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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 THE PROCTOR & GAMBLE COMPANY, et  
15 al.,

16 Defendant.

Case No.: RG19035212

**CONSENT JUDGMENT**

Judge: Frank Roesch

Dept.: 17

Hearing Date: May 5, 2022

Hearing Time: 3:30 PM

Reservation #: 194233715899

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**1. INTRODUCTION**

1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and The Procter & Gamble Company (“P&G” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro 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. P&G 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.** Ferreiro alleges that Defendant has exposed individuals to diethanolamine (DEA) from its sales of hair care 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 **Notice of Violation/Complaint.** On or about September 18, 2018, Ferreiro served P&G, and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of hair care products including, but not limited to, Aussie Mega Gel (the “Noticed Product”) expose users in California to DEA. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On September 16, 2019, Ferreiro filed a complaint (the “Complaint”) in the matter.

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 Complaint filed in this matter, that venue is proper in the County of Alameda, 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 Complaint based on the facts alleged therein and/or in the Notice.

1           1.5 Defendant denies the material allegations contained in Ferreiro’s Notice and  
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment  
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of  
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the  
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9           2.1 **Covered Products.** The term “Covered Products” means Hair Care Products  
10 including but not limited to, Aussie Mega Gel, that are manufactured, distributed and/or offered for  
11 sale in California by P&G.

12           2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment  
13 is entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: STOP SALE, REFORMULATION AND WARNINGS**

15           3.1 **No Continuation of Sale of the Noticed Product.** As of the Effective Date, and  
16 continuing thereafter, the Noticed Product will not be distributed or sold in California by Defendant  
17 unless the Noticed Product (a) complies with the Reformulation Standard pursuant to § 3.3, below;  
18 or (b) is labeled with a clear and reasonable exposure warning pursuant to §§ 3.4 and 3.5, below.

19           3.2 **Reformulation of Covered Products.** As of the date this Consent Judgment is  
20 signed by both Parties, and continuing thereafter, Covered Products other than the Noticed Product  
21 that P&G directly manufactures, imports, distributes, sells, or offers for sale in California shall  
22 either: (a) be Reformulated Products pursuant to § 3.3, below; or (b) be labeled with a clear and  
23 reasonable exposure warning pursuant to §§ 3.4 and 3.5, below. For purposes of this Consent  
24 Judgment, a “Reformulated Product” is a Covered Product that is in compliance with the standard  
25 set forth in § 3.3 below. The warning requirement set forth in §§ 3.4 and 3.5 shall not apply to any  
26 Reformulated Product.

1           3.3     **Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
2 with DEA concentrations of less than or equal to six-tenths of one percent (0.6%) in a  
3 triethanolamine (“TEA”) ingredient in Covered Products, based on material specification limits  
4 established by P&G and communicated by P&G to the ingredient supplier, and with concentrations  
5 of TEA of less than or equal to seven percent (7%) in the final Covered Product. TEA ingredient  
6 shall include but is not limited to triethanolamine or triethanolamine salts or the use of a material  
7 that contains triethanolamine or triethanolamine salts.

8           3.4     **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
9 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
10 this §§ 3.4 and 3.5 must be provided for all Covered Products that Defendant manufacturers,  
11 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There  
12 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream  
13 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall  
14 consist of either the **Warning** or **Alternative Warning** described in §§ 3.4(a) or (b), respectively:

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

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

19           (b)     **Alternative Warning:** P&G may, but is not required to, use the alternative short-  
20 form warning as set forth in this § 3.4(b) (“**Alternative Warning**”) as follows:

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

22           3.5     A **Warning** or **Alternative Warning** provided pursuant to § 3.4 must print the word  
23 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
24 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
25 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
26 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
27 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the  
28 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or

1 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
2 with other words, statements, or designs as to render it likely to be read and understood by an  
3 ordinary individual under customary conditions of purchase or use. A warning may be contained  
4 in the same section of the packaging, labeling, or instruction booklet that states other safety  
5 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
6 those other safety warnings.

7 If P&G sells Covered Products via an internet website to customers located in California,  
8 the warning requirements of this section shall be satisfied if the foregoing warning appears either:  
9 (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the  
10 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a  
11 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a  
12 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or  
13 immediately following the display, description, price, or checkout listing of the Covered Product,  
14 if the warning statement appears elsewhere on the same web page in a manner that clearly associates  
15 it with the product(s) to which the warning applies.

16 3.6 **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
17 compliance with this Consent Judgment by either adhering to §§ 3.4 and 3.5 of this Consent  
18 Judgment or by complying with warning requirements adopted by the State of California's Office  
19 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

#### 20 4. **MONETARY TERMS**

21 4.1 **Civil Penalty.** P&G shall pay \$5,000.00 as a Civil Penalty pursuant to Health and  
22 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
23 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil  
24 Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

25 4.1.1 Within ten (10) days of the Effective Date, P&G shall issue two separate  
26 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$3,750.00; and to (b)  
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1 “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$1,250.00 . Payment owed to  
2 Ferreiro pursuant to this Section shall be delivered to the following payment address:

3 Evan J. Smith, Esquire  
4 Brodsky & Smith, LLC  
5 Two Bala Plaza, Suite 510  
6 Bala Cynwyd, PA 19004

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

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

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

23 4.2 **Attorneys’ Fees.** Within forty five (45) days of the Effective Date, P&G shall pay  
24 \$50,000.00 to Brodsky & Smith, LLC (“Brodsky Smith”) as complete reimbursement for Ferreiro’s  
25 attorneys’ fees and costs incurred as a result of investigating, bringing this matter to P&G attention,  
26 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,  
27 pursuant to Code of Civil Procedure § 1021.5.

28 **5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
acting on his own behalf, and on behalf of the public interest, and P&G, and its parents,  
shareholders, members, directors, officers, managers, employees, representatives, agents,  
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their

1 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they  
2 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
3 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
4 retailers, franchisees, and cooperative members, including Walgreen Co. (“Walgreens”),  
5 (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to DEA  
6 from Covered Products as set forth in the Notice, with respect to any Covered Products  
7 manufactured, distributed, or sold by P&G prior to the Effective Date. It is the Parties’ intent that  
8 this Consent Judgment shall have preclusive effect such that no other person or entity, whether  
9 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or  
10 take any action with respect to any violation of Proposition 65 that was alleged in the Complaint,  
11 or that could have been brought pursuant to the Notice against P&G and/or the Downstream  
12 Releasees of the Covered Products (“Proposition 65 Claims”). Compliance with the terms of this  
13 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

14           5.2     In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
15 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative  
16 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
17 legal action and releases P&G, Defendant Releasees, and Downstream Releasees, including  
18 Walgreens, from any and all manner of actions, causes of action, claims, demands, rights, suits,  
19 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,  
20 expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed  
21 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related  
22 to or arising from Covered Products manufactured, distributed, or sold by P&G, Defendant  
23 Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this  
24 paragraph, Ferreiro hereby specifically waives any and all rights and benefits which he now has, or  
25 in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code,  
26 which provides as follows:

27           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
28           CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

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EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.

5.3 P&G waives any and all claims against Ferreiro, his attorneys and other  
representatives, for any and all actions taken or statements made (or those that could have been  
taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of  
investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
and/or with respect to Covered Products.

**6. INTEGRATION**

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

**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:

Elizabeth V. McNulty  
Evans, Fears & Schutttert, LLP  
4440 Von Karman Avenue, Suite 250  
Newport Beach, Ca. 92660

And



1 For Ferreiro:

2 Evan Smith  
3 Brodsky & Smith, LLC  
4 9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

8 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
10 the same document.

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

13 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
14 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
15 Defendant agrees it shall support approval of such Motion.

16 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
17 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
18 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
19 days, the case shall proceed on its normal course.

20 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
21 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
22 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
23 its normal course on the trial court's calendar.

24 10.4 Within fifteen (15) calendar days of the Effective Date, Ferreiro shall file a request  
25 for dismissal without prejudice of Walgreens in this action.

26 **11. MODIFICATION**

27 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
28 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

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**12. ATTORNEY'S FEES**

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

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: 11/16/2021 \_\_\_\_\_

By: \_\_\_\_\_  
ANTHONY FERREIRO

By:  \_\_\_\_\_  
THE PROCTER & GAMBLE COMPANY

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

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

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

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**AGREED TO:**

**AGREED TO:**

Date: 3/14/22

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

By: Anthony Ferreiro  
ANTHONY FERREIRO

By: \_\_\_\_\_  
THE PROCTER & GAMBLE COMPANY

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

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

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