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Counsel for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 21-091642
)	
Plaintiff,)	
)	[PROPOSED] CONSENT
v.)	JUDGMENT AS TO THE ESTÉE
)	LAUDER ENTITIES
ESTÉE LAUDER INC., <i>et al.</i>)	
)	
Defendant.)	
)	
)	
)	

1. INTRODUCTION

1.1 The parties to this Consent Judgment (“Parties”) are the Center for Environmental Health (“CEH”), on the one hand, and defendants Estée Lauder Inc., The Estée Lauder Companies Inc., Clinique Laboratories, LLC, Make-Up Art Cosmetics Inc., and Make-Up Art Cosmetics (U.S.), Inc. (together, “Settling Defendants”), on the other hand. CEH and Settling Defendants are referred to collectively as the “Parties.”

1 1.2 Settling Defendants are each a corporation that employs ten (10) or more persons
2 and that manufactures, distributes, and/or sells cosmetics products in the State of California or has
3 done so in the past.

4 1.3 On April 23, 2019 and December 23, 2020, CEH sent 60-Day Notices of Violation
5 under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California
6 Health & Safety Code §§ 25249.5, *et seq.*) (the “Notices”) to each Settling Defendant, the
7 California Attorney General, the District Attorneys of every County in the State of California, and
8 the City Attorneys for every City in the State of California with a population greater than
9 750,000. The Notices allege violations of Proposition 65 with respect to the presence of
10 perfluorooctanoic acid (“PFOA”) in make-up foundation and concealer manufactured, distributed,
11 and/or sold by Settling Defendants.

12 1.4 On November 11, 2021, CEH sent an Amended 60-Day Notice of Violation under
13 Proposition 65 (the “Amended Notice”) to each Settling Defendant, the California Attorney
14 General, the District Attorneys of every County in the State of California, and the City Attorneys
15 for every City in the State of California with a population greater than 750,000. The Amended
16 Notice alleges violations of Proposition 65 with respect to the presence of PFOA in cosmetics
17 products manufactured, distributed, and/or sold by Settling Defendants.

18 1.5 On March 8, 2021, CEH filed the Complaint in the above-captioned matter,
19 naming each Settling Defendant as a defendant. Upon entry of this Consent Judgment, the
20 Complaint shall be deemed amended to assert allegations as to alleged exposures to PFOA in all
21 cosmetics products manufactured or caused to be manufactured by Settling Defendants that are
22 sold or offered for sale to California consumers.

23 1.6 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
24 Court has jurisdiction over the allegations of violations contained in the operative Complaint
25 applicable to Settling Defendants (“Complaint”) and personal jurisdiction over Settling
26 Defendants as to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda;
27 and (iii) this Court has jurisdiction to enter this Consent Judgment.

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1 1.7 Nothing in this Consent Judgment is or shall be construed as an admission by the
2 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
3 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
4 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
5 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
6 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
7 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
8 this action.

9 **2. DEFINITIONS**

10 2.1 “Covered Products” means cosmetics products.

11 2.2 “Effective Date” means the date on which notice of entry of this Consent
12 Judgment by the Court is served upon Settling Defendants.

13 2.3 “The Estée Lauder Companies Inc.” means The Estée Lauder Companies Inc., its
14 subsidiaries, and affiliated entities that are under common ownership, as of the date the first 60-
15 day notice was served in connection with this action.

16 **3. INJUNCTIVE RELIEF**

17 3.1 **Reformulation of Covered Products.**

18 3.1.1 As of the Effective Date, Settling Defendants shall not manufacture or
19 cause to be manufactured any Covered Product that will be sold or offered for sale to California
20 consumers that contains (1) any intentionally added PFOA, or (2) any intentionally added
21 fluorinated ingredient that causes PFOA to be in a Covered Product, including but not limited to
22 C9-15 fluoroalcohol phosphate.

23 3.1.2 No more than thirty (30) days after the Effective Date, Settling
24 Defendants shall provide CEH a written certification that, as of the date of such certification, all
25 of their formulations of each Covered Product manufactured after the Effective Date comply with
26 the reformulation requirement in Section 3.1.1.

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1 **4. ENFORCEMENT**

2 4.1 CEH may, by motion or application for an order to show cause before the Superior
3 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.
4 This Consent Judgment may only be enforced by the Parties.

5 4.2 Should CEH acquire data indicating that a Covered Product is sold or offered for
6 sale in California and is not compliant with Section 3.1 or contains PFOA, it may exercise its
7 enforcement right pursuant to this Section 4.2.

8 4.2.1 At least 60 days prior to bringing any motion or application to enforce the
9 requirements of Section 3 above, CEH shall provide the implicated Settling Defendants with (1) a
10 Notice of Violation, (2) a copy of any test results which purportedly support CEH’s Notice of
11 Violation, (3) the name and address of the entity from which the Covered Product was purchased,
12 and (4) any evidence CEH has supporting the allegation that the Covered Product was
13 manufactured or caused to be manufactured by a Settling Defendant after the Effective Date. The
14 Parties shall then meet and confer regarding the basis for CEH’s anticipated motion or application
15 in an attempt to resolve it informally. Should such attempts at informal resolution fail, CEH may
16 file its enforcement motion or application.

17 4.2.2 As to Covered Products manufactured or caused to be manufactured by a
18 Settling Defendant on or after the Effective Date:

19 4.2.2.1 If Settling Defendants respond to a Notice of Violation pertaining
20 to any Covered Product with evidence that, notwithstanding the presence of PFOA in the Covered
21 Product, Settling Defendants have complied with Section 3.1, the Parties shall meet and confer as
22 to the source of the PFOA in the Covered Products and what additional measures, if any, Settling
23 Defendants must take to ensure that no unwarned exposures to PFOA from Covered Products
24 occurs thereafter.

25 4.2.2.2 Should the Parties reach agreement on a proposal to eliminate
26 future exposures to PFOA from such Covered Products thereafter, they shall seek modification of
27 the Consent Judgment to include the proposal pursuant to Section 6.

28 4.2.2.3 Should the Parties be unable to reach such agreement within the

1 applicable meet-and-confer period, the Parties shall submit simultaneous briefs to the Court for a
2 binding determination regarding any appropriate modification to the Consent Judgment to ensure
3 compliance with Proposition 65 as to PFOA exposures from Covered Products.

4 **5. PAYMENTS**

5 **5.1 Payments by Settling Defendants.** Within twenty (20) calendar days of the
6 Effective Date, Settling Defendants shall pay the total sum of \$250,000 as a settlement payment
7 as further set forth in this Section 5.

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

17 **5.2.1** \$33,600 as a civil penalty pursuant to Health & Safety Code §
18 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
19 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
20 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
21 payment for \$25,200 shall be made payable to OEHHA and associated with taxpayer
22 identification number 68-0284486. This payment shall be delivered as follows:

23 For United States Postal Service Delivery:

24 Attn: Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 P.O. Box 4010, MS #19B
28 Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics

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Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The CEH portion of the civil penalty payment for \$8,400 shall be 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 Defendant shall pay the sum of \$25,200 as an Additional Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH’s Toxics and Youth Fund and use them to support CEH programs and activities that seek to educate the public about PFOA and other toxic chemicals in consumer products that are marketed to youth, expand its use of social media to communicate with youth in California about the risks of exposures to PFOA and other toxic chemicals in the products they use and about ways to reduce those exposures, work with industries that market products to youth to reduce exposure to PFOA and other toxic chemicals, and thereby reduce the public health impacts and risks of exposure to PFOA and other toxic chemicals in consumer products that are marketed to youth in California. CEH shall obtain and maintain adequate records to document that ASP funds 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 payment pursuant to this Section 5.2.2 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981.

5.2.3 \$191,200 as a reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs (including but not limited to expert and investigative costs). The attorneys’ fees and cost reimbursement shall be made in two separate checks as follows: (a) \$160,300 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$30,900 payable to the Center for Environmental Health and associated with taxpayer

1 identification number 94-3251981. These payments shall be delivered to Lexington Law Group,
2 503 Divisadero Street, San Francisco, CA 94117.

3 **6. MODIFICATION**

4 6.1 **Written Consent.** This Consent Judgment may be modified from time to time by
5 express written agreement of the Parties with the approval of the Court, or by an order of this
6 Court upon motion and in accordance with law.

7 6.2 **Meet and Confer.** A Party seeking to modify this Consent Judgment shall
8 attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the
9 Consent Judgment.

10 **7. CLAIMS COVERED AND RELEASED**

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

21 7.2 Provided that Settling Defendants comply in full with their obligations under
22 Section 5 hereof, CEH, for itself and its agents, successors, and assigns, releases, waives, and
23 forever discharges any and all claims against Settling Defendants, Defendant Releasees, and
24 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
25 statutory or common law claims that have been or could have been asserted by CEH regarding the
26 failure to warn about exposure to PFOA arising in connection with Covered Products
27 manufactured, distributed, or sold by Settling Defendants prior to the Effective Date.

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1 7.3 Provided that Settling Defendants comply in full with their obligations under
2 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendants
3 shall constitute compliance with Proposition 65 by Settling Defendants, Defendant Releasees, and
4 Downstream Defendant Releasees with respect to any alleged failure to warn about PFOA in
5 Covered Products manufactured, distributed, or sold by Settling Defendants after the Effective
6 Date.

7 **8. NOTICE**

8 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
9 notice shall be sent by first class and electronic mail to:

10 Howard Hirsch
11 Lexington Law Group
12 503 Divisadero Street
13 San Francisco, CA 94117
14 hhirsch@lexlawgroup.com

15 8.2 When any Settling Defendant is entitled to receive any notice under this Consent
16 Judgment, the notice shall be sent by first class and electronic mail to:

17 Taryn Looney
18 Estée Lauder Companies
19 VP and Legal Counsel
20 Global Product Regulatory & Sustainability
21 110 E. 59th Street, 36th Floor
22 New York, NY 10022
23 tlooney@estee.com

24 With a copy to:

25 Michael Steel
26 Law Offices of Michael Steel
27 6303 Wood Drive
28 Oakland, CA 94611
 mjslaw@outlook.com

 8.3 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.

1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
3 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
4 shall support entry of this Consent Judgment.

5 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
6 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
7 purpose other than to allow the Court to determine if there was a material breach of Section 9.1

8 **10. ATTORNEYS' FEES**

9 10.1 Should any Party prevail on any motion, application for an order to show cause, or
10 other proceeding to enforce a violation of this Consent Judgment, that Party may apply to the
11 Court for an award of reasonable attorneys' fees and costs incurred as a result of such motion or
12 application, which the Court may grant or deny in accordance with governing law.

13 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
14 own attorneys' fees and costs.

15 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
16 sanctions pursuant to law.

17 **11. OTHER TERMS**

18 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California.

20 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
21 Defendants, and their respective divisions, subdivisions, and subsidiaries, and the successors or
22 assigns of any of them.

23 11.3 This Consent Judgment contains the sole and entire agreement and understanding
24 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
26 and therein. There are no warranties, representations, or other agreements between the Parties
27 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
28 other than those specifically referred to in this Consent Judgment have been made by any Party

1 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
2 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,
3 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by
4 the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall
5 be deemed or shall constitute a waiver of any of the other provisions hereof whether or not
6 similar, nor shall such waiver constitute a continuing waiver.

7 11.4 Nothing in this Consent Judgment shall release any claims, or in any way affect
8 any rights that either Party might have against any other entity, except as otherwise provided
9 herein.

10 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
11 Consent Judgment.

12 11.6 The stipulations to this Consent Judgment may be executed in counterparts and by
13 means of facsimile or portable document format (pdf), which taken together shall be deemed to
14 constitute one document.

15 11.7 Each signatory to this Consent Judgment certifies that he or she is fully authorized
16 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
17 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

18 11.8 The Parties, including their counsel, have participated in the preparation of this
19 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
20 Consent Judgment was subject to revision and modification by the Parties and has been accepted
21 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
22 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
23 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
24 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
25 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
26 this regard, the Parties hereby waive California Civil Code § 1654.

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IT IS SO STIPULATED:

Dated: December 9, 2021

CENTER FOR ENVIRONMENTAL HEALTH



Signature

Michael Green

Printed Name

CEO

Title

Dated: _____, 2021

ESTÉE LAUDER INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____, 2021

**CENTER FOR ENVIRONMENTAL
HEALTH**

Signature

Printed Name

Title

Dated: 3 December, 2021

ESTÉE LAUDER INC.

Lisa A. Napolione
Signature

Lisa A. Napolione
Printed Name

SVP, Global R+D
Title

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Dated: 3 December, 2021

THE ESTÉE LAUDER COMPANIES INC.

Lisa A. Napolione
Signature

Lisa A. Napolione
Printed Name

SVP, Global R+D
Title

Dated: 3 December, 2021

CLINIQUE LABORATORIES, LLC

Lisa A. Napolione
Signature

Lisa A. Napolione
Printed Name

SVP, Global R+D
Title

Dated: 3 December, 2021

MAKE-UP ART COSMETICS INC.

Lisa A. Napolione
Signature

Lisa A. Napolione
Printed Name

SVP, Global R+D
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Dated: 3 December, 2021

MAKE-UP ART COSMETICS (U.S.), INC.

Lisa A. Napolione
Signature

Lisa A. Napolione
Printed Name

SUP, Global R+D
Title

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: _____

Judge of the Superior Court