

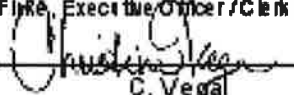
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FILED
Superior Court of California
County of Alameda

01/13/2023

Clerk of the Court, Executive Officer / Clerk of the Court

By:  Deputy
C. Vega

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 TARGET CORPORATION,

15 Defendants.

Case No.: RG20068380

~~PROPOSED~~ CONSENT
JUDGMENT

Judge: Eumi Lee

Dept.: 512

Hearing Date: January 13, 2023

Hearing Time: 9:00 AM

Reservation #: 161956053676

Electronically Received 10/10/2022 12:35 PM

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1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro (“Ferreiro” or “Plaintiff”) and Marit, LLC f/k/a Ecoco (“Ecoco”) on its own behalf and on
4 behalf of EStyle Corp., LLC (“EStyle”). Collectively herein, Ecoco and Estyle may be referred to
5 as “Defendants.” Plaintiff and Defendants may collectively be referred to as the “Parties” and each
6 of them as a “Party.” Ferreiro alleges that he is an individual residing in California that seeks to
7 promote awareness of exposures to toxic chemicals and improve human health by reducing or
8 eliminating hazardous substances contained in consumer products. Defendants are alleged to be
9 people in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
10 §§ 25249.6 et seq.

11 1.2 **Allegations and Representations.** Ferreiro alleges that Eco Style Argan oil gels
12 have exposed individuals to diethanolamine (DEA) without being provided a clear and reasonable
13 exposure warning pursuant to Proposition 65. DEA is listed under Proposition 65 as a chemical
14 known to the State of California to cause cancer.

15 1.3 **Notices of Violation/Complaints.**

16 1.3.1 On July 5, 2019, Ferreiro served Ecoco, Target Brands, Inc., Target
17 Corporation (collectively, “Target”), and various public enforcement agencies with documents
18 each entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the
19 “Ferreiro Notice”) alleging that Ecoco and Target violated Proposition 65 for failing to warn
20 consumers and customers that use of Ecoco cosmetics expose users in California to DEA.

21 1.3.2 On July 20, 2020, Ferreiro filed a complaint against Target (the
22 “Complaint”) to prosecute claims alleged in the Ferreiro Notice.

23 1.3.3 On March 9, 2021, Ferreiro filed an amended complaint (the “Amended
24 Complaint”) to add Ecoco as a defendant in the litigation. The Complaint and Amended Complaint
25 shall be referred to collectively herein as, the “Action.”

26 1.3.4 This settlement is entered into among the Parties as a settlement of all claims
27 brought by Plaintiff in the Ferreiro Notice served on Ecoco and Target, and each of their affiliates
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1 and subsidiaries regarding alleged exposures to DEA from use of Products (defined herein)
2 supplied by Ecoco or its affiliates.

3 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
4 jurisdiction over Defendants as to the allegations contained in the Action filed in this matter, that
5 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
6 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
7 claims which were or could have been raised in the Action based on the facts alleged therein and/or
8 in the Notice.

9 1.5 Defendants deny the material allegations contained in the Ferreiro Notice and
10 Action and maintain that they have not violated Proposition 65. Nothing in this Consent Judgment
11 shall be construed as an admission by Defendants of any fact, finding, issue of law, or violation of
12 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
13 by Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being
14 specifically denied by Defendants. However, this section shall not diminish or otherwise affect the
15 obligations, responsibilities, and duties of Defendants under this Consent Judgment.

16 **2. DEFINITIONS**

17 2.1 **Covered Products.** The term “Covered Products” means Eco Style Argan oil gels
18 that are manufactured, distributed and/or offered for sale in California by Defendants.

19 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
20 entered as a Judgment of the Court.

21 **3. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

22 3.1 **Reformulation of Covered Products.** Commencing September 1, 2022, and
23 continuing thereafter, Covered Products that Defendants directly manufacture, import, distribute,
24 sell, or offer for sale in California shall either: (a) be DEA Free Reformulated Products pursuant to
25 § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and
26 3.4, below. For purposes of this Consent Judgment, a “DEA Free Reformulated Product” is a
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1 Covered Product that complies with the standard set forth in § 3.2 below. The warning requirement
2 set forth in §§ 3.3 and 3.4 shall not apply to any DEA Free Reformulated Product.

3 **3.2 DEA Free Reformulation Standard.** “DEA Free Reformulated Product” shall
4 mean Covered Product with DEA content that is either not detectable (i.e., zero) or below the
5 Reporting Limit (defined herein) when analyzed pursuant to liquid chromatography/tandem mass
6 spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy (ICP-MS) or other method of
7 analysis utilized by the International Organization for Standardization (ISO) for qualitative and
8 quantitative screening of cosmetics and cosmetic raw materials.

9 **3.2.1 Reporting Limit.** The “Reporting Limit” is the lowest concentration at
10 which DEA can be detected in a sample of a Covered Product by an accredited testing laboratory
11 employing LC/MS/MS analysis or other reliable method of analysis utilized by the ISO for
12 qualitative and quantitative screening of cosmetics and cosmetic raw materials.

13 **3.3 Clear and Reasonable Warning.** Commencing September 1, 2022, and continuing
14 thereafter, Defendants must provide a clear and reasonable exposure warning as set forth in this §§
15 3.3 and 3.4 for each Covered Product that such Defendant manufacturers, imports, distributes, sells,
16 or offers for sale in California that is not a DEA Free Reformulated Product. There shall be no
17 obligation for Defendants to provide a warning for any Covered Product that enters the stream of
18 commerce prior to the Effective Date. The warning shall consist of either the **Warning** or
19 **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

20 (a) **Warning.** The “Warning” shall consist of the statement:

21 **⚠ WARNING:** This product can expose you to chemicals including
22 diethanolamine (DEA), which is known to the State of California to cause cancer.
23 For more information go to www.P65Warnings.ca.gov.

24 (b) **Alternative Warning:** Defendants may, but are not required to, use the alternative
25 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

26 **⚠ WARNING:** Cancer - www.P65Warnings.ca.gov.

27 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
28 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to

1 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
2 triangle with a black outline, except that if the sign or label for the Covered Product does not use
3 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
4 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
5 Covered Product’s packaging or labeling, providing that the warning is displayed with such
6 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
7 read and understood by an ordinary individual under customary conditions of purchase or use. A
8 warning may be contained in the same section of the packaging, labeling, or instruction booklet
9 that states other safety warnings, if any, concerning the use of the Covered Product and shall be at
10 least the same size as those other safety warnings.

11 If Defendants sell Covered Products via an internet website to customers located in
12 California, the warning requirements of this section shall be satisfied if the foregoing warning
13 appears either: (a) on the same web page on which Covered Products are displayed and/or
14 described; (b) on the same page as the price for the Covered Products; or (c) on one or more web
15 pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a
16 symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear
17 adjacent to or immediately following the display, description, price, or checkout listing of the
18 Covered Products, if the warning statement appears elsewhere on the same web page in a manner
19 that clearly associates it with the product(s) to which the warning applies. Defendants shall instruct
20 any third party internet sellers to provide the warning as a condition of sale of the Covered Product.

21 **3.5 Compliance with Warning Regulations.** The Parties agree that Defendants shall
22 be deemed in compliance with the warning requirements in this Consent Judgment, to the degree
23 necessary, by either adhering to §§ 3.3 and 3.4 of this Consent Judgment or by complying with
24 warning requirements adopted by the State of California’s Office of Environmental Health Hazard
25 Assessment (“**OEHHA**”) applicable to the product and the exposure at issue after the Effective
26 Date.

1 3.6 **Separate Liability.** Ecoco and Estyle are separately agreeing to comply with the
2 terms of this Consent Judgment. Nothing herein is intended to create joint liability or common
3 obligations between the two companies. Except as indicated herein, each obligation assumed by
4 Defendants is intended to be an individual obligation.

5 4. **MONETARY TERMS**

6 4.1 **Civil Penalty.** Ecoco shall pay \$16,000.00 as a Civil Penalty pursuant to Health and
7 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
8 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
9 Penalty remitted to Plaintiff, as provided by California Health & Safety Code § 25249.12(d).

10 4.1.1 Within ten (10) days of the Effective Date, Ecoco shall issue two separate
11 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$12,000.00; and to (b)
12 “Brodsky Smith, LLC in Trust for Ferreiro” in the amount of \$4,000.00. Payment owed to Plaintiff
13 pursuant to this Section shall be delivered to the following payment address:

14 Evan J. Smith, Esquire
15 Brodsky Smith, LLC
16 Two Bala Plaza, Suite 805
17 Bala Cynwyd, PA 19004

18 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
19 to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following address(es):

20 For United States Postal Service Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 P.O. Box 4010
25 Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
29 Office of Environmental Health Hazard Assessment
30 1001 I Street
31 Sacramento, CA 95814

1 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith, LLC at the address set
2 forth above as proof of payment to OEHHA.

3 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Ecoco shall pay
4 \$63,000.00 to Brodsky Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff's
5 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Defendants'
6 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
7 interest, pursuant to Code of Civil Procedure § 1021.5.

8 **5. RELEASE OF ALL CLAIMS**

9 5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiff
10 acting on his own behalf, and on behalf of the public interest, and Defendants, and their respective
11 parents, subsidiaries, shareholders, affiliates and each of their members, directors, officers,
12 managers, employees, representatives, agents, attorneys, divisions, subdivisions, and their
13 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
14 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
15 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
16 retailers, franchisees, and cooperative members, including, without limitation, the Target
17 Corporation and Target Brands, Inc., (collectively "Downstream Releasees"), of all claims for
18 violations of Proposition 65 based on exposure to DEA from Covered Products as set forth in the
19 Action, with respect to any Covered Products manufactured, distributed, or sold by Defendants
20 prior to September 1, 2022. It is the Parties' intention that this Consent Judgment shall have
21 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,
22 her, or its interests or the public interest shall be permitted to pursue and/or take any action with
23 respect to any violation of Proposition 65 that was alleged in the Action, or that could have been
24 brought pursuant to the Notice against Defendants and/or the Downstream Releasees of the
25 Covered Products ("Proposition 65 Claims"). The Parties agree that compliance with the terms of
26 this Consent Judgment constitutes compliance with Proposition 65 based on exposure to DEA from
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1 use of the Covered Products as set forth in the Notice/Complaint. Third party internet sellers who
2 do not provide a warning in compliance with §§ 3.4, above are expressly not covered by this release.

3 5.2 In addition to the foregoing, Plaintiff, on behalf of himself, his past and current
4 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
5 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
6 legal action and releases Defendants, Defendant Releasees, and Downstream Releasees, from any
7 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
8 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
9 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
10 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
11 from Covered Products manufactured, distributed, or sold by Defendants, Defendant Releasees or
12 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
13 Plaintiff specifically waives any and all rights and benefits he now has, or in the future may have,
14 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
15 follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
17 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
18 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
19 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
20 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
21 DEBTOR OR RELEASED PARTY.

22 5.3 Defendants waive any and all claims against Plaintiff, his attorneys and other
23 representatives, for any and all actions taken, or statements made (or those that could have been
24 taken or made) by Plaintiff and his attorneys and other representatives, whether in the course of
25 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this Action,
26 and/or with respect to exposure to DEA from use of Covered Products.

27 **6. INTEGRATION**

28 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
prior negotiations and understandings related hereto shall be deemed to have been merged within

1 it. No representations or terms of agreement other than those contained herein exist or have been
2 made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
6 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendants shall
7 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
8 that, Covered Products are so affected.

9 **8. NOTICES**

10 8.1 Unless specified herein, all correspondence and notices required to be provided
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
12 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
13 by the other party at the following addresses:

14 For Defendants:

15 Ari N. Rothman
16 Venable LLP
17 600 Massachusetts Avenue, NW
18 Washington, DC 20001
19 ANRothman@Venable.com

Todd A. Harrison
Venable LLP
600 Massachusetts Avenue, NW
Washington, DC 20001
ANRothman@Venable.com

20 For Plaintiff:

21 Evan Smith
22 Brodsky Smith, LLC
23 9595 Wilshire Blvd., Ste. 900
24 Beverly Hills, CA 90212

25 Any party, from time to time, may specify in writing to the other party a change of address to which
26 all notices and other communications shall be sent.

27 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

28 9.1 This Consent Judgment may be executed in counterparts and by facsimile or
electronically (such as by PDF), each of which shall be deemed an original, and all of which, when
taken together, shall constitute one and the same document.

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 10.1 Plaintiff agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendants agree they shall not oppose such Motion unless such Motion is materially inconsistent
6 with the terms of this Consent Judgment.

7 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
8 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
9 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
10 days, the case shall proceed on its normal course.

11 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
12 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
13 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
14 its normal course on the trial court's calendar.

15 **11. MODIFICATION**

16 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
17 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.
18 Notwithstanding the foregoing, if Plaintiff, the Attorney General, or any public enforcer
19 represented by Brodsky Smith agrees to terms in a judicially entered consent judgment with any
20 manufacturer of cosmetics as defined by California Health and Safety Code 109900 which permits
21 a higher level of DEA in cosmetics without requiring an exposure warning, the Parties agree that
22 Defendants shall be deemed in compliance with the terms of this Consent Judgment if they elect to
23 adhere to such reformulation terms as provided in such other DEA judicially entered consent
24 judgment.

25 **12. ATTORNEY'S FEES**

26 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
27 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.
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13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 10/10/2022

Date: Aug 12 / 2022

By: Anthony Ferrero
ANTHONY FERRERO

By: John Richard Howe
ESTYLE CORP, LLC.

AGREED TO:

Date: 9.13.2022

By: [Signature]
MARIT, LLC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 01/13/2023

[Signature]
Judge of Superior Court
Eumi Lee / Judge