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FILED
ALAMEDA COUNTY

JUN 13 2014

CLERK OF THE SUPERIOR COURT
 By Herrera Deputy

5 Attorneys for Plaintiff
 SHEFA LMV, LLC
 6
 7 Attorneys for Defendant (non-appointed)
 8 HOUSE OF PAWS, LTD.
 9 A.P.K. Bates (Non-Legal)
 Director for The House of Paws, LTD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

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

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO: 4765
)
) [*Shefa LMV, LLC v. Ross Stores, et al.*,
) Los Angeles County Superior Court
) No. ~~RC521400~~
)
) **[PROPOSED] AMENDED CONSENT**
) **JUDGMENT AS TO THE HOUSE OF**
) **PAWS, LTD.**
)
) Judge: Hon. George C. Hernandez, Jr.
)
) Action filed: October 11, 2013

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and HOUSE OF PAWS, LTD..**

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

11 **1.2. General Allegations**

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

16 **1.3. Product Description**

17 As used in this Consent Judgment, “Products” shall mean products containing cocamide
18 DEA including, but not limited to, [names of shampoos and soaps], that are manufactured,
19 imported, distributed and/or sold by DEFENDANT for sale in the State of California.

20 **1.4. Notice of Violation**

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

26 **1.5. No Admission**

27 DEFENDANT denies the material, factual and legal allegations contained in Plaintiff’s
28 Notice and maintains that it has at all times been in compliance with all laws and all products that

1 it has sold, manufactured, imported and/or distributed in California, including the Products.
2 Nothing in this Consent Judgment shall be construed as an admission by DEFENDANT of any
3 fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment
4 constitute or be construed as an admission by DEFENDANT of any fact, finding, conclusion, issue
5 of law or violation of law. However, this Section shall not diminish or otherwise affect
6 DEFENDANT's obligations, responsibilities and duties under this Consent Judgment.

7 **1.6. Consent to Jurisdiction**

8 For purposes of this Consent Judgment only, the parties stipulate that this Court has
9 jurisdiction over DEFENDANT as to the allegations contained in the Complaint, that venue is
10 proper in Alameda County Superior Court, and that this Court or, if the case is transferred back to
11 the Los Angeles County Superior Court at the conclusion of the Coordination Action, the Los
12 Angeles Superior Court has jurisdiction to enter and enforce the provisions of this Consent
13 Judgment.

14 **1.7. Execution Date**

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

17 **1.8. Effective Date**

18 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
19 Court enters Judgment pursuant to the terms of this Consent Judgment.
20

21 **2. INJUNCTIVE RELIEF**

22 **2.1. Reformulation of Covered Products**

23 As of the Effective Date, DEFENDANT shall not manufacture, distribute, sell or offer for
24 sale any Covered Product that contains Cocamide DEA and that will be sold or offered for sale to
25 California consumers. For purposes of this Consent Judgment, a product "contains cocamide
26 DEA" if cocamide DEA is an intentionally added ingredient in the product and/or part of the
27 product formulation.
28

1 **2.2. Suppliers**

2 No more than 30 days after the Effective Date, DEFENDANT shall issue specifications to
3 its suppliers of Covered Products requiring that Covered Products not contain any cocamide DEA,
4 and shall instruct each supplier to use reasonable efforts to eliminate Covered Products containing
5 cocamide DEA on a nationwide basis.

6 **2.3. Sell Through Period**

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

12 **3. ENFORCEMENT**

13 Shefa may, by motion or application for an order to show cause before the Alameda County
14 Superior Court, or, if the case is transferred back to the Los Angeles County Superior Court at the
15 conclusion of the Coordination Action, the Los Angeles Superior Court, may enforce the terms and
16 conditions contained in this Consent Judgment. Prior to bringing any motion or application to
17 enforce the requirements of Section 2 above, Shefa shall provide the Defendant with Notice of
18 Violation and a copy of any test results which purportedly support Shefa's Notice of Violation.
19 The Parties shall then meet and confer regarding the basis for Shefa's anticipated motion or
20 application in an attempt to resolve the matter informally, including providing Settling Defendant a
21 reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such
22 attempts at informal resolution fail, Shefa may file its enforcement motion or application. The
23 prevailing party on any motion to enforce this Consent Judgment shall be entitled to its reasonable
24 attorney's fees and costs incurred as a result of such motion or application.

25 **4. MONETARY PAYMENTS**

26 **4.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

27 DEFENDANT shall pay a total civil penalty payment of \$3000.00 within ten (10) days of
28 the Execution Date, as follows: the civil penalty shall be apportioned in accordance with

1 California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the
2 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
3 remaining 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in
4 Section 4.3.

5 **4.2. Reimbursement of Plaintiff's Fees and Costs**

6 The parties acknowledge that Plaintiff and its counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
8 this fee issue to be resolved after the material terms of the agreement had been settled.

9 DEFENDANT expressed a desire to resolve the fee and cost issue after the other settlement terms
10 had been agreed. The Parties then attempted to (and did) reach an accord on the compensation
11 due to Plaintiff and its counsel under general contract principles and the private attorney general
12 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in this
13 matter, except fees that may be incurred on appeal. Under these legal principles, DEFENDANT
14 shall pay the amount of \$5000.00 for fees and costs incurred investigating, litigating and
15 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,
16 drafting, and obtaining the Court's approval of this Consent Judgment in the public interest.

17 **4.3. Payment Procedures**

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

- 20 (a) one check to "OEHHA" in the amount of \$ 2250.00;
- 21 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Plaintiff, LLC" in the
22 amount of \$750.00;
- 23 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$5000.00.

24 **4.4. Issuance of 1099 Forms**

25 After the settlement funds have been transmitted to Plaintiff's counsel, DEFENDANT shall
26 issue separate 1099 forms, as follows:

- 27 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
28 68-0284486) in the amount of \$2250.00;

1 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$750.00, whose
2 address and tax identification number shall be furnished upon request;

3 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the
4 amount of \$5000.00;

5 **4.5. Issuance of Payments.**

6 **4.5.1.** All payments owed to Plaintiff, pursuant to Section 4.1, shall be delivered to
7 the following payment address:

8 Daniel N. Greenbaum, Esq.
9 Law Office of Daniel N. Greenbaum
10 14752 Otsego Street
11 Sherman Oaks, CA 91403

12 **4.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1,
13 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

14 Mike Gyrics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-4010

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

21 **5. CLAIMS COVERED AND RELEASED**

22 **5.1. Plaintiff's Release of DEFENDANT**

23 Plaintiff, acting on its own behalf and in the public interest, releases DEFENDANT, its
24 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,
25 employees, attorneys, and each entity to whom DEFENDANT directly or indirectly distributes or
26 sells Products, including, but not limited to, downstream distributors, wholesalers, customers,
27 retailers, including specifically, but not limited to Ross Stores, Inc., franchisees, cooperative
28 members, licensors, and licensees ("Releasees"), from all claims for violations of Proposition 65
up through the date on which this Consent Judgment is signed by both parties based on exposure to
cocamide DEA from the Products as set forth in the Notice. Compliance with the terms of this

1 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
2 cocamide DEA from the Products as set forth in the Notice.

3 Plaintiff, also, in its individual capacity only and *not* in its representative capacity, provides
4 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
5 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
6 liabilities and demands of Plaintiff of any nature, character or kind, whether known or unknown,
7 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the cocamide
8 DEA in the Products manufactured, distributed or sold by DEFENDANT.

9 **5.2. DEFENDANT's Release of Plaintiff**

10 DEFENDANT on behalf of itself, its past and current agents, representatives, attorneys,
11 successors, and/or assignees, hereby waives any and all claims against Plaintiff, its attorneys and
12 other representatives, for any and all actions taken or statements made (or those that could have
13 been taken or made) by Plaintiff and its attorneys and other representatives, whether in the course
14 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
15 respect to the Products.

16 **6. COURT APPROVAL**

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

22 **7. SEVERABILITY**

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

26 **8. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 and the obligations of DEFENDANT hereunder as to the Products apply only within the State of

1 California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered
2 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
3 rendered inapplicable or no longer required as a result of any such repeal or preemption or
4 rendered inapplicable by reason of law generally as to the Products, including, without limitation,
5 the removal of cocamide DEA from OEHHA's list of Proposition 65 chemicals, then
6 DEFENDANT shall notify Plaintiff and its counsel and may have no further obligations pursuant
7 to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

8 **9. NOTICES**

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

13
14 To DEFENDANT:
15 APK Bates
16 The House of Paws Ltd
17 Dinghills Farm
18 Somerby
19 Melton Mowbray
20 Leics LE14 2QF

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

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

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

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

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

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

1 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

2 Plaintiff and DEFENDANT agree to mutually employ their, and their counsel's, best efforts
3 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
4 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
5 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
6 Consent Judgment, which Plaintiff shall draft and file, and DEFENDANT shall not oppose. If any
7 third party objection to the noticed motion is filed, Plaintiff and DEFENDANT shall work together
8 to file a joint reply or separate replies if the parties so desire and appear at any hearing before the
9 Court. This provision is a material component of the Consent Judgment and shall be treated as
10 such in the event of a breach. If the Court does not grant the motion to approve this Consent
11 Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days
12 after the Court's denial of the motion to approve, then, upon remittitur, any and all payments made
13 pursuant to Section 4 of this Consent Judgment will be returned to DEFENDANT.

14 **13. MODIFICATION**

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

18 **14. AUTHORIZATION**

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

21 **15. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
22 **CONSENT JUDGMENT**

23 This Consent Judgment came before this Court upon the request of the Parties. The Parties
24 request the Court to review this Consent Judgment and to make the following findings pursuant to
25 Cal. Health & Safety Code § 25249.7(f)(4):

- 26 1. The injunctive relief required by the Consent Judgment complies with Cal. Health
27 & Safety Code § 25249.7;
- 28 2. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is

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reasonable under California law; and

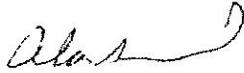
3. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.

AGREED TO:

AGREED TO:

Date: 5/19/14

Date: 20th May 2014

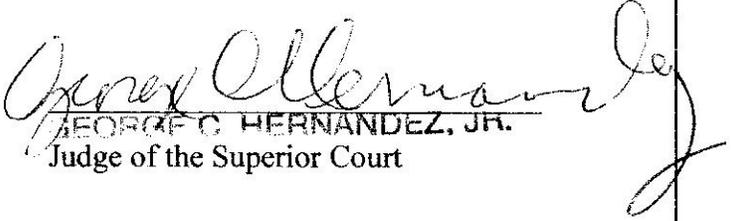
By: 
Plaintiff, Shefa LMV, LLC
Print: Alisa Fried
Its: Managing Member

By: 
ADK BATES
CO DIRECTOR
Defendant, HOUSE OF PAWS, LTD.

ORDER AND JUDGMENT

1 Based upon the stipulated Consent Judgment between Shefa LMV, LLC and House of Paws Ltd,
2 the settlement is approved and the clerk is directed to enter judgment in accordance with the terms
3 herein.

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5 Dated: 6/13/2014

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

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