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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: Curtis Karnow

Dept.: 611

Hearing Date: February 8, 2023

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.

9 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
10 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of ID tags without providing a clear
11 and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65
12 as a chemical known to the State of California to cause cancer and reproductive toxicity.

13 **1.3 Notice of Violation/Complaint.** On or about January 11, 2021, Ferreiro served
14 Starskin, and various public enforcement agencies with documents entitled “60-Day Notice of
15 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
16 violated Proposition 65 for failing to warn consumers and customers that use of Starskin ID tags
17 expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting
18 the claims alleged in the Notice. On June 1, 2021, Ferreiro filed the “Complaint” in this matter.

19 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
21 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
22 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
23 of all claims which were or could have been raised in the Complaint based on the facts alleged
24 therein and/or in the Notice. Starskin subsequently entered into negotiations with Ferreiro. In
25 addition to negotiating on their own behalf, Starskin negotiated as purported indemnitor to Macy’s,
26 Inc. to resolve Ferreiro’s claims concerning exposure to DEHP in the Products.
27
28

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

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

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

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

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

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

3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Product does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Covered Product and shall be at least the same size as those other safety warnings. The size and font of the warning must comply with the safe harbor warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) applicable to the product and the exposures at issue.

1 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
2 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
3 Starskin offers Covered Products for sale to consumers in California. The requirements of this
4 Section shall be satisfied if the online **Warning** or **Alternative Warning** complies with the safe
5 harbor online warning requirements adopted by OEHHA applicable to the product and the
6 exposures at issue. To comply with this Section, Starskin shall (a) post the **Warning** or **Alternative**
7 **Warning** on its own website and, if it has the ability to do so, on the websites of its third-party
8 internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning**
9 on the websites of its third-party internet sellers, provide such sellers with written notice in
10 accordance with Title 27, California Code of Regulations, Section 25600.2.

11 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
12 compliance with the warning provisions of this Consent Judgment by either adhering to §§ 3.3 and
13 3.4 of this Consent Judgment or by complying with warning requirements adopted by OEHHA
14 applicable to the product and the exposures at issue after the Effective Date.

15 4. **MONETARY TERMS**

16 4.1 **Civil Penalty.** Starskin shall pay \$1,000.00 as a Civil Penalty pursuant to Health
17 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
18 Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
19 remaining 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety
20 Code § 25249.12(d).

21 Within ten (10) days of the Effective Date, Starskin shall issue two separate checks
22 for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to (b) "Brodsky &
23 Smith in Trust for Ferreiro" in the amount of \$250.00. Payment owed to Ferreiro pursuant to this
24 Section shall be delivered to the following payment address:

25 Evan J. Smith, Esquire
26 Brodsky & Smith
27 Two Bala Plaza, Suite 805
28 Bala Cynwyd, PA 19004

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

3 For United States Postal Service Delivery:

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

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

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

17 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Starskin shall pay
18 \$16,500.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Ferreiro's
19 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Starskin
20 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
21 interest, pursuant to Code of Civil Procedure § 1021.5.

22 **5. RELEASE OF ALL CLAIMS**

23 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
24 acting on his own behalf, and on behalf of the public interest, and Starskin, and its parents,
25 shareholders, members, directors, officers, managers, employees, representatives, agents,
26 attorneys, divisions, subdivisions, parent companies, subsidiaries, partners, sister companies, and
27 affiliates, and their predecessors, successors and assigns ("Defendant Releasees"), and all entities
28 from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products,
including but not limited to manufacturers, suppliers, distributors, wholesalers, marketplace hosts,
customers, licensors, licensees, retailers (including but not limited to Macy's, Inc.), franchisees,
and cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65

1 based on exposure to DEHP from use of the Covered Products as set forth in the Notice, with
2 respect to any Covered Products manufactured, distributed, or sold by Starskin prior to the Effective
3 Date. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that
4 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the
5 public interest shall be permitted to pursue and/or take any action with respect to any violation of
6 Proposition 65 based on exposure to DEHP that was alleged in the Complaint, or that could have
7 been brought pursuant to the Notice against Starskin and/or Defendant Releasees and/or the
8 Downstream Releasees of the Covered Products ("Proposition 65 Claims"). Compliance with the
9 provisions of Section 3 of this Consent Judgment shall be deemed compliance with Proposition 65
10 as to any alleged exposures to DEHP in Covered Products after the Effective Date.

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

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

1 5.3 Starskin waives any and all claims against Ferreiro, his attorneys and other
2 representatives, for any and all actions taken, or statements made (or those that could have been
3 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter
5 with respect to Covered Products.

6 **6. INTEGRATION**

7 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
8 prior negotiations and understandings related hereto shall be deemed to have been merged within
9 it. No representations or terms of agreement other than those contained herein exist or have been
10 made by any Party with respect to the other Party or the subject matter hereof.

11 **7. GOVERNING LAW**

12 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
14 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
15 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
16 that, Covered Products are so affected.

17 **8. NOTICES**

18 8.1 Unless specified herein, all correspondence and notices required to be provided
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by email
20 and: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier
21 on any party by the other party at the following addresses:

22 For Defendant:

23 Paul Hendriks, Treasurer
24 Starskin USA, Inc.
25 228 E. 45th St., Suite 9E
 New York, NY 10017

 Ann Grimaldi
 Grimaldi Law Offices
 1160 Battery St. East, Ste. 100
 San Francisco, CA 94111

26 For Ferreiro:

27 Evan Smith
28 Brodsky & Smith
 9595 Wilshire Blvd., Ste. 900

1 Beverly Hills, CA 90212

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

4 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

5 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
6 which shall be deemed an original, and all of which, when taken together, shall constitute one and
7 the same document.

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

10 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
11 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
12 Defendant agrees it shall support approval of such Motion.

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

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

21 **11. MODIFICATION**

22 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
23 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

24 **12. ATTORNEY'S FEES**

25 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
26 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

27 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
28 pursuant to law.

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **14. AUTHORIZATION**

5 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective Parties and have read, understood and agree to all of the terms and conditions of this
7 document and certify that he or she is fully authorized by the Party he or she represents to execute
8 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
9 explicitly provided herein each Party is to bear its own fees and costs.

10
11 **AGREED TO:**

AGREED TO:

12
13 Date: _____

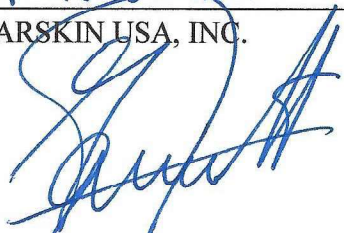
Date: March 10, 2022

14 By: _____
15 ANTHONY FERREIRO

By: P. Hendriks
STARSKIN USA, INC.

16
17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18
19 Dated: _____



Judge of Superior Court

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9 explicitly provided herein each Party is to bear its own fees and costs.

10
11 **AGREED TO:**

AGREED TO:

12 Date: 4/21/22

Date: _____

13
14 By: Anthony Ferreiro
15 ANTHONY FERREIRO

By: _____
STARSKIN USA, INC.

16
17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18
19 Dated: _____

Judge of Superior Court