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7 CENTER FOR ENVIRONMENTAL HEALTH

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

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12 CENTER FOR ENVIRONMENTAL HEALTH,) Case No. 21CV002315
13 a non-profit corporation,)
14) **[PROPOSED] AMENDED CONSENT**
Plaintiff,) **JUDGMENT AS TO SPEEDO USA,**
15) **SPEEDO INTERNATIONAL LTD.,**
vs.) **AND PENTLAND BRANDS**
16) **LIMITED**
17)
SPEEDO INTERNATIONAL LTD.,)
18 PENTLAND BRANDS LIMITED; and DOES)
1 through 200, inclusive,)
19)
Defendants.)

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22 **1. INTRODUCTION**

23 **1.1** The parties to this Consent Judgment (“Parties”) are the Center for
24 Environmental Health (“CEH”) and defendants Speedo USA, Inc., Speedo International Ltd., and
25 Pentland Brands Limited (“Settling Defendants”). CEH and Settling Defendants are referred to
26 collectively as the “Parties.”

27 **1.2** Settling Defendants are corporations that employ ten (10) or more persons and
28 that manufactures, distributes, and/or sells latex caps used for swimming and other water

1 activities that are alleged by CEH to contain n-nitrosodiethylamine (“NDEA”) in the State of
2 California or has done so in the past.

3 **1.3** On June 17, 2021, 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”) on Settling Defendants, 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 NDEA in latex caps used for
9 swimming and other water activities that are manufactured, distributed, and/or sold by Settling
10 Defendants.

11 **1.4** On November 10, 2021, CEH filed the above-captioned action in the Superior
12 Court of California for Alameda County, naming Settling Defendants as defendants in this action.

13 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
14 Court has jurisdiction over the allegations of violations contained in the operative Complaint in
15 the above-captioned action (“Complaint”) and personal jurisdiction over Settling Defendants as to
16 the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this
17 Court has jurisdiction to enter this Consent Judgment.

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

26 **2. DEFINITIONS**

27 **2.1** “Reformulation Date” means nine months following the Effective Date.
28

1 **2.2** “Covered Products” means latex caps used for swimming and other water
2 activities.

3 **2.3** “Effective Date” means the date on which this Consent Judgment is entered by
4 the Court.

5 **3. INJUNCTIVE RELIEF RE COVERED PRODUCTS**

6 **3.1 Reformulation of Covered Products.** As of the Reformulation Date, Settling
7 Defendants shall not manufacture, distribute, sell, or offer for sale any Covered Product that
8 contains NDEA in excess of 10 micrograms per kilogram (10 parts per billion (“ppb”)) (the
9 “Reformulation Level”) that will be sold or offered for sale to California consumers, except as set
10 forth in Section 3.4. Covered Products purchased, manufactured, distributed, shipped or sold by
11 Settling Defendants prior to the Reformulation Date are not subject to the injunctive relief
12 requirements of Section 3, even if such products are sold in California after the Reformulation
13 Date.

14 **3.2 Compliance Testing.** Compliance with the Reformulation Level shall be
15 determined using ISO Standard 19577 or by using solvent extraction and analysis using US EPA
16 Method 8270 or US EPA Method 521, or any other comparable standards or methods as agreed
17 upon by the Parties (the “Test Protocol”) and performed by an independent and appropriately
18 accredited and qualified laboratory.

19 **3.3 Specification to and Certification from Suppliers.** No more than thirty (30)
20 days after the Effective Date, Settling Defendants shall issue specifications to their suppliers of
21 Covered Products requiring that Covered Products comply with the Reformulation Level and
22 shall instruct each supplier to use reasonable efforts to eliminate Covered Products containing
23 NDEA on a nationwide basis. Settling Defendants shall obtain and maintain written
24 certification(s) from its suppliers of Covered Products confirming that all such Covered Products
25 received by Settling Defendants for distribution in California comply with the Reformulation
26 Level. Settling Defendants shall not be deemed in violation of the requirements of Section 3.1 for
27 any Covered Product to the extent: (a) it has relied on a written certification from its vendor that
28 supplied a Covered Product that such Covered Product complies with the Reformulation Level, or

1 (b) it has obtained a test result from an independent third-party accredited laboratory reporting
2 that the Covered Product complies with the Reformulation Level.

3 **3.4 Reformulation Alternative - Clear and Reasonable Warnings.** If Settling
4 Defendants determine that it is not commercially feasible to comply with the Reformulation
5 Level, Settling Defendants may elect to label Covered Products with a Clear and Reasonable
6 Warning that complies with the provisions of this Section 3.4 and Title 27 California Code of
7 Regulations section 25601, et seq (the “Warning Option”).

8 3.4.1 **Warning Language.** A Clear and Reasonable Warning under this
9 Agreement shall state:



11 **WARNING:** This product can expose you to chemicals including N-
12 Nitrosodiethylamine, which is known to the State of California to cause cancer.
For more information go to www.P65Warnings.ca.gov.

13 The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be preceded
14 by the yellow warning triangle symbol depicted above, provided however, the symbol may be
15 printed in black and white if the Covered Product label is produced without using the color yellow.
16 This warning statement shall be prominently displayed on the outer packaging or tag of the Covered
17 Product and shall be displayed with such conspicuousness, as compared with other words,
18 statements or designs as to render it likely to be seen, read and understood by an ordinary individual
19 prior to sale. For internet, catalog, or any other sale where the product is not physically present,
20 the warning statement shall be displayed in such a manner that it is likely to be read and understood
21 by an ordinary individual prior to the authorization of or actual payment. For websites and catalogs
22 controlled by third-parties, Settling Defendants’ compliance with the requirements of 27 C.C.R. §
23 25600.2 shall constitute compliance with Section 3.4 of this Consent Judgment.

24 3.4.2 **Notice to CEH of Election to Warn.** At least 30 days before selling or
25 distributing any Covered Products with such warnings, the Settling Defendant shall provide written
26 notice to CEH that Settling Defendants have elected to utilize the Warning Option.

27 3.4.3 **Future Changes to Warning Regulations.** The Parties agree that the
28 specifications for Clear and Reasonable Warnings in this Consent Judgment comply with

1 Proposition 65 and its regulations as of the date of this Consent Judgment. If modifications or
2 amendments to the warning provisions of Proposition 65 or its regulations after the Effective Date
3 are inconsistent with, or provide warning specifications or options different from, the specifications
4 in this Consent Judgment, either Party may seek to modify this Consent Judgment to comply with
5 this Section by providing warnings that conform to the modified or amended provisions of
6 Proposition 65 or its regulations pursuant to Section 6 of this Consent Judgment.

7 **4. ENFORCEMENT**

8 **4.1** CEH may, by motion or application for an order to show cause before the
9 Superior Court of the County of Alameda, enforce the terms and conditions contained in this
10 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
11 Section 3 above, CEH shall provide each Settling Defendant with a Notice of Violation setting
12 forth the basis for the alleged violation. The Parties shall then meet and confer regarding the
13 basis for CEH's anticipated motion or application in an attempt to resolve it informally. Should
14 such attempts at meeting and conferring fail, CEH may file its enforcement motion or application.
15 In ruling on any motion to enforce the terms of this section, the Court may, in addition to ordering
16 compliance with the terms of this Consent Judgment, employ such remedies as necessary to
17 ensure compliance with Proposition 65 including, but not limited to, requiring Settling
18 Defendants to provide warnings. Should CEH prevail on any motion or application to enforce a
19 material violation of this Consent Judgment under this Section, CEH shall be entitled to its
20 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
21 Settling Defendants prevail on any motion or application under this Section, Settling Defendants
22 shall be entitled to their reasonable attorneys' fees and costs incurred as a result of such motion or
23 application.

24 **5. PAYMENTS**

25 **5.1 Payments by Settling Defendant.** Within fifteen (15) calendar days of the
26 Effective Date, Settling Defendants shall pay the total sum of fifty-four thousand dollars and no
27 cents \$54,000 as a settlement payment as further set forth in this Section. Any payment by
28 Settling Defendants shall be deemed to be timely and not subject to a late charge and/or other

1 penalty if (1) postmarked (if sent by the United States Postal Service) or (2) delivered to an
2 overnight carrier (e.g. Fed Ex), on or before the deadline set forth in this paragraph.

3 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendants
4 shall be paid in 5 separate checks in the amounts specified below and delivered as set forth below.
5 Any failure by Settling Defendants to comply with the payment terms herein shall be subject to a
6 joint and several stipulated late fee to be paid by Settling Defendants in the amount of \$100 for
7 each day the full payment is not received after the applicable payment due date set forth in
8 Section 5.1. The late fees required under this Section shall be recoverable, together with
9 reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this
10 Consent Judgment. The funds paid by Settling Defendants shall be allocated as set forth below
11 between the following categories and made payable as follows:

12 5.2.1 \$9,000 as a civil penalty pursuant to Health & Safety Code §
13 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
14 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
15 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
16 payment for \$6,750 shall be made payable to OEHHA and associated with taxpayer identification
17 number 68-0284486. This payment shall be delivered as follows:

18 For United States Postal Service Delivery:

19 Attn: Mike Gyurics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 P.O. Box 4010, MS #19B
23 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
28 1001 I Street, MS #19B
Sacramento, CA 95814

1 The CEH portion of the civil penalty payment for \$2,250 shall be made payable to the Center for
2 Environmental Health and associated with taxpayer identification number 94-3251981. This
3 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
4 94117.

5 5.2.2 \$6,750 as an Additional Settlement Payment (“ASP”) to CEH
6 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
7 3204. CEH will use these funds to support CEH programs and activities that seek to educate the
8 public about toxic chemicals, including carcinogenic nitrosamines such as NDEA and NDMA,
9 work with industries interested in moving toward safer alternatives, advocate with government,
10 businesses, and communities for business practices that are safe for human health and the
11 environment, and thereby reduce the public health impacts and risks of exposure to NDEA,
12 NDMA, and other toxic chemicals in consumer products sold in California. CEH shall obtain and
13 maintain adequate records to document that ASPs are spent on these activities and CEH agrees to
14 provide such documentation to the Attorney General within thirty (30) days of any request from
15 the Attorney General. The payment pursuant to this Section shall be made payable to the Center
16 for Environmental Health and associated with taxpayer identification number 94-3251981. This
17 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
18 94117.

19 5.2.3 \$38,250 as a reimbursement of a portion of CEH’s reasonable
20 attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two
21 separate checks as follows: (a) \$36,000 payable to the Lexington Law Group and associated with
22 taxpayer identification number 94-3317175; and (b) \$2,250 payable to the Center for
23 Environmental Health and associated with taxpayer identification number 94-3251981. Both of
24 these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
25 CA 94117.

26 5.2.4 To summarize, Settling Defendants shall deliver checks made out to
27 the payees and in the amounts set forth below:
28

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$6,750	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$2,250	LLG
Center For Environmental Health	ASP	\$6,750	LLG
Lexington Law Group	Fee and Cost	\$36,000	LLG
Center For Environmental Health	Fee and Cost	\$2,250	LLG

5.3 Payment if Settling Defendants Elect Warning Option. If Settling Defendants avail themselves of the Warning Option provided for by Section 3.4, Settling Defendants shall make an additional payment of \$10,800 to be split between a civil penalty and ASP as set forth herein, concurrently with its written notice as provided in Section 3.4.2. Of the additional payment, \$6,400 shall be a civil penalty, 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, the OEHHA portion of the civil penalty payment of \$4,800 shall be made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment of \$1,600 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. The remaining \$4,400 of the additional payment shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981 and shall be used as set forth in Section 5.2.2 above. Both payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.4 Notwithstanding the provisions of the Enforcement of Judgments Law and Code of Civil Procedure § 780.160, in the event that Settling Defendants do not comply fully with their payment obligations under this Section 5, in addition to any other enforcement mechanism available to CEH, CEH may seek an order requiring Settling Defendants to submit a debtor’s

1 examination in the Alameda County Superior Court. In the event that Settling Defendants fail to
2 submit to any such debtor’s examination ordered by the Court, CEH may seek an order holding
3 Settling Defendants in contempt of Court.

4 **6. MODIFICATION**

5 **6.1 Written Consent.** This Consent Judgment may be modified from time to
6 time by express written agreement of the Parties with the approval of the Court, or by an order of
7 this Court upon motion and in accordance with law.

8 **6.2 Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
9 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
10 modify the Consent Judgment. The Parties acknowledge and agree that certain events may
11 provide a reason for modification of Section 3 of this Consent Judgment, including, but not
12 limited to: (1) if Proposition 65 or its implementing regulations are changed from their terms as
13 they exist on the Effective Date in a manner that impacts the Reformulation levels (including, but
14 not limited to, a change in the No Significant Risk Level for NDEA, or the establishment of any
15 “alternative risk level” for NDEA), (2) if OEHHA takes final regulatory action for products
16 similar to the Covered Products in a manner that impacts the Reformulation Levels, and/or (3) if
17 a court of competent jurisdiction enters a consent judgment setting a higher Reformulation Level
18 for a product similar to the Covered Products.

19 **7. CLAIMS COVERED AND RELEASED**

20 **7.1** This Consent Judgment is a full, final and binding resolution between CEH on
21 behalf of itself and the public interest and Settling Defendants and Settling Defendants’ parents,
22 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
23 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to
24 which Settling Defendants directly or indirectly distribute or sell Covered Products, including but
25 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees,
26 including without limitation Spiraledge, Inc. (“Downstream Defendant Releasees”), of any
27 violation of Proposition 65 based on failure to warn about alleged exposure to NDEA contained in
28 Covered Products that were manufactured, distributed, supplied, sold or offered for sale by Settling

1 Defendants prior to the Reformulation Date, even if such products are sold in California or to
2 California consumers after the Reformulation Date.

3 **7.2** CEH, for itself, its agents, successors and assigns, releases, waives, and forever
4 discharges any and all claims against Settling Defendants, Defendant Releasees, and Downstream
5 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common
6 law claims that have been or could have been asserted by CEH regarding a violation of Proposition
7 65 and/or the failure to warn about exposure to NDEA arising in connection with Covered Products
8 manufactured, distributed, supplied, sold or offered for sale by Settling Defendants prior to the
9 Reformulation Date, even if such products are sold in California or to California consumers after
10 the Reformulation Date..

11 **7.3** Compliance with the terms of this Consent Judgment by Settling Defendants
12 shall constitute compliance with Proposition 65 by Settling Defendants, their Defendant
13 Releasees and their Downstream Defendant Releasees with respect to any alleged failure to warn
14 about NDEA in Covered Products manufactured, distributed or sold by Settling Defendants after
15 the Reformulation Date, except as to any retailer who fails to provide an internet or catalogue
16 warning provided to said retailer pursuant to Section 3.4 in a manner consistent with Section
17 3.4.1.

18 **8. NOTICE**

19 **8.1** When CEH is entitled to receive any notice under this Consent Judgment, the
20 notice shall be sent by electronic mail to:

21 Mark Todzo
22 Lexington Law Group
23 mtodzo@lexlawgroup.com

24 **8.2** When Settling Defendants are entitled to receive any notice under this Consent
25 Judgment, the notice shall be sent by electronic mail to:

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1 Jasmine W. Wetherell
2 Paul Hirose
3 Perkins Coie LLP
4 JWetherell@perkinscoie.com
5 PHirose@perkinscoie.com

6 **8.3** Any Party may modify the person and address to whom the notice is to be sent
7 by sending the other Party notice by first class and electronic mail.

8 **9. COURT APPROVAL**

9 **9.1** This Consent Judgment shall become effective upon entry by the Court. CEH
10 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
11 shall support entry of this Consent Judgment.

12 **9.2** If this Consent Judgment is not entered by the Court, it shall be of no force or
13 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
14 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

15 **10. GOVERNING LAW AND CONSTRUCTION**

16 **10.1** The terms of this Consent Judgment shall be governed by the laws of the State
17 of California.

18 **11. ATTORNEYS' FEES**

19 **11.1** Should CEH prevail on any motion, application for an order to show cause, or
20 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
21 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
22 Settling Defendants prevail on any motion, application for an order to show cause, or other
23 proceeding, Settling Defendants shall be entitled to their reasonable attorneys' fees and costs
24 incurred as a result of such motion or application.

25 **11.2** Except as otherwise provided in this Consent Judgment, each Party shall bear
26 its own attorneys' fees and costs.

27 **11.3** Nothing in this Section 11 shall preclude a Party from seeking an award of
28 sanctions pursuant to law.

1 **12. ENTIRE AGREEMENT**

2 **12.1** This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
4 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
5 merged herein and therein. There are no warranties, representations, or other agreements between
6 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
7 implied, other than those specifically referred to in this Consent Judgment have been made by any
8 Party hereto. No other agreements not specifically contained or referenced herein, oral or
9 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
10 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
11 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
12 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
13 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
14 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether
15 or not similar, nor shall such waiver constitute a continuing waiver.

16 **13. SUBMISSION OF REPORTS AND DATA TO CEH**

17 **13.1** For any report or information that Settling Defendants submit to CEH pursuant
18 to this Consent Judgment, Settling Defendants may make such submissions subject to the terms of
19 a protective order or Confidentiality Agreement.

20 **14. RETENTION OF JURISDICTION**

21 **14.1** This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

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

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

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16. NO EFFECT ON OTHER SETTLEMENTS

16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity that is not a Settling Defendants (or a Defendant Releasee) on terms that are different than those contained in this Consent Judgment.

17. EXECUTION IN COUNTERPARTS

17.1 The stipulations to this Consent Judgment 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.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____, 2022

Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: July 10, 2022

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Chief Executive Officer

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Dated: July 12, 2022

SPEEDO USA, INC.



Signature

Matt Rock


Printed Name

President

Title

Dated: July 12, 2022

SPEEDO INTERNATIONAL LTD.



Signature

Matt Rock

Printed Name

Title

Dated: July 12, 2022

PENTLAND BRANDS LIMITED



Signature

Matt Rock

Printed Name

Title