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in shampoo and liquid soaps manufactured, distributed, and/or sold by Settling Defendant.

**1.3.** On September 12, 2017, CEH sent a demand letter to Settling Defendant stating that CEH intended to file suit against Settling Defendant based on its alleged violations of COPA (the “Demand Letter”). Specifically, the Demand Letter alleges that Settling Defendant violated COPA by selling cosmetic products such as shampoo in California that are labeled, advertised and marketed as “organic” but which do not contain at least 70% certified organic ingredients, excluding water and salt.

**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 this or any other or future legal proceedings. This Agreement is the product of negotiation and compromise and is accepted by the Parties for purposes of settling, compromising, and resolving disputed issues.

## **2. DEFINITIONS**

**2.1.** “Covered Product(s)” shall mean shampoo which Settling Defendant manufactures, distributes, sells or causes to be manufactured for distribution and/or sale to consumers in California.

**2.2.** “Effective Date” shall be the date on which this Agreement is executed by both Parties.

**2.3.** “Information Panel” shall mean any portion of the product’s label other than the principal display panel (PDP) as defined by the Labeling Regulations Applicable to Cosmetics, Title 21 of the Code of Federal Regulations § 701.10.

**2.4.** “Organically produced ingredients” or “organic ingredients” are ingredients that are produced in accordance with the National Organic Program, Part 205 of Title 7 of the Code of Federal Regulations, as adopted by the California Organic Products Act of 2003, Cal. Health & Safety Code §§ 110810, *et seq.*

**2.5.** “Sold as Organic” means any use of the term “organic,” “organically grown” or grammatical variations of those terms, whether orally or in writing, in connection with any

Covered Product, including but not limited to any use of these terms in the labeling or advertising of any Covered Product and/or any ingredient in such Covered Product.

### **3. INJUNCTIVE RELIEF – PROPOSITION 65**

**3.1. Reformulation of Covered Products.** After the Effective Date, Settling Defendant 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 Covered Product “contains cocamide DEA” if cocamide DEA is an intentionally added ingredient in the product and/or part of the product formulation.

#### **3.2. Action Regarding Specific Covered Products.**

**3.2.1.** If Settling Defendant has not yet done so, on or before the Effective Date, Settling Defendant shall cease selling ISO Beauty Ionix Shampoo with Argan Oil, SKU No. 6-10563-00727-1 (the “Section 3.3 Product”) in California. If Settling Defendant has not yet done so, on or before the Effective Date, Settling Defendant shall also: (a) cease shipping the Section 3.3 Product to any of its stores and/or customers that resell the Section 3.3 Product in California; and (b) send instructions to its stores and/or customers that resell the Section 3.3 Product in California instructing them either to: (i) return all the Section 3.3 Product to Settling Defendant for destruction, or (ii) directly destroy the Section 3.3 Product.

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

**3.2.3.** Within sixty (60) days of the Effective Date, Settling Defendant shall provide CEH with written certification from Settling Defendant confirming compliance with the requirements of this Section 3.3.

#### **4. INJUNCTIVE RELIEF – CALIFORNIA ORGANIC PRODUCTS ACT**

**4.1. Products Sold as Organic.** After the Effective Date, Settling Defendant shall not cause to be manufactured any Covered Product that is Sold as Organic to consumers or represented as Organic to consumers in California, unless such Covered Product contains at least 70 percent organically produced ingredients, excluding water and salt subject to the provisions of Section 4.3 below.

**4.2. Calculation of Percentages of Organic Ingredients.** The percentage of all organically produced ingredients in a Covered Product subject to this Agreement shall be calculated in accordance with this Section 4.2. The percentage of all organically produced ingredients in a Covered Product shall be rounded down to the nearest whole number.

**4.2.1. Organic Ingredients in Solid Form.** For Covered Products containing organically produced ingredients in solid form, the percentage of organic ingredients shall be calculated by dividing the total net weight of combined organic ingredients at formulation, excluding water and salt, by the total weight of the finished Covered Product, excluding water and salt.

**4.2.2. Organic Ingredients in Liquid Form.** For Covered Products containing organically produced ingredients in liquid form, the percentage of organic ingredients shall be calculated by dividing the fluid volume of all organic ingredients, excluding water and salt, by the fluid volume of the finished Covered Product, excluding water and salt.

**4.2.3. Organic Ingredients in Both Solid and Liquid Form.** For Covered Products containing organically produced ingredients in both solid and liquid form, by dividing the combined weight of the solid ingredients and the weight of the liquid ingredients, excluding water and salt, by the total weight of the finished Covered Product, excluding water and salt.

#### **4.2.4. Water Added To Rehydrate and/or Reconstitute a Dehydrated**

**Organic Ingredient.** Water used to rehydrate a dehydrated powdered organic ingredient may not be included in the calculation of the percentage of organic ingredients. However, water used to reconstitute a liquid concentrate of an organic ingredient to single strength may be included in the percentage of organic ingredients provided that the PDP of the product label clearly states: “This product is made using reconstituted [name of reconstituted ingredient].”

**4.3. Covered Products with Less than 70% Organic Ingredients.** To the extent Settling Defendant identifies the organic content of any Covered Product containing less than 70 percent organically produced ingredients, by weight or by fluid volume, excluding water and salt, Settling Defendant may only identify the organic content of the Covered Product on the Information Panel by the following:

**4.3.1.** Identifying each organic ingredient in the ingredient statement either with the word “organic” or with an asterisk or other reference mark that is defined below the ingredient statement to indicate that such ingredient is organically produced; and/or

**4.3.2.** Displaying the total percentage of organic contents on the Information Panel of the Covered Product.

## **5. ENFORCEMENT**

**5.1. Venue, Jurisdiction, and Attorneys’ Fees.** The Parties agree that any action based on 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. The prevailing party on any action to enforce the terms of this Agreement 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 thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) 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. PAYMENTS**

**6.1.** In consideration of the mutual covenants and releases provided in this Agreement, Settling Defendant shall pay a total of \$40,000 according to the payment schedule set forth in **Exhibit A** attached hereto. Excepting bank failures and *force majeure*, failure to deliver the payment by the due date shall be subject to a late payment fee of \$100 per day for each day after the delivery date the payment is received. In the event that a payment is more than thirty (30) days late, all remaining payments shall become due and recoverable pursuant to the guarantee referenced in Section 6.2 below. The funds paid by Settling Defendant shall be allocated as set forth in Section 6.3 and Section 6.4.

**6.2.** Settling Defendant and CEH agree that Settling Defendant has provided a good and sufficient guarantee for payment of the amount provided for in Section 6.2. A copy of the Guarantee is attached hereto as **Exhibit B**.

**6.3. Proposition 65 Civil Penalty.** Settling Defendant shall pay \$4,000 as a 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, Defendant shall pay the OEHHA portion of the Civil Penalty payment of \$3,000 by check 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

Defendant shall pay the CEH portion of the Civil Penalty payment for \$1,000 check made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

**6.4. Attorneys' Fees and Costs.** Settling Defendant shall pay \$36,000 as a reimbursement of a portion of CEH's reasonable investigation fees and costs, attorneys' fees,

and any other costs incurred as a result of investigating the alleged Proposition 65 and COPA violations described herein, bringing this matter to Settling Defendant's attention, and negotiating a settlement in the public interest. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) \$35,000 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$1,000 payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

## **7. MODIFICATION OF SETTLEMENT AGREEMENT**

**7.1.** This Agreement may be modified only by written agreement of the Parties. If the modification pertains to Proposition 65 requirements, the Agreement may be modified only with prior notice to the Attorney General's Office.

## **8. CLAIMS COVERED AND RELEASED**

**8.1.** Provided that Settling Defendant complies in full with its obligations under Section 6 hereof, this Agreement is a full, final, and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant, 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 distributors, wholesalers, customers, and retailers, franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees") of: (1) any violation of Proposition 65 that was or could have been asserted against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees with respect to the failure to warn about alleged exposures to cocamide DEA present in Covered Products that were manufactured, distributed or sold by Settling Defendant prior to the Effective Date; and (2) any violation of COPA that was or could have been asserted against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees with respect to Covered Products that were manufactured, distributed or sold by Settling Defendant on or prior to the Effective Date.



**8.2.** Provided that Settling Defendant complies in full with its obligations under Section 6 hereof, compliance with the terms of this Agreement by Settling Defendant constitutes: (1) compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees for purposes of exposures to cocamide DEA from the Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective Date; (2) compliance with COPA by Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees for purposes of Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective Date.

**9. SPECIFIC PERFORMANCE**

**9.1.** The Parties expressly recognize that Settling Defendant's obligations under this Agreement are unique. In the event that Settling Defendant is found to be in breach of this Agreement for failure to comply with the provisions of Section 3 and Section 4, 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 Settling Defendant expressly waives the defense that a remedy in damages will be adequate.

**10. 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:

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

For Settling Defendant:

Ethan O. Michael  
Lebedev, Michael & Helmi, PLC

10999 Riverside Drive, Suite 201  
Studio City, CA 91602  
ethan@michaellawgroup.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. OTHER TERMS**

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

**11.2.** This Agreement shall apply to and be binding upon CEH and Settling Defendant, and Settling Defendant's respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any of them.

**11.3.** 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. 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.

11.4. Nothing in this Agreement shall preclude CEH from resolving any claim against any entity that is not Settling Defendant on terms that are different than those contained in this Agreement, except as provided in the release in Section 8.

11.5. The stipulations to 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.

11.6. 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.

**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**



\_\_\_\_\_  
Charlie Pizarro  
Associate Director

Dated: \_\_\_\_\_

26 Oct 2018

ISO BEAUTY, INC.

Alon Peled  
Signature

Dated: 10-31-18

Alon Peled  
Printed Name

CEO  
Title

**EXHIBIT A**

**Total Settlement Payment: \$40,000**

This payment shall be allocated and paid by check as follows:

<b>Deadline</b>	<b>Payee(s)</b>	<b>Type</b>	<b>Amount</b>	<b>Deliver To</b>
3/15//2019	OEHHA	Penalty	\$3,000	OEHHA per Section 6.3
	CEH	Penalty	\$1,000	LLG per Section 6.3
3/15/2019	CEH	Fee	\$1,000	LLG per Section 6.4
	LLG	Fee	\$5,000	LLG per Section 6.4
6/15/2019	LLG	Fee	\$6,000	LLG per Section 6.4
9/15/2019	LLG	Fee	\$6,000	LLG per Section 6.4
12/15/2019	LLG	Fee	\$6,000	LLG per Section 6.4
3/15/2020	LLG	Fee	\$6,000	LLG per Section 6.4
6/15/2020	LLG	Fee	\$6,000	LLG per Section 6.4
		<b>TOTAL</b>	<b>\$40,000</b>	

**EXHIBIT B**

UNCONDITIONAL GUARANTY

For valuable consideration, the undersigned, Alon Peled ("Guarantor"), hereby unconditionally guarantees and promises that he will ensure that ISO Beauty, Inc. ("ISO Beauty") timely pays its indebtedness to Plaintiff Center for Environmental Health ("CEH") as set forth in Section 6 of the Settlement agreement between the Parties to which this Guaranty is attached ("Settlement Agreement").

In the event that ISO Beauty fails to timely make any of the payments due under Section 6.1 of the Settlement Agreement, Guarantor will make all remaining payments himself within ten (10) days.

For purposes of this Guaranty only, Guarantor agrees that the Superior Court for the County of Alameda has jurisdiction over them and this Guaranty and that venue is proper for purposes of any application, motion or action to enforce this Guaranty.

Dated: October 31, 2018

By: Alon Peled  
Alon Peled  
Chief Executive Officer  
ISO Beauty, Inc.