

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9465 Wilshire Blvd., Ste. 300
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 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 NEOTERIC COSMETICS, INC., SCOTT'S
15 LIQUID GOLD, INC.,

16 Defendants.

Case No.: CGC-23-603872

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: October 11, 2024

Hearing Time: 9:30 AM

Complaint Filed: January 9, 2023

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and Scott’s Liquid Gold, Inc.
4 (“Scott’s Liquid Gold” or “Defendant”) with Balabbo and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Balabbo 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. Scott’s Liquid Gold 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.** Balabbo alleges that Defendant has exposed
11 individuals to coconut oil diethanolamine condensate (“cocamide DEA”) from its sales of *Prell*®
12 classic clean shampoos, UPC # 735379430133 without providing a clear and reasonable exposure
13 warning pursuant to Proposition 65. Cocamide DEA is listed pursuant to Proposition 65 as a
14 chemical known to the State of California to cause cancer.

15 1.3 **Notice of Violation/Action.** On or about January 11, 2022, Balabbo served
16 Walmart, Inc., Walmart Apollo, LLC (collectively, “Walmart”), Scott’s Liquid Gold, Neoteric
17 Cosmetics, Inc. (“Neoteric”) and various public enforcement agencies with documents entitled “60-
18 Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging
19 that Defendant violated Proposition 65 for failing to warn consumers and customers that use of
20 *Prell*® classic clean shampoos, UPC # 735379430133 expose users in California to cocamide DEA.
21 No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
22 January 9, 2023, Balabbo filed a complaint (the “Complaint”).

23 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
25 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
26 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
27 of all claims which were or could have been raised in the Action based on the facts alleged therein
28

1 and in the Notice.

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means *Prell®* classic clean
11 shampoos, UPC # 735379430133 that are manufactured, distributed, shipped into California and
12 offered for sale in California by Scott’s Liquid Gold that expose users to cocamide DEA.

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

15 **3. INJUNCTIVE RELIEF: COMMITMENT NOT TO SELL**

16 3.1 **Commitment Not to Sell.** As of the Effective Date, Defendant shall not
17 manufacture, distribute, sell, or offer Covered Products for sale in California.

18 **4. MONETARY TERMS**

19 4.1 **Civil Penalty.** Scott’s Liquid Gold shall pay \$2,000.00 as a Civil Penalty pursuant
20 to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California
21 Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining
22 25% of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code
23 § 25249.12(d).

24 4.1.1 Within ten (10) days of the Effective Date, Scott’s Liquid Gold shall issue
25 two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00;
26 and to (b) “Brodsky Smith in Trust for Balabbo” in the amount of \$500.00. Payment owed to
27 Balabbo pursuant to this Section shall be delivered to the following payment address:

28 Evan J. Smith, Esquire

1 Brodsky Smith
2 Two Bala Plaza, Suite 805
3 Bala Cynwyd, PA 19004

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

6 For United States Postal Service Delivery:

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

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

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

20 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Scott's Liquid Gold
21 shall pay \$18,000.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees
22 and costs incurred as a result of investigating, bringing this matter to the attention of Scott's Liquid
23 Gold, litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
24 pursuant to Code of Civil Procedure § 1021.5.

25 **5. RELEASE OF ALL CLAIMS**

26 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
27 acting on her own behalf, and on behalf of the public interest, and Scott's Liquid Gold, and its
28 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
predecessors, successors and assigns, including but not limited to Neoteric Cosmetics, Inc.
("Defendant Releasees"), and all entities from whom they obtained and to whom they directly or
indirectly distributed or sold Covered Products, including but not limited to manufacturers,
suppliers, distributors, wholesalers, customers, licensors, licensees retailers, including but not

1 limited to Walmart, and its parents, subsidiaries, and affiliates, franchisees, and cooperative
2 members (“Downstream Releasees”), of all claims for violations of Proposition 65 based on
3 exposure to cocamide DEA from use of the Covered Products manufactured, distributed, or sold
4 by Scott’s Liquid Gold or Neoteric Cosmetics, Inc., as set forth in the Notice. It is the Parties’
5 intention that this Consent Judgment shall have preclusive effect such that no other actions by
6 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
7 permitted to pursue and take any action with respect to any violation of Proposition 65 based on
8 exposure to cocamide DEA from use of the Covered Products that was alleged in the Complaint,
9 or that could have been brought pursuant to the Notice against Scott’s Liquid Gold and the
10 Downstream Releasees (“Proposition 65 Claims”). Scott’s Liquid Gold’s compliance with the
11 terms of this Consent Judgment constitutes compliance with Proposition 65 by Scott’s Liquid Gold
12 with regard to exposure to cocamide DEA from use of the Covered Products.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5.3 Scott's Liquid Gold waives any and all claims against Balabbo, her attorneys and other representatives, for any and all actions taken, or statements made (or those that could have been taken or made) by Balabbo and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and 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. NOTICES

7.1 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:

Brent Johnson
Holland & Hart, LLP
222 S. Main St., Ste. 2200
Salt Lake City, UT 84101

And

For Balabbo:

Evan Smith
Brodsky Smith
9465 Wilshire Blvd., Ste. 300
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.

1 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

2 8.1 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 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
6 **APPROVAL**

7 9.1 Balabbo 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 9.2 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 30
13 days, the case shall proceed on its normal course.

14 9.3 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 **10. MODIFICATION**

19 10.1 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 **11. ATTORNEY'S FEES**

22 11.1 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 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. RETENTION OF JURISDICTION

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

13. AUTHORIZATION

13.1 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: 8/20/2024

By: _____
PRECILA BALABBO

By: DocuSigned by:
David Arndt
1FD9207F2EAA43D
SCOTT'S LIQUID GOLD, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. RETENTION OF JURISDICTION

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

13. AUTHORIZATION

13.1 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: 8 | 23 | 24

Date: _____

By: *Precila Balabbo*
PRECILA BALABBO

By: _____
SCOTT'S LIQUID GOLD, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court