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

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12 CENTER FOR ENVIRONMENTAL HEALTH,
13 a non-profit corporation,

14 Plaintiff,

15 v.

16 E-ALTERNATIVE SOLUTIONS, LLC, *et al.*,

17 Defendants.
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Case No. CGC-25-624261

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANTS
E-ALTERNATIVE SOLUTIONS,
LLC AND SWISHER
INTERNATIONAL INC.**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and Defendants E-Alternative Solutions, LLC (“EAS”) and
4 Swisher International, Inc. (“Swisher”). EAS and Swisher are referred to collectively as “Settling
5 Defendants” and CEH and Settling Defendants are referred to collectively as the “Parties.”

6 1.2 Settling Defendants manufacture, distribute, and/or sell mint flavored caffeine
7 pouches that contain pulegone in the State of California (“Covered Products”) or have done so in
8 the past.

9 1.3 On November 13, 2024, CEH served a 60-Day Notice of Violation under
10 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
11 & Safety Code §§ 25249.5, *et seq.*) (“Notice”) on EAS, the California Attorney General, the
12 District Attorneys of every County in the State of California, and the City Attorneys for every
13 City in the State of California with a population greater than 750,000. The Notice alleges
14 violations of Proposition 65 with respect to the presence of pulegone in mint flavored caffeine
15 pouches.

16 1.4 On January 16, 2025, CEH served a 60-Day Notice of Violation under
17 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
18 & Safety Code §§ 25249.5, *et seq.*) (“Notice”) on Swisher, the California Attorney General, the
19 District Attorneys of every County in the State of California, and the City Attorneys for every
20 City in the State of California with a population greater than 750,000. The Notice alleges
21 violations of Proposition 65 with respect to the presence of pulegone in mint flavored caffeine
22 pouches.

23 1.5 On April 10, 2025 CEH filed the original complaint (“Complaint”). The
24 complaint names Settling Defendants as defendants in the action.

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

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

11 **2. DEFINITIONS**

12 2.1 “Covered Products” means mint flavored caffeine pouches that are
13 manufactured, distributed and/or sold by Settling Defendants.

14 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
15 the Court.

16 2.3 “Reformulation Level” means 8.7 ppm pulegone in Covered Products as
17 measured by the Test Protocol.

18 2.4 “Test Protocol” means the use of GC-FID to measure the total pulegone
19 content in a Covered Product.

20 **3. INJUNCTIVE RELIEF**

21 3.1 **Reformulation of Covered Products.** Within ninety (90) days following the
22 Effective Date (the “Reformulation Date”), Settling Defendants shall not manufacture, distribute,
23 sell, or offer for sale any Covered Product in California that contains pulegone in excess of the
24 Reformulation Level.

25 3.2 **Specifications to Suppliers.** No more than thirty (30) days after the Effective
26 Date, Settling Defendant shall issue specifications to its suppliers of Covered Products requiring
27 that Covered Products not contain pulegone in excess of the Reformulation Level.

28 3.3 **Sell-Through for Existing Inventory.** The reformulation requirements of

1 Section 3 shall not apply to Covered Products that Settling Defendants have purchased prior to
2 the Effective Date, including but not limited to Covered Products that have been manufactured
3 and are in the process distribution, or in inventory or distribution centers, or at retail locations.

4 **4. ENFORCEMENT**

5 4.1 Plaintiff may, by motion or application for an order to show cause before the
6 Superior Court of San Francisco County, enforce the terms and conditions contained in this
7 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
8 Section 3 above, Plaintiff shall provide Settling Defendants with a Notice of Violation and a copy
9 of any test results which purportedly support the Notice of Violation. The Parties shall then meet
10 and confer regarding the basis for the anticipated motion or application in an attempt to resolve it
11 informally, including providing Settling Defendants with a reasonable opportunity of at least
12 thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail,
13 Plaintiff may file an enforcement motion or application. This Consent Judgment may only be
14 enforced by the Parties.

15 **5. PAYMENTS**

16 5.1 **Payments by Settling Defendants.** Settling Defendant shall jointly and
17 severally pay the total settlement amount of \$32,500 as a settlement payment as further set forth in
18 this Section. Any payment by Settling Defendants shall be deemed to be timely and not subject to
19 a late charge and/or other penalty if (1) postmarked (if sent by the United States Postal Service) or
20 (2) delivered to an overnight carrier (e.g. Fed Ex), on or before the deadline set forth in this
21 paragraph.

22 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendants
23 shall be allocated between civil penalties, an additional settlement payment and attorneys' fees and
24 costs as set forth below. Any failure by Settling Defendants to comply with the payment terms
25 herein shall be subject to a joint and several stipulated late fee to be paid by Settling Defendants in
26 the amount of \$100 for each day the full payment is not received after the applicable payment due
27 dates set forth in Section 5.2.1-5.2.3. The late fees required under this Section shall be recoverable,
28 together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to

1 Section 4 of this Consent Judgment. The funds paid by Settling Defendants shall be allocated as
2 set forth below between the following categories and made payable as follows:

3 5.2.1 \$4,320 of the total payment is a civil penalty pursuant to Health &
4 Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with
5 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
6 Environmental Health Hazard Assessment). Accordingly, the OEHHA portion of the civil
7 penalty payment for \$3,240 shall be made payable to OEHAA and associated with taxpayer
8 identification number 68-0284486. This payment shall be delivered as follows:

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

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

21 The CEH portion of the civil penalty payment for \$1,080 shall be made payable to the Center for
22 Environmental Health and associated with taxpayer identification number 94-3251981. This
23 payment shall be delivered to Lexington Law Group, LLP, 503 Divisadero Street, San Francisco,
24 CA 94117.

25 5.2.2 \$3,240 of the total payment is an Additional Settlement Payment
26 ("ASP") to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
27 Regulations, Title 11, § 3204 and California Code of Regulations, Title 11, § 3204. CEH will use
28 such funds to continue its work educating and protecting people from exposures to toxic
chemicals, including pulegone, in caffeine pouches and other products. CEH may 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.

5.2.3 \$24,940 of the total payment is a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be divided as follows: (a) \$21,145 payable to the Lexington Law Group, LLP and associated with taxpayer identification number 88-4399775; and (b) \$3,980 payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, LLP 503 Divisadero Street, San Francisco, CA 94117.

5.3 To summarize, the payments described above shall be payable as set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$3,240	OEHHA per Section 5.1.1
Center For Environmental Health	Penalty	\$1,080	LLG
Center For Environmental Health	ASP	\$3,240	LLG
Lexington Law Group, LLP	Fee and Cost	\$20,960	LLG
Center For Environmental Health	Fee and Cost	\$3,980	LLG

6. MODIFICATION

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

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

7. CLAIMS COVERED AND RELEASED

7.1 Provided that Settling Defendants comply in full with their obligations under Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of

1 itself and the public interest, and Settling Defendants and their parents, subsidiaries, affiliated
2 entities that are under common ownership, directors, officers, employees, agents, shareholders,
3 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Defendant
4 Releasees distribute or sell Covered Products, such as distributors, wholesalers, customers,
5 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any
6 violation of Proposition 65 based on failure to warn about alleged exposure to pulegone contained
7 in Covered Products that were manufactured, distributed, or sold by Settling Defendants prior to
8 the Effective Date.

9 7.2 Provided that Settling Defendants comply in full with their obligations under
10 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
11 discharges any and all claims against Settling Defendants, Defendant Releasees and Downstream
12 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
13 common law claims that have been or could have been asserted by CEH regarding pulegone in
14 Covered Products manufactured, distributed, and/or sold by Settling Defendants prior to the
15 Effective Date.

16 7.3 Compliance with the terms of this Consent Judgment by Settling Defendants
17 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendants,
18 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
19 warn about pulegone in Covered Products manufactured, distributed, or sold by Settling
20 Defendants after the Effective Date.

21 7.4 Nothing in this Section 7 affects Plaintiff’s right to commence or prosecute an
22 action under Proposition 65 against any person other than Settling Defendant, Defendant
23 Releasees, or Downstream Defendant Releasees.

24 **8. NOTICE**

25 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by first class and electronic mail to:
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Mark N. Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

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

Chris Casey
Executive Vice President and General Counsel
Swisher International, Inc.
ccasey@swisher.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.

9. COURT APPROVAL

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

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

10. GOVERNING LAW AND CONSTRUCTION

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

11. ATTORNEYS' FEES

11.1 Should Plaintiff prevail on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment, Plaintiff shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should a Settling Defendants prevail on any motion application for an order to show cause or other proceeding, that Settling Defendants may be awarded its reasonable attorneys' fees and costs against Plaintiff as a result of such motion or application upon a finding by the Court that

1 Plaintiff's prosecution of the motion or application lacked substantial justification. For purposes
2 of this Consent Judgment, the term substantial justification means a justification that is well
3 grounded in both law and fact.

4 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
5 its own attorneys' fees and costs.

6 11.3 Nothing in this Section 101 shall preclude a Party from seeking an award of
7 sanctions pursuant to law.

8 **12. ENTIRE AGREEMENT**

9 12.1 This Consent Judgment contains the sole and entire agreement and
10 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
11 discussions, negotiations, commitments or understandings related thereto, if any, are hereby
12 merged herein and therein. There are no warranties, representations or other agreements between
13 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
14 implied, other than those specifically referred to in this Consent Judgment have been made by any
15 Party hereto. No other agreements not specifically contained or referenced herein, oral or
16 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
17 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
18 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
19 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
20 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
21 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
22 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

23 **13. SUCCESSORS AND ASSIGNS**

24 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
25 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
26 assigns of any of them.

1 **14. RETENTION OF JURISDICTION**

2 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

5 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
7 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

8 **16. NO EFFECT ON OTHER SETTLEMENTS/ “MOST FAVORED NATION”**
9 **CLAUSE**

10 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
11 against an entity other than Settling Defendants on terms that are different than those contained in
12 this Consent Judgment.

13 16.2 If CEH enters into any consent judgment (“Settlement Document”) with any
14 other entity in this action with respect to an alleged failure to warn of alleged exposures to pulegone
15 in caffeine pouches in which it agrees to different injunctive terms, Settling Defendants may seek
16 to modify this Consent Judgment to adopt those injunctive terms and comply with them instead of
17 those presently set forth in Section 3. If Settling Defendants seeks to adopt different injunctive
18 terms, it shall provide notice to CEH consistent with Section 6 of this Consent Judgment. If CEH
19 enters into any Settlement Document with any other entity in this action with respect to an alleged
20 failure to warn of alleged exposures to pulegone in caffeine pouches that contains a different test
21 protocol for determining the total content of pulegone in caffeine pouches, Settling Defendants may
22 also use that test protocol.

23 **IT IS SO ORDERED:**

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25 Dated: _____, 2025

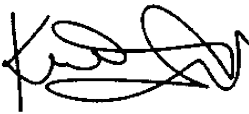
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IT IS SO STIPULATED:

Dated: June 12, 2025

CENTER FOR ENVIRONMENTAL HEALTH



Kizzy Charles-Guzman
Chief Executive Officer

Dated:

E-ALTERNATIVE SOLUTIONS, LLC

Signature

Printed Name

Title

Dated:

SWISHER INTERNATIONAL, INC.

Signature

Printed Name

Title

1 IT IS SO STIPULATED:

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3 Dated:

CENTER FOR ENVIRONMENTAL HEALTH

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7 Kizzy Charles-Guzman
8 Chief Executive Officer

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10 Dated: 4/10/25

E-ALTERNATIVE SOLUTIONS, LLC


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Signature

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14 Raymond J. Brandstetter
Printed Name

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16 VP- Finance & Operations
Title

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18 Dated: 4/10/25

SWISHER INTERNATIONAL, INC.

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Signature

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22 Christopher L. Chan
Printed Name

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24 EVP / General Counsel
Title