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12 Environmental Health Advocates, Inc.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 ENVIRONMENTAL HEALTH
16 ADVOCATES, INC.,

17 Plaintiff,

18 v.

19 PALLADIO BEAUTY GROUP, LLC, a
20 Delaware limited liability company, SALLY
21 BEAUTY SUPPLY, LLC, a Virginia limited
22 liability company, ELEMENTIS PLC, a UK
23 public limited company, MONDO MINERALS
24 B.V., a Dutch limited liability company,
25 TONNIE COSMETICS CO., LTD., a
26 Taiwanese corporation, and DOES 1 through
27 100, inclusive,

28 Defendants.

Case No. 22CV010824

[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 Environmental Health Advocates, Inc.,
4 (“EHA” or “Plaintiff”) and Palladio Beauty Group, LLC (“Palladio”) and Sally Beauty Supply, LLC
5 (“Sally Beauty” and, together with Palladio, “Defendants”). EHA, Palladio and Sally Beauty are each
6 individually referred to as a “Party” and collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

8 EHA is a corporation organized in the state of California, acting in the interest of the general
9 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by
10 reducing or eliminating hazardous substances contained in consumer products.

11 **1.3 Defendants**

12 Palladio and Sally Beauty each employ ten or more individuals and for purposes of this Consent
13 Judgment only, are each a “person in the course of doing business” for purposes of the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq.
15 (“Proposition 65”).

16 **1.4 General Allegations**

17 EHA alleges that Defendants manufacture, import, sell, and/or distribute for sale Palladio blush
18 and bronzer products that contains asbestos (“Covered Products”).

19 EHA further alleges that Defendants do so without providing a sufficient health hazard warning
20 as required by Proposition 65 and related Regulations. Pursuant to Proposition 65, asbestos is listed as
21 a chemical known to cause cancer. Defendants deny these allegations and assert that the products are
22 safe and in compliance with all applicable laws, rules and regulations. Palladio further alleges that the
23 Covered Products it imports, sells and/or distributes were tested for asbestos and that no asbestos
24 contamination has ever been discovered and/or reported relating to any Covered Product.

25 **1.5 Notices of Violation**

26 On or around May 27, 2021, EHA served Defendants Palladio and Sally Beauty Supply, LLC,
27 the California Attorney General, and all other required public enforcement agencies with a 60-Day
28 Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Defendants had violated

1 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated
2 with exposures to asbestos contained in Palladio Mosaic Powder 2-in-1 Blush Bronzer.

3 On or around August 9, 2021, EHA served Defendants Palladio and Sally Beauty Supply, LLC,
4 Elementis PLC, Mondo Minerals B.V., Tonnie Cosmetics Co., Ltd., the California Attorney General,
5 and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition
6 65 (“First Amended Notice”). The First Amended Notice included Elementis PLC, Mondo Minerals
7 B.V., and Tonnie Cosmetics Co., Ltd. as suppliers.

8 On or around February 3, 2022, EHA served Defendants Palladio, Sally Beauty Supply, LLC,
9 Elementis PLC, Mondo Minerals B.V. and Tonnie Cosmetics Co., Ltd., the California Attorney
10 General, and all other required public enforcement agencies with a 60-Day Notice of Violation of
11 Proposition 65 (“Second Amended Notice”). The Second Amended Notice included supplemental
12 supporting documents for the named products.

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

15 **1.6 Product Description**

16 The products covered by this Consent Judgment are blush and bronzer products manufactured
17 by Palladio, including but not limited to Palladio Mosaic Powder 2-in-1 Blush Bronzer.

18 **1.7 State of the Pleadings**

19 On or around May 04, 2022, EHA filed a Complaint for the alleged violations of Proposition
20 65 that are the subject of the Notice (“Complaint”) against defendants Palladio, Sally Beauty,
21 Elementis PLC, Mondo Minerals B.V. and Tonnie Cosmetics Co., LTD.

22 **1.8 No Admission**

23 Palladio and Sally Beauty deny the material factual and legal allegations of the Notice and
24 Complaint and maintain that all of the products with talc it has manufactured, imported, sold, and/or
25 distributed for sale in California, including Covered Products, have been, and are, in compliance with
26 all applicable laws, rules and regulations. Nothing in this Consent Judgment shall be construed as an
27 admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance
28 with this Consent Judgment be construed as an admission of any fact, finding, conclusion of law, issue

1 of law, or violation of law. This Section shall not, however, diminish or otherwise affect Defendants’
2 obligations, responsibilities, and duties under this Consent Judgment.

3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
5 Court has jurisdiction over Defendants as to the allegations in the Complaint, that venue is proper in
6 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
7 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
10 Consent Judgment is approved and entered as a judgment of the Court, as discussed in Section 5.

11 **2. INJUNCTIVE RELIEF**

12 **2.1 Reformulation and Testing of the Covered Products**

13 Commencing on March 1, 2023, or 90 days after the Effective Date, whichever is later, Palladio
14 shall not manufacture or purchase any Covered Products unless each lot of any Covered Product sold
15 into California, or each lot of the talc ingredient used in any Covered Product sold into California, is
16 tested by transmission electron microscopy (“TEM”) for asbestos concentration for the presence of
17 asbestos and the asbestos level is below the no significant risk level for asbestos provided by OEHHA.

18 For purposes of complying with this Section 2, Palladio may rely on a confirmation provided
19 by the supplier of the talc ingredient for a Covered Product or the supplier or manufacturer of a Covered
20 Product, provided said confirmation confirms no detectable amount of asbestos fibers using TEM. If
21 a lot of the talc ingredient from the supplier tests non-detect for asbestos, any product using the talc
22 from that tested lot will be deemed in compliance with Proposition 65.

23 If Palladio does not receive a confirmation that TEM testing has been completed by either the
24 supplier of the talc ingredient for the Covered Product or supplier or manufacturer of the Covered
25 Product, Palladio will have a sample from each category of Covered Products (i.e., one blush product
26 and one bronzer product) sold into California tested at least twice per year (i.e., every six months) at a
27 laboratory accredited to perform TEM testing for the presence of asbestos.

28 If asbestos contamination is discovered and/or reported, Palladio will not utilize any talc from

1 the contaminated lot. If Palladio discovers asbestos contamination using its own testing, it shall
2 immediately cease any distribution or sales of the contaminated units, and if any contaminated units
3 have already been distributed for sale, promptly issue a recall of all contaminated units.

4 Covered Products' compliance with the standard set for in this section constitutes compliance
5 with Proposition 65 as to asbestos.

6 **2.2 Clear and Reasonable Warnings**

7 For Covered Products that contain asbestos in a concentration exceeding the Reformulation
8 Standard set forth in section 2.1 above, and which are distributed or directly sold by Palladio in the
9 State of California on or after the Effective Date, Palladio shall provide one of the following warning
10 statements.

11 **Option 1:**

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

14 **Option 2:**

15  **WARNING:** Cancer- www.P65Warnings.ca.gov.

16 This warning statement shall be prominently displayed on the Covered Products, on the
17 packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is
18 displayed with such conspicuousness, as compared with other words, statements, or designs as to render
19 it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is
20 displayed on the Covered Products' packaging, it must be in a type size no smaller than the largest type
21 size used for other consumer information on the product. In no case shall a warning statement displayed
22 on the Covered Products' packaging appear in a type size smaller than 6-point type. The same warning
23 shall be posted on any websites under the exclusive control of Palladio where Covered Products are
24 sold into California. Palladio shall instruct any third-party website to which it directly sells its Covered
25 Products to include the same warning as a condition of selling the Covered Products in California.

26 **2.3 Sell-Through Period**

27 Notwithstanding anything else in this Consent Judgment, Covered Products that are
28 manufactured, packaged, or put into commerce within ninety (90) days of the Effective Date shall be

1 subject to the release of liability pursuant to this Consent Judgment, without regard to when such
2 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations
3 of Palladio and Sally Beauty, or any Releasees (if applicable), stated in this Section 2 do not apply to
4 Covered Products manufactured, packaged, or put into commerce up to ninety (90) days after the
5 Effective Date.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Settlement Amount**

8 Palladio shall pay sixty thousand dollars (\$60,000.00) in settlement and total satisfaction of all
9 the claims referred to in the Notice, First Amended Notice, Second Amended Notice, the Complaint,
10 and this Consent Judgment. This includes civil penalties in the amount of six thousand dollars
11 (\$6,000.00) pursuant to Health and Safety Code section 25249.7(b) and attorneys' fees and costs in the
12 amount of fifty-four thousand dollars (\$54,000.00) pursuant to Code of Civil Procedure section 1021.5.

13 **3.2 Civil Penalty**

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

18 All payments owed to EHA shall be delivered to the following address:

19 Environmental Health Advocates
20 225 Broadway, Suite 2100
San Diego, CA 92101

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

23 For United States Postal Service Delivery:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
26 P.O. Box 4010
Sacramento, CA 95812-4010

27 For Federal Express 2-Day Delivery:

28 Mike Gyurics

1 Fiscal Operations Branch Chief
2 Office of Environmental Health Hazard Assessment
3 1001 I Street
4 Sacramento, CA 95814

5 Palladio agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
6 simultaneous with its penalty payment to EHA.

7 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.
8 Relevant information is set out below:

- 9 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 10 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

11 **3.3 Attorney's Fees and Costs**

12 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
13 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not
14 limited to investigating potential violations, bringing this matter to Defendants' attention, as well as
15 litigating and negotiating a settlement in the public interest.

16 Palladio shall provide its payment for civil penalty of four thousand five hundred dollars
17 (\$4,500.00) directly to OEHHA. Palladio shall provide all other payments for civil penalty and for
18 attorneys' fees and costs to EHA's counsel as follows. Payment may be by physical check or by
19 electronic means, including wire transfers, at Palladio's discretion: one thousand five hundred dollars
20 (\$1,500) payable to EHA pursuant to Health and Safety Code section 25249.12(d), and fifty-four
21 thousand dollars (\$54,000.00) payable to Entorno Law, LLP, within thirty (30) days of the Effective
22 Date.

23 The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this
24 entity is:

25 Noam Glick
26 Entorno Law, LLP
27 225 Broadway, Suite 1900
28 San Diego, CA 92101

1 **4. CLAIMS COVERED AND RELEASE**

2 **4.1 EHA’s Public Release of Proposition 65 Claims**

3 Plaintiff, acting on its own behalf and in the public interest, releases Palladio, Sally Beauty,
4 Elementis PLC, Mondo Minerals B.V. and Tonnie Cosmetics Co., LTD and their parents, subsidiaries,
5 affiliated entities under common ownership or control, their directors, officers, principals, agents,
6 employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant
7 Entities”), each entity to whom Defendants directly or indirectly distribute, ship, or sells the Covered
8 Products, including but not limited to downstream distributors, wholesalers, customers, retailers, and
9 marketplaces franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all
10 of the foregoing entities’ owners, directors, officers, agents, principals, employees, attorneys, insurers,
11 accountants, representatives, predecessors, successors, and assigns (collectively referred to as the
12 “Releasees”) from all claims for violations of Proposition 65 up through the Effective Date based on
13 exposure to asbestos from Covered Products as set forth in the Notice(s). Compliance with the terms
14 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
15 asbestos from Covered Products as set forth in the Notice(s). This Consent Judgment is a full, final,
16 and binding resolution of all claims under Proposition 65 that were or could have been asserted against
17 Palladio and/or Releasees for failure to comply with Proposition 65 for alleged exposure to asbestos
18 from Covered Products.

19 **4.2 EHA’s Individual Release of Claims**

20 EHA, in its individual capacity, also provides a release to Palladio, Sally Beauty and/or other
21 Releasees, which shall be a full and final accord and satisfaction of, as well as a bar to, all actions,
22 causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and
23 demands of every nature, character, and kind, whether known or unknown, suspected or unsuspected,
24 arising out of alleged or actual exposures to asbestos in Covered Products manufactured, imported,
25 sold, or distributed before the Effective Date.
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1 **4.3 Defendants' Release of EHA**

2 Defendants on their own behalf, and on behalf of Releasees as well as their past and current
3 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against
4 EHA and its attorneys and other representatives, for any and all actions taken or statements made by
5 EHA and its attorneys and other representatives, whether in the course of investigating claims,
6 otherwise seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered
7 Products.

8 **4.4 No Other Known Claims or Violations**

9 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged
10 violations of Proposition 65 by Defendants or for which Defendants bear legal responsibility other
11 than those that are fully resolved by this Consent Judgment.

12 **5. COURT APPROVAL**

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

16 **6. SEVERABILITY**

17 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
18 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the state of California as
21 applied 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 Defendants may
23 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations
24 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so
25 affected.

26 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
27 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
28 requirements of Proposition 65; or if asbestos cases are permanently enjoined by a court of competent

1 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First
2 Amendment rights with respect to asbestos in Covered Products or Covered Products substantially
3 similar to Covered Products, then Defendants shall be relieved of their obligation to comply with
4 Section 2 herein.

5 **8. ENFORCEMENT**

6 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
7 to its reasonable attorneys' fees and costs.

8 **9. NOTICE**

9 Unless otherwise specified herein, all correspondence and notice required by this Consent
10 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
11 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to
12 the following addresses:

13 If to Palladio and/or Sally Beauty:

14 Daniel A. Solitro
15 Locke Lord LLP
16 300 South Grand Avenue, Suite 2600
Los Angeles, CA 90071
dsolitro@lockelord.com

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101
noam@enteronolaw.com

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

19 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

23 **11. POST EXECUTION ACTIVITIES**

24 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
25 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
26 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
27 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
28 employ their reasonable best efforts, including those of their counsel, to support the entry of this

1 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
2 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,
3 responding to any objection that any third-party may make, and appearing at the hearing before the
4 Court if so requested.

5 **12. MODIFICATION**

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

9 **13. AUTHORIZATION**

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

12 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

13 If a dispute arises with respect to either Party’s compliance with the terms of this Consent
14 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
15 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
16 in the absence of such a good faith attempt to resolve the dispute beforehand.

17 **15. ENTIRE AGREEMENT**

18 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
19 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
20 commitments, and understandings related hereto. No representations, oral or otherwise, express or
21 implied, other than those contained herein have been made by any Party. No other agreements, oral or
22 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

23 **AGREED TO:**

AGREED TO:

24
25 Date: 10/19/2022

Date: 10/19/2022

26
27 By: 
28 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
PALLADIO BEAUTY GROUP, LLC and
SALLY BEAUTY SUPPLY, LLC

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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT