

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and Xttrium Laboratories, Inc. (“Settling Entity”). CEH and Settling Entity are together referred to herein as “the Parties.” The effective date of this Agreement is the date on which it is fully executed by the Parties (the “Effective Date”).

1. INTRODUCTION

1.1 The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation, and to settle all claims presently alleged by CEH against Settling Entity pursuant to California Health & Safety Code Section 25249.6 *et seq* (“Proposition 65”) pertaining to antiseptic skin cleansers containing coconut oil diethanolamine condensate (“Cocamide DEA”) that are manufactured by Settling Entity.

1.2 On or about July 2, 2021, CEH issued a 60-day Notice of Violation (“Notice”) under Proposition 65 to Settling Entity, Walgreen Co., 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, alleging that Settling Entity violated Proposition 65 by exposing persons to Cocamide DEA in Covered Products without first providing a clear and reasonable warning under Proposition 65.

1.3 More than 60 days have passed since the Notice was served on the Attorney General, other public enforcers, and Settling Entity, and no designated governmental entity has filed a complaint against Settling Entity with regard to the Covered Products and the allegations in the Notice.

1.4 On July 25, 2019, a consent judgment pursuant to Proposition 65 between CEH and Settling Entity was entered regarding the Covered Product and Cocamide DEA in the case of *Center for Environmental Health v. Xttrium Laboratories, Inc.*, Alameda County Superior Court

No. RG19011555 (the “Consent Judgment”). The Consent Judgment provides for a clear and reasonable warning as injunctive relief and remains in full force and effect.

1.5 By executing this Agreement, the Parties do not admit any facts or conclusions of law. Nothing in this Agreement 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 future legal proceedings, except as otherwise provided herein.

2. DEFINITIONS

2.1 The term “Covered Products” means antiseptic skin cleansers containing Cocamide DEA that are manufactured by the Settling Entity for retail sale.

3. INJUNCTIVE RELIEF

3.1 **Compliance with Prior Consent Judgment.** Settling Entity shall comply with the terms of Section 3 of the Consent Judgment by providing a clear and reasonable warning on the outer package of each Covered Products that contain Cocamide DEA as an ingredient.

3.2 **Scope of Release.** Covered Products that were manufactured by Settling Entity prior to the Effective Date shall be subject to the release provisions of Section 8, without regard to when such Covered Products were, or are in the future, distributed or sold to customers or consumers.

4. ENFORCEMENT OF SETTLEMENT AGREEMENT

4.1 The Parties agree that any action based on a violation of this Agreement shall be brought pursuant to the terms of Section 4 of the Consent Judgment.

5. PAYMENTS

5.1 **Payments by Settling Entity.** Within five (5) days of the Effective Date, Settling Entity shall pay to CEH a total sum of \$22,500 as a total settlement payment as further set forth in this Section.

5.2 **Allocation of Payments.** The total settlement amount shall be paid in four (4) separate checks in the amounts specified below and delivered as set forth below. The funds paid by Settling Entity shall be allocated as set forth below between the following categories and made payable as follows:

5.2.1. Settling Entity shall pay \$5,650 as a civil 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, Settling Entity shall pay the OEHHA portion of the civil penalty payment for \$4,237.50 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

Settling Entity shall pay the CEH portion of the civil penalty payment for \$1,412.50 by 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.

5.2.2. Settling Entity shall pay \$16,850 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) \$15,750 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$1,100 payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3. To summarize, Settling Entity shall deliver checks made out to the payees and in the amounts set forth below:

PAYEE	TYPE	AMOUNT	DELIVER TO
OEHHA	Civil Penalty	\$4,237.50	OEHHA
Center for Environmental Health	Civil Penalty	\$1,412.50	LLG
Center for Environmental Health	Fees and Costs	\$1,100	LLG
Lexington Law Group	Fees and Costs	\$15,750	LLG

6. MODIFICATION OF AGREEMENT

6.1 This Agreement may be modified from time to time by express written agreement of the Parties.

7. APPLICATION OF SETTLEMENT AGREEMENT

7.1 This Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions, and subsidiaries, and the successors or assigns of any of them.

8. CLAIMS COVERED AND RELEASE

8.1 Provided that Settling Entity complies in full with its obligations under Section 5 hereof, CEH, on behalf of itself and its successors and assigns, discharges, waives, and releases Settling Entity and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, assigns and attorneys (collectively, the “Settling Entity Releasees”), and all entities to whom they distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers (including Walgreen Co.), franchisees, cooperative members, and licensees (“Downstream Settling Entity Releasees”) from all claims under Proposition 65 regarding the failure to warn about exposures to Cocamide DEA in connection with Covered Products manufactured by Settling Entity prior to the Effective Date.

8.2 Provided that Settling Entity complies in full with its obligations under Section 5 hereof, compliance with the terms of this Agreement by Settling Entity constitutes compliance with Proposition 65 by Settling Entity, Settling Entity Releasees and Downstream Settling Entity Releasees for purposes of exposure to Cocamide DEA from the Covered Products manufactured after the Effective Date.

8.3 The Parties understand and agree that the commitments Settling Entity has agreed to herein, and actions to be taken by Settling Entity under this Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Administrative Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to the Covered Products it has manufactured prior the Effective Date, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Agreement, provided that Settling Entity is in compliance with this Agreement.

9. GOVERNING LAW

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

10. PROVISION OF NOTICE

10.1 When CEH is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail to:

Howard Hirsch
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

10.2 When Settling Entity is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail to:

Trenton H. Norris
Arnold & Porter
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
trent.norris@arnoldporter.com

10.3 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. ENTIRE AGREEMENT

11.1 Except as set forth previously in the Consent Judgment, 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. Other agreements that are not specifically

contained or referenced herein, oral or otherwise, shall be deemed neither to exist nor 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.

12. AUTHORITY TO STIPULATE TO AGREEMENT

12.1 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 to legally bind that Party. The undersigned have read, understood, and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each Party is to bear its own fees and costs.

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13. EXECUTION IN COUNTERPARTS

13.1 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.

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Signature

Michael Green

Printed Name

CEO

Title

XTTRIUM LABORATORIES, INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

XTTRIUM LABORATORIES, INC.



Signature



Printed Name



Title