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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 For purposes of this Consent Judgment only, Palladio and Sally Beauty each employ ten or
13 more individuals and are each a “person in the course of doing business” for purposes of the Safe
14 Drinking 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 (“Covered Products”) that contains asbestos

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.

22 Defendants deny these allegations, deny there is asbestos in any Covered Product, and assert
23 that the products are safe and in compliance with all applicable laws, rules and regulations. Palladio
24 further alleges that the Covered Products it imports, sells and/or distributes were tested for asbestos
25 and that no asbestos contamination has ever been discovered and/or reported relating to any Covered
26 Product.

27 **1.5 Notices of Violation**

28 On or around May 27, 2021, EHA served Defendants Palladio and Sally Beauty Supply, LLC,

1 the California Attorney General, and all other required public enforcement agencies with a 60-Day
2 Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Defendants had violated
3 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated
4 with exposures to asbestos contained in Palladio Mosaic Powder 2-in-1 Blush Bronzer.

5 On or around August 9, 2021, EHA served Defendants Palladio and Sally Beauty Supply, LLC,
6 Elementis PLC, Mondo Minerals B.V., Tonnie Cosmetics Co., Ltd., the California Attorney General,
7 and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition
8 65 (“First Amended Notice”). The First Amended Notice included Elementis PLC, Mondo Minerals
9 B.V., and Tonnie Cosmetics Co., Ltd. as suppliers.

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

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

17 **1.6 Product Description**

18 The products covered by this Consent Judgment are blush and bronzer products manufactured,
19 distributed, or sold by Palladio, including but not limited to Palladio Mosaic Powder 2-in-1 Blush
20 Bronzer.

21 **1.7 State of the Pleadings**

22 On or around May 04, 2022, EHA filed a Complaint for the alleged violations of Proposition
23 65 that are the subject of the Notice, the First Amended Notice, and Second Amended Notice
24 (“Complaint”) against defendants Palladio, Sally Beauty, Elementis PLC, Mondo Minerals B.V. and
25 Tonnie Cosmetics Co., LTD.

26 **1.8 No Admission**

27 Palladio and Sally Beauty deny the material factual and legal allegations in the Notice, First
28 Amended Notice, Second Amended Notice, and the Complaint and maintain that all of the products

1 with talc it has manufactured, imported, sold, and/or distributed for sale in California, including
2 Covered Products, have been, and are, in compliance with all applicable laws, rules and regulations.
3 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion
4 of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed
5 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section
6 shall not, however, diminish or otherwise affect Defendants’ obligations, responsibilities, and duties
7 under this Consent Judgment.

8 **1.9 Jurisdiction**

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

13 **1.10 Effective Date**

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

16 **2. INJUNCTIVE RELIEF**

17 **2.1 Reformulation and Testing of the Covered Products**

18 Commencing on July 1, 2024, or 90 days after the Effective Date, whichever is later, Palladio
19 shall not manufacture, import or distribute for sale any Covered Products in California unless each lot
20 of any Covered Product, or each lot of the talc ingredient used in any Covered Product sold into
21 California, is tested by transmission electron microscopy (“TEM”) for the presence of asbestos in the
22 manner set forth in this Consent Judgment and the results confirm there is no detectable asbestos in the
23 Covered Product or lot of talc tested. To meet this testing requirement, Palladio must use the TEM
24 Testing Protocol set forth in Section 2.2..

25 For purposes of complying with this Section 2, Palladio may rely on a confirmation provided
26 by the supplier of the talc ingredient for a Covered Product or the supplier or manufacturer of a Covered
27 Product, provided said confirmation confirms no detectable amount of asbestos fibers using TEM. If
28

1 a lot of the talc ingredient from the supplier tests non-detect for asbestos, any product using the talc
2 from that tested lot will be deemed in compliance with Proposition 65.

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

8 If asbestos contamination is discovered and/or reported, Palladio will not utilize any talc from
9 the contaminated lot. If Palladio discovers asbestos contamination using its own testing, it shall
10 immediately cease any distribution or sales of the contaminated units, and if any contaminated units
11 have already been distributed for sale, promptly issue a recall of all contaminated units.

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

14 **2.2 TEM Testing Protocol**

15 Products to be evaluated by this screening protocol for potentially releasable asbestos content
16 shall be prepared and analyzed by TEM and quantified on an asbestos structures per milligram basis
17 (asbestos str/mg), using the definitions and counting criteria for asbestos structures of the American
18 Hazard Emergency Response Act.

19 **Preparation of Bulk Powder Products for Bulk Asbestos Structure Quantification by TEM**

20 Preparation for quantification of asbestos structures by TEM shall be conducted as follows:
21 The product is prepared for analysis by weighing and suspending a portion of the suspect material in
22 an alcohol/deionized water mix. Measured aliquots of the sample suspension are then filtered through
23 a 0.2 µm mixed cellulose ester filter (MCE). Between 10-50 mg of the material shall be suspended in
24 a 400 mL 50/50 DI H₂O/isopropyl alcohol solution, from which 1-5 mL aliquots shall be drawn and
25 filtered. The final MCE filter is dried, collapsed with acetone, and coated with carbon in a vacuum
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1 evaporator. The fibers and solids collected on the carbon-coated filter replicate are transferred onto
2 copper grids for TEM analysis.

3 **TEM Bulk Analysis for Asbestos Fiber Structures**

4 The resulting preparation is then scanned to assure a particle loading of the filter between 5-
5 15%, and then quantified by analysis, measuring lengths and widths and chemistries of particulate to
6 determine overall asbestos concentration on the final filter. Only particle structures that contain
7 asbestos as countable by the AHERA protocol, to include morphology, chemistry (by EDS) and
8 diffraction structure (by SAED) will be considered for quantification. Sufficient area of the filter shall
9 be analyzed to reach an analytical sensitivity of at least 500 str/mg of product. Typical preparations of
10 mineral powders by the preparations procedures outlined here with aliquots adjusted to obtain the target
11 particle loading (5-15%) on 200 mesh Cu TEM grids with an approximate average grid opening area
12 of 0.01 mm² provide this level of analytical sensitivity by scanning approximately 200 grid openings
13 (two full grids) area of the filter or its equivalent. Scanning is typically done at 1,500-5,000x, and
14 individual asbestos fibers measured at 20,000-25,000x.

15 **Pass/Fail Criterion**

16 Products prepared and analyzed by this bulk screening protocol that are found to contain >500
17 str/mg of product shall be deemed as “Fails bulk asbestos screening test”. Products prepared and
18 analyzed by this bulk screening protocol that are found to contain <500 str/mg of product shall be
19 deemed as “Passes bulk asbestos screening test”, and no further testing recommended or required.

20 **2.3 Sell-Through Period**

21 Notwithstanding anything else in this Consent Judgment, Covered Products that are
22 manufactured, packaged, or put into commerce prior to use of the testing protocol of section 2.2 shall
23 be subject to the release of liability pursuant to this Consent Judgment, without regard to when such
24 Covered Products were, or are in the future, distributed or sold to customers.

25 **3. MONETARY SETTLEMENT TERMS**

26 **3.1 Settlement Amount**

27 Palladio shall pay sixty thousand dollars (\$60,000.00) in settlement and total satisfaction of all
28 the claims referred to in the Notice, First Amended Notice, Second Amended Notice, the Complaint,

1 and this Consent Judgment. This includes civil penalties in the amount of six thousand dollars
2 (\$6,000.00) pursuant to Health and Safety Code section 25249.7(b) and attorneys' fees and costs in the
3 amount of fifty-four thousand dollars (\$54,000.00) pursuant to Code of Civil Procedure section 1021.5.

4 **3.2 Civil Penalty**

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

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

10 Environmental Health Advocates
11 225 Broadway, Suite 2100
12 San Diego, CA 92101

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

14 For United States Postal Service Delivery:

15 Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 P.O. Box 4010
19 Sacramento, CA 95812-4010

20 For Federal Express 2-Day Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 1001 I Street
25 Sacramento, CA 95814

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

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

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

3.3 Attorney’s Fees and Costs

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

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

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

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
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, and each of their directors, officers, principals,
6 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant
7 Entities”), each entity to whom Defendant Entities directly or indirectly distribute, ship, or sell the
8 Covered Products, including but not limited to downstream distributors, wholesalers, customers,
9 retailers, marketplaces franchisees, franchisors, cooperative members, suppliers, licensees, and
10 licensors, and all of the foregoing entities’ owners, directors, officers, agents, principals, employees,
11 attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (collectively
12 referred to as the “Releasees”) from all claims for violations of Proposition 65 up through the Effective
13 Date based on exposure to asbestos from Covered Products as set forth in the Notice, First Amended
14 Notice, and Second Amended Notice. Compliance with the terms of this Consent Judgment constitutes
15 compliance with Proposition 65 with respect to exposures to asbestos from Covered Products as set
16 forth in the Notice, First Amended Notice, and Second Amended Notice. This Consent Judgment is a
17 full, final, and binding resolution of all claims under Proposition 65 that were or could have been
18 asserted against Palladio, Sally Beauty, Defendant Entities and/or Releasees for failure to comply with
19 Proposition 65 for alleged exposure to asbestos from Covered Products.

20 **4.2 EHA’s Individual Release of Claims**

21 EHA, in its individual capacity, also provides a release to Palladio, Sally Beauty, Defendant
22 Entities and/or other Releasees, which shall be a full and final accord and satisfaction of, as well as a
23 bar to, all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
24 claims, liabilities, and demands of every nature, character, and kind, whether known or unknown,
25 suspected or unsuspected, arising out of alleged or actual exposures to asbestos in Covered Products
26 manufactured, imported, sold, or distributed by Defendant Entities before the Effective Date.
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28

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 the claims,
6 covered by this Consent Judgment otherwise seeking to enforce Proposition 65 against them, in this
7 matter or with respect to the Covered 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 rendered inapplicable to the Covered Products under the law,
2 whether because it is determined to be preempted by federal law or a burden on First Amendment
3 rights with respect to asbestos in Covered Products or products substantially similar to Covered
4 Products, or otherwise, then Defendants shall be relieved of their obligation to comply with Section 2
5 herein. In the event the U.S. Food and Drug Administration issues regulations relating to methods or
6 protocols for identifying asbestos in cosmetic products, Palladio may satisfy the requirements of this
7 Consent Judgment through testing that conforms to any such FDA method or protocol.

8 **8. ENFORCEMENT**

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

11 **9. NOTICE**

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

16 If to Palladio and/or Sally Beauty:

17 Daniel A. Solitro
18 Locke Lord LLP
19 300 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

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

22 **10. COUNTERPARTS; DIGITAL SIGNATURES**

23 This Consent Judgment may be executed in counterparts and electronically or by facsimile
24 signature, each of which shall be deemed an original, and all of which, when taken together, shall
25 constitute one and the same document. Photographic and facsimile copies of such signed counterparts
26 may be used in lieu of the originals for any purpose. The exchange of this Agreement and/or of
27 signature pages by facsimile transmission or electronic mail attachment shall be deemed to have the
28 same legal effect as delivery of an original signed copy of this Agreement. Signatures by scanned and

1 e-mailed image or facsimile transmission shall have the same force and effect as original signatures
2 and as an electronic record executed and adopted by a Party with the intent to sign the electronic record
3 pursuant to Civil Code §§ 1633.1-1633.17.

4 **11. POST EXECUTION ACTIVITIES**

5 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
6 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
7 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
8 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
9 employ their reasonable best efforts, including those of their counsel, to support the entry of this
10 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
11 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,
12 responding to any objection that any third-party may make, and appearing at the hearing before the
13 Court if so requested.

14 **12. MODIFICATION**

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

18 **13. AUTHORIZATION**

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

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

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

26 **15. ENTIRE AGREEMENT**

27 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
28 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,

1 commitments, and understandings related hereto. No representations, oral or otherwise, express or
2 implied, other than those contained herein have been made by any Party. No other agreements, oral or
3 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

4 **AGREED TO:**

AGREED TO:

5
6 Date: 02/06/2023

Date: 02/06/2023

7
8 By: 
9 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

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

10
11 **IT IS SO ORDERED.**

12
13 Date: _____

14 JUDGE OF THE SUPERIOR COURT