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

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 SALON COMMODITIES, INC.,

15 Defendant.

Case No.: RG20

**CONSENT JUDGMENT**

Judge: Julia Spain

Dept.: 520

Hearing Date: August 5, 2020

Hearing Time: 2:00 PM

Reservation #: R-2181349

1           **1. INTRODUCTION**

2           **1.1 The Parties.** This Consent Judgment is entered into by and between Anthony  
3           Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and Salon Commodities, Inc.  
4           (“Salon Commodities” or “Defendant”) with Ferreiro and Defendant collectively referred to as the  
5           “Parties” and each of them as a “Party.” Ferreiro is an individual residing in California that seeks  
6           to promote awareness of exposures to toxic chemicals and improve human health by reducing or  
7           eliminating hazardous substances contained in consumer products. Salon Commodities is alleged  
8           to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety  
9           Code §§ 25249.6 et seq.

10           **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed  
11           individuals to diethanolamine (DEA) from its sales of As I Am™ Twist Defining Cream without  
12           providing a clear and reasonable exposure warning pursuant to Proposition 65. DEA is listed under  
13           Proposition 65 as a chemical known to the State of California to cause cancer.

14           **1.3 Notice of Violation/Complaint.** On or about June 28, 2019, Ferreiro served Salon  
15           Commodities, and various public enforcement agencies with documents entitled “60-Day Notice  
16           of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that  
17           Defendant violated Proposition 65 for failing to warn consumers and customers that use of As I  
18           Am™ Twist Defining Cream expose users in California to DEA. No public enforcer has brought  
19           and is diligently prosecuting the claims alleged in the Notice. On March 13, 2020, Ferreiro filed a  
20           complaint (the “Complaint”) in the matter.

21           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22           jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
23           venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,  
24           and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
25           claims which were or could have been raised in the Complaint based on the facts alleged therein  
26           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 As I Am™ Twist Defining  
10 Cream that are manufactured, distributed and/or offered for sale in California by Salon  
11 Commodities, and that expose users to DEA.

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

14           3. **INJUNCTIVE RELIEF: COMMITMENT TO REFORMULATE OR WARN**

15           3.1 **Reformulation or Labeling of Products.** Commencing within one year (365 days)  
16 after the Effective Date as defined in Section 2.2, and continuing thereafter, Salon Commodities  
17 shall only ship, sell, or offer for sale in California, reformulated Product pursuant to Section 3.2 or  
18 Product that is labeled with a clear and reasonable warning pursuant to Section 3.3. For purposes  
19 of this Consent Judgment, "Reformulated Product" includes As I Am™ Twist Defining Cream, as  
20 set forth in Section 2.1, that meets the Reformulation Standard set forth in Section 3.2.

21           3.2 **Reformulation Standard.** Reformulated Product shall meet or exceed the standards  
22 outlined in this section. Acceptable formulated and Reformulated Product is defined as Product  
23 which does not contain DEA in any accessible component (*i.e.*, any component that may be touched  
24 during a reasonably foreseeable use), when analyzed pursuant to any acceptable methodology used  
25 by any state or federal agency for determining DEA content in a substance.  
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1           3.3    **Clear and Reasonable Warning.** Commencing one year (365 days) after the  
2 Effective Date of this Consent Judgment, and continuing thereafter, Defendant shall provide a clear  
3 and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 for all Covered Products that  
4 Defendant manufactures, imports, distributes, sells, or offers for sale in California that are not a  
5 Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered  
6 Products that (i) enter the stream of commerce prior to one year (365 days) after the Effective Date  
7 of this Consent Judgment; or (ii) had entered the stream of commerce prior to the Effective Date of  
8 this Consent Judgment. The warning, if required, shall consist of either the **Warning** or **Alternative**  
9 **Warning** described in §§ 3.3(a) or (b), respectively:

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

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

14           (b)    **Alternative Warning:** Salon Commodities may, but is not required to, use the  
15 alternative short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) in place of the  
16 warning set forth in § 3.3(a) above, as follows:

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

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

3 If Salon Commodities sells Covered Products that are not a Reformulated Product via an  
4 internet website to customers located in California, the warning requirements of this section shall  
5 be satisfied if the foregoing warning appears either: (a) on the same web page on which a Covered  
6 Product is displayed and/or described; (b) on the same page as the price for the Covered Product;  
7 or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout  
8 process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white  
9 equilateral triangle may appear adjacent to or immediately following the display, description, price,  
10 or checkout listing of the Covered Product, if the warning statement appears elsewhere on the same  
11 web page in a manner that clearly associates it with the product(s) to which the warning applies.

12 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
13 compliance with this Consent Judgment by (1) adhering to §§ 3.3 and 3.4 of this Consent Judgment;  
14 (2) complying with warning requirements adopted by the State of California's Office of  
15 Environmental Health Hazard Assessment ("OEHHA") after the Effective Date; or (3) refraining  
16 from manufacturing, distributing, and/or offering for sale in California products that expose users  
17 to DEA, *i.e.*, by only shipping, selling, or offering for sale in California, Reformulated Product.  
18 Nothing in this Consent Judgment requires Salon Commodities to include any Proposition 65  
19 warnings on Reformulated Products, or any products that do not contain chemicals listed under  
20 Proposition 65, or on any products which contain such chemicals in concentrations at or below  
21 Proposition 65 "No Significant Risk Levels" and/or "Maximum Allowable Dose Levels."

22 **3.6 Formulated/Reformulation Commitment.** Commencing within one year (365  
23 days) after the Effective Date, Salon Commodities shall not knowingly manufacture, import,  
24 distribute, sell, or offer the Covered Products in the State of California unless it is a Reformulated  
25 Product pursuant to Section 3.2 or unless it contains a clear and reasonable warning pursuant to  
26 Sections 3.3 and 3.4.  
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1       **4. MONETARY TERMS**

2           **4.1 Civil Penalty.** Salon Commodities shall pay \$2,000.00 as a Civil Penalty pursuant  
3 to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California  
4 Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining  
5 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code  
6 § 25249.12(d).

7           **4.1.1** Within ten (10) days of the Effective Date, Salon Commodities shall issue two  
8 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and  
9 to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00. Payment owed to  
10 Ferreiro pursuant to this Section shall be delivered to the following payment address:

11           Evan J. Smith, Esquire  
12           Brodsky & Smith, LLC  
13           Two Bala Plaza, Suite 510  
13           Bala Cynwyd, PA 19004

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

16           For United States Postal Service Delivery:

17           Mike Gyurics  
18           Fiscal Operations Branch Chief  
18           Office of Environmental Health Hazard Assessment  
19           P.O. Box 4010  
19           Sacramento, CA 95812-4010

20           For Non-United States Postal Service Delivery:

21           Mike Gyurics  
22           Fiscal Operations Branch Chief  
22           Office of Environmental Health Hazard Assessment  
23           1001 I Street  
23           Sacramento, CA 95814

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

26           **4.2 Attorneys' Fees.** Within ten (10) days of the Effective Date, Salon Commodities  
27 shall pay \$23,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for  
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1 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to  
2 Salon Commodities' attention, and litigating, negotiating, and obtaining judicial approval of a  
3 settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

4 **5. RELEASE OF ALL CLAIMS**

5 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
6 acting on his own behalf, and on behalf of the public interest, and Salon Commodities, and its  
7 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,  
8 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, including  
9 but not limited to Avlon Industries, Inc., and their predecessors, successors and assigns ("Defendant  
10 Releasees"), and all entities from whom they obtain and to whom they directly or indirectly  
11 distribute or sell Covered Products, including but not limited to Target Corporation and Target  
12 Brands, Inc., and all other such manufacturers, suppliers, distributors, wholesalers, customers,  
13 licensors, licensees retailers, franchisees, and cooperative members ("Downstream Releasees"), of  
14 all claims for violations of Proposition 65 based on exposure to DEA from Covered Products as set  
15 forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by  
16 Salon Commodities prior to one year (365 days) after the Effective Date. This Consent Judgment  
17 shall have preclusive effect such that no other person or entity, whether purporting to act in his,  
18 her, or its interests or the public interest shall be permitted to pursue and/or take any action with  
19 respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have  
20 been brought pursuant to the Notice against Salon Commodities and/or the Downstream Releasees  
21 of the Covered Products ("Proposition 65 Claims"). Compliance with the terms of this Consent  
22 Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

23 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
24 agents, representatives, attorneys, and successors and/or assignees, and not in his representative  
25 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
26 legal action and releases Salon Commodities, Defendant Releasees, and Downstream Releasees  
27 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,  
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1 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
2 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
3 now or in the future, with respect to any alleged violations of Proposition 65 or of any other nature  
4 related to or arising from Covered Products manufactured, distributed, or sold by Salon  
5 Commodities, Defendant Releasees or Downstream Releasees. With respect to the foregoing  
6 waivers and releases in this paragraph, Ferreiro hereby specifically waives any and all rights and  
7 benefits which he now has, or in the future may have, conferred by virtue of the provisions of §  
8 1542 of the California Civil Code, which provides as follows:  
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10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
15 DEBTOR OR RELEASED PARTY.

16 5.3 Salon Commodities waives any and all claims against Ferreiro, his attorneys and  
17 other representatives, for any and all actions taken or statements made (or those that could have  
18 been taken or made) by Ferreiro and his attorneys and other representatives, whether in the course  
19 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
20 and/or with respect to Covered Products.

## 21 6. INTEGRATION

22 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
23 any and all prior negotiations and understandings related hereto shall be deemed to have been  
24 merged within it. No representations or terms of agreement other than those contained herein exist  
25 or have been made by any Party with respect to the other Party or the subject matter hereof.

## 26 7. GOVERNING LAW

27 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
28 California and apply within the State of California. In the event that 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.



1       **8. NOTICES**

2           8.1 Unless specified herein, all correspondence and notices required to be provided  
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
5 by the other party at the following addresses:

6 For Defendant:

7           Asa Markel  
8           MASUDA, FUNAI, EIFERT & MITCHELL, LTD.  
9           19191 S. Vermont Avenue, Suite 420  
            Torrance, CA 90502

10 And

11 For Ferreiro:

12           Evan Smith  
13           Brodsky & Smith, LLC  
14           9595 Wilshire Blvd., Ste. 900  
            Beverly Hills, CA 90212

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

17       **9. COUNTERPARTS; FACSIMILE SIGNATURES**

18           9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
19 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
20 the same document.

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

23           10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
24 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
25 Defendant agrees it shall support approval of such Motion.

26           10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
27 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
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1 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
2 days, the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
5 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
6 its normal course on the trial court's calendar.

7 **11. MODIFICATION**

8 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
9 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. ATTORNEY'S FEES**

11 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
12 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

13 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
14 pursuant to law.

15 **13. RETENTION OF JURISDICTION**

16 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
17 Consent Judgment.

18 **14. AUTHORIZATION**

19 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
20 respective Parties and have read, understood and agree to all of the terms and conditions of this  
21 document and certify that he or she is fully authorized by the Party he or she represents to execute  
22 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
23 explicitly provided herein each Party is to bear its own fees and costs.  
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**AGREED TO:**

Date: June 8, 2020  
By: Anthony Ferreiro  
ANTHONY FERREIRO

**AGREED TO:**

Date: 04/22/20  
By: [Signature]  
SALON COMMODITIES, INC.  
HASAN SYED

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

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

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