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NOV 24 2014
ROOM 102

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

BC 564854
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PEOPLE OF THE STATE OF CALIFORNIA, ex rel. DEPARTMENT OF TOXIC SUBSTANCES CONTROL,
Plaintiff,
v.
NEUTROGENA CORPORATION, a Delaware corporation,
Defendant.

Case No. NOV 24 2014
ROOM 102
FINAL JUDGMENT ON CONSENT AND PERMANENT INJUNCTION

Good cause appearing herein, the Court finds that the settlement between Plaintiff, People of the State of California, ex rel. Department of Toxic Substances Control, and Defendant Neutrogena Corporation, a Delaware corporation, is fair and in the public interest. Accordingly, the parties' Stipulation for Settlement and Entry of Judgment and Permanent Injunction, a copy which is attached as Exhibit A, is approved, and the Final Judgment on Consent and Permanent

1 Injunction is entered in favor of Plaintiff People of the State of California, ex rel. Department of
2 Toxic Substances Control, and against Defendant Neutrogena Corporation as provided therein.

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4 Date: _____

5 Judge of the Superior Court
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EXHIBIT A

COPY

1 KAMALA D. HARRIS
 Attorney General of California
 2 SARAH E. MORRISON
 Supervising Deputy Attorney General
 3 THOMAS G. HELLER
 Deputy Attorney General
 4 State Bar No. 162561
 300 South Spring Street, Suite 1702
 5 Los Angeles, CA 90013
 Telephone: (213) 897-2628
 6 Fax: (213) 897-2802
 E-mail: Thomas.Heller@doj.ca.gov
 7 *Attorneys for Plaintiff People of the State of*
California, ex rel. Department of Toxic Substances
 8 *Control*

RECEIVED
 NOV 24 2014
 ROOM 102

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF LOS ANGELES
 11 CENTRAL DISTRICT
 12

13 **PEOPLE OF THE STATE OF**
 14 **CALIFORNIA, ex rel. DEPARTMENT OF**
 15 **TOXIC SUBSTANCES CONTROL,**
 16
 Plaintiff,
 17
 v.
 18 **NEUTROGENA CORPORATION, a**
 19 **Delaware corporation,**
 20
 Defendant.

Case No. **BC 5 6 4 8 5 4**
STIPULATION FOR SETTLEMENT
AND ENTRY OF JUDGMENT AND
PERMANENT INJUNCTION

21
 22 Plaintiff, the People of the State of California, ex rel. Department of Toxic Substances
 23 Control (Department) and Defendant Neutrogena Corporation (Neutrogena) (together the Parties)
 24 enter into this Stipulation for Settlement and Entry of Judgment and Permanent Injunction,
 25 (Stipulation), and stipulate as follows:
 26
 27
 28

1 **1. THE COMPLAINT**

2 Concurrently with this Stipulation, the Department will file a Complaint for Civil
3 Penalties and Injunctive Relief (Complaint) under the California Hazardous Waste Control Law,
4 Health and Safety Code section 25100 et seq. (HWCL) and its implementing regulations against
5 Neutrogena, which generates, stores, and treats hazardous wastes at its manufacturing facility
6 located at 5735, 5755, 5760, and 5771 West 96th Street, 5705 West 98th Street, and 5760 and
7 5800 Arbor Vitae Street, Los Angeles, California 90045 (Neutrogena Facility).

8 **2. AGREEMENT TO SETTLE DISPUTE**

9 The Parties enter into this Stipulation pursuant to a compromise and settlement of disputed
10 claims by mutually consenting to the entry by the Superior Court of the County of Los Angeles of
11 the Final Judgment on Consent and Permanent Injunction, in the form attached as Exhibit 1
12 (Judgment). The Parties are each represented by counsel. The Office of the Attorney General
13 represents the Department, and Tatro Tekosky Sadwick LLP represents Neutrogena. This
14 Stipulation and the Judgment were negotiated and executed in good faith and at arms' length by
15 the Parties to avoid expensive and protracted litigation regarding the alleged violations of the
16 HWCL and to further the public interest.

17 **3. JURISDICTION AND VENUE**

18 The Parties agree that for purposes of this Stipulation this Court has subject matter
19 jurisdiction over the matters alleged in the Complaint and personal jurisdiction over Defendant.
20 Venue is proper under Health and Safety Code section 25183.

21 **4. WAIVER OF HEARING AND TRIAL AND ENTRY OF JUDGMENT**

22 By signing and entering into this Stipulation, Neutrogena waives its right to a trial on the
23 matters alleged in the Complaint. Further, the Parties request entry of the Judgment on the terms
24 set forth in this Stipulation.

25 **5. APPLICABILITY**

26 Unless otherwise expressly provided herein, the provisions of this Stipulation and the
27 Judgment shall apply to and be binding on Neutrogena and its agents, servants, employees,
28 representatives, and all persons acting in concert or participating with Neutrogena at the

1 Neutrogena Facility, and the Department and any successor agency of the Department that may
2 have responsibility for and jurisdiction over the subject matter of the Judgment.

3 **6. SETTLEMENT; ADMISSIONS**

4 The Parties enter into this Stipulation as a compromise and settlement of disputed claims
5 for the purpose of avoiding prolonged and complicated litigation and in furtherance of the public
6 interest. The Parties agree that there has been no adjudication of any fact or law; however,
7 Neutrogena admits the violations in paragraphs 43-44 of the seventh cause of action, paragraph
8 47 of the eighth cause of action, paragraph 50 of the ninth cause of action, and paragraph 58 of
9 the eleventh cause of action. Except as expressly set forth in this paragraph, Neutrogena does not
10 admit any fact or violation of law.

11 **7. MATTERS COVERED**

12 This Stipulation is a full, final, and binding resolution and settlement of all claims,
13 violations, or causes of action alleged in the Complaint and all claims, violations, or causes of
14 action whether alleged or not based on the acts, omissions and/or events alleged in the Complaint,
15 including without limitation a cause of action for alleged failure to obtain authorization from the
16 Certified Unified Program Agency (CUPA) pursuant to California Code of Regulations, title 22,
17 section 67450.1. Nothing in this Stipulation is intended to or shall waive or limit the res judicata
18 effect of the Judgment entered pursuant to this Stipulation.

19 **8. INJUNCTION**

20 Upon entry of the Judgment, Neutrogena shall be enjoined and ordered as follows:

21 a. Within sixty (60) calendar days of the Effective Date of the Judgment, Neutrogena
22 shall revise its Permit by Rule (PBR) Waste Analysis Plan (WAP) to address analysis of
23 categories of products and/or production processes (e.g., first batch rinses, any additional batch
24 rinses, and kettle maintenance operations that involve chemical solutions) sharing sufficiently
25 similar chemical composition and hazardous characteristics that the results of analyzing a waste
26 stream from one such product/production process reasonably can be extrapolated to the other
27 products/production processes in that category. If Neutrogena requests in writing that the
28 Department do so, the Department agrees to review the revised WAP and, at the Department's

1 discretion. comment on, suggest modifications to, or approve it if acceptable to the Department.
2 If the Department's review and approval of the revised WAP is not completed and communicated
3 to Neutrogena within ninety (90) calendar days of the Effective Date of the Judgment, the time
4 frame set forth in paragraph 8.b. below shall be extended until thirty (30) days after the
5 Department completes and communicates in writing to Neutrogena the Department's approval of
6 the revised WAP.

7 For each of the categories of products and/or production processes, Neutrogena shall,
8 where applicable and appropriate, add analysis protocols to the revised WAP for pH, percentage
9 of organics, and other chemicals required to demonstrate that the influent waste streams to the
10 PBR authorized unit meet the requirements stated in California Code of Regulations, title 22,
11 section 67450.11. To the extent such analysis becomes inapplicable or inappropriate, such
12 analysis may be discontinued.

13 The revised WAP shall provide for new waste profiles to be made prior to the production
14 of a new product line or a change to the production process, production equipment or the
15 chemicals used in a rinse or maintenance operation. To the extent certain types of products are
16 produced seasonally or sporadically, creation of the waste profile for such product shall be
17 deferred until production occurs as part of the normal production cycle, provided that the profile
18 is performed prior to the first discharge of the first such product or related production process
19 materials into the permitted treatment tank system(s).

20 For any waste stream, whether such waste stream is associated with a new product line or
21 not, that waste stream may be diverted so that it does not enter the permitted treatment unit(s) or
22 be profiled and, once the profiling process is completed, conveyed to the permitted treatment
23 unit(s), provided that the collection and diversion complies with chapter 6.5 of division 20 of the
24 Health and Safety Code and any permit, rule, regulation, standard, or requirement issued or
25 adopted pursuant to chapter 6.5.

26 In accordance with California Code of Regulations, title 22, sections 66265.74 and
27 67450.3(c), the aforementioned profiles shall be kept on-site as part of the operating record.

28

1 In addition to the aforementioned requirements, the WAP shall identify parts of the
2 conveyance system that Neutrogena considers to be part of the permitted treatment tank
3 system(s).

4 b. Within one hundred twenty (120) calendar days of the Effective Date of the
5 Judgment, Neutrogena shall commence complying with the analysis requirements prescribed in
6 California Code of Regulations, title 22, section 66265.13(a) by carrying out the revised WAP, as
7 required by California Code of Regulations, title 22, section 66265.13(b). At that time,
8 Neutrogena shall submit a copy of the revised WAP to the Department and submit to the CUPA
9 the amended notification required by California Code of Regulations, title 22, section 67450.3,
10 subdivision (c)(2).

11 c. Neutrogena shall make tank and container inspection reports for the Neutrogena
12 Facility available to the Department for review, as required by California Code of Regulations,
13 title 22, section 66265.74, subdivision (a).

14 d. Neutrogena shall maintain aisle space between hazardous waste containers at the
15 Neutrogena Facility, as required by California Code of Regulations, title 22, section 66265.35.

16 e. Neutrogena shall not treat hazardous waste at the Neutrogena Facility without a
17 permit or authorization from the Department under Health and Safety Code section 25201,
18 subdivision (a).

19 f. Neutrogena shall provide secondary containment to sumps and pipes that receive
20 hazardous waste at the Neutrogena Facility, as required by California Code of Regulations, title
21 22, section 66265.193.

22 g. Neutrogena shall maintain tank assessment records for the waste water treatment
23 tanks, hazardous waste storage tanks and drum washer tank at the Neutrogena Facility, as
24 required by California Code of Regulations, title 22, section 66265.192.

25 h. Neutrogena shall maintain written operating instructions and written records of dates,
26 amounts and types of waste treated in the drum rinsing system and the waste water treatment
27 system at the Neutrogena Facility, as required by Health and Safety Code section 25201.5;
28 subdivision (d)(3). Neutrogena shall make entries in the drum rinsing system records in sufficient

1 detail to show that the types of drums treated are authorized for such treatment pursuant to Health
2 and Safety Code section 25201.5, subdivision (c)(2). Neutrogena shall make entries in the waste
3 water treatment system records in sufficient detail to show that the types of wastes treated are
4 authorized for such treatment pursuant to the PBR.

5 i. Neutrogena shall dispose, or cause the disposal of, hazardous waste generated at the
6 Neutrogena Facility only pursuant to a permit or authorization from the Department under Health
7 and Safety Code section 25201, subdivision (a). This provision does not prohibit Neutrogena
8 from disposing or causing the disposal of hazardous waste at an off-site facility that is authorized
9 to accept the hazardous waste for disposal according to the provisions of chapter 6.5 of division
10 20 of the Health and Safety Code.

11 The above injunctive provisions are not intended to, and do not imply, a lack of current
12 compliance by Neutrogena.

13 9. PAYMENT

14 Neutrogena shall pay the Department a civil penalty of four hundred sixteen thousand two
15 hundred forty three dollars (\$416,243.00). Four hundred eleven thousand two hundred forty three
16 dollars (\$411,243.00) shall be payable within thirty days of the Effective Date of the Judgment.
17 The remaining five thousand dollars (\$5,000) shall be payable within 180 days of the Effective
18 Date, subject to adjustment according to the paragraph below.

19 Neutrogena may send up to five employees to the California Compliance School, Modules
20 I-IV. Attendance must be completed and Neutrogena must submit a Certificate of Satisfactory
21 Completion issued by the California Compliance School to the Department within 180 days of the
22 Effective Date. In recognition of this educational investment, the five thousand dollars (\$5000)
23 payable to the Department with 180 days of the Effective Date shall be reduced by \$1000 for each
24 Neutrogena employee who satisfactorily completes the specified school and for whom the
25 Department timely receives the Certificate of Satisfactory Completion.

26 Neutrogena shall pay the civil penalty by electronic funds transfer in accordance with
27 instructions provided by the Department or by cashier's check, made payable to the "California
28

1 Department of Toxic Substances Control" and bearing the notation "Neutrogena Corporation,"
2 sent to:

3 Cashier
4 Accounting Office, MS-21 A
5 Department of Toxic Substances Control
6 P.O. Box 806
7 Sacramento, CA 95 812-0806

8 An electronic (i.e., Adobe PDF) copy or paper photocopy of each cashier's check shall be
9 sent, at the same time; to:

10 Sangat Kals, Section Chief
11 Statewide Emergency Response and Sacramento Enforcement Branch
12 Hazardous Waste Management Program
13 Department of Toxic Substances Control
14 8800 Cal Center Drive
15 Sacramento, CA 95826
16 Sangat.Kals@dtsc.ca.gov

17 Joseph Smith, Senior Staff Counsel
18 Office of Legal Counsel, MS-23A
19 Department of Toxic Substances Control
20 P.O. Box 806
21 Sacramento, CA 95812-0806
22 Joseph.Smith@dtsc.ca.gov

23 10. ENFORCEMENT

24 If the Department determines that Neutrogena has violated the terms of this Stipulation or
25 the Judgment, the Department will provide Neutrogena with written notice of the default. Such
26 written notice constitutes Neutrogena's notice of its reasonable opportunity to come into
27 compliance. If Neutrogena fails to come into compliance within thirty calendar days of the date
28 of the Department's notice or another time frame specified by the Department (whichever is
later), the Department may proceed to pursue all its rights and remedies to enforce the Judgment.
Notwithstanding the foregoing, nothing herein is intended, or shall it be construed, to preclude the
Department from initiating an enforcement action against Neutrogena as an alternative to
enforcement of this Stipulation and the Judgment for any violations of the HWCL not alleged to
date by the Department.

1 **11. NOTICES**

2 All notices under this Stipulation and the Judgment shall be in writing and shall be sent to:

3 For the Department:

4 Sangat Kals, Section Chief
5 Statewide Emergency Response and Sacramento Enforcement Branch
6 Hazardous Waste Management Program
7 Department of Toxic Substances Control
8 8800 Cal Center Drive
9 Sacramento, CA 95826-Sangat.Kals@dtsc.ca.gov

10 And

11 Joseph Smith, Senior Staff Counsel
12 Office of Legal Counsel, MS-23A
13 Department of Toxic Substances Control
14 P.O. Box 806
15 Sacramento, CA 95812-0806
16 Joseph.Smith@dtsc.ca.gov

17 For Neutrogena:

18 Jorge Castillo
19 Senior Environmental, Health, Safety, and Sustainability Manager
20 Neutrogena Corporation
21 5760 W. 96th St.
22 Los Angeles, CA 90045

23 And

24 David Sadwick, Esq.
25 Tatro Tekosky Sadwick LLP
26 333 South Grand Avenue, Suite 4270
27 Los Angeles, California 90071
28 dsadwick@ttsmlaw.com

 All approvals and decisions regarding any matter requiring approvals or decisions under the terms of this Stipulation and the Judgment shall also be communicated in writing to the persons listed above. Each Party may change its respective representative(s) for purposes of notice by providing the name and address of the new representative, in writing, to both Parties. Any such change will take effect within seven calendar days of the date of the written notice.

12. AUTHORITY TO ENTER STIPULATION

 Each signatory to this Stipulation certifies that he or she is fully authorized by the Party he or she represents to enter into this Stipulation, to execute it on behalf of the party represented, and to legally bind that Party.

1 **13. EFFECT OF STIPULATION AND JUDGMENT**

2 Except as expressly provided in this Stipulation, nothing in this Stipulation or the
3 Judgment is intended nor shall it be construed to preclude the Department, or any state, county, or
4 local agency, department, board or entity, including any CUPA, from exercising its authority
5 under any law, statute, or regulation.

6 **14. NO WAIVER OF RIGHT TO ENFORCE**

7 The failure of the Department to enforce any provision of the Stipulation or the Judgment
8 shall neither be deemed a waiver of such provision, nor in any way affect the validity of the
9 Stipulation or Judgment or the Department's enforcement authority. The failure of the
10 Department to enforce any such provision of this Stipulation or the Judgment shall not preclude it
11 from later enforcing the same or other provisions. No oral advice, guidance, suggestions, or
12 comments by employees or officials of the Department or Neutrogena, or people or entities acting
13 on behalf of Neutrogena, regarding matters covered in this Stipulation or the Judgment, shall be
14 construed to relieve Neutrogena of its obligations under this Stipulation or the Judgment.

15 **15. NO LIABILITY OF THE DEPARTMENT**

16 The Department shall not be liable for any injury or damage to persons or property
17 resulting from acts or omissions by Neutrogena or its agents, servants, employees,
18 representatives, or other persons acting in concert or participating with Neutrogena, in carrying
19 out activities pursuant to this Stipulation or the Judgment, nor shall the Department be held as a
20 party to or guarantor of any contract entered into by Neutrogena or its agents, servants,
21 employees, representatives, or other persons acting in concert or participating with Neutrogena, in
22 carrying out the requirements of this Stipulation or the Judgment.

23 **16. FUTURE REGULATORY CHANGES**

24 Nothing in this Stipulation or the Judgment shall excuse Neutrogena from meeting any
25 more stringent requirements that may be imposed by applicable law or by changes in the
26 applicable law. To the extent future statutory and regulatory changes make Neutrogena's
27 obligations less stringent than those provided for in this Stipulation or the Judgment, Neutrogena
28 (a) may stipulate with the Department to modify the obligations and submit such stipulation to

1 this Court for review and approval or (b) may apply to this Court by noticed motion to modify the
2 obligations contained herein.

3 **17. INTEGRATION**

4 This Stipulation and the Judgment constitute the entire agreement between the Parties, and
5 may not be amended or supplemented except as provided for in this Stipulation or in the
6 Judgment. No oral representations have been made or relied on other than as expressly set forth
7 herein.

8 **18. RETENTION OF JURISDICTION**

9 The Parties agree that the Court has continuing jurisdiction to interpret and enforce the
10 provisions of this Stipulation and the Judgment.

11 **19. EQUAL AUTHORSHIP**

12 This Stipulation shall be deemed to have been drafted equally by the Parties hereto. The
13 Parties agree that the rule of construction holding that ambiguity is construed against the drafting
14 party shall not apply to the interpretation of this Stipulation.

15 **20. AMENDMENTS TO THIS STIPULATION AND THE JUDGMENT**

16 This Stipulation and the Judgment may be amended only pursuant to a written agreement
17 signed by all the Parties, followed by written approval by the Court, or by order of the Court
18 following the filing of a duly noticed motion.

19 **21. COUNTERPARTS**

20 This Stipulation may be executed in several counterpart originals, all of which taken
21 together shall constitute an integrated document.

22 **22. ENTRY OF JUDGMENT PURSUANT TO STIPULATION**

23 The Parties further stipulate that upon approval of this Stipulation by the Court, the Court
24 may enter the Judgment in this matter in the form set forth in the attached Exhibit 1. The
25 "Effective Date" of the Judgment is the date the Judgment is entered by the Court. If the Court
26 does not approve this Stipulation and the Judgment in the form and substance proposed in Exhibit
27 1 hereto, each Party reserves the right to withdraw both the Stipulation and the Judgment upon
28 written notice to all Parties and the Court.

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IT IS SO STIPULATED.

Dated: November __, 2014

FOR THE DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

PAUL KEWIN
Division Chief, Enforcement and
Emergency Response Division
Department of Toxic Substances Control

Dated: November 12, 2014

FOR NEUTROGENA CORPORATION

Original signed by Michael Walker

MICHAEL WALKER
Vice President and Chief Financial Officer

APPROVED AS TO FORM.

Dated: November __, 2014

KAMALA D. HARRIS
Attorney General of California
SARAH E. MORRISON
Supervising Deputy Attorney General

THOMAS G. HELLER
Deputy Attorney General
*Attorneys for Plaintiff People of the State of
California, ex rel. Department of Toxic
Substances Control*

Dated: November 17, 2014

TATRO TEKOSKY SADWICK LLP

Original signed by David Sadwick

DAVID SADWICK
*Attorneys for Defendant Neutrogena
Corporation*

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IT IS SO STIPULATED.

Dated: November 19, 2014

FOR THE DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

Original signed by Paul Kewin

PAUL KEWIN
Division Chief, Enforcement and
Emergency Response Division
Department of Toxic Substances Control

Dated: November __, 2014

FOR NEUTROGENA CORPORATION

MICHAEL WALKER
Vice President and Chief Financial Officer

APPROVED AS TO FORM.

Dated: November 24, 2014

KAMALA D. HARRIS
Attorney General of California
SARAH E. MORRISON
Supervising Deputy Attorney General

Original signed by Thomas G. Heller

THOMAS G. HELLER
Deputy Attorney General.
*Attorneys for Plaintiff People of the State of
California, ex rel. Department of Toxic
Substances Control*

Dated: November __, 2014

TATRO TEKOSKY SADWICK LLP

DAVID SADWICK
*Attorneys for Defendant Neutrogena
Corporation*