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7 CENTER FOR ENVIRONMENTAL HEALTH

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

12 CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 19-038937  
13 )  
14 Plaintiff, )  
15 v. ) **[PROPOSED] CONSENT**  
16 CHANEL, INC., *et al.* ) **JUDGMENT AS TO L'ORÉAL USA,**  
17 ) **INC.**  
18 Defendant. )  
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20 **1. INTRODUCTION**

21 1.1 The parties to this Consent Judgment are the Center for Environmental Health  
22 (“CEH”) and defendant L’Oréal USA, Inc. (“Settling Defendant”). CEH and Settling Defendant  
23 are referred to collectively as the “Parties.”

24 1.2 Settling Defendant is a corporation that employs ten (10) or more persons and that  
25 manufactures, distributes, and/or sells makeup foundation in the State of California or has done so  
26 in the past.

27 1.3 On April 15, 2019, CEH served a 60-Day Notice of Violation under Proposition  
28 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety

1 Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendant, the California Attorney General, the  
2 District Attorneys of every County in the State of California, and the City Attorneys for every  
3 City in the State of California with a population greater than 750,000. The Notice alleges  
4 violations of Proposition 65 with respect to the presence of perfluorooctanoic acid (“PFOA”) in  
5 makeup foundation manufactured, distributed, and/or sold by Settling Defendant.

6 1.4 On October 11, 2019, CEH filed the Complaint in the above-captioned matter,  
7 naming Settling Defendant as a defendant.

8 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
9 Court has jurisdiction over the allegations of violations contained in the operative Complaint  
10 applicable to Settling Defendant (“Complaint”) and personal jurisdiction over Settling Defendant  
11 as to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii)  
12 this Court has jurisdiction to enter this Consent Judgment.

13 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the  
14 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with  
15 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
16 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
17 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
18 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
19 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
20 this action.

21 **2. DEFINITIONS**

22 2.1 “Covered Products” means makeup foundation manufactured by or for Settling  
23 Defendant or companies under its control that may be sold into California.

24 2.2 “Effective Date” means the date on which this Consent Judgment is entered by the  
25 Court.

26 2.3 “Detectible PFOA” means a concentration of PFOA that exceeds the Reporting  
27 Limit.

28 2.4 “Reporting Limit” means 0.100 mg/kg of PFOA by weight for Covered Products

1 sold in a solid form, or 0.100 mg/L by volume for Covered Products sold in a liquid form.

2 **3. INJUNCTIVE RELIEF**

3 **3.1 Reformulation of Covered Products.**

4 3.1.1 As of the Effective Date, Settling Defendant shall not manufacture for  
5 sale any Covered Product that will be sold or offered for sale to California consumers that  
6 contains (i) any intentionally added PFOA, or (ii) any intentionally added ingredient that is  
7 known to degrade to Detectible PFOA, including but not limited to C9-15 fluoroalcohol  
8 phosphate.

9 3.1.2 No more than thirty (30) days after the Effective Date, Settling Defendant  
10 shall provide CEH a written certification that to the best of its knowledge all Covered Products  
11 being manufactured as of the Effective Date contain no Detectible PFOA.

12 **4. ENFORCEMENT**

13 4.1 CEH may, by motion or application for an order to show cause before the Superior  
14 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.  
15 Should CEH acquire data showing that a Covered Product is not compliant with Section 3, it may  
16 exercise its enforcement right. This Section does not establish a reformulation level or Maximum  
17 Allowable Dose Level (“MADL”), and PFOA content above the Reporting Limit does not  
18 necessarily indicate a violation of Proposition 65. At least thirty (30) days prior to bringing any  
19 motion or application to enforce this Consent Judgment, CEH shall provide Settling Defendant  
20 with a Notice of Violation and a copy of any test results which purportedly support CEH’s Notice  
21 of Violation. The Parties shall then meet and confer regarding the basis for CEH’s anticipated  
22 motion or application in an attempt to resolve it informally, including whether the State of  
23 California has promulgated a MADL for PFOA and whether the Covered Product identified in the  
24 Notice of Violation contains PFOA in concentrations that cause exposures that violate  
25 Proposition 65. Should such attempts at informal resolution fail, CEH may file its enforcement  
26 motion or application. The prevailing party on such motion or application shall be entitled to its  
27 reasonable costs and attorneys’ fees. This Consent Judgment may only be enforced by the  
28 Parties.

1     **5.     PAYMENTS**

2             **5.1     Payments by Settling Defendant.** Within fifteen (15) calendar days of the  
3 Effective Date, Settling Defendant shall pay the total sum of \$40,000 as a settlement payment as  
4 further set forth in this Section 5.

5             **5.2     Allocation of Payments.** The total settlement amount for Settling Defendant shall  
6 be paid in five (5) separate checks in the amounts specified below and delivered as set forth  
7 below. Any failure by Settling Defendant to comply with the payment terms herein shall be  
8 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each  
9 day the full payment is not received after the payment due date set forth in Section 5.1. The late  
10 fees required under this Section 5 shall be recoverable, together with reasonable attorneys' fees,  
11 in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The funds  
12 paid by Settling Defendant shall be allocated as set forth below between the following categories  
13 and made payable as follows:

14                     **5.2.1     \$4,800 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).**  
15 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
16 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
17 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
18 payment for \$3,600 shall be made payable to OEHHA and associated with taxpayer identification  
19 number 68-0284486. This payment shall be delivered as follows:

20                             For United States Postal Service Delivery:

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

24                             For Non-United States Postal Service Delivery:

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

28             The CEH portion of the civil penalty payment for \$1,200 shall be made payable to the

1 Center for Environmental Health and associated with taxpayer identification number 94-3251981.  
2 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,  
3 CA 94117.

4           5.2.2     Settling Defendant shall pay the sum of \$3,600 as an Additional  
5 Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and  
6 California Code of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH’s  
7 Toxics and Youth Fund and use them to support CEH programs and activities that seek to educate  
8 the public about PFOA and other toxic chemicals in consumer products that are marketed to  
9 youth, expand its use of social media to communicate with youth in California about the risks of  
10 exposures to PFOA and other toxic chemicals in the products they use and about ways to reduce  
11 those exposures, work with industries that market products to youth to reduce exposure to PFOA  
12 and other toxic chemicals, and thereby reduce the public health impacts and risks of exposure to  
13 PFOA and other toxic chemicals in consumer products that are marketed to youth in California.  
14 CEH shall obtain and maintain adequate records to document that ASP funds are spent on these  
15 activities and CEH agrees to provide such documentation to the Attorney General within thirty  
16 days of any request from the Attorney General. The payment pursuant to this Section 5.2.2 shall  
17 be made payable to the Center for Environmental Health and associated with taxpayer  
18 identification number 94-3251981.

19           5.2.3     \$31,600 as a reimbursement of a portion of CEH’s reasonable attorneys’  
20 fees and costs (including but not limited to expert and investigative costs). The attorneys’ fees  
21 and cost reimbursement shall be made in two separate checks as follows: (a) \$25,900 payable to  
22 the Lexington Law Group and associated with taxpayer identification number 94-3317175; and  
23 (b) \$5,700 payable to the Center for Environmental Health and associated with taxpayer  
24 identification number 94-3251981. These payments shall be delivered to Lexington Law Group,  
25 503 Divisadero Street, San Francisco, CA 94117.

26 **6.     MODIFICATION**

27           This Consent Judgment may be modified from time to time by express written agreement  
28 of the Parties with the approval of the Court, or by an order of this Court upon motion and in

1 accordance with law. A Party seeking to modify this Consent Judgment for any reason shall  
2 attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the  
3 Consent Judgment.

4 **7. CLAIMS COVERED AND RELEASED**

5 7.1 Provided that Settling Defendant complies in full with its obligations under  
6 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on  
7 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,  
8 affiliated entities that are under common ownership, directors, officers, employees, agents,  
9 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which  
10 Settling Defendant directly or indirectly distributes or sells Covered Products, including but not  
11 limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees  
12 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn  
13 about alleged exposure to PFOA contained in Covered Products that were sold, distributed, or  
14 offered for sale by Settling Defendant prior to the Effective Date.

15 7.2 Provided that Settling Defendant complies in full with its obligations under  
16 Section 5 hereof, CEH, for itself and its agents, successors, and assigns, releases, waives, and  
17 forever discharges any and all claims against Settling Defendant, Defendant Releasees, and  
18 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other  
19 statutory or common law claims that have been or could have been asserted by CEH individually  
20 or in the public interest regarding the failure to warn about exposure to PFOA arising in  
21 connection with Covered Products manufactured, distributed, or sold by Settling Defendant prior  
22 to the Effective Date.

23 7.3 Provided that Settling Defendant complies in full with its obligations under  
24 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall  
25 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and  
26 Downstream Defendant Releasees with respect to any alleged failure to warn about PFOA in  
27 Covered Products manufactured by Settling Defendant after the Effective Date.

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1 **8. NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
3 notice shall be sent by first class and electronic mail to:

4 Howard Hirsch  
5 Lexington Law Group  
6 503 Divisadero Street  
7 San Francisco, CA 94117  
8 hhirsch@lexlawgroup.com

9 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
10 Judgment, the notice shall be sent by first class and electronic mail to:

11 Will Wagner  
12 Greenberg Traurig LLP  
13 1201 K Street, Suite 1100  
14 Sacramento, CA 94111  
15 wagnerw@gtlaw.com

16 8.3 Any Party may modify the person and address to whom the notice is to be sent by  
17 sending the other Party notice by first class and electronic mail.

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH  
20 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant  
21 shall support entry of this Consent Judgment.

22 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
23 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
24 purpose other than to allow the Court to determine if there was a material breach of Section 9.1

25 **10. ATTORNEYS' FEES**

26 10.1 Except as otherwise provided in this Consent Judgment, each Party shall bear its  
27 own attorneys' fees and costs.

28 10.2 Nothing in this Section 10 shall preclude a Party from seeking an award of  
sanctions pursuant to law.

**11. OTHER TERMS**

11.1 The terms of this Consent Judgment shall be governed by the laws of the State of

1 California.

2 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
3 Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors or  
4 assigns of any of them.

5 11.3 This Consent Judgment contains the sole and entire agreement and understanding  
6 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
7 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
8 and therein. There are no warranties, representations, or other agreements between the Parties  
9 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
10 other than those specifically referred to in this Consent Judgment have been made by any Party  
11 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
12 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,  
13 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by  
14 the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall  
15 be deemed or shall constitute a waiver of any of the other provisions hereof whether or not  
16 similar, nor shall such waiver constitute a continuing waiver.

17 11.4 Nothing in this Consent Judgment shall release any claims, or in any way affect  
18 any rights that either Party might have against any other entity, except as otherwise provided  
19 herein.

20 11.5 This Court shall retain jurisdiction of this matter to implement or modify the  
21 Consent Judgment.

22 11.6 The stipulations to this Consent Judgment may be executed in counterparts and by  
23 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
24 constitute one document.

25 11.7 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
26 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
27 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

28 11.8 The Parties, including their counsel, have participated in the preparation of this




1 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
2 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
3 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
4 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
5 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
6 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
7 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
8 this regard, the Parties hereby waive California Civil Code § 1654.

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**IT IS SO ORDERED, ADJUDGED,  
AND DECREED.**

Dated: \_\_\_\_\_  
Judge of the Superior Court

**IT IS SO STIPULATED:**

<p>Dated: <u>November 16, 2020</u></p>	<p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p>  <p>_____ Signature</p> <p><u>Michael Green</u> _____ Printed Name</p> <p><u>CEO</u> _____ Title</p>
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Dated: _____, 2020	<p><b>L'ORÉAL USA, INC.</b></p> <p>Signature <b>Sanja</b> Digitally signed by Sanjay.DEVI Date: <b>y.DEVI</b> 2020.11.05 Printed Name 08:16:08 -05'00'</p> <p>Senior Vice President, Finance Title _____</p>
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