

1 Julie Erickson, State Bar No. 293111 (julie@eko.law)
Elizabeth Kramer, State Bar No. 293129 (elizabeth@eko.law)
2 Kevin Osborne, State Bar No. 261367 (kevin@eko.law)
Erickson Kramer Osborne LLP
3 44 Tehama St
San Francisco, CA 94105
4 Phone: 415-635-0631
Fax: 415-599-8088

5 Yvette Golan (ygolan@tgfirm.com) Pro Hac Vice pending
6 **The Golan Law Firm PLLC**
529 14th Street NW, Suite 914
7 Washington, D.C. 20045
Phone: 866-298-4150
8 Fax: 928-4410-8250

9 Jason S. Rathod (jrathod@classlawdc.com) Pro Hac Vice pending
Mark D. Patronella (mpatronella@classlawdc.com) Pro Hac Vice pending
10 **Migliaccio & Rathod LLP**
412 H Street NE
11 Washington, D.C. 20002
Phone: 202-470-3520
12 Fax: 202-800-2730

13 *Attorneys for Plaintiff*

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF ALAMEDA

17 Piyush Yadav, an individual acting in the public
18 interest,

19 Plaintiff,

20 v.

21 Colorescience, Inc., Glo Skin Beauty, and Iredale
Cosmetics, Inc.,

22 Defendants.

Case No.: 23CV029836

**[PROPOSED] CONSENT
JUDGMENT**

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Piyush Yadav,
3 individually and acting in the public interest (“Plaintiff”), on the one hand, and Colorescience, Inc.,
4 Glo Skin Beauty, and Iredale Cosmetics, Inc. (collectively “Defendants”), on the other hand, with
5 Plaintiff and Defendants collectively referred to as the “Parties” and each of them as a “Party.”
6 Plaintiff is an individual residing in California who seeks to promote awareness of exposures to
7 toxic chemicals and improve human health by reducing or eliminating hazardous substances
8 contained in consumer products. Defendants are alleged to be persons in the course of doing
9 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Plaintiff alleges that Defendants have exposed
11 individuals to Titanium Dioxide airborne, unbound particles of respirable size (“TiO2”) from their
12 sales of cosmetic and sunscreen products without providing a clear and reasonable exposure
13 warning pursuant to Proposition 65. TiO2 is listed under Proposition 65 as a chemical known to
14 the State of California to cause cancer.

15 1.3 **Notice of Violation/Complaint.** On or about December 2, 2020, and on January 31,
16 2022, Plaintiff served Defendants and various public enforcement agencies with documents entitled
17 “Sixty-Day Notice of Violation” and “Supplemental Sixty-Day Notice of Violation” (respectively)
18 pursuant to Health & Safety Code §25249.7(d) (the “Notices”), alleging that Defendants violated
19 Proposition 65 for failing to warn consumers and customers that use of cosmetics and sunscreens
20 manufactured, distributed, offered for sale and/or sold by Defendants expose users in California to
21 TiO2. No public enforcer has brought and is diligently prosecuting the claims alleged in the
22 Notices. On March 22, 2023, Plaintiff initiated this action by filing a complaint (the “Complaint”).

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

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

9 **2. DEFINITIONS**

10 2.1 **TiO₂.** The term “TiO₂” means Titanium Dioxide airborne, unbound particles of
11 respirable size.

12 2.2 **Covered Products.** The term “Covered Products” means cosmetics and sunscreens
13 containing TiO₂ that are manufactured, distributed, sold and/or offered for sale in California by
14 Defendants.

15 2.3 **Effective Date.** The term “Effective Date” means the date Defendants receive
16 Notice of Entry of this Consent Judgment as a Judgment of the Court.

17 **3. INJUNCTIVE RELIEF: WARNINGS**

18 3.1 **Reformulation of Covered Products.** As of the Reformulation Date (defined
19 herein), and continuing thereafter, Defendants shall not manufacture or import Covered Products
20 for sale in California unless such Covered Products are either: (a) TiO₂ Reformulated Products
21 pursuant to Paragraph 3.2, below; or (b) labeled with a clear and reasonable warning pursuant to
22 Paragraphs 3.3 and 3.4, below. For purposes of this Consent Judgment, a “TiO₂ Reformulated
23 Product” is a Covered Product that complies with the standard set forth in Paragraph 3.2 below.
24 The warning requirement set forth in Paragraphs 3.3 and 3.4 shall not apply to any TiO₂
25 Reformulated Product. The “Reformulation Date” shall be twelve (12) months after the Effective
26 Date.

1 3.2 **TiO2 Reformulation Standard.** To qualify as a “TiO2 Reformulated Product,” the
2 Covered Product must meet the following standard: no more than five percent (5%) of the Covered
3 Product by mass shall be TiO2 airborne respirable particles (i.e., airborne particles less than or
4 equal to four (4) microns in aerodynamic mass median diameter). In any action to enforce this
5 Consent Judgment based on a failure to meet the TiO2 Reformulated Product standard in this
6 paragraph, analysis of any Covered Product must be performed by a laboratory that is accredited
7 following ISO 17025 guidelines and analyzed pursuant to generally accepted scientific methods of
8 analysis for quantitative determination of the aerodynamic mass median diameter of airborne TiO2
9 to which a consumer is exposed during ordinary use of the Covered Product (the “Test Method”).

10 3.3 **Clear and Reasonable Warning.** As of the Reformulation Date, and continuing
11 thereafter, Defendants must provide a clear and reasonable warning as set forth in this Paragraph
12 3.3 and Paragraph 3.4 for each Covered Product that Defendants manufacture or import for sale in
13 California that is not a TiO2 Reformulated Product. There shall be no obligation for a Defendant
14 to provide a warning for Covered Products that enter the stream of commerce prior to the
15 Reformulation Date. The warning shall consist of either the **Warning** or **Alternative Warning**
16 described in Paragraphs 3.3(a) or (b), respectively:

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

18 ⚠ **WARNING:** This product can expose you to chemicals including titanium
19 dioxide (TiO2), which is known to the State of California to cause cancer. For more
20 information go to www.P65Warnings.ca.gov.

21 (b) **Alternative Warning:** Defendants may, but are not required to, use the alternative
22 short-form warning as set forth in this Paragraph 3.3(b) (“**Alternative Warning**”) as follows:

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

24 3.4 A **Warning** or **Alternative Warning** provided pursuant to Paragraph 3.3 must print
25 the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning
26 symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow
27 equilateral triangle with a black outline, except that if the sign or label for the Covered Product
28 does not use the color yellow, the symbol may be in black and white. The symbol must be in a size

1 no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed
2 on the Covered Product’s packaging or labeling, providing that the warning is displayed with such
3 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
4 read and understood by an ordinary individual under customary conditions of purchase or use. A
5 warning may be contained in the same section of the packaging, labeling, or instruction booklet
6 that states other safety warnings, if any, concerning the use of the Covered Product and shall be at
7 least the same size as those other safety warnings.

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

17 **3.5 Compliance with Warning Regulations.** For any Covered Products that do not
18 meet the TiO2 Reformulation Standard set forth in Paragraph 3.2, a Defendant shall be deemed in
19 compliance with this Consent Judgment by either adhering to Paragraphs 3.3 and 3.4 of this
20 Consent Judgment or by complying with warning requirements as set forth in the State of
21 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) regulations as in
22 effect on or after the Effective Date.

23 **4. MONETARY TERMS**

24 **4.1 Civil Penalty.** Defendants shall pay a combined total of \$18,000.00 as a Civil
25 Penalty pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance
26 with California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and
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1 the remaining 25% of the Civil Penalty remitted to Plaintiff, as provided by California Health &
2 Safety Code § 25249.12(d).

3 4.2 **Attorneys' Fees.** Defendants shall pay a combined total of \$102,000.00 to Erickson
4 Kramer Osborne LLP as complete reimbursement for Plaintiff's attorneys' fees and costs incurred
5 as a result of investigating, bringing this matter to Defendants' attention, litigating and negotiating,
6 and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
7 Procedure § 1021.5

8 4.1.1 Within thirty (30) days following the Effective Date, Defendants shall issue
9 one check, fully covering the sums laid out in paragraphs 4.1 and 4.2, to Erickson Kramer
10 Osborne LLP in the amount of \$120,000.00, which will be held in trust for disbursement.

11 Payment pursuant to this Section shall be delivered to the following payment address:

12 Elizabeth Kramer
13 **Erickson Kramer Osborne LLP**
14 44 Tehama Street,
San Francisco, California 94105

15 4.3 **Disbursement of Funds.** Within fifteen (15) days of receipt of full payment by
16 Defendants, Plaintiff's counsel shall transfer \$13,500 to the OEHHA and \$4,500 to Plaintiff
17 Yadav.

18 4.3.1 Payment made to OEHHA (EIN: 68-0284486) pursuant to this Section shall
19 be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at one of the following
20 address(es):

21 For United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 1001 I Street
2 Sacramento, CA 95814

3 4.4 **Tax Documentation.** Defendants agree to provide a completed IRS 1099 for their
4 payments to, and Plaintiff agrees to provide a IRS W-9 form for, Erickson Kramer Osborne LLP.
5 Erickson Kramer Osborne LLP will provide a completed IRS 1099 for its payments of the civil
6 penalty to Plaintiff Yadav and OEHHA and payment of attorneys' fees to Migliaccio & Rathod
7 LLP and the Golan Law Firm PLLC.

8 **5. RELEASE OF ALL CLAIMS**

9 5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiff
10 acting on his own behalf, and on behalf of the public interest, and Defendants, and each of their
11 parents, subsidiaries, shareholders, affiliates, members, directors, officers, managers, employees,
12 representatives, agents, attorneys, insurers, divisions, subdivisions, and each of their predecessors,
13 successors and assigns (collectively "Defendant Releasees"), and all entities from whom any
14 Defendant Releasee obtains Covered Products or their ingredients, and to whom any Defendant
15 Releasee directly or indirectly manufactures, imports, distributes or sells Covered Products,
16 including but not limited to manufacturers, suppliers, distributors, wholesalers, licensors, licensees,
17 auctioneers, retailers, franchisees, reformulators, customers, owners, purchasers, users, cooperative
18 members, and each of their respective officers, directors, attorneys, representatives, shareholders,
19 agents, employees and affiliates (collectively "Downstream Releasees"), of all claims that have
20 been asserted for, could have been asserted for, or that arise out of alleged or actual violations of
21 Proposition 65 or its implementing regulations based on alleged exposure to TiO₂ from Covered
22 Products as set forth in the Notices or the Complaint, with respect to any Covered Products
23 manufactured, distributed, or sold by Defendants prior to the Reformulation Date. Defendants,
24 Defendant Releasees and Downstream Releasees are hereby collectively referred to as the
25 "Released Parties." Plaintiff, on behalf of himself and in the public interest, hereby discharges and
26 releases Released Parties from any and all claims relating to Proposition 65 arising from Released
27 Parties' manufacture, import, sale, or distribution of Covered Products prior to the Reformulation
28 Date, including, without limitation, any such claims, actions, and causes of action, in law or in

1 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
2 (including, but not limited to, fees of attorneys, experts, and others) of any nature whatsoever,
3 whether known or unknown, fixed or contingent, asserted for, that could have been asserted for, or
4 that arise out of the failure of any Released Party to provide clear, accurate and reasonable warnings
5 under Proposition 65, Business and Professions Code §17200, et seq., predicated or based on a
6 violation of Proposition 65, arising from the sale, distribution, or use of any Covered Products sold,
7 manufactured or distributed by any Released Party in California prior to the Reformulation Date),
8 but not including claims to enforce this Consent Judgment or unknown claims (collectively
9 “Claims”). Compliance with this Consent Judgment by any Released Party shall constitute
10 compliance with Proposition 65 by all Released Parties with respect to the presence of TiO₂ in the
11 Covered Products prior to the Reformulation Date. Plaintiff agrees that any and all Claims are
12 resolved with prejudice by this Consent Judgment. The release in this Paragraph 5.1 applies to all
13 Covered Products that Released Parties manufactured, distributed, or sold prior to the
14 Reformulation Date, regardless of the date any other Released Party may distribute or sell the
15 Covered Products that Defendants manufactured, distributed, or sold prior to the Reformulation
16 Date. It is the Parties’ intention that this Consent Judgment shall have preclusive effect such that
17 no other private enforcers, whether purporting to act in his, her, or its interests or the public interest,
18 shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65
19 that was alleged in the Notices or the Complaint, or that could have been brought pursuant to the
20 Notices or the Complaint against Released Parties regarding the Covered Products (“Proposition
21 65 Claims”).

22 5.2 In addition to the foregoing, Plaintiff, on behalf of himself, his past and current
23 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
24 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
25 legal action, and discharges and releases the Released Parties from any and all Claims arising under
26 Proposition 65 for unwarned exposures to TiO₂ relating to Covered Products manufactured,
27 imported, distributed, or sold by any Released Party. The releases in this Paragraph 5.2 are
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1 provided in Plaintiff's individual capacity and are not releases on behalf of the public. It is possible
2 that other claims not known to the Parties arising out of the facts contained in the Notices, or alleged
3 in the Complaint, relating to the Covered Products, will hereafter be discovered or developed.
4 Plaintiff, on behalf of himself only, acknowledges that this Consent Judgment is expressly intended
5 to cover and include all such claims prior to the Reformulation Date, including all rights of action
6 therefor. Plaintiff acknowledges that the claims released in Paragraphs 5.1 and 5.2 may include
7 unknown claims arising under Proposition 65 for unwarned exposures to TiO₂ from the Covered
8 Products prior to the Reformulation Date, and nevertheless Plaintiff intends to release such claims,
9 and in doing so waives California Civil Code § 1542 (and any other state, federal, or international
10 law of similar import), which provides as follows:

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

15 Plaintiff understands and acknowledges that the significance and consequence of
16 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising
17 out of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from
18 any violation of Proposition 65 or any other statutory or common law regarding the failure to warn
19 about exposure to TiO₂ from the Covered Products, including but not limited to any exposure to,
20 or failure to warn with respect to exposure to TiO₂ from the Covered Products, Plaintiff will not
21 be able to make any claim for those damages against Released Parties. Furthermore, Plaintiff
22 acknowledges that he intends these consequences for any such Claims arising from any violation
23 of Proposition 65 or any other statutory or common law regarding the failure to warn about
24 exposure to TiO₂ from Covered Products as may exist as of the date of this release but which
25 Plaintiff does not know exist, and which, if known, would materially affect his decision to enter
26 into this Consent Judgment, regardless of whether his lack of knowledge is the result of ignorance,
27 oversight, error, negligence, or any other cause.
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1 5.3 Defendants waive any and all claims against Plaintiff, 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 Plaintiff 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 and/or 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, preempted or is
14 otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
15 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
16 to the extent 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: (i) first-
20 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
21 by the other party at the following addresses:

22 For Defendants Colorescience, Inc. and Iredale Cosmetics, Inc.:

23 Michael J. Steel
24 Law Offices of Michael Steel
25 6303 Wood Drive
26 Oakland, CA 94611
27 mjslaw@outlook.com

28 For Defendant Glo Skin Beauty:

 Thomas M. Donnelly

1 Jones Day
555 California Street, 26th Floor
2 San Francisco, CA 94104
tmdonnelly@jonesday.com

3 For Plaintiff:

4 Jason S. Rathod
5 **Migliaccio & Rathod LLP**
412 H Street NE
6 Washington, D.C. 20002

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

10 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

11 9.1 This Consent Judgment may be executed in counterparts and by facsimile or
12 portable document format (pdf), each of which shall be deemed an original, and all of which, when
13 taken together, shall constitute one and the same document.

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

16 10.1 Plaintiff agrees to comply with the requirements set forth in California Health &
17 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
18 Defendants shall support approval of such Motion.

19 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
20 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
21 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
22 30 days, the case shall proceed on its normal course.

23 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
24 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
25 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed
26 on its normal course on the trial court's calendar.

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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 Plaintiff, the Attorney General, or any public enforcer represented by [insert plaintiff's counsel] agree to terms in a settlement or judicially entered consent judgment with any manufacturer of Covered Products which permits a higher level of TiO2 in Covered Products without requiring an exposure warning, the Parties agree that Defendants shall be deemed in compliance with the terms of this Consent Judgment and Proposition 65 if they elect to adhere to such reformulation terms as provided in such other TiO2 settlement or judicially entered consent judgment. At a Party's request, the Parties agree to cooperate to modify this agreement to conform to a subsequently entered settlement.

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.

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, 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.

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AGREED TO:

06/13/2023

Date: _____

By: _____

PLAINTIFF Piyush Yadav



AGREED TO:

Date: _____

By: _____

DEFENDANT Colorescience, Inc.

Date: _____

By: _____

DEFENDANT Iredale Cosmetics, Inc.

Date: _____

By: _____

DEFENDANT Glo Skin Beauty

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: _____

Date: June 8, 2023

By: _____
PLAINTIFF Piyush Yadav

By: Ted Bel
DEFENDANT Colorescience, Inc.

Date: _____

By: _____
DEFENDANT Iredale Cosmetics, Inc.

Date: _____

By: _____
DEFENDANT Glo Skin Beauty

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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Date: _____

Date: _____

By: _____
PLAINTIFF Piyush Yadav

By: _____
DEFENDANT Colorescience, Inc.

Date: 6-9-2023

By: [Signature]
DEFENDANT Iredale Cosmetics, Inc.

Date: _____

By: _____
DEFENDANT Glo Skin Beauty

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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Date: _____

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By: _____

PLAINTIFF Piyush Yadav

By: _____

DEFENDANT Colorescience, Inc.

Date: _____

By: _____

DEFENDANT Iredale Cosmetics, Inc.

Date: 5/31/23

By: 

DEFENDANT Glo Skin Beauty

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court