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10 *Attorneys for Defendant*
11 *VMV Cosmetics Group d/b/a Salerm Cosmetics*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**

14 ALEX MARTINEZ, an individual,
15
16 Plaintiff,
17 v.
18 VMV COSMETICS GROUP D/B/A SALERM
COSMETICS, et. al,
19 Defendants.

Case No.: 22STCV33108

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

(Health & Safety Code § 25249.5, et seq.)

Complaint Filed: October 6, 2022
Trial Date: None Set

1 **I. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Alex Martinez
3 (“Martinez”) and Salerm Cosmetics professional SA named in this lawsuit as VMV Cosmetic Group
4 (“VMV”), d/b/a Salerm Cosmetics.¹ Martinez is an individual residing in California that seeks to promote
5 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
6 hazardous substances contained in consumer products. Martinez alleges that VMV employs ten or more
7 persons and is a person in the course of doing business for purposes of Proposition 65, California Health
8 and Safety Code section 25249.5, *et seq.* (“Proposition 65”). Martinez and VMV are hereinafter referred
9 to individually as a “Party” or collectively as the “Parties.”

10 **1.2 The Allegations.** On October 6, 2022, Martinez, as a private enforcer and in the public
11 interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties
12 (the “Complaint”) pursuant to Proposition 65 against VMV and VMV Cosmetic Group South California,
13 Inc. In this action, Martinez alleges that VMV’s cosmetic products, including “Stop Stress Shampooing-
14 Gel” (the “Covered Products” or the “Products”) contain Coconut Oil Diethanolamine Condensate, a
15 chemical listed under Proposition 65 as a carcinogen. Martinez alleges that the Covered Products expose
16 consumers to this chemical at a level requiring a Proposition 65 warning.

17 **1.3** Martinez alleges that VMV is a business entity that has employed ten or more persons at
18 all times relevant to this action, and qualifies as a “person in the course of doing business” within the
19 meaning of Proposition 65. VMV, distributes, and/or sells the Covered Products.

20 **1.4 Notice of Violation.** The Complaint is based on allegations contained in Martinez’s Notice
21 of Violation dated August 1, 2022 that was served on the California Attorney General, other public
22 enforcers, and VMV (the “Notice”). A true and correct copy of the 60-Day Notice is attached hereto as
23 **Exhibit A** and incorporated herein by reference. More than 60 days have passed since the Notice was
24 served on the Attorney General, public enforcers, and VMV; and no designated governmental entity has
25 filed a Complaint against VMV with regard to the Covered Products or the alleged violations.

26 _____
27 ¹ Salerm Cosmetics is the trade name.

1 **III. REFORMULATION OR WARNINGS**

2 **3.1 Clear and Reasonable Warnings**

3 Beginning on June 1, 2023 or, if later, the Effective Date, (the “Compliance Date”) VMV agrees
4 to manufacture, import, or purchase for sale in California only Covered Products that either contain no
5 Coconut Oil Diethanolamine Condensate or are accompanied by the following warning on both the
6 Product itself (on the label) and on VMV’s website (at the point of checkout or on the product display
7 page):

8 **WARNING:** This product can expose you to Coconut Oil Diethanolamine Condensate,
9 which is known to the State of California to cause cancer. For more information, go to
10 <https://www.p65warnings.ca.gov/>.

11 The above statement (the “Warning”) must be in a type size no smaller than the largest type size
12 used for other consumer information on the Product. “Consumer information” includes warnings,
13 directions for use, ingredient lists, and nutritional information. “Consumer information” does not include
14 the brand name, product name, company name, location of manufacture, or product advertising. In no
15 case shall the Warning appear in a type size smaller than six (6) point type. In addition, a symbol
16 consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be
17 placed to the left of the text of the Warning, in a size no smaller than the height of the word “WARNING.”
18 Where the label for the product is not printed using the color yellow, the symbol may be in black and
19 white. Covered Products that were manufactured by VMV or its subsidiaries prior to the Effective Date
20 shall be deemed exempted from the warning requirement and shall be permitted to be sold through all
21 sales channels as previously manufactured, packaged and labeled, as they have been included in the
22 calculation of civil penalties below.

23 **3.1.1 Internet Sales.** For any Product sold over the Internet, and in addition to the on-label
24 Warning described above, the Warning shall be prominently displayed as follows: (a) on the primary
25 display page for the Product; (b) as a clearly marked hyperlink using the word “WARNING” in all capital
26 and bold letters on the Product’s primary display page; so long as the hyperlink goes directly to a page

1 prominently displaying the Warning without content that detracts from the Warning; (c) on the checkout
2 page or any other page in the checkout process when a California delivery address is indicated for any
3 purchase of any Product and with the Warning clearly associated with the Product to indicate that the
4 product is subject to the Warning; or (d) by otherwise prominently displaying the Warning to the purchaser
5 prior to completing the purchase. The Warning is not prominently displayed if the purchaser must search
6 for it in the general content of the website.

7 **3.1.2 Warning Prominence.** The Warning shall be at least the same size as the largest of any
8 other health or safety warnings also appearing on the website or on the label and the word “WARNING”
9 shall be in all capital letters and in bold print. VMV must display the Warning with such conspicuousness,
10 as compared with other words, statements or designs on the label, or on its website, if applicable, to render
11 the Warning likely to be read and understood by an ordinary individual under customary conditions of
12 purchase or use of the product. The Warning may be accompanied by supplemental information only to
13 the extent that the supplemental information identifies the source of the exposure or provides information
14 on how to avoid or reduce exposure to the identified chemical or chemicals. For purposes of this Consent
15 Judgment, the term “label” means a display of written, printed or graphic material that is printed on or
16 affixed to a Covered Products or their immediate container or wrapper.

17 **3.2 Compliance with Warning Regulations.** VMV shall be deemed to be in compliance with
18 this Consent Judgment by (1) adhering to section 3.1 of this Consent Judgment, or (2) complying with
19 any future warning requirements adopted by the State of California’s Office of Environmental Hazard
20 Assessment (“OEHHA”) after the Effective Date, that are applicable to the product and the chemical at
21 issue.

22 **3.3 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the Parties,
23 Martinez shall notice a Motion for Court Approval and comply with the requirements set forth in California
24 Health & Safety Code section 25249.7(f).

25 **3.4** It is the parties’ intention that this Consent Judgment shall have preclusive effect such that
26 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the public

1 interest shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65
2 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against VMV
3 and/or the Downstream Releasees of the Covered Products (“Proposition 65 Claims”). Compliance with
4 the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered
5 Products.

6 **IV. MONETARY TERMS.**

7 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments, attorneys’
8 fees, and costs, VMV shall make a total payment of \$25,000.00 (the “Total Settlement Amount”) to
9 Martinez within ten (10) business days of the Effective Date (“Due Date”). VMV shall make this payment
10 by wire transfer to KJC Law Group, A.P.C., attorneys of record for Martinez, for which KJC Law Group
11 will give VMV the necessary wire account information. The Total Settlement Amount shall be
12 apportioned as follows:

13 Civil Penalty

14 VMV shall cause to be paid \$5,000 as a Civil Penalty pursuant to California Health and Safety
15 Code section 25249.7(b)(l), to be apportioned in accordance with California Health & Safety Code Section
16 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted
17 to Martinez, as provided by California Health & Safety Code section 25249.12(d).

18 Within ten (10) business days of the Effective Date, VMV shall cause to be issued two separate
19 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$3,750; and (2) to “KJC Law
20 Group in Trust for Martinez” in the amount of \$1,250. Payment owed to Martinez pursuant to this Section
21 shall be delivered to the following payment address:

22 **KJC Law Group, A.P.C.**
23 9701 Wilshire Blvd., Suite 1000
24 Beverly Hills, CA 90212

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

27 If by U.S. Postal Service:

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

3 For Non-United States Postal Service Delivery:

4 Mike Gyurics, F Fiscal Operations Branch Chief, Office of Environmental Health Hazard
5 Assessment, 1001 I Street, Sacramento, CA 95814.

6 A copy of the check payable to OEHHA shall be mailed to KJC Law Group as proof of payment
7 to OEHHA.

8 Attorneys' Fees

9 Within ten (10) business days of the Effective Date, VMV shall cause to be paid \$20,000 to KJC
10 Law Group, A.P.C. (attorneys of record for Martinez) as complete reimbursement for Martinez's
11 attorneys' fees and costs incurred as a result of investigating, bringing this matter to VMV's attention,
12 litigating, negotiating, and obtaining judicial approval of a settlement in the public interest. VMV shall
13 make the payment by wire transfer to the following:

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17 **Wire Transfer**

15 Bank Name: JPMorgan Chase Bank NA
16 Bank Address: 13949 Ventura Blvd, Sherman Oaks, CA 91423
17 SWIFT Code: CHASUS33
(for international wires)
18 Wire Routing Number: 021000021
19 Account Number: 611162618 - Trust account
611180099 - Operating account
20 Name on Bank Account: KJC LAW GROUP
21 9701 Wilshire Blvd., Suite 1000
22 Beverly Hills, CA 90212

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4.2 In the event that VMV fails to remit the Total Settlement Amount owed under Section 4 of this Consent Judgment on or before the Due Date, VMV shall be deemed to be in material breach of its obligations under this Consent Judgment. Martinez shall provide written notice of the delinquency to VMV via electronic mail, to its counsel of record. If VMV fails to deliver the Total Settlement Amount within five (5) days from the written notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate provided in California Code of Civil Procedure section 685.010.

Additionally, VMV agrees to pay Martinez’s reasonable attorneys’ fees and costs for any efforts to collect the payment due under this Consent Judgment.

V. MODIFICATION OF CONSENT JUDGMENT

5.1 This Consent Judgment may be modified only as to injunctive terms (i) by written stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a modified consent judgment.

5.2 If VMV seeks to modify this Consent Judgment under Section 5.1, then VMV must provide written notice to Martinez of its intent (“Notice of Intent”). If Martinez seeks to meet and confer regarding the proposed modification in the Notice of Intent, then Martinez must provide written notice to VMV within thirty (30) days of receiving the Notice of Intent. If Martinez notifies VMV in a timely manner of Martinez’s intent to meet and confer, then the Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in person or via telephone within thirty (30) days of Martinez’s notification of the intent to meet and confer. Within thirty (30) days of such meeting, if Martinez disputes the proposed modification, Martinez shall provide to VMV a written basis for its position. The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it become necessary, the Parties may agree in writing to different deadlines for the meet-and-confer period.

1 **X. GOVERNING LAW**

2 The terms and conditions of this Consent Judgment shall be governed by and construed in
3 accordance with the laws of the State of California.

4 **XI. PROVISION OF NOTICE**

5 All notices required to be given to either Party to this Consent Judgment by the other shall be in
6 writing and sent to the following agents listed below via first-class mail or via electronic mail where
7 required.

8 **KJC LAW GROUP, A.P.C.**
9 Kevin J. Cole (SBN 321555)
10 9701 Wilshire Blvd., Suite 1000
11 Beverly Hills, CA 90212
12 Telephone: (310) 861-7797
13 e-Mail: kevin@kjclawgroup.com

14 *Attorneys for Plaintiff*
15 Alex Martinez

16 **HAHN LOESER & PARKS LLP**
17 Michael J. Gleason (SBN 279434)
18 One America Plaza
19 600 West Broadway, Suite 1500
20 San Diego, CA 92101
21 Telephone: (619) 810-4310
22 e-Mail: mgleason@hahnlaw.com

23 *Attorneys for Defendant*
24 VMV

25 **XII. COURT APPROVAL**

26 **12.1** Upon execution of this Consent Judgment by the Parties, Martinez shall notice a Motion for
27 Court Approval. The Parties shall use their best efforts to support entry of this Consent Judgment.

28 **12.2** If the California Attorney General objects to any term in this Consent Judgment, the Parties
shall use their best efforts to resolve the concern in a timely manner, and if possible, prior to the hearing on
the motion.

12.3 If this Consent Judgment is not approved by the Court, it shall be void and have no force or
effect.

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XIII. EXECUTED AND COUNTERPARTS

This Consent Judgment may be executed in counterparts, which taken together shall be deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid as the original signature.

XIV. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

XV. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

If a dispute arises with respect to either Party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

XVI. ENFORCEMENT

The Parties may, by motion or order to show cause before the Superior Court of Los Angeles County, enforce the terms and conditions contained in this Consent Judgment. In any successful action brought by Martinez to enforce this Consent Judgment, Martinez may seek whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with the Consent Judgment and Proposition 65.

XVII. ENTIRE AGREEMENT, AUTHORIZATION

17.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter herein, including any and all prior discussions, negotiations, commitments, and understandings related thereto. No representations, oral or otherwise, express or implied,

1 other than those contained herein have been made by any Party. No other agreements, oral or otherwise,
2 unless specifically referred to herein, shall be deemed to exist or to bind any Party.

3 17.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
4 Party he or she represents to stipulate to this Consent Judgment.

5 **XVIII. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
6 **CONSENT JUDGMENT**

7 This Consent Judgment has come before the Court upon the request of the Parties. The Parties
8 request the Court to fully review this Consent Judgment and, being fully informed regarding the matters
9 which are the subject of this action, make the findings pursuant to California Health and Safety Code
10 section 25249.7(f)(4) and approve this Consent Judgment.

11 **IT IS SO STIPULATED.**

12 DATED: May 30, 2023

KJC LAW GROUP, A.P.C.

13 By: /s/ Kevin J. Cole
14 Kevin J. Cole, Esq.

15 *Attorneys for Plaintiff*
16 *Alex Martinez*

17 DATED: May 30, 2023

17 DocuSigned by:

18 Plaintiff Alex Martinez

19
20
21 DATED: May 30, 2023

HAHN LOESER & PARKS LLP

22 By: /s/ Michael J. Gleason
23 Michael J. Gleason, Esq.

24 *Attorneys for Defendant*
25 *VMV Cosmetic Group d/b/a Salerm Cosmetics*

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DATED: JUNE 5, 2023

VMV COSMETICS GROUP D/B/A SALERM
COSMETICS



By: OSCAR CLAVELL COROMINAS

Its: HEAD OF LEGAL