

**FILED**  
**ALAMEDA COUNTY**

JUN 13 2014

CLERK OF THE SUPERIOR COURT

By *Amers* Deputy

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12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 Coordination Proceeding  
16 Special Title (Rule 3.350)  
17 PROPOSITION 65 COCAMIDE DEA  
CASES

) JUDICIAL COUNCIL COORDINATION  
) PROCEEDING NO: 4765

) [*Shefa LMV, LLC v. Ross Stores, et al.*,  
) Los Angeles County Superior Court  
) No. BC521400

) **[PROPOSED] CONSENT JUDGMENT**  
) **AS TO ENCHANTE ACCESSORIES,**  
) **INC.**

) Judge: Hon. George C. Hernandez, Jr.

23 Action filed: October 11, 2013

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1       **1. INTRODUCTION**

2               **1.1. Shefa LMV, LLC and ENCHANTE ACCESSORIES, INC.**

3               This Consent Judgment is entered into by and between plaintiff Shefa LMV, LLC (“Shefa  
4       LMV”) and ENCHANTE ACCESSORIES, INC. (“ENCHANTE ACCESSORIES”), with Shefa  
5       LMV and ENCHANTE ACCESSORIES collectively referred to as the “parties,” and individually  
6       as a “party.” Shefa LMV is an entity organized in the State of California, which has asserted that it  
7       seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing  
8       or eliminating hazardous substances contained in consumer and commercial products. Shefa LMV  
9       alleges that ENCHANTE ACCESSORIES employs ten or more persons and is a person in the course  
10      of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
11      California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

12              **1.2. General Allegations**

13              Shefa LMV alleges that ENCHANTE ACCESSORIES has manufactured, imported,  
14      distributed and/or sold shampoo and shower gel products that contain cocamide diethanolamine  
15      (“Cocamide DEA”) without the requisite Proposition 65 warnings. Cocamide DEA is on the  
16      Proposition 65 list as known to cause birth defects and other reproductive harm.

17              **1.3. Product Description**

18              As used in this Consent Judgment, “Products” shall mean products containing Cocamide  
19      DEA including, but not limited to, Sleep therapy lavender honey shower gel, and Calming  
20      chamomile pet shampoo, that are manufactured, imported, distributed and/or sold by ENCHANTE  
21      ACCESSORIES for sale in the State of California.

22              **1.4. Notice of Violation**

23              On July 1, 2013, Shefa LMV served ENCHANTE ACCESSORIES and various public  
24      enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that  
25      provided recipients with notice alleging that ENCHANTE ACCESSORIES was in violation of  
26      Proposition 65 for failing to warn consumers and customers that the Products exposed users in  
27      California to Cocamide DEA. No public enforcer has diligently prosecuted the allegations set forth  
28      in the Notice.

1           **1.5. No Admission**

2           ENCHANTE ACCESSORIES denies the material, factual and legal allegations contained in  
3 Shefa LMV's Notice and maintains that it has at all times been in compliance with all laws and all  
4 products that it has sold, manufactured, imported and/or distributed in California, including the  
5 Products. Nothing in this Consent Judgment shall be construed as an admission by ENCHANTE  
6 ACCESSORIES of any fact, finding, issue of law or violation of law, nor shall compliance with this  
7 Consent Judgment constitute or be construed as an admission by ENCHANTE ACCESSORIES of  
8 any fact, finding, conclusion, issue of law or violation of law. However, this Section shall not  
9 diminish or otherwise affect ENCHANTE ACCESSORIES's obligations, responsibilities and duties  
10 under this Consent Judgment.

11           **1.6. Consent to Jurisdiction**

12           For purposes of this Consent Judgment only, the parties stipulate that this Court has  
13 jurisdiction over ENCHANTE ACCESSORIES as to the allegations contained in the Complaint, that  
14 venue is proper in Alameda County Superior Court. , and that this Court or, if the case is transferred  
15 back to the Los Angeles County Superior Court at the conclusion of the Coordination Action, the  
16 Los Angeles Superior Court has jurisdiction to enter and enforce the provisions of this Consent  
17 Judgment. For purposes of this Consent Judgment only, the parties stipulate that this Court has  
18 jurisdiction over ENCHANTE ACCESSORIES as to the allegations contained in the Notice, that  
19 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to enter and enforce  
20 the provisions of this Consent Judgment.

21           **1.7. Execution Date**

22           For purposes of this Consent Judgment, the term "Execution Date" shall mean the date this  
23 Consent Judgment is signed by both parties.

24           **1.8. Effective Date**

25           For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the  
26 Court enters Judgment pursuant to the terms of this Consent Judgment.

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1 **2. REFORMULATION AND SELL-THROUGH**

2 **2.1. Reformulation**

3 Commencing on October 15, 2013, ENCHANTE ACCESSORIES shall sell, distribute or  
4 otherwise deliver, or cause to be sold, distributed or otherwise delivered into California, only  
5 Products reformulated to remove Cocamide DEA as an ingredient. For purposes of this Consent  
6 Judgment, a product "contains Cocamide DEA" if Cocamide DEA is an intentionally added  
7 ingredient in the product and/or part of the product formulation.

8 **2.2. Suppliers**

9 No more than 30 days after the Effective Date, ENCHANTE shall issue specifications to its  
10 suppliers of Covered Products requiring that Covered Products remove Cocamide DEA as an  
11 ingredient, and shall instruct each supplier to use reasonable efforts to eliminate Covered Products  
12 containing Cocamide DEA on a nationwide basis.

13 ENCHANTE ACCESSORIES represents that it completed this action in or about September  
14 2013.

15 **2.3. Sell Through Period**

16 ENCHANTE ACCESSORIES's Products that were manufactured and distributed for retail  
17 sale prior to the Effective Date shall be subject to the release of liability pursuant to Section 5 of  
18 this Consent Judgment, without regard to when such Products were, or are in the future, sold to  
19 consumers. As a result, the obligations of ENCHANTE ACCESSORIES as set forth in this  
20 Consent Judgment, including but not limited to Section 2.1, do not apply to these products.

21 **3. ENFORCEMENT**

22 Shefa may, by motion or application for an order to show cause before the Alameda County  
23 Superior Court. Prior to bringing any motion or application to enforce the requirements of Section  
24 2 above, Shefa shall provide the Defendant with Notice of Violation and a copy of a test that  
25 support Shefa's Notice of Violation. The Parties shall then meet and confer regarding the basis for  
26 Shefa's anticipated motion or application in an attempt to resolve the matter informally, including  
27 providing Settling Defendant a reasonable opportunity of at least thirty (30) days to cure any  
28 alleged violation. Should such attempts at informal resolution fail, Shefa may file its enforcement

1 motion or application. The prevailing party on any motion to enforce this Consent Judgment shall  
2 be entitled to its reasonable attorney's fees and costs incurred as a result of such motion or  
3 application.

#### 4 **4. MONETARY PAYMENTS**

##### 5 **4.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

6 ENCHANTE ACCESSORIES shall pay a total civil penalty payment of \$2,000.00 within  
7 ten (10) days of the Execution Date, as follows: the civil penalty shall be apportioned in accordance  
8 with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to  
9 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the  
10 remaining 25% of the penalty remitted to Shefa LMV, both pursuant to the procedures set forth in  
11 Section 4.3.

##### 12 **4.2. Reimbursement of Shefa LMV's Fees and Costs**

13 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute  
14 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
15 this fee issue to be resolved after the material terms of the agreement had been settled. ENCHANTE  
16 ACCESSORIES expressed a desire to resolve the fee and cost issue after the other settlement terms  
17 had been agreed. The Parties then attempted to (and did) reach an accord on the compensation due  
18 to Shefa LMV and its counsel under general contract principles and the private attorney general  
19 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in this  
20 matter, except fees that may be incurred on appeal. Under these legal principles, ENCHANTE  
21 ACCESSORIES shall pay the amount of \$5,000.00 for fees and costs incurred investigating,  
22 litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred)  
23 negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public  
24 interest.

##### 25 **4.3. Payment Procedures**

26 All payments required by Sections 4.1 and 4.2 shall be within ten (10) days of the Execution  
27 Date, in three checks made payable as follows:

- 28 (a) one check to "OEHHA" in the amount of \$1,500.00;

1 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in  
2 the amount of \$500.00;

3 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$5,000.00.

4 **4.4. Issuance of 1099 Forms**

5 After the settlement funds have been transmitted to Shefa LMV's counsel, ENCHANTE  
6 ACCESSORIES shall issue separate 1099 forms, as follows:

7 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:  
8 68-0284486) in the amount of \$1,500.00;

9 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$500.00, whose address  
10 and tax identification number shall be furnished upon request;

11 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the  
12 amount of \$5,000.00;

13 **4.5. Issuance of Payments.**

14 **4.5.1.** All payments owed to Shefa LMV, pursuant to Section 4.1, shall be delivered  
15 to the following payment address:

16 Daniel N. Greenbaum, Esq.  
17 Law Office of Daniel N. Greenbaum  
18 14752 Otsego Street  
19 Sherman Oaks, CA 91403

20 **4.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1,  
21 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

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

27 With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum at  
28 the address set forth above in 4.5.1, as proof of payment to OEHHA.

**5. CLAIMS COVERED AND RELEASED**

**5.1. Shefa LMV's Release of ENCHANTE ACCESSORIES**

**5.2.** Plaintiff, acting on its own behalf and in the public interest, releases ENCHANTE

1 ACCESSORIES, its parents, subsidiaries, affiliated entities that are under common ownership,  
2 directors, officers, employees, attorneys, and each entity to whom ENCHANTE ACCESSORIES  
3 directly or indirectly distributes or sells Products, including, but not limited to, downstream  
4 distributors, wholesalers, customers, retailers, including specifically, but not limited to Ross Stores,  
5 Inc., Big Lots Stores, Inc., franchisees, cooperative members, licensors, and licensees (“Releasees”),  
6 from all claims for violations of Proposition 65 up through the date on which this Consent Judgment  
7 is signed by both parties based on exposure to Cocamide DEA from the Products as set forth in the  
8 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with  
9 Proposition 65 with respect to exposures to Cocamide DEA from the Products as set forth in the  
10 Notice. Shefa LMV, also, in its individual capacity only and *not* in its representative capacity,  
11 provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar  
12 to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,  
13 liabilities and demands of Shefa LMV of any nature, character or kind, whether known or unknown,  
14 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Cocamide  
15 DEA in the Products manufactured, distributed or sold by ENCHANTE ACCESSORIES.

16 **5.3. ENCHANTE ACCESSORIES’s Release of Shefa LMV**

17 ENCHANTE ACCESSORIES on behalf of itself, its past and current agents, representatives,  
18 attorneys, successors, and/or assignees, hereby waives any and all claims against Shefa LMV, its  
19 attorneys and other representatives, for any and all actions taken or statements made (or those that  
20 could have been taken or made) by Shefa LMV and its attorneys and other representatives, whether  
21 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this  
22 matter with respect to the Products.

23 **6. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
25 be null and void if, for any reason, it is not approved and entered by the Court within one year after  
26 it has been fully executed by all parties. In the event the Court does not approve this Consent  
27 Judgment within one year, the funds paid pursuant to Section 4 of this Consent Judgment shall be  
28 returned to ENCHANTE ACCESSORIES within ten (10) days after the expiration of one year.

1 **7. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions  
4 remaining shall not be adversely affected.

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California  
7 and the obligations of ENCHANTE ACCESSORIES hereunder as to the Products apply only within  
8 the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise  
9 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment  
10 are rendered inapplicable or no longer required as a result of any such repeal or preemption or  
11 rendered inapplicable by reason of law generally as to the Products, including, without limitation,  
12 the removal of Cocamide DEA from OEHHA's list of Proposition 65 chemicals, then ENCHANTE  
13 ACCESSORIES shall notify Shefa LMV and its counsel and may have no further obligations  
14 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

15 **9. NOTICES**

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

20  
21 To ENCHANTE ACCESSORIES:

22 David Irons  
23 ENCHANTE ACCESSORIES, INC.  
24 4 East 34<sup>th</sup> Street  
New York, NY 10016

25 With a copy to:

26 Carol Brophy, Esq.  
27 Sedgwick LLP  
333 Bush St 30th Fl  
28 San Francisco, CA 94104

To Shefa LMV:

Daniel N. Greenbaum, Esq.  
Law Office of Daniel N. Greenbaum  
14752 Otsego Street  
Sherman Oaks, CA 91403



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

3 **10. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,  
5 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
6 one and the same document. A facsimile or pdf signature shall be as valid as the original.

7 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

8 Shefa LMV and its attorneys agree to comply with the reporting form requirements  
9 referenced in California Health & Safety Code § 25249.7(f).

10 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

11 Shefa LMV and ENCHANTE ACCESSORIES agree to mutually employ their, and their  
12 counsel's, best efforts to support the entry of this agreement as a Consent Judgment and obtain  
13 approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that,  
14 pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain  
15 judicial approval of this Consent Judgment, which Shefa LMV shall draft and file, and ENCHANTE  
16 ACCESSORIES shall not oppose. If any third party objection to the noticed motion is filed, Shefa  
17 LMV and ENCHANTE ACCESSORIES shall work together to file a joint reply or separate replies  
18 if the parties so desire and appear at any hearing before the Court. This provision is a material  
19 component of the Consent Judgment and shall be treated as such in the event of a breach. If the  
20 Court does not grant the motion to approve this Consent Judgment, and if the parties choose not to  
21 pursue a modified Consent Judgment within 30 days after the Court's denial of the motion to  
22 approve, then, upon remittitur, any and all payments made pursuant to Section 3 of this Consent  
23 Judgment will be returned to ENCHANTE ACCESSORIES.

24 **13. MODIFICATION**

25 This Consent Judgment may be modified only: (1) by written agreement of the parties and  
26 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
27 of any party and entry of a modified Consent Judgment by the Court.

28 **14. AUTHORIZATION**

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The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

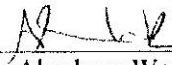
AGREED TO:

AGREED TO:

Date: 5/19/14

Date: 5/21/2014

By:   
Plaintiff, Shefa LMV, LLC  
Print: Alisa Fried  
Its: Managing Member

By:   
Abraham Weinberger  
Defendant, ENCHANTE  
ACCESSORIES, INC.

**ORDER AND JUDGMENT**

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Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Enchante Accessories, Inc., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: 6/13/2014

  
Judge of the Superior Court  
**GEORGE C. HERNANDEZ, JR.**