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7 CENTER FOR ENVIRONMENTAL HEALTH

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN FRANCISCO

12 CENTER FOR ENVIRONMENTAL HEALTH,) Case No. CGC-24-619142
13)
14 Plaintiff,) **[PROPOSED] AMENDED CONSENT**
15 v.) **JUDGMENT AS TO NORTHERNER**
16) **SCANDINAVIA INC.**
17 NORTHERNER SCANDINAVIA INC., *et al.*,)
18 Defendants.)
19 _____)

20 **1. INTRODUCTION**

21 **1.1.** This Amended Consent Judgment (“Consent Judgment”) is entered into by
22 Plaintiff Center for Environmental Health, a non-profit corporation (“CEH”), and defendant
23 Northerner Scandinavia Inc. (“Settling Defendant”) to settle claims asserted by CEH against
24 Settling Defendant as set forth in the operative Complaint in the matter *Center for Environmental*
25 *Health v. Northerner Scandinavia Inc.*, San Francisco County Superior Court Case No. CGC-24-
26 619142 (the “Action”). CEH and Settling Defendant are referred to collectively as the “Parties.”

27 **1.2.** On April 3, 2024, CEH served a 60-Day Notice of Violation relating to the
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1 California Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
2 Code § 25249.5, *et seq.* (“Proposition 65”) on Settling Defendant, the California Attorney
3 General, the District Attorneys of every County in the State of California, and the City Attorneys
4 for every City in State of California with a population greater than 750,000. The Notice alleges
5 violations of Proposition 65 with regard to exposures to nicotine resulting from use of nicotine
6 pouch products sold by Setting Defendant (“Nicotine Pouches”). On April 30, 2024, CEH served
7 an amended 60-Day Notice of Violation (“Amended Notice”) on all of the same entities listed
8 above that included the same allegations as the Notice, but fixed a typographical error contained
9 in the Notice.

10 **1.3.** On August 1, 2024, CEH served a second 60-Day Notice of Violation relating to
11 the California Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
12 Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Settling Defendant, the California Attorney
13 General, the District Attorneys of every County in the State of California, and the City Attorneys
14 for every City in State of California with a population greater than 750,000 (“Second Notice”).
15 The Second Notice alleges violations of Proposition 65 with regard to exposures to nicotine
16 resulting from use of oral smokeless nicotine products such as gum, snus, snuff, lozenges, cotton
17 mouth, and chewing tobacco (“Oral Smokeless Nicotine Products”) by Setting Defendant.
18 Nicotine Pouches and Oral Smokeless Nicotine Products are collectively referred to herein as the
19 “Covered Products.” The Notice, Amended Notice and Second Notice are collectively referred to
20 herein as “Notices.”

21 **1.4.** On October 21, 2024, CEH filed the Action which named Settling Defendant as a
22 defendant which includes a single cause of action under Proposition 65 based on the allegations
23 set forth in the Notice, Amended Notice and Second Notice.

24 **1.5.** Settling Defendant is a corporation that employs ten (10) or more persons and that
25 distributes and sells Covered Products (as defined herein) in the State of California or has done so
26 in the past.

27 **1.6.** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
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1 Court has jurisdiction over the allegations of violations contained in the Notices and Complaint
2 and personal jurisdiction over Settling Defendant to the acts alleged in the Complaint; (ii) venue
3 is proper in the County of San Francisco; and (iii) this Court has jurisdiction to enter this Consent
4 Judgment as a full and final resolution of all claims which were or could have been raised in the
5 Complaint based on the facts alleged in the Notices and Complaint with respect to Covered
6 Products distributed, and/or sold by Settling Defendant.

7 **1.7.** The Parties enter into this Consent Judgment as a full and final settlement of all
8 claims which were or could have been raised in the Complaint arising out of the facts or conduct
9 related to Settling Defendant alleged therein and in the Notices. By execution of this Consent
10 Judgment and agreeing to comply with its terms, the Parties do not admit any fact, conclusion of
11 law, or violation of law, nor shall compliance with the Consent Judgment constitute or be
12 construed as an admission by the Parties of any fact, conclusion of law, or violation of law.
13 Settling Defendant denies the material, factual, and legal allegations in the Notices and Complaint
14 and expressly denies any wrongdoing whatsoever. Except as specifically provided herein,
15 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument,
16 or defense any of the Parties may have in this or any other pending or future legal proceedings.
17 This Consent Judgment is the product of negotiation and compromise and is accepted by the
18 Parties solely for purposes of settling, compromising, and resolving issues disputed in this Action.

19 **2. DEFINITIONS**

20 **2.1.** “Covered Products” means nicotine pouch products, nicotine gum, nicotine
21 lozenges, Cotton Mouth, chewing tobacco and moist smokeless tobacco, including snus and
22 snuff, distributed and/or sold by Settling Defendant.

23 **2.2.** “Defendant’s website” or words to that effect means www.Nicokick.com and
24 www.Northerner.com or another website from which the Settling Defendant sells the Covered
25 Products into California.

26 **2.3.** “Effective Date” means the date on which the Court enters this Consent
27 Judgment.

1 **2.4.** “Fruit Flavored Covered Product” means a Covered Product that is marketed and
2 sold as having a fruit taste or odor and imparts a fruit taste or odor that is distinguishable by an
3 ordinary consumer either prior to or during the consumption of the product.

4 **3. INJUNCTIVE RELIEF**

5 **3.1. Clear and Reasonable Warnings for Covered Products.**

6 After thirty (30) days following the Effective Date, no Covered Product shall be sold by
7 Settling Defendant on its websites to a customer in California unless the following warning is
8 provided:



10 **WARNING:** This product can expose you to chemicals including nicotine, which
11 is known to the State of California to cause birth defects or other reproductive harm.

12 For more information go to www.P65Warnings.ca.gov.

13 The warning shall not be immediately preceded by, immediately surrounded by, or include
14 any additional words or phrases that an ordinary individual under customary conditions of
15 purchase or use would understand as contradicting, obfuscating, or otherwise undermining
16 the warning. The warning statement shall be displayed in such a manner that it is likely to be
17 read and understood as being applicable to the particular Covered Product being purchased
18 by a customer in California prior to the authorization of or actual payment. The warning
19 language is not prominently displayed if the customer must search for the warning language
20 in the general content of Settling Defendant’s websites or if an ordinary individual under
21 customary conditions of purchase or use cannot determine the specific Covered Product to
22 which the warning applies. Placement of the warning statement at the bottom of an internet
23 webpage that offers multiple products for sale does not satisfy the requirements of this
24 Section. If consumer information on the website is in a foreign language, the warning must
25 be given in the foreign language in addition to English. In lieu of the preceding warning
26 language set forth above, Settling Defendant may use any specific safe harbor warning
27 content applicable to the Covered Products and the chemical at issue set forth in Title 27,
28 California Code of Regulations, section 25600, *et seq.*, as amended August 30, 2018, and

1 subsequently thereafter. In the event Settling Defendant agrees to use the specific warning
2 language set forth in this paragraph, it will make the reduced payments identified in Section
3 4.2 for the full-length warning. In the event Settling Defendant elects to use other safe harbor
4 warning language, it shall also make payments outlined in Section 4.3.

5 **3.2. Optional Additional Injunctive Relief – Cessation of Sales of Fruit Flavored**
6 **Covered Products.** Within ninety (90) days following the Effective Date, Settling Defendant
7 shall make its election of whether to be bound by this Optional Injunctive Relief or make the
8 additional payments set forth in Section 4.4.

9 **3.2.1.** Should Settling Defendant elect to be bound by this Optional Injunctive
10 Relief, it shall, within thirty (30) days after making the election, stop selling all Fruit Flavored
11 Covered Products into the State of California. As to any Fruit Flavored Covered Product, the
12 obligation to stop selling such Covered Product shall continue unless and until both of the
13 following conditions are met: (1) FDA has expressly authorized the sale of the Fruit Flavored
14 Covered Product; and (2) the sale of such Covered Product is not otherwise prohibited by state or
15 federal law. To the extent that the preceding conditions (1) and (2) apply to some, but not all of
16 the Fruit Flavored Covered Products, the sales prohibition will only apply to those Fruit Flavored
17 Covered Products for which the two conditions have not been met.

18 **4. PAYMENTS**

19 **4.1. Payments by Settling Defendant.** Within 10 days of the Effective Date, Settling
20 Defendant shall pay the total sum of \$90,000 and no cents as a settlement payment as further set
21 forth in this Section. Any payment by Settling Defendant shall be deemed to be timely and not
22 subject to a late charge and/or other penalty if (1) postmarked (if sent by the United States Postal
23 Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before the deadline set forth
24 in this paragraph.

25 **4.2. Allocation of Payments.** The total settlement amount for Settling Defendant of
26 \$90,000 shall be paid in five separate checks in the amounts specified below and delivered as set
27 forth below. Any failure by Settling Defendant to comply with the payment terms herein shall be
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1 subject to a joint and several stipulated late fee to be paid by Settling Defendant in the amount of
2 \$100 for each day the full payment is not received after the applicable payment due date set forth
3 in Section 4.1. The late fees required under this Section shall be recoverable, together with
4 reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this
5 Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth below
6 between the following categories and made payable as follows:

7 **4.2.1.** \$12,180 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

8 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
9 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
10 Hazard Assessment). Accordingly, the OEHHA portion of the civil penalty payment for \$9,135
11 shall be made payable to OEHAA and associated with taxpayer identification number 68-
12 0284486. This payment shall be delivered as follows:

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

20 Attn: Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street, MS #19B
24 Sacramento, CA 95814

25 **4.2.2.** The CEH portion of the civil penalty payment for \$3,045 shall be made
26 payable to the Center for Environmental Health and associated with taxpayer identification
27 number 94-3251981. This payment shall be delivered to Lexington Law Group, LLP, 503
28 Divisadero Street, San Francisco, CA 94117

4.2.3. \$9,130 as an Additional Settlement Payment ("ASP") in lieu of civil
penalty 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

1 Fund and use them to: (1) support CEH programs and activities that seek to educate the public
2 about nicotine in nicotine pouches and other toxic chemicals in consumer products that are
3 marketed to, or used by youth; (2) expand its use of social media to communicate with
4 Californians about the risks of exposures to nicotine and other toxic chemicals in the products
5 they and their children use and about ways to reduce those exposures; and (3) work with
6 industries that market products to youth to reduce exposures to nicotine and other toxic
7 chemicals, and thereby reduce the public health impacts and risks of exposures to nicotine and
8 other toxic chemicals in consumer products that are marketed to, or used by youth in California.
9 CEH shall obtain and maintain adequate records to document that ASPs are spent on these
10 activities and CEH agrees to provide such documentation to the Attorney General within thirty
11 (30) days of any request from the Attorney General. The payment pursuant to this Section shall
12 be made payable to the Center for Environmental Health

13 **4.2.4.** \$68,690 as a reimbursement of a portion of CEH’s reasonable attorneys’
14 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks
15 as follows: (a) \$57,850 payable to the Lexington Law Group, LLP and associated with taxpayer
16 identification number 88-4399775; and (b) \$10,840 payable to the Center for Environmental
17 Health and associated with taxpayer identification number 94-3251981. Both of these payments
18 shall be delivered to Lexington Law Group, LLP, 503 Divisadero Street, San Francisco, CA
19 94117.

20 **4.3.** If Settling Defendant elects to use any other safe harbor warning language other
21 than the specific warning language set forth in Section 3.1, Settling Defendant shall make an
22 additional payment of \$5,000 and no cents to be split between a civil penalty, ASP and attorneys’
23 fees and costs as set forth herein. Of the additional payment, \$2,500 shall be a civil penalty,
24 apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the
25 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)).
26 Accordingly, the OEHHA portion of the civil penalty payment of \$1,875 shall be made payable to
27 OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA
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1 address set forth in section 4.2.1 above. The CEH portion of the additional civil penalty payment
2 of \$625 shall be made payable to the Center for Environmental Health and associated with
3 taxpayer identification number 94-3251981. \$1,000 of the additional payment shall be made
4 payable to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117 for fees and
5 costs associated with the additional payment. The remaining \$1,500 of the additional payment
6 shall be made payable to the Center for Environmental Health and associated with taxpayer
7 identification number 94-3251981 and shall be used as set forth in Section 4.2.2 above. Both
8 payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San
9 Francisco, CA 94117.

10 **4.4.** If Settling Defendant elects not to be bound by the Optional Additional Injunctive
11 relief, Settling Defendant shall make an additional payment of \$50,000 and no cents to be split
12 between a civil penalty, ASP and attorneys' fees and costs as set forth herein. Of the additional
13 payment, \$15,000 shall be a civil penalty, apportioned in accordance with Health & Safety Code
14 § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
15 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment
16 of \$11,250 shall be made payable to OEHHA, associated with taxpayer identification number 68-
17 0284486, and sent to the OEHHA address set forth in section 4.2.1 above. The CEH portion of
18 the additional civil penalty payment of \$3,750 shall be made payable to the Center for
19 Environmental Health and associated with taxpayer identification number 94-3251981. \$25,000
20 of the additional payment shall be made payable to Lexington Law Group, 503 Divisadero Street,
21 San Francisco, CA 94117 to reimburse it for a portion of its outstanding fees and costs as well as
22 those associated with the additional payment. The remaining \$10,000 of the additional payment
23 shall be made payable to the Center for Environmental Health and associated with taxpayer
24 identification number 94-3251981 and shall be used as set forth in Section 4.2.3 above. Both
25 payments to CEH as well as the one to Lexington Law Group shall be delivered to Lexington
26 Law Group, 503 Divisadero Street, San Francisco, CA 94117.

1 **5. ENFORCEMENT OF CONSENT JUDGMENT**

2 **5.1.** CEH may, by motion or application for an order to show cause before the Superior
3 Court of San Francisco County, enforce the terms and conditions contained in this Consent
4 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
5 above applicable to Settling Defendant, CEH shall provide Settling Defendant with a Notice of
6 Violation and a copy of any photographs or other documents which support CEH’s Notice of
7 Violation. The Parties shall then meet and confer regarding the basis for CEH’s anticipated
8 motion or application in an attempt to resolve it informally, including providing Settling
9 Defendant a reasonable opportunity of at least thirty (30) days to cure any alleged violation.
10 Should such attempts at informal resolution fail, CEH may file its enforcement motion or
11 application. In the event that CEH is successful in any enforcement motion under this Section, it
12 shall be entitled to recover any remedies available to it under Proposition 65 or any other laws.

13 **6. MODIFICATION OF CONSENT JUDGMENT**

14 **6.1.** This Consent Judgment may only be modified by written agreement of CEH and
15 Settling Defendant, or upon motion of CEH or Settling Defendant as provided by law. The
16 moving party shall bear the burden of proof on any motion to modify this Consent Judgment.

17 **7. CLAIMS COVERED AND RELEASE**

18 **7.1.** Provided Settling Defendant complies in full with its obligations under Section 4
19 hereof, this Consent Judgment is a full, final, and binding resolution between CEH acting in the
20 public interest and Settling Defendant and Settling Defendant’s parents, officers, directors,
21 shareholders, divisions, subdivisions, subsidiaries, and their respective successors and assigns
22 (“Settling Defendant’s Releasees”), of all claims alleged in the Complaint in this Action arising
23 from any violation of Proposition 65 that have been or could have been asserted in the public
24 interest against Settling Defendant and Settling Defendant’s Releasees, regarding the failure to
25 warn about exposures to nicotine in the Covered Products manufactured, distributed, or sold by
26 Settling Defendant prior to the Effective Date.

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1 **7.2.** Provided Settling Defendant complies in full with its obligations under Section 4
2 hereof, CEH, for itself, releases, waives, and forever discharges any and all claims alleged in the
3 Complaint against Settling Defendant and Settling Defendant’s Releasees arising from any
4 violation of Proposition 65 that have been or could have been asserted regarding the failure to
5 warn about exposure to nicotine in connection with Covered Products manufactured, distributed,
6 or sold by Settling Defendant prior to the Effective Date.

7 **7.3.** Provided Settling Defendant complies in full with its obligations under Section 4
8 hereof, compliance with the terms of this Consent Judgment by Settling Defendant and the
9 Settling Defendant’s Releasees shall constitute compliance with Proposition 65 by Settling
10 Defendant and Settling Defendant’s Releasees with respect to any alleged failure to warn about
11 nicotine in Covered Products manufactured, distributed, or sold by Settling Defendant after the
12 Effective Date.

13 **8. PROVISION OF NOTICE**

14 **8.1.** When any Party is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by first class and electronic mail as follows:

16 **8.1.1. Notices to Defendant.** The persons for Settling Defendant to receive
17 notices pursuant to this Consent Judgment shall be:

18 Agustin E. Rodriguez
19 Troutman Pepper
20 1001 Haxall Point
21 15th Floor
22 Richmond, VA 23219
23 Agustin.rodriquez@troutman.com

24 **8.1.2. Notices to Plaintiff.** The persons for CEH to receive notices pursuant to
25 this Consent Judgment shall be:

26 Mark Todzo
27 Lexington Law Group LLP
28 503 Divisadero Street
 San Francisco, CA 94117
 mtodzo@lexlawgroup.com

8.2. Any Party may modify the person and address to whom the notice is to be sent by

1 sending the other Parties notice by first class and electronic mail.

2 **9. COURT APPROVAL**

3 **9.1.** This Consent Judgment shall become effective on the Effective Date, provided
4 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
5 Settling Defendant shall support approval of such Motion.

6 **9.2.** If this Consent Judgment is not entered by the Court, it shall be of no force or
7 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
8 purpose.

9 **10. GOVERNING LAW AND CONSTRUCTION**

10 **10.1.** The terms and obligations arising from this Consent Judgment shall be construed
11 and enforced in accordance with the laws of the State of California.

12 **11. ATTORNEYS' FEES**

13 **11.1.** Except as otherwise provided in this Consent Judgment, each Party shall bear its
14 own attorneys' fees and costs.

15 **11.2.** Nothing in this Section 11 shall preclude a Party from seeking an award of
16 sanctions pursuant to law.

17 **12. ENTIRE AGREEMENT**

18 **12.1.** This Consent Judgment contains the sole and entire agreement and understanding
19 of CEH and Settling Defendant with respect to the entire subject matter hereof, and any and all
20 prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
21 merged herein and therein.

22 **12.2.** There are no warranties, representations, or other agreements between CEH and
23 Settling Defendant except as expressly set forth herein. No representations, oral or otherwise,
24 express or implied, other than those specifically referred to in this Consent Judgment have been
25 made by any Party hereto.

26 **12.3.** No other agreements not specifically contained or referenced herein, oral or
27 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements

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1 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
2 any of the Parties hereto only to the extent that they are expressly incorporated herein.

3 **12.4.** No supplementation, modification, waiver, or termination of this Consent
4 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

5 **12.5.** No waiver of any of the provisions of this Consent Judgment shall be deemed or
6 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
7 such waiver constitute a continuing waiver.

8 **13. RETENTION OF JURISDICTION**

9 **13.1.** This Court shall retain jurisdiction of this matter to implement or modify the
10 Consent Judgment.

11 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

12 **14.1.** Each signatory to this Consent Judgment certifies that they are fully authorized by
13 the Party they represent to stipulate to this Consent Judgment and to enter into and execute the
14 Consent Judgment on behalf of the Party represented and to legally bind that Party.

15 **15. NO EFFECT ON OTHER SETTLEMENTS**

16 **15.1.** Nothing in this Consent Judgment shall preclude CEH from resolving any claim
17 against another entity on terms that are different from those contained in this Consent Judgment.

18 **16. EXECUTION IN COUNTERPARTS**

19 **16.1.** The stipulations to this Consent Judgment may be executed in counterparts and by
20 means of facsimile, which taken together shall be deemed to constitute one document.

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IT IS SO STIPULATED.

CENTER FOR ENVIRONMENTAL HEALTH



Kizzy Charles-Guzman
CEO

Dated: January 8, 2024

NORTHERNER SCANDINAVIA, INC.



Signature

Dated: 12/23/24

Peter Grafstrom
Printed Name

IT IS SO ORDERED:

Dated: _____, 2024

Judge of the Superior Court