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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 AMERICAN CREW, INC., TARGET
15 CORPORATION,

16 Defendants.

Case No.: CGC-20-585325

**[PROPOSED] CONSENT
JUDGMENT**

Judge: Ethan P. Schulman
Dept.: 302
Hearing Date: May 26, 2021
Hearing Time: 9:30 AM
Reservation #:

1 **1. INTRODUCTION**

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

9 1.2 **Allegations and Representations.** Plaintiffs allege that Defendant has exposed
10 individuals to diethanolamine (DEA) from its sales of cosmetics (defined herein) without providing
11 a clear and reasonable exposure warning pursuant to Proposition 65. DEA is listed under
12 Proposition 65 as a chemical known to the State of California to cause cancer.

13 1.3 **Notices of Violation/Complaints.**

14 1.3.1 On July 18, 2019, Ferreiro served American Crew, Inc. (“American Crew”),
15 Target Brands, Inc., Target Corporation (collectively, “Target”), and various public enforcement
16 agencies with documents each entitled “Notice of Violation of California Health & Safety Code §
17 25249.6, et seq.” (the “Ferreiro Notice”) alleging that American Crew and Target violated
18 Proposition 65 for failing to warn consumers and customers that use of American Crew cosmetics
19 expose users in California to DEA.

20 1.3.2 No public enforcer has brought and is diligently prosecuting the claims
21 alleged in the Ferreiro Notice. On July 8, 2020, Ferreiro filed a complaint (the “Complaint”) in the
22 matter to prosecute claims alleged in the Ferreiro Notice.

23 1.3.3 On October 15, 2020, Bell served Revlon Consumer Products Corporation,
24 Revlon, Inc. (collectively, and together with American Crew, “Revlon”), Almay, Inc. (“Almay”),
25 Ulta Salon, Cosmetics & Fragrances, Inc., Ulta Beauty, Inc. (collectively, “Ulta Beauty”), and
26 various public enforcement agencies with documents each entitled “Notice of Violation of
27 California Health & Safety Code § 25249.6, et seq.” (the “Bell Notice”) alleging that Revlon,
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1 Almay and Ulta Beauty violated Proposition 65 for failing to warn consumers and customers that
2 use of Revlon cosmetics (defined herein) expose users in California to DEA.

3 1.3.4 The Ferreiro Notice and Bell Notice shall be referred to collectively herein
4 as, the “Notices.”

5 1.3.5 No public enforcer has brought and is diligently prosecuting the claims
6 alleged in the Bell Notice. On February 12, 2021, Ferreiro filed an amended complaint (the
7 “Amended Complaint”) in order to add Bell as plaintiff, and claims alleged in the Bell Notice to
8 the litigation. The Complaint and Amended Complaint shall be referred to collectively herein as,
9 the “Action.”

10 1.3.6 This settlement is entered into among the Parties as a global settlement of all
11 claims brought by Plaintiffs in the Notices served on Revlon, American Crew, Target, Ulta Beauty
12 and each of their affiliates and subsidiaries regarding alleged exposures to DEA from use of
13 cosmetics (defined herein) supplied by Revlon or its affiliates.

14 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
16 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
17 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
18 of all claims which were or could have been raised in the Action based on the facts alleged therein
19 and/or in the Notices.

20 1.5 Defendant denies the material allegations contained in the Notices and Action and
21 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
22 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
23 shall compliance with this Consent Judgment constitute or be construed as an admission by
24 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
25 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
26 responsibilities, and duties of Defendant under this Consent Judgment.

1 **2. DEFINITIONS**

2 **2.1 Covered Products.** The term “Covered Products” means “cosmetics as defined by
3 California Health and Safety Code 109900 for use on hair and skin including but not limited to,
4 Almay mascaras, that are manufactured, distributed and/or offered for sale in California by
5 Revlon.”

6 **2.2 Effective Date.** The term “Effective Date” means the date this Consent Judgment
7 is entered as a Judgment of the Court.

8 **3. INJUNCTIVE RELIEF: WARNINGS**

9 **3.1 Reformulation of Covered Products.** As of the date this Consent Judgment is
10 signed by both Parties, and continuing thereafter, Covered Products that Revlon directly
11 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be DEA
12 Free Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
13 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
14 “DEA Free Reformulated Product” is a Covered Product that complies with the standard set forth
15 in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any
16 Reformulated Product.

17 **3.2 DEA Free Reformulation Standard.** To qualify as a “DEA Free Reformulated
18 Product” the Covered Product must meet the following standard: DEA content that is either (i) not
19 detectable (i.e., zero) or below the Reporting Limit (defined herein) when measured in the Covered
20 Product; or (ii) less than or equal to one-tenth of one percent (0.1%) in any triethanolamine-
21 containing ingredient in the Covered Product, in each case when analyzed pursuant to liquid
22 chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy
23 (ICP-MS) or other method of analysis utilized by the International Organization for Standardization
24 (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw materials.

25 **3.2.1 Reporting Limit.** The “Reporting Limit” is the lowest concentration at
26 which DEA can be detected in a sample of a Product by an accredited testing laboratory employing
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1 LC/MS/MS analysis or other method of analysis utilized by the ISO for qualitative and quantitative
2 screening of cosmetics and cosmetic raw materials.

3 **3.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing
4 thereafter, Revlon must provide a clear and reasonable exposure warning as set forth in this §§ 3.3
5 and 3.4 for all Covered Products that Defendant manufacturers, imports, distributes, sells, or offers
6 for sale in California that is not a DEA Free Reformulated Product. There shall be no obligation for
7 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to
8 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**
9 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.

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

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

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

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

10 **3.5 Compliance with Warning Regulations.** The Parties agree that Defendant shall be
11 deemed in compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this
12 Consent Judgment or by complying with warning requirements adopted by the State of California’s
13 Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

14 **4. MONETARY TERMS**

15 **4.1 Civil Penalty.** Revlon shall pay \$16,000.00 as a Civil Penalty pursuant to Health
16 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
17 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
18 Civil Penalty remitted to Plaintiffs, as provided by California Health & Safety Code § 25249.12(d).

19 **4.1.1** Within ten (10) days of the Effective Date, Revlon shall issue two separate
20 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$12,000.00; and to (b)
21 “Brodsky & Smith, LLC in Trust for Ferreiro and Bell” in the amount of \$4,000.00. Payment
22 owed to Plaintiffs pursuant to this Section shall be delivered to the following payment address:

23 Evan J. Smith, Esquire
24 Brodsky & Smith, LLC
25 Two Bala Plaza, Suite 805
26 Bala Cynwyd, PA 19004

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

28 For United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 P.O. Box 4010
5 Sacramento, CA 95812-4010

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 1001 I Street
11 Sacramento, CA 95814

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

14 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Revlon shall pay
15 \$63,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiffs'
16 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Revlon
17 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
18 interest, pursuant to Code of Civil Procedure § 1021.5.

19 **5. RELEASE OF ALL CLAIMS**

20 5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiffs
21 acting on their own behalf, and on behalf of the public interest, and Revlon, and its parents,
22 subsidiaries, shareholders, affiliates and each of their members, directors, officers, managers,
23 employees, representatives, agents, attorneys, divisions, subdivisions, and their predecessors,
24 successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to
25 whom they directly or indirectly distribute or sell Covered Products, including but not limited to
26 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers
27 (including, without limitation, the Target Corporation), franchisees, and cooperative members,
28 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to DEA
from Covered Products as set forth in the Notices, with respect to any Covered Products
manufactured, distributed, or sold by Revlon prior to the Effective Date. It is the Parties' intention
that this Consent Judgment shall have preclusive effect such that no other actions by private

1 enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
2 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
3 alleged in the Action, or that could have been brought pursuant to the Notices against Revlon and/or
4 the Downstream Releasees of the Covered Products (“Proposition 65 Claims”). The Parties agree
5 that compliance with the terms of this Consent Judgment constitutes compliance with Proposition
6 65 as to the Covered Products.

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

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

26 5.3 Revlon waives any and all claims against Plaintiffs, their attorneys and other
27 representatives, for any and all actions taken, or statements made (or those that could have been
28 taken or made) by Plaintiffs and their 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.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
3 prior negotiations and understandings related hereto shall be deemed to have been merged within
4 it. No representations or terms of agreement other than those contained herein exist or have been
5 made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

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

12 **8. NOTICES**

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

17 For Defendant:

18 Alexandra Gerber
19 SVP and Asst. General Counsel
20 Revlon
21 One New York Plaza
22 New York, NY 10004

With a copy to:

23 William F. Tarantino
24 Morrison & Foerster LLP
25 425 Market Street
26 San Francisco, CA 94105

27 For Plaintiffs:

28 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.

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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.

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

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

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

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

11. MODIFICATION

11.1 This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party. Notwithstanding the foregoing, if Plaintiffs, the Attorney General, or any public enforcer represented by Brodsky & Smith agree to terms in a settlement or judicially entered consent judgment with any manufacturer of Covered Products which permits a higher level of DEA in Covered Products without requiring an exposure warning, the Parties agree that Defendant shall be deemed in compliance with the terms of this Consent Judgment and Proposition 65 if it elects to adhere to such reformulation terms as provided in such other DEA settlement or judicially entered

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consent judgment. The Parties agree to cooperation to modify the consent judgment to conform to the subsequently entered consent judgment at the other Party's request.

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:

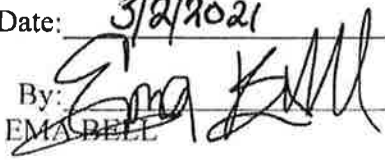
AGREED TO:

Date: March 31, 21
By: Anthony Ferreiro
ANTHONY FERREIRO

Date: March 12, 2021
By: Alexandra Gerber
Alexandra Gerber SVP Assistant GC
REVLON, INC.

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AGREED TO:

Date: 3/2/2021
By: 
EMABEL

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____ Judge of Superior Court