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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

ECOLAB USA, INC., et al.,

Defendants.

Case No. CGC-24-619214

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT CONOPCO, INC.**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and Defendant Conopco, Inc. (“Settling Defendant”). CEH and
4 Settling Defendant are referred to collectively as the “Parties.”

5 1.2 CEH alleges that Settling Defendant is a corporation that employs ten (10) or
6 more persons and that manufactures, distributes, and/or sells shampoo that contains 1,4-Dioxane
7 in the State of California or have done so in the past.

8 1.3 On March 7, 2024 CEH served a 60-Day Notice of Violation under
9 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
10 & Safety Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendant, the California Attorney
11 General, the District Attorneys of every County in the State of California, and the City Attorneys
12 for every City in the State of California with a population greater than 750,000. The Notice
13 alleges violations of Proposition 65 with respect to the presence of 1,4-Dioxane in shampoo that
14 is distributed and/or sold by Settling Defendant.

15 1.4 On October 24, 2024, CEH filed the above-captioned action in the Superior
16 Court of California for San Francisco County, naming Settling Defendant as a defendant in this
17 action.

18 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
19 Court has jurisdiction over the allegations of violations contained in the operative Complaint in
20 the above-captioned action (“Complaint”) and personal jurisdiction over Settling Defendant as to
21 the acts alleged in the Complaint; (ii) venue is proper in the County of San Francisco; and (iii)
22 this Court has jurisdiction to enter this Consent Judgment.

23 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
24 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
25 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
26 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
27 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
28 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and

1 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
2 this action.

3 **2. DEFINITIONS**

4 2.1 “Compliance Date” means the date that is twelve months following the
5 Effective Date.

6 2.2 “Covered Products” means Savile-brand shampoo manufactured, distributed,
7 and/or sold by Settling Defendant in California.

8 2.3 “Effective Date” means the date on which this Consent Judgment is entered by
9 the Court.

10 2.4 “Reformulation Level” means 3 parts per million (“ppm”) 1,4-Dioxane.

11 **3. INJUNCTIVE RELIEF**

12 3.1 **Reformulation of Covered Products.** On and after the Compliance Date,
13 Settling Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product in
14 California that contains 1,4-Dioxane in excess of the Reformulation Level as determined using
15 Headspace Gas Chromatography/Mass Spectrometry, or similar method agreed upon by the
16 Parties to this Consent Judgment, except as provided in Section 3.3.

17 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
18 Date, Settling Defendant shall issue specifications to its suppliers of Covered Products that
19 Covered Products shall not contain 1,4-Dioxane in excess of the Reformulation Level.

20 3.3 **Sell-Through for Existing Inventory.** The reformulation requirements of
21 Section 3.1 shall not apply to Covered Products that Settling Defendant had purchased or
22 manufactured prior to the Effective Date, including but not limited to Covered Products in
23 distribution centers, in inventory, or at retail locations.

24 **4. ENFORCEMENT**

25 4.1 CEH may, by motion or application for an order to show cause before the
26 Superior Court of the County of San Francisco, enforce the terms and conditions contained in this
27 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
28 Section 3 above, CEH shall provide Settling Defendant with a Notice of Violation setting forth

1 the basis for the alleged violation. The Parties shall then meet and confer regarding the basis for
2 CEH's anticipated motion or application in an attempt to resolve it informally. Should such
3 attempts at meeting and conferring fail, CEH may file its enforcement motion or application. In
4 ruling on any motion to enforce the terms of this Section, the Court may, in addition to ordering
5 compliance with the terms of this Consent Judgment, employ such remedies as necessary to
6 ensure compliance with Proposition 65 including, but not limited to, requiring Settling Defendant
7 to provide warnings. Should CEH prevail on any motion or application to enforce a material
8 violation of this Consent Judgment under this Section, CEH shall be entitled to its reasonable
9 attorneys' fees and costs incurred as a result of such motion or application. Should Settling
10 Defendant prevail on any motion or application under this Section, Settling Defendant may be
11 awarded its reasonable attorneys' fees and costs as a result of such motion or application upon a
12 finding by the court that CEH's prosecution of the motion or application was not in good faith.

13 **5. PAYMENTS**

14 5.1 **Total Settlement Payment.** Within fifteen (15) days of the Effective Date,
15 Settling Defendant shall pay the total sum of \$45,000 to Lexington Law Group, LLP, on behalf of
16 CEH, as a settlement payment as further set forth in this Section. Settling Defendant shall pay the
17 total sum of \$45,000 via wire transfer to Lexington Law Group, LLP's IOLTA account and
18 associated with taxpayer identification number 94-6001385, pursuant to the wire instructions
19 provided to Settling Defendant by CEH. CEH shall provide wire transfer instructions to Settling
20 Defendant on or before the Effective Date.

21 5.2 The single payment from Settling Defendant will thereafter be allocated
22 between a civil penalty, ASP, and attorneys' fees and costs in the amounts specified below and
23 delivered by counsel for CEH to the entities as set forth below. Any failure by Settling Defendant
24 to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by
25 Settling Defendant in the amount of \$100 for each day the full payment is not received after the
26 applicable payment due date set forth above. The late fees required under this Section shall be
27 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
28

1 pursuant to Section 4 of this Consent Judgment. The Settlement Payment shall be apportioned
2 among the following:

3 5.2.1 \$5,800 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

4 The civil penalty payment shall be apportioned in accordance with Health & Safety Code
5 §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
6 Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty
7 payment for \$4,350 shall be made payable to OEHHA and associated with taxpayer identification
8 number 68-0284486. This payment shall be delivered by counsel for CEH as follows:

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10 For United States Postal Service Delivery:

11 Attn: Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 P.O. Box 4010, MS #19B
15 Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Attn: Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 1001 I Street, MS #19B
21 Sacramento, CA 95814

22 The CEH portion of the civil penalty payment for \$1,450 shall be delivered by counsel for CEH
23 to CEH.

24 5.2.2 \$4,200 as an Additional Settlement Payment (“ASP”) to CEH in lieu of
25 civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations,
26 Title 11, § 3204. CEH will use such funds to continue its work educating and protecting people
27 from exposures to toxic chemicals, including 1,4-Dioxane, in personal care products. CEH may
28 also use a portion of such funds to monitor compliance with this Consent Judgment and to
purchase and test Settling Defendant’s products to confirm compliance. CEH shall obtain and
maintain adequate records to document that ASPs are spent on these activities and CEH agrees to
provide such documentation to the Attorney General within thirty days of any request from the

1 Attorney General. The payment pursuant to this Section shall be delivered by counsel for CEH to
2 CEH.

3 5.2.3 \$35,000 as a reimbursement of a portion of CEH's reasonable attorneys'
4 fees and costs. The attorneys' fees and cost reimbursement shall be apportioned as follows: (a)
5 \$29,000 to the Lexington Law Group, LLP and associated with taxpayer identification number
6 88-4399775; and (b) \$6,000 to the Center for Environmental Health and associated with taxpayer
7 identification number 94-3251981. CEH's attorneys' fees and cost reimbursement portion shall
8 be delivered by counsel for CEH to CEH.

9 5.3 To summarize, the total settlement payment shall be transferred via wire by
10 Settling Defendant to Lexington Law Group, LLP's IOLTA account, and apportioned and
11 disbursed by counsel for CEH to the payees and in the amounts set forth below:

12 Payee	Type	Amount
13 OEHHA	Penalty	\$4,350
14 Center For Environmental Health	Penalty	\$1,450
15 Center For Environmental Health	ASP	\$4,200
16 Lexington Law Group	Fee and Cost	\$29,000
17 Center For Environmental Health	Fee and Cost	\$6,000

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19 **6. MODIFICATION**

20 6.1 **Written Consent.** This Consent Judgment may be modified from time to
21 time by express written agreement of the Parties with the approval of the Court, or by an order of
22 this Court upon motion and in accordance with law.

23 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
24 provide notice to and attempt in good faith to meet and confer with all affected Parties prior to
25 filing a motion to modify the Consent Judgment.

1 **7. CLAIMS COVERED AND RELEASED**

2 7.1 Provided that Settling Defendant complies in full with its obligations under
3 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
4 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
5 that are under common ownership, directors, officers, employees, agents, shareholders,
6 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling
7 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
8 retailers as well as franchisees, suppliers, licensors and licensees (“Downstream Defendant
9 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to
10 1,4-Dioxane contained in Covered Products that were sold by Settling Defendant prior to the
11 Effective Date. For purposes hereof, Defendant Releasees and Downstream Defendant Releasees
12 shall be collectively referred to as “Releasees”.

13 7.2 Provided that Settling Defendant complies in full with its obligations under
14 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives, covenants not to
15 sue, and forever discharges any and all claims against Settling Defendant and all Releasees
16 arising from any violation of Proposition 65 or any other statutory or common law claims that
17 have been or could have been asserted by CEH individually regarding the failure to warn about
18 exposure to 1,4-Dioxane contained in Covered Products (i) sold by Settling Defendant prior to the
19 Compliance Date or (ii) which Settling Defendant purchased prior to the Effective Date.

20 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant
21 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
22 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
23 warn about 1,4-Dioxane in Covered Products manufactured, distributed, or sold by Settling
24 Defendant after the Effective Date.

25 7.4 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
26 action under Proposition 65 against any person other than Settling Defendant, Defendant
27 Releasees, or Downstream Defendant Releasees.

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1 **8. NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail to:

4 Mark N. Todzo
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 mtodzo@lexlawgroup.com

9 8.2 When Settling Defendant is entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to:

11 Joseph Green
12 Kelley Drye & Warren LLP
13 Washington Harbour, Suite 400
14 Washington, DC 20007
15 jgreen@kelleydrye.com

16 8.3 Any Party may modify the person and address to whom the notice is to be sent
17 by sending the other Party notice by first class and electronic mail.

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
20 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
21 shall support entry of this Consent Judgment.

22 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
23 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
24 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

25 **10. GOVERNING LAW AND CONSTRUCTION**

26 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
27 of California.

28 **11. ATTORNEYS' FEES**

Should CEH prevail on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should

1 Settling Defendant prevail on any motion application for an order to show cause or other
2 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
3 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
4 or application lacked substantial justification. For purposes of this Consent Judgment, the term
5 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
6 California Code of Civil Procedure §§ 2016, *et seq.* This section is not intended to preclude the
7 ordinary operation of California Civil Code §1717.

8 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
9 its own attorneys' fees and costs.

10 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
11 sanctions pursuant to law.

12 **12. ENTIRE AGREEMENT**

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

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13. SUCCESSORS AND ASSIGNS

13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

14. RETENTION OF JURISDICTION

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

15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

16. NO EFFECT ON OTHER SETTLEMENTS

16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity other than Settling Defendant on terms that are different than those contained in this Consent Judgment.

IT IS SO ORDERED:

Dated: _____, 2024

Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: December 12, 2024

CENTER FOR ENVIRONMENTAL HEALTH



Kizzy Charles-Guzman
Chief Executive Officer

Dated: _____, 2024

CONOPCO, INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____, 2024

CENTER FOR ENVIRONMENTAL HEALTH

Kizzy Charles-Guzman
Chief Executive Officer

Dated: December 12, 2024

CONOPCO, INC.



Signature

Spencer Wein
Printed Name

Senior Legal Counsel
Title