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Attorneys for Plaintiff
Kim Embry

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

KIM EMBRY, an individual

Plaintiff,

v.

COQUETTE INTERNATIONAL, INC. and
DOES 1 through 100, inclusive

Defendants.

Case No. _____

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Kim Embry (“Embry”) and Coquette
4 International, Inc. (“Coquette”) (collectively the “Parties”).

5 **1.2 Plaintiff**

6 Embry is an individual residing in California and acting in the interest of the general public.
7 She seeks to promote awareness of exposures to toxic chemicals and to improve human health by
8 reducing or eliminating hazardous substances contained in consumer products.

9 **1.3 Defendant**

10 Coquette employs ten or more individuals and is a “person in the course of doing business”
11 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
12 Code section 25249.6 *et seq.* (“Proposition 65”).

13 **1.4 General Allegations**

14 Embry alleges that Coquette manufactures, imports, sells, and distributes for sale in California
15 women's lingerie products that contain di(2-ethylhexyl) phthalate (“DEHP”), nickel, and lead
16 (collectively “Listed Chemicals”). Embry further alleges that Coquette does so without providing a
17 sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to
18 Proposition 65, DEHP, lead, and nickel are listed as a chemical known to cause cancer and/or
19 reproductive harm.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment “Product” or “Products” are defined as women's
22 lingerie products containing the Listed Chemicals that are imported, sold, or distributed for sale in
23 California by Coquette and Releasees, defined *infra*.

24 **1.6 Notices of Violation**

25 Embry served and/or will serve Coquette and the California Attorney General, and all other
26 required public enforcement agencies with a 60-Day Notice of Violation of California Health and
27 Safety Code section 25249.6 *et seq.* alleging that Coquette violated Proposition 65 by failing to
28

1 sufficiently warn consumers in California of the health hazards associated with exposures to Listed
2 Chemicals contained in the Products (“Notice”).

3 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
4 violations alleged in the Notice.

5 **1.7 Complaint**

6 On _____, Embry filed a Complaint against Coquette for the alleged violations
7 of Health and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”). On that
8 same date, Embry and Coquette filed a Stipulation to and Request for Dismissal Without Prejudice of
9 the action removed to federal court, then pending in the U.S. District Court for the Northern District
10 of California, Case No. 3:17-cv-06888-WHO.

11 **1.8 No Admission**

12 Coquette denies the material, factual, and legal allegations in the Notices and Complaint, and
13 maintains that it does not manufacture, import, sell or distribute products for sale in California.
14 Rather, Coquette maintains that it only holds the Coquette and Darque trademarks and service marks,
15 which are licensed to entities in California who import, sell and/or distribute those products.
16 Coquette maintains that all licensed products bearing the Coquette or Darque label that may have
17 been imported, sold, and/or distributed for sale in California, including the Products, have been, and
18 are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
19 admission of any fact, finding, conclusion of law, issue of law, or violation of law, or of fault,
20 wrongdoing, or liability by Coquette, its officers, directors, employees, or parent, subsidiary or
21 affiliated entities, nor shall compliance with this Consent Judgment be construed as an admission of
22 any fact, finding, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or
23 liability by Coquette, its officers, directors, employees, or parent, subsidiary or affiliated entities,
24 Further, nothing in this Consent Judgment shall prejudice, waiver or impair any right, remedy,
25 argument, or defense the Parties may have in any other or future legal proceeding, except as
26 expressly provided in this Consent Judgment. This Section shall not, however, diminish or otherwise
27 affect Coquette’s obligations, responsibilities, and duties under this Consent Judgment.

1 **1.9 Jurisdiction and Venue**

2 For purposes of this Consent Judgment only, the Parties stipulate that Alameda County
3 Superior Court ("Court") has jurisdiction over the subject matter and acts alleged in the Complaint,
4 that venue is proper in the County of Alameda, and that the Court has jurisdiction to enter and
5 enforce the provisions of this Consent Judgment as a full and final settlement of the allegations
6 against Coquette in the Complaint, pursuant to Proposition 65 and Code of Civil Procedure section
7 664.6. The Court shall retain jurisdiction of this matter only to implement and enforce the terms of
8 this Consent Judgment under Code of Civil Procedure section 664.6.

9 If the consent judgment is not approved, Coquette reserves its right to contest jurisdiction in
10 California.

11 **1.10 Effective Date**

12 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
13 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 6.

14 **2. INJUNCTIVE RELIEF**

15 **2.1 Reformulation and Warnings**

16 Commencing ninety (90) days after the Effective Date, and continuing thereafter, Coquette
17 agrees that products bearing the Coquette and/or Darque label that are distributed for sale in
18 California will be only (a) reformulated Products pursuant to Section 2.2, or (b) Products that are
19 labeled with a clear and reasonable warning pursuant to Section 2.3. Coquette, its related companies,
20 and its downstream retailers shall have no obligation to reformulate or label Product that entered the
21 stream of commerce prior to the Effective Date.

22 **2.2 Reformulation Standard**

23 "Reformulated Product" shall mean Product that contains less than one thousand (1,000) parts
24 per million of DEHP.

25 **2.3 Clear and Reasonable Warnings**

26 Commencing ninety (90) days after the Effective Date, Coquette shall provide a clear and
27 reasonable warning for any Product bearing the Coquette or Darque label that is distributed or offered
28 for sale in California that is not a Reformulated Product, or shall otherwise comply with the

1 provisions of Cal. Health & Safety Code sections 25249.6 and 25249.11(f). Coquette shall take
2 reasonable steps, consistent with the provisions of Cal. Health & Safety Code sections 25249.6 and
3 25249.11(f) to ensure that the warning similar to the below is affixed to the packaging or labeling, or
4 directly on, the Products:

5 (a) the text, "**WARNING:** Cancer and Reproductive Harm -
6 www.P65Warnings.ca.gov," accompanied by a symbol consisting of a black
7 exclamation point in a yellow equilateral triangle with a bold black outline. Where the
8 sign, label or shelf tag for the product is not printed using the color yellow, the symbol
9 may be printed in black and white. The symbol shall be placed to the left of the text of
10 the warning, in a size no smaller than the height of the word "WARNING," as
11 provided by regulations adopted on or about August 30, 2018

12 Or

13 (b) the text, "**WARNING:** This product can expose you to chemicals including
14 di(2-ethylhexyl) phthalate, nickel, and lead, which are known to the State of California
15 to cause cancer and birth defects or other reproductive harm. For more information go
16 to www.P65Warnings.ca.gov," accompanied by a symbol consisting of a black
17 exclamation point in a yellow equilateral triangle with a bold black outline. Where the
18 sign, label or shelf tag for the product is not printed using the color yellow, the symbol
19 may be printed in black and white. The symbol shall be placed to the left of the text of
20 the warning, in a size no smaller than the height of the word "WARNING," as
21 provided by regulations adopted on or about August 30, 2018.

22 Coquette shall otherwise endeavor to ensure that products bearing the Coquette or Darque
23 label comply with the provisions of Cal. Health & Safety Code sections 25249.6 and 25249.11(f) and
24 the implementing regulations located at 27 C.C.R. section 25601 *et seq.*, to wit:

25 For internet purchases, a warning shall also provide either the warning or a clearly marked
26 hyperlink using the word "WARNING" on the product display page, or by otherwise prominently
27 displaying the warning to the purchaser prior to completing the purchase. If warning is provided
28 using the short-form warning label content, the warning provided on the website shall use the same
content. A warning is not prominently displayed if the purchaser must search for it in the general
content of the website.

For catalog purchases, a warning must also be provided in the catalog in a manner that clearly
associates it with the item being purchased. If a short-form warning is being provided on the label,
the warning provided in the catalog may use the same content.

1 Where a sign or label used to provide a warning includes consumer information about a
2 product in a language other than English, the warning shall also be provided in that language in
3 addition to English.

4 In the event that the Office of Environmental Health Hazard Assessment promulgates one or
5 more regulations requiring or permitting warning text and/or methods of transmission different than
6 those set forth above, Coquette shall be entitled to use, at its discretion, such other warning text
7 and/or method of transmission without being deemed in breach of this Agreement.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Settlement Amount**

10 Coquette shall pay fifty-five thousand dollars (\$55,000) in settlement and total satisfaction of
11 all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
12 penalties in the amount of five thousand dollars (\$5,000) pursuant to Health and Safety Code section
13 25249.7(b) and attorney's fees and costs in the amount of fifty thousand dollars (\$50,000) pursuant to
14 Code of Civil Procedure section 1021.5.

15 **3.2 Civil Penalty**

16 The portion of the settlement attributable to civil penalties shall be allocated according to
17 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
18 penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and
19 the remaining twenty-five percent (25%) of the penalty paid to Embry.

20 All payments owed to Embry, shall be delivered to the following payment address:

21 Noam Glick
22 Glick Law Group
23 225 Broadway, Suite 2100
24 San Diego, CA 92101

25 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
26 (Memo Line "Prop 65 Penalties") at the following addresses:

27 For United States Postal Service Delivery:

28 Mike Gyurics
 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 P.O. Box 4010

Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

Coquette agrees to provide Embry's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payments to Embry.

The Parties, including Embry, will exchange completed IRS 1099, W-9, or other forms as required. Relevant information for Glick Law Group, N&T, and Embry are set out below:

- "Kim Embry" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;
 - "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
 - "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- and
- "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

3.3 Attorney's Fees and Costs

The portion of the settlement attributable to attorney's fees and costs shall be paid to Embry's counsel, who are entitled to attorney's fees and costs incurred by her in this action, including but not limited to investigating potential violations, bringing this matter to Coquette's attention, as well as litigating and negotiating a settlement in the public interest.

Coquette shall provide its payment to Embry's counsel in two checks, divided equally, payable to Glick Law Group, PC (\$25,000) and Nicholas & Tomasevic, LLP (\$25,000) respectively.

The addresses for these two entities are:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
San Diego, CA 92101

Craig Nicholas
Nicholas & Tomasevic, LLP
225 Broadway, 19th Floor
San Diego, CA 92101

3.4 Timing

The above mentioned checks will be issued within thirty (30) days of the Effective Date.

4. CLAIMS COVERED AND RELEASED

4.1 Embry's Public Release of Proposition 65 Claims

This Consent Judgment is a full, final, and binding resolution between Embry, on behalf of herself, and in the public interest, and Coquette and its parents, subsidiaries, affiliated entities under common ownership, its directors, officers, agents, employees, attorneys, and each entity to whom Coquette directly or indirectly distributes or sells the Products, including but not limited to, Coquette International U.S.A., Inc. and any downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, the "Releasees"), for all claims that were or could have been asserted against Coquette and/or Releasees for failure to provide warnings for alleged exposures to the Listed Chemicals contained in Products.

For any claim or violation arising under Proposition 65 alleging a failure to warn about exposures to Listed Chemicals from Products imported, sold, or distributed by Coquette prior to the Effective Date, Embry, acting on her own behalf and in the public interest, releases Coquette and the Releasees of any and all liability. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to Listed Chemicals from Products imported, sold, or distributed by Coquette after the Effective Date.

4.2 Embry's Individual Release of Claims

Embry, in her individual capacity, also provides a release to Coquette and/or Releasees, which shall be a full and final accord and satisfaction of as well as a bar to all actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands by Embry of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to Listed Chemicals in Products imported, sold, or distributed by Coquette before the Effective Date.

1 **4.3 Coquette’s Release of Embry**

2 Coquette, on its own behalf, and on behalf of Releasees as well as its past and current
3 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims
4 against Embry and her attorneys and other representatives arising from this matter or relating to the
5 Products including any and all actions taken or statements made by Embry and her attorneys and
6 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
7 Proposition 65 against it, in this matter or with respect to the Products.

8 **5. REPRESENTATIONS AND WARRANTIES**

9 Embry represents and warrants that she is not aware of any third party who has purchased any
10 Coquette Products with the intent to serve a 60-Day Notice of Violation of California Health and
11 Safety Code section 25249.6 *et seq.*, alleging that Coquette violated Proposition 65.

12 Embry represents and warrants that she nor her agents has not provided and will not provide
13 in the future any third-party with any Coquette Products that she has purchased with the intent to
14 serve a 60-Day Notice of Violation of California Health and Safety Code section 25249.6 *et seq.*,
15 alleging that Coquette violated Proposition 65.

16 Embry represents and warrants that neither she nor her agents has not notified or informed
17 any third-party of the existence of any Coquette Products with the intent to serve a 60-Day Notice of
18 Violation of California Health and Safety Code section 25249.6 *et seq.*, alleging that Coquette
19 violated Proposition 65.

20 Embry agrees and covenants not to file or serve in the future against Coquette any 60-Day
21 Notice of Violation of California Health and Safety Code section 25249.6 *et seq.*, or a complaint or
22 administrative action alleging that Coquette violated Proposition 65, as related to any product
23 manufactured, distributed or sold by Coquette.

24 Embry further agrees and covenants that neither she nor her agents will not cooperate with
25 any individual or organization, other than with proper requests by public agencies authorized to
26 enforce Proposition 65, with regard to any efforts to enforce, notify, or sue under Proposition 65.

27 The Parties hereto recognize and agree that Coquette's consent to this Consent Judgment is
28 expressly premised upon the Representations and Warranties set forth above and that, should any of

1 these Representations or Warranties turn out to be false, Coquette's consent to this Consent Judgment
2 shall be considered invalid and this Consent Judgment unenforceable. Furthermore, all payments
3 made under this Consent Judgment shall be refunded immediately upon notification by Coquette of
4 the falsity of said Representation and/or Warranty.

5 **6. SERVICE ON THE ATTORNEY GENERAL**

6 Pursuant to 11 C.C.R. section 3003, Embry shall serve a copy of this Consent Judgment,
7 signed by both parties, on the California Attorney General so that the Attorney General may review
8 this Consent Judgment prior to its submittal to the Court for approval. Embry shall file a motion to
9 approve this Consent Judgment, to be heard no sooner than forty-five (45) days after the Attorney
10 General has received the aforementioned copy of this Consent Judgment, as required by 11 C.C.R.
11 section 3003. This Consent Judgment is not effective until forty-five (45) days have passed in order
12 to allow the Attorney General to review it and the court has otherwise approved it as detailed in
13 paragraph 5 below.

14 **7. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Alameda
16 County Superior Court and shall be null and void if it is not approved and entered by the Court within
17 one year after it has been fully executed by the Parties, or by such additional time as the Parties may
18 agree to in writing.

19 **8. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the state of California
21 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
22 rendered inapplicable for reasons, including but not limited to changes in the law, then Coquette may
23 provide written notice to Embry of any asserted change, and shall have no further injunctive
24 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
25 so affected.

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1 **9. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 For Coquette:

6 Rudy Perrino
7 WFBM, LLP
7 707 Wilshire Blvd., Suite 3280
8 Los Angeles, CA 90017

For Embry:

Noam Glick
Glick Law Group, PC
225 Broadway, 21st Floor
San Diego, CA 92101

9 Any Party may, from time to time, specify in writing to the other, a change of address to
10 which all notices and other communications shall be sent.

11 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

12 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
13 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
14 same document.

15 **11. POST EXECUTION ACTIVITIES**

16 Embry agrees to comply with the reporting form requirements referenced in Health and Safety
17 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
18 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
19 motion Embry shall draft and file. In furtherance of obtaining such approval, the Parties agree to
20 mutually employ their best efforts, including those of their counsel, to support the entry of this
21 agreement as a judgment, and to obtain judicial approval of their settlement in a timely manner. For
22 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for
23 approval, responding to any objection that any third-party may make, and appearing at the hearing
24 before the Court if so requested.

25 **12. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the
27 Parties with respect to the entire subject matter hereof and any and all prior discussions, negotiations,
28 commitments and understandings related hereto. No representations, oral or otherwise, express or

1 implied, other than those contained herein have been made by any party hereto. No other agreements
2 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
3 Parties.

4 **13. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
6 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
7 of any Party, and the entry of a modified consent judgment thereon by the Court.

8 **14. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
10 have read, understand, and agree to all of the terms and conditions contained herein.

11 **15. SETTLEMENT CONFIDENTIALITY**

12 Until the following conditions occur, this Consent Judgment shall remain confidential
13 pursuant to the settlement privileges set forth under Cal. Evid. Code sections 1151, 1152, and 1154,
14 and any other privileges existing under state statutory, constitutional or common law:

15 (1) Embry files and serves Coquette and the California Attorney General, and all other
16 required public enforcement agencies with a 60-Day Notice of Violation, as provided in Section 1.6
17 above; and

18 (2) Embry files a Complaint against Coquette for the alleged violations of Health and Safety
19 Code section 25249.6 that are the subject of the Notice, as provided in Section 1.7 above.


20 **AGREED TO:**

AGREED TO:

21 Date: June 13, 2018

22 Date: June 18, 2018

23 By: 
24 KIM EMBRY

25 By: 
26 PETER J. HOREA [print name]
27 Coquette International, Inc.