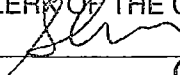


DEC 22 2021

CLERK OF THE COURT

BY:  Deputy Clerk

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Evan Smith (Bar No. SBN 242352)  
BRODSKY & SMITH, LLC.  
9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212  
Tel: (877) 534-2590  
Fax: (310) 247-0160

*Attorneys for Plaintiff*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

ANTHONY FERREIRO,  
Plaintiff,

v.

AMERICAN CREW, INC., TARGET  
CORPORATION,  
Defendants.

Case No.: CGC-20-585325

**[PROPOSED] CONSENT  
JUDGMENT**

Judge: Ethan P. Schulman  
Dept.: 302  
Hearing Date: December 22, 2021  
Hearing Time: 9:30 AM  
Reservation #:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**1. INTRODUCTION**

1.1 **The Parties.** This Consent Judgment is entered into by and between Ema Bell (“Bell” or “Plaintiff”) and Revlon, Inc. (“Revlon” or “Defendant”) with Plaintiff and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Plaintiff is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Revlon is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Plaintiff alleges that Defendant has exposed individuals to diethanolamine (DEA) from its sales of mascara and similar eye makeup products without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEA is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 **Notices of Violation/Complaints.**

1.3.1 On July 8, 2020, Ferreiro filed a complaint (the “Complaint”).

1.3.2 On October 15, 2020, Bell served Revlon Consumer Products Corporation, Revlon, Inc. (collectively, and together with American Crew, “Revlon”), Almay, Inc. (“Almay”), Ulta Salon, Cosmetics & Fragrances, Inc., Ulta Beauty, Inc. (collectively, “Ulta Beauty”), and various public enforcement agencies with documents each entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”) alleging that Revlon, Almay and Ulta Beauty violated Proposition 65 for failing to warn consumers and customers that use of Revlon mascara and similar eye makeup products expose users in California to DEA.

1.3.3 No public enforcer has brought and is diligently prosecuting the claims alleged in the Bell Notice. On February 12, 2021, Ferreiro filed an amended complaint (the “Amended Complaint”) in order to add Bell as plaintiff, and claims alleged in the Notice to the litigation. The Complaint and Amended Complaint shall be referred to collectively herein as, the “Action.”

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1.3.4 This settlement is entered into among the Parties as a global settlement of all claims brought by Plaintiff in the Notice served on Revlon, Ulta Beauty and each of their affiliates and subsidiaries regarding alleged exposures to DEA from use of Covered Products (defined herein) supplied by Revlon or its affiliates.

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

1.5 Defendant denies the material allegations contained in the Notice and Action and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

## 2. DEFINITIONS

2.1 **Covered Products.** The term "Covered Products" means mascara and similar eye makeup products, as set forth on Exhibit A, that are manufactured, distributed, offered for sale and/or sold in California by Revlon.

2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is entered as a Judgment of the Court.

## 3. INJUNCTIVE RELIEF: WARNINGS

3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is signed by both Parties, and continuing thereafter, Covered Products that Revlon directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be DEA

1 Free Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
2 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
3 “DEA Free Reformulated Product” is a Covered Product that complies with the standard set forth  
4 in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any  
5 Reformulated Product.

6           **3.2 DEA Free Reformulation Standard.** To qualify as a “DEA Free Reformulated  
7 Product” the Covered Product must meet the following standard: DEA content that is either (i) not  
8 detectable (i.e., zero) or below the Reporting Limit (defined herein) when measured in the Covered  
9 Product; or (ii) less than or equal to one-tenth of one percent (0.1%) in any triethanolamine-  
10 containing ingredient in the Covered Product, in each case when analyzed pursuant to liquid  
11 chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy  
12 (ICP-MS) or other method of analysis utilized by the International Organization for Standardization  
13 (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw materials. Defendant  
14 has no intention of increasing the levels of TEA in its Covered Products following the Effective  
15 Date and agrees that any increase of TEA in its Covered Products following the Effective Date shall  
16 not exceed 12,000 mg/kg and shall at all times comply with the “DEA Free Reformulated Product”  
17 standard identified herein.

18           **3.2.1 Reporting Limit.** The “Reporting Limit” is the lowest concentration at  
19 which DEA can be detected in a sample of a Product by an accredited testing laboratory employing  
20 LC/MS/MS analysis or other method of analysis utilized by the ISO for qualitative and quantitative  
21 screening of cosmetics and cosmetic raw materials.

22           **3.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing  
23 thereafter, Revlon must provide a clear and reasonable exposure warning as set forth in this §§ 3.3  
24 and 3.4 for all Covered Products that Defendant manufacturers, imports, distributes, sells, or offers  
25 for sale in California that is not a DEA Free Reformulated Product. There shall be no obligation for  
26 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to  
27

28

1 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**  
2 described in §§ 3.3(a) or (b), respectively:

3 (a) **Warning.** The "Warning" shall consist of the statement:

4 **⚠ WARNING:** This product can expose you to chemicals including  
5 diethanolamine (DEA), which is known to the State of California to cause cancer.  
6 For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

7 (b) **Alternative Warning:** Revlon may, but is not required to, use the alternative short-  
8 form warning as set forth in this § 3.3(b) ("**Alternative Warning**") as follows:

9 **⚠ WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

10 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word  
11 "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to  
12 the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral  
13 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
14 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
15 than the height of the word "**WARNING:**". The warning shall be affixed to or printed on the  
16 Covered Product's packaging or labeling, providing that the warning is displayed with such  
17 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
18 read and understood by an ordinary individual under customary conditions of purchase or use. A  
19 warning may be contained in the same section of the packaging, labeling, or instruction booklet  
20 that states other safety warnings, if any, concerning the use of the Covered Product and shall be at  
21 least the same size as those other safety warnings.

22 If Revlon sells Covered Products via an internet website to customers located in California,  
23 the warning requirements of this section shall be satisfied if the foregoing warning appears either:

24 (a) on the same web page on which Covered Products are displayed and/or described; (b) on the  
25 same page as the price for the Covered Products; or (c) on one or more web pages displayed to a  
26 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a  
27 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or  
28 immediately following the display, description, price, or checkout listing of the Covered Products,

1 if the warning statement appears elsewhere on the same web page in a manner that clearly associates  
2 it with the product(s) to which the warning applies.

3           **3.5 Compliance with Warning Regulations.** The Parties agree that Defendant shall be  
4 deemed in compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this  
5 Consent Judgment or by complying with warning requirements adopted by the State of California's  
6 Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

7 **4. MONETARY TERMS**

8           **4.1 Civil Penalty.** Revlon shall pay \$11,000.00 as a Civil Penalty pursuant to Health  
9 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
10 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
11 Civil Penalty remitted to Plaintiff, as provided by California Health & Safety Code § 25249.12(d).

12           **4.1.1** Within ten (10) days of the Effective Date, Revlon shall issue two separate  
13 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$8,250.00; and to (b)  
14 "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$2,750.00. Payment owed to Plaintiff  
15 pursuant to this Section shall be delivered to the following payment address:

16           Evan J. Smith, Esquire  
17           Brodsky & Smith, LLC  
18           Two Bala Plaza, Suite 805  
19           Bala Cynwyd, PA 19004

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

22           For United States Postal Service Delivery:

23           Mike Gyurics  
24           Fiscal Operations Branch Chief  
25           Office of Environmental Health Hazard Assessment  
26           P.O. Box 4010  
27           Sacramento, CA 95812-4010  
28

1 For Non-United States Postal Service Delivery:

2 Mike Gyurics  
3 Fiscal Operations Branch Chief  
4 Office of Environmental Health Hazard Assessment  
5 1001 I Street  
6 Sacramento, CA 95814

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

9 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Revlon shall pay  
10 \$63,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff's  
11 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Revlon  
12 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
13 interest, pursuant to Code of Civil Procedure § 1021.5.

14 **5. RELEASE OF ALL CLAIMS**

15 5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiff  
16 acting on her own behalf, and on behalf of the public interest, and Revlon, and its parents,  
17 subsidiaries, shareholders, affiliates and each of their members, directors, officers, managers,  
18 employees, representatives, agents, attorneys, divisions, subdivisions, and their predecessors,  
19 successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to  
20 whom they directly or indirectly distribute or sell Covered Products, including but not limited to  
21 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,  
22 franchisees, and cooperative members, ("Downstream Releasees"), of all claims for violations of  
23 Proposition 65 based on exposure to DEA from Covered Products as set forth in the Notice, with  
24 respect to any Covered Products manufactured, distributed, or sold by Revlon prior to the Effective  
25 Date. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that  
26 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the  
27 public interest shall be permitted to pursue and/or take any action with respect to any violation of  
28 Proposition 65 that was alleged in the Action, or that could have been brought pursuant to the  
Notice against Revlon and/or the Downstream Releasees of the Covered Products ("Proposition 65

1 Claims"). The Parties agree that compliance with the terms of this Consent Judgment constitutes  
2 compliance with Proposition 65 as to the Covered Products.

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

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

19 5.3 Revlon waives any and all claims against Plaintiff, her attorneys and other  
20 representatives, for any and all actions taken, or statements made (or those that could have been  
21 taken or made) by Plaintiff and her attorneys and other representatives, whether in the course of  
22 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
23 and/or with respect to Covered Products.

24 6. **INTEGRATION**

25 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all  
26 prior negotiations and understandings related hereto shall be deemed to have been merged within  
27 it. No representations or terms of agreement other than those contained herein exist or have been  
28 made by any Party with respect to the other Party or the subject matter hereof.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**7. GOVERNING LAW**

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

**8. NOTICES**

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

For Defendant:

Alexandra Gerber  
SVP and Asst. General Counsel  
Revlon  
One New York Plaza  
New York, NY 10004

With a copy to:

William F. Tarantino  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105

For Plaintiffs:

Evan Smith  
Brodsky & Smith, LLC  
9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

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

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

9.1 This Consent Judgment may be executed in counterparts and by facsimile, 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 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.  
17 Notwithstanding the foregoing, if Plaintiff, the Attorney General, or any public enforcer  
18 represented by Brodsky & Smith agree to terms in a settlement or judicially entered consent  
19 judgment with any manufacturer of Covered Products which permits a higher level of DEA in  
20 Covered Products without requiring an exposure warning, the Parties agree that Defendant shall be  
21 deemed in compliance with the terms of this Consent Judgment and Proposition 65 if it elects to  
22 adhere to such reformulation terms as provided in such other DEA settlement or judicially entered  
23 consent judgment. At a Party's request, the Parties agree to cooperate to modify this agreement to  
24 conform to a subsequently entered settlement.

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.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**13. RETENTION OF JURISDICTION**

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

**14. AUTHORIZATION**

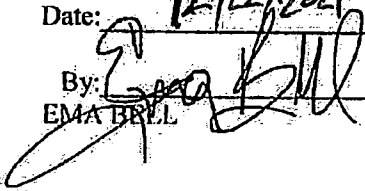
14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment 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: 12/12/2021

Date: \_\_\_\_\_

By:   
EMMA BREL

By: \_\_\_\_\_  
REVLON, INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**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: \_\_\_\_\_

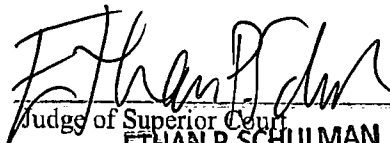
Date: \_\_\_\_\_

By: \_\_\_\_\_  
EMA BELL

By: Alexandra Gerber  
REVLON, INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: Dec. 22, 2021

  
Judge of Superior Court  
**ETHAN P. SCHULMAN**

**EXHIBIT A**

4290694000	ALM OC MKP MULTI BENEFIT MASC BLK BROWN
4290693000	ALM OC MULTI BENEFIT MASC BLK
4290692000	ALM OC MULTIBENEFIT MASC BLACKEST BLK
4285297000	RV BOLD LQ MASC/ VOL&LEN BLKND BRN
4285296000	RV BOLD LQ MASC /VOL&LEN BLK
4285295000	RV BOLD LQ MASC/ VOL&LEN BLKST BLK
4293952000	ALM MEGA VOL NWP MSC 001 BBLK
4294440000	MEGA VOL NWP MASC BLACK
4294441000	MEGA VOL NWP MASC BLK BROWN