Evan J. Smith, Esquire (SBN 242352)
Ryan P. Cardona, Esquire (SBN 302113)
BRODSKY SMITH
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

vs.

MILL CREEK BOTANICALS INC., MILL CREEK BOTANICALS LLC, U.S. INTERNATIONAL TRADING CORP., VISTACOST.COM, INC.,

Defendants.

Case No.: 26CV179289

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. S. Raj Chatterjee
Dept.: 21
Hearing Date: August 4, 2026
Hearing Time: 2:30 PM
Complaint Filed: April 15, 2024
Reservation #: 274893726310

Docusign Envelope ID: 3EF8E688-6DFF-8DAB-8260-281B45D62258

1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony Ferreiro acting on behalf of the public interest (hereinafter "Ferreiro") and Vitacost.com, Inc. ("Vitacost" or "Defendant") with Ferreiro and Defendant collectively referred to as the "Parties" and each of them as a "Party." Ferreiro is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Vitacost is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed individuals to diethanolamine (DEA) from its sales of *Mill Creek® Biotene H-24®* natural extra body styling gels without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer through the sale of this product through the internet.

1.3 **Notice of Violation/Action.** On May 9, 2023, Ferreiro served Vitacost, Mill Creek Botanicals, Inc. ("Mill Creek"), and various public enforcement agencies with documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Defendant and Mill Creek violated Proposition 65 for failing to warn consumers and customers that use of *Mill Creek® Biotene H-24®* natural extra body styling gels expose users in California to DEA. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On April 15, 2024, Ferreiro filed a complaint (the "Complaint").

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

Docusign Envelope ID: 3EF8E688-6DFF-8DAB-8260-281B45D62258

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

2. DEFINITIONS

2.1 **Covered Products.** The term "Covered Products" means *Mill Creek® Biotene H-24®* natural extra body styling gels that are manufactured, distributed, shipped into California and offered for sale in California by Vitacost that expose users to DEA.

2.2 **Effective Date.** The term "Effective Date" means the date Notice is served that this Consent Judgment is entered as a Judgment of the Court.

3. INJUNCTIVE RELIEF: WARNINGS

3.1 **Clear and Reasonable Warning**. Commencing within sixty (60) days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.1 and 3.2 must be provided for all Covered Products that Defendant imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream of commerce within 90 days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

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

> ⚠ **WARNING**: This product can expose you to chemicals including diethanolamine (DEA), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning**: Vitacost may, but is not required to, use the alternative short-form warning as set forth in this § 3.1(b) ("**Alternative Warning**") as follows:

Docusign Envelope ID: 3EF8E688-6DFF-8DAB-8260-281B45D62258

⚠ **WARNING**: Risk of cancer from exposure to diethanolamine (DEA). See www.P65Warnings.ca.gov.

Or:

⚠ **WARNING**: Can expose you to diethanolamine (DEA), a carcinogen. See www.P65Warnings.ca.gov.

Or, for Covered Products manufactured and labeled prior to January 1, 2028, Defendant may, at its option, use the following statement for warnings affixed to the packaging or label:

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

For each of these warnings, Defendant may, at its option, use the words **"CA WARNING:"** or **"CALIFORNIA WARNING:"** instead of the word **"WARNING:".**

3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must have the word **"WARNING:," "CA WARNING:"** or **"CALIFORNIA 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:"**.

3.3 If Vitacost offers Covered Products for sale to consumers in California through brick and mortar retail establishments, the **Warning** or **Alternative 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 only if such electronic device or automatic process provides the **Warning** or **Alternative Warning** without the purchaser having to seek it out, providing that the **Warning** or **Alternative 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** or **Alternative Warning** provided via an electronic device or automatic process does not apply to internet purchases, which are subject to the provisions of Section 25602(b). The **Warning** or **Alternative 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

Docusign Envelope ID: 3EF8E688-6DFF-8DAB-8260-281B45D62258

size as those other safety warnings. If "consumer information," as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Vitacost shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by OEHHA. An **Alternative Warning** on a Covered Product manufactured and labeled after January 1, 2028 shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

3.4 For internet sales, the **Warning** or **Alternative Warning** shall be posted on websites where Vitacost offers and makes available Covered Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning,** or a clearly marked hyperlink using the word "**WARNING,**" appears on the product display page, or by otherwise prominently displaying the warning to the California purchaser prior to completing the purchase. To comply with this Section, Vitacost shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers it is aware of and to which it provides Covered Products; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers that it is aware of and to which it provides Covered Products with written notice in accordance with Title 27, California Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in compliance with this Consent Judgment and Proposition 65 by either adhering to §§ 3.3 and 3.4 of this Consent Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered Product and exposures at issue within 90 days after the Effective Date.

4. MONETARY TERMS

4.1 **Civil Penalty.** Vitacost shall pay $1,000.00 as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &

Docusign Envelope ID: 3EF8E688-6DFF-8DAB-8260-281B45D62258

Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

4.1.1 Within ten (10) business days of the Effective Date, Vitacost shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of $750.00; and to (b) "Anthony Ferreiro" in the amount of $250.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

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

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

Docusign Envelope ID: 3EF8E688-6DFF-8DAB-8260-281B45D62258

5. RELEASE OF ALL CLAIMS

5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro acting on his own behalf, and on behalf of the public interest, and Vitacost, and its parents, shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assigns ("Defendant Releasees") and all entities to which Vitacost directly or indirectly distributes or sells Covered Products, of all claims for violations of Proposition 65 based on exposure to DEA from use of the Covered Products manufactured, distributed, or sold by Vitacost as set forth in the Notice. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that no other actions by private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and take any action with respect to any violation of Proposition 65 based on exposure to DEA from use of the Covered Products that was alleged in the Complaint, or that could have been brought pursuant to the Notice against Vitacost ("Proposition 65 Claims"). Vitacost's compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Vitacost with regard to exposure to DEA from use of the Covered Products.

5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, and successors and assignees, and *not* in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases Vitacost and Defendant Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by Vitacost or Defendant Releasees.

With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the future may have,

Docusign Envelope ID: 3EF8E688-6DFF-8DAB-8260-281B45D62258

conferred by virtue of the provisions of § 1542 of the California Civil Code. It is possible that other claims not known to the Ferreiro arising out of the facts alleged in the Notice and Complaint and relating to the Covered Products will develop or be discovered. Ferreiro, on behalf of himself only, acknowledges that this Consent Judgment is expressly intended to cover and include all such claims up through 60 days after the Effective Date, including all rights of action therefor. Ferreiro acknowledges that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 provides as follows:

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

Ferreiro acknowledges and understands the significance and consequence of this specific waiver of California Civil Code § 1542.

5.3 Vitacost waives any and all claims against Ferreiro, his attorneys and other representatives, for any and all actions taken, or statements made (or those that could have been taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of investigating the claims at issue here 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.

Docusign Envelope ID: 3EF8E688-6DFF-8DAB-8260-281B45D62258

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:

Gregory P. O'Hara
Lauren M. Michals
Nixon Peabody LLP
One Embarcadero Center, 32nd Fl.
San Francsico, CA 94111

And

For Ferreiro:

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.

8. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

Docusign Envelope ID: 3EF8E688-6DFF-8DAB-8260-281B45D62258

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

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

10. MODIFICATION

10.1 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.

11. ATTORNEY'S FEES

11.1 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.

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

12. RETENTION OF JURISDICTION

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

Docusign Envelope ID: 3EF8E688-6DFF-8DAB-8260-281B45D62258

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:

Date: _____

By: _____
ANTHONY FERREIRO

AGREED TO:

Date: 6/16/2026
Signed by:

By: Clarice Hovsepian
0629F997826B408...
VITACOST.COM, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

_____
Judge of Superior Court

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:

Date: 6/17/26

By: Anthony Ferreiro
ANTHONY FERREIRO

AGREED TO:

Date: _____

By: _____
VITACOST.COM, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

_____
Judge of Superior Court