

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11
12 ANTHONY FERREIRO,

13 Plaintiff,

14 vs.

15 STARSKIN USA, INC. & MACY'S,
16 INC.,

17 Defendants.

Case No.: CGC-22-597530

CONSENT JUDGMENT

Judge: Richard B. Ulmer, Jr.

Dept.: 302

Hearing Date: August 12, 2022

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

10 1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of ID tags without providing a clear
12 and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65
13 as a chemical known to the State of California to cause cancer and reproductive toxicity.

14 1.3 **Notice of Violation/Complaint.** On or about January 11, 2021, Ferreiro served
15 Starskin, Starskin Beauty Group AG, Federated Department Stores, Inc., Macy’s, Inc., Macy’s
16 West Stores, LLC, Bloomingdales.com, LLC, and various public enforcement agencies with
17 documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d)
18 (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
19 customers that use of Starskin ID tags expose users in California to DEHP. No public enforcer
20 has brought and is diligently prosecuting the claims alleged in the Notice. On January 10, 2022,
21 Ferreiro filed a complaint (the “Complaint”) in the matter.

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 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 Starskin ID tags, that are
10 manufactured, distributed and/or offered for sale in California by Starskin.

11 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
12 entered as a Judgment of the Court.

13 **3. INJUNCTIVE RELIEF: WARNINGS**


14 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
15 thereafter, Covered Products that Starskin directly manufactures, imports, distributes, sells, or
16 offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below; or
17 (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For
18 purposes of this Consent Judgment, a “Reformulated Product” is a Covered Product that is in
19 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3
20 and 3.4 shall not apply to any Reformulated Product.

21 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
22 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
23 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
24 and 8270C or other methodology utilized by federal or state government agencies for the purpose
25 of determining the phthalate content in a solid substance.


26 3.3 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
27 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
28

1 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or
2 offers for sale in California that is not a Reformulated Product. There shall be no obligation for
3 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to
4 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**
5 described in §§ 3.3(a) or (b), respectively:

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

7  **WARNING:** This product can expose you to chemicals including di(2-
8 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
9 cancer and birth defects or other reproductive harm. For more information go to
10 www.P65Warnings.ca.gov.

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

13  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

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

27 If Starskin sells Covered Products via its own website to customers located in California,
28 the warning requirements of this section shall be satisfied if the foregoing warning appears by
including either the warning or a clearly marked hyperlink using the word “**WARNING**” on the

1 product display page, or by otherwise prominently displaying the warning to the purchaser prior to
2 completing the purchase. If the warning is provided using the short-form warning label content set
3 forth in Section 3.3. above

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

8 **4. MONETARY TERMS**

9 **4.1 Civil Penalty.** Starskin shall pay \$1,000.00 as a Civil Penalty pursuant to Health
10 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
11 Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
12 remaining 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety
13 Code § 25249.12(d).

14 **4.1.1** Within ten (10) days of the Effective Date, Starskin shall issue two separate
15 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to (b)
16 “Brodsky & Smith in Trust for Ferreiro” in the amount of \$250.00. Payment owed to Ferreiro
17 pursuant to this Section shall be delivered to the following payment address:

18 Evan J. Smith, Esquire
19 Brodsky & Smith
20 Two Bala Plaza, Suite 805
21 Bala Cynwyd, PA 19004

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

24 For United States Postal Service Delivery:

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

 For Non-United States Postal Service Delivery:

 Mike Gyurics

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

5 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith at the address set
6 forth above as proof of payment to OEHHA.

7 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Starskin shall pay
8 \$16,500.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Ferreiro's
9 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Starskin
10 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
11 interest, pursuant to Code of Civil Procedure § 1021.5.

12 **5. RELEASE OF ALL CLAIMS**

13 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
14 acting on his own behalf, and on behalf of the public interest, and Starskin, and its parents,
15 shareholders, members, directors, officers, managers, employees, representatives, agents,
16 attorneys, divisions, subdivisions, parent companies, subsidiaries, partners, sister companies, and
17 affiliates, and their predecessors, successors and assigns ("Defendant Releasees"), and all entities
18 from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products,
19 including but not limited to manufacturers, suppliers, distributors, wholesalers, marketplace hosts,
20 customers, licensors, licensees retailers (including but not limited to Macy's, Inc.), franchisees, and
21 cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65
22 based on exposure to DEHP from use of the Covered Products as set forth in the Notice, with
23 respect to any Covered Products manufactured, distributed, or sold by Starskin prior to the Effective
24 Date. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that
25 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the
26 public interest shall be permitted to pursue and/or take any action with respect to any violation of
27 Proposition 65 based on exposure to DEHP that was alleged in the Complaint, or that could have
28 been brought pursuant to the Notice against Starskin and/or Defendant Releasees and/or the
Downstream Releasees of the Covered Products ("Proposition 65 Claims").

1 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
2 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
4 legal action and releases Starskin, Defendant Releasees, and Downstream Releasees from any and
5 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
6 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
7 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
8 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
9 Products manufactured, distributed, or sold by Starskin, Defendant Releasees or Downstream
10 Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby
11 specifically waives any and all rights and benefits which he now has, or in the future may have,
12 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
13 follows:

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

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

25 **6. INTEGRATION**

26 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
27 prior negotiations and understandings related hereto shall be deemed to have been merged within
28 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.

1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
4 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
5 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
6 that, Covered Products are so affected.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by email
10 and: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier
11 on any party by the other party at the following addresses:

12 For Defendant:

13 Paul Hendriks, Treasurer
14 Starskin USA, Inc.
15 228 E. 45th St., Suite 9E
16 New York, NY 10017
17 Paul.hendriks@starskin.com

18 **With copy to:**

19 Ann Grimaldi
20 Grimaldi Law Offices
21 75 Broadway St., Suite 202
22 San Francisco, CA 94111
23 Ann.grimaldi@grimaldilawoffices.com

24 And

25 For Ferreiro:

26 Evan Smith
27 Brodsky & Smith
28 9595 Wilshire Blvd., Ste. 900
 Beverly Hills, CA 90212
 esmith@brodskysmith.com

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.

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
8 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
12 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 60
13 days, the case shall proceed on its normal course.

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

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21 **12. ATTORNEY’S FEES**

22 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party’s reasonable attorney’s fees and costs.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

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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:

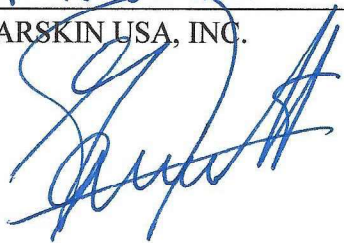
AGREED TO:

Date: _____

Date: March 10, 2022

By: _____
ANTHONY FERREIRO

By: P. Hendriks
STARSKIN USA, INC.



IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 4/21/22

Date: _____

By: *Anthony Ferreiro*
ANTHONY FERREIRO

By: _____
STARSKIN USA, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court