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

CENTER FOR ENVIRONMENTAL HEALTH,
Plaintiff,
v.
PDX AROMATICS LLC, et al.,
Defendants.

Case No. CGC-21-590599

**[PROPOSED] CONSENT
JUDGMENT AS TO PDX
AROMATICS LLC**

1 **1. INTRODUCTION**

2 1.1 The Parties to this Consent Judgment are the Center For Environmental Health
3 (“CEH”), a California non-profit corporation, and PDX Aromatics LLC (“Settling Defendant”).
4 CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to settle certain
5 claims asserted by CEH against Settling Defendant as set forth in the operative complaint
6 (“Complaint”) in the above-captioned matter. This Consent Judgment covers the lead content of
7 kratom (*mitragyna speciosa*) powder, including teas and capsules, that is sold by Settling
8 Defendant and then offered for retail sale to residents of the State of California (“Covered
9 Products”).

10 1.2 On December 4, 2020, CEH provided a 60-day Notice of Violation of Proposition
11 65 to the California Attorney General, the District Attorneys of every county in California, the
12 City Attorneys of every California city with a population greater than 750,000 and to Settling
13 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead
14 and lead compounds (“Lead”) contained in Covered Products without first providing a clear and
15 reasonable Proposition 65 warning.

16 1.3 Settling Defendant is a corporation or other entity that manufactures, distributes,
17 sells or offers for sale Covered Products that are sold in the State of California or has done so in
18 the past.

19 1.4 On March 24, 2021, CEH filed the Complaint in the above-captioned matter
20 naming Settling Defendant.

21 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
22 has jurisdiction over the allegations of violations contained in the Complaint and personal
23 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
24 the County of San Francisco and that this Court has jurisdiction to enter and enforce this Consent
25 Judgment as a full and final resolution of all claims which were or could have been raised in the
26 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
27 distributed and/or sold by Settling Defendant.

1 Permanent Warning Option provided by this Section 3.3, on or before the Compliance Date
2 Settling Defendant shall provide written notice to CEH of its election under this section, and
3 Settling Defendant concurrently shall make the additional payment specified in Section 5.2.4
4 below.

5 **3.4 Clear and Reasonable Warning.** The warning required by Section 3.2 and
6 Section 3.3 for Covered Products shall include the following:

7 **3.4.1 Warning Language:**

8 **WARNING:**

9 Consuming this product can expose you to chemicals including lead, which is known to the
10 State of California to cause birth defects or other reproductive harm. For more information
11 go to www.P65Warnings.ca.gov/food.

12 **3.4.2 Placement of Warning Language.** The warning language set forth in
13 Section 3.4.1 must be displayed with such conspicuousness as compared with other words,
14 statements, designs or devices as to render the warning likely to be read and understood by an
15 ordinary consumer under customary conditions of purchase and use. The warning language shall
16 appear on the container's label, set off from other surrounding information or enclosed in a text
17 box. If the product's label contains other warnings or nutritional information in a language other
18 than English, the warning language set forth in Section 3.4.1 must also be displayed on the label
19 in that language in addition to English.

20 **3.4.3 Internet Sales.** With respect to internet sales of Covered Products, the
21 warning language set forth in Section 3.4.1 must be prominently displayed in such a manner that
22 it is likely to be read and understood as being applicable to the Covered Product being sold prior
23 to the authorization of or actual payment by the purchaser. The warning statement shall be
24 displayed before a consumer commits to purchasing the Covered Product by providing the
25 warning on the product display or checkout page. If the warning is displayed on the checkout
26 page, the warning shall include a checkbox that requires a California consumer to acknowledge
27 the warning prior to purchase. For purposes of this section, the warning language is not

1 prominently displayed if the customer must search for the warning language in the general
2 content of Settling Defendant's website or if a reasonable consumer cannot determine the specific
3 Covered Product to which the warning applies. If the product display or checkout page contains
4 other warnings or nutritional information in a language other than English, the warning language
5 set forth in Section 3.4.1 must also be displayed in that language in addition to English.

6 **4. ENFORCEMENT**

7 **4.1 Enforcement Procedures.** This Court shall have exclusive jurisdiction over all
8 matters regarding enforcement of the Consent Judgment. Prior to bringing any motion or order to
9 show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall
10 provide the violating party thirty (30) days advanced written notice of the alleged violation. The
11 Parties shall meet and confer during such thirty (30) day period in an effort to try to reach
12 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the
13 Party seeking to enforce may, by new action, motion or order to show cause before the Superior
14 Court of San Francisco, seek to enforce Proposition 65 or the terms and conditions contained in
15 this Consent Judgment.

16 **5. PAYMENTS**

17 **5.1 Payments by Settling Defendant.** On or before ten (10) days after the Effective
18 Date, Settling Defendant shall pay the total sum of \$50,000 as a settlement payment as further set
19 forth in this Section.

20 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall
21 be paid in five (5) separate checks in the amounts specified below and delivered as set forth
22 below. Any failure by Settling Defendant to comply with the payment terms herein shall be
23 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each
24 day the full payment is not received after the applicable payment due date set forth in Section 5.1.
25 The late fees required under this Section shall be recoverable, together with reasonable attorneys'
26 fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The
27 funds paid by Settling Defendant shall be allocated as set forth below between the following

1 categories and made payable as follows:

2 5.2.1 \$6,730 as a civil penalty pursuant to Health & Safety Code §25249.7(b).

3 The civil penalty payment shall be apportioned in accordance with Health & Safety Code
4 §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
5 Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty
6 payment for \$5,047.50 shall be made payable to OEHHA and associated with taxpayer
7 identification number 68-0284486. This payment shall be delivered as follows:

8 For United States Postal Service Delivery:

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

14 For Non-United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street, MS #19B
19 Sacramento, CA 95814

20 The CEH portion of the civil penalty payment for \$1,682.50 shall be made
21 payable to the Center for Environmental Health and associated with taxpayer identification
22 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
23 Street, San Francisco, CA 94117.

24 5.2.2 \$5,045 as an Additional Settlement Payment (“ASP”) to CEH pursuant to
25 Health & Safety Code §25249.7(b), and California Code of Regulations, Title 11, §3204. CEH
26 intends to place these funds in CEH’s Toxics in Food Fund and will use the funds to support CEH
27 programs and activities that seek to educate the public about toxic chemicals in food, to work
28 with the food industry and agriculture interests to reduce exposure to toxic chemicals in food and
to thereby reduce the public health impacts and risks of exposure to Lead and other toxic
chemicals in food sold in California. CEH shall obtain and maintain adequate records to
document that ASPs are spent on these activities and CEH agrees to provide such documentation
to the Attorney General within thirty days of any request from the Attorney General. The

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

4 5.2.3 Settling Defendant shall pay \$38,225 as a reimbursement of a portion of
5 CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be
6 made in two separate checks as follows: (a) \$33,725 payable to the Lexington Law Group and
7 associated with taxpayer identification number 94-3317175; and (b) \$4,500 payable to the Center
8 For Environmental Health and associated with taxpayer identification number 94-3251981. Both
9 of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San
10 Francisco, CA 94117.

11 5.2.4 If, on or before the Compliance Date, Settling Defendant has availed
12 itself of the Permanent Warning Option provided for by Section 3.3, Settling Defendant shall
13 make an additional payment of \$50,000 as a civil penalty, concurrently with its written notice as
14 provided in Section 3.3. This additional civil penalty payment shall be apportioned in accordance
15 with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office
16 of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of
17 the civil penalty payment for \$37,500 shall be made payable to OEHHA, associated with taxpayer
18 identification number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1
19 above. The CEH portion of the additional civil penalty payment for \$12,500 shall be made
20 payable to the Center for Environmental Health and associated with taxpayer identification
21 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
22 Street, San Francisco, CA 94117 within 10 business days of the Compliance Date

23 5.2.5 To summarize, as non-contingent settlement payments Settling Defendant
24 shall deliver checks made out to the payees in the amounts set forth below:

25

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$5,047.50	OEHHA per Section 5.2.1

1 violation of Proposition 65 based on failure to warn about alleged exposure to Lead contained in
2 Covered Products that were sold by Settling Defendant prior to the Effective Date.

3 7.2 Provided that Settling Defendant complies in full with its obligations under
4 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
5 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream
6 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
7 common law claims that have been or could have been asserted by CEH regarding the failure to
8 warn about exposure to Lead contained in Covered Products sold by Settling Defendant prior to
9 the Effective Date.

10 7.3 Provided that Settling Defendant complies in full with its obligations under
11 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant,
12 Defendant Releasees and Downstream Defendant Releasees shall constitute compliance with
13 Proposition 65 by Settling Defendant, Defendant Releasees and Downstream Defendant
14 Releasees with respect to any alleged failure to warn about Lead in Covered Products sold by
15 Settling Defendant after the Effective Date.

16 **8. PROVISION OF NOTICE**

17 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by first class and electronic mail to:

19 Ryan Berghoff
20 Howard Hirsch
21 Lexington Law Group
22 503 Divisadero Street
23 San Francisco, CA 94117
24 rberghoff@lexlawgroup.com
25 hhirsch@lexlawgroup.com

26 8.2 When Settling Defendant is entitled to receive any notice under this Consent
27 Judgment, the notice shall be sent by first class and electronic mail to:

28 Todd Harrison
Venable LLP
600 Massachusetts Avenue, NW
Washington, DC 20001

taharrison@venable.com

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

9. COURT APPROVAL

9.1 This Consent Judgment shall become effective upon the date signed by CEH and Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support approval of such Motion.

9.2 If this Consent Judgment is not entered by the Court, it shall be of no further force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

10. GOVERNING LAW AND CONSTRUCTION

10.1 The terms of this Consent Judgment shall be governed by the laws of the State of California.

11. ATTORNEYS' FEES

11.1 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. Should Settling Defendants prevail on any motion application for an order to show cause, or other proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a result of such motion or application upon a finding by the Court that CEH's prosecution of the motion or application lacked substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

11.2 Nothing in this Section 11 shall preclude a party from seeking an award of sanctions pursuant to law.

12. ENTIRE AGREEMENT

12.1 This Consent Judgment contains the sole and entire agreement and understanding

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

14 **13. SUCCESSORS AND ASSIGNS**

15 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
16 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
17 assigns of any of them.

18 **14. RETENTION OF JURISDICTION**

19 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
20 Consent Judgment.

21 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

22 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
23 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
24 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

25 **16. NO EFFECT ON OTHER SETTLEMENTS**

26 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
27 against an entity that is not Settling Defendant on terms that are different than those contained in

1 this Consent Judgment.

2 **17. EXECUTION IN COUNTERPARTS**

3 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
4 means of facsimile or portable document format (pdf), which taken together shall be deemed to
5 constitute one document.

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7 **IT IS SO ORDERED, ADJUDGED,
8 AND DECREED**

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10 Dated: _____

Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: May 21, 2021

**CENTER FOR ENVIRONMENTAL
HEALTH**



Signature

Michael Green

Printed Name

CEO

Title

Dated: _____, 2021

PDX AROMATICS LLC

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____, 2021

CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

Dated: 5/17/2021, 2021

PDX AROMATICS LLC

DocuSigned by:
Jeff Stratton
4394F0EB4DFA4E1...

Signature

Jeff Stratton

Printed Name

Managing Director

Title