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Rich Brands, LLC

FILED
ALAMEDA COUNTY

JUN 13 2014

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

Coordination Proceeding
Special Title (Rule 3.350)
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] AMENDED CONSENT**
) **JUDGMENT AS TO RICH BRANDS,**
) **LLC**

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

Action filed: October 11, 2013

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and Rich Brands, LLC**

3 This Consent Judgment is entered into by and between plaintiff Shefa LMV, LLC
4 (“Plaintiff”) and RICH BRANDS, LLC (“Defendant”), collectively referred to as the “parties,” and
5 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 moisturizing bath and shower gelee products that contain cocamide diethanolamine (“Cocamide
14 DEA”) without the requisite Proposition 65 warnings. Cocamide DEA is on the Proposition 65 list
15 as 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, *Vitabath* Moisturizing Bath and Shower Gelee, that are
19 manufactured, imported, distributed and/or sold by DEFENDANT for sale in the State of
20 California. It is understood and agreed that “Products” shall not mean: in the event California’s
21 OEHHA removes Cocamide DEA from its list of Proposition 65 chemicals, any products thereafter
22 manufactured, imported, distributed and/or sold by DEFENDANT for sale in the State of
23 California which contain Cocamide DEA.

24 **1.4. Notice of Violation**

25 On July 1, 2013, Plaintiff served DEFENDANT and various public enforcement agencies
26 with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with
27 notice alleging that DEFENDANT was in violation of Proposition 65 for failing to warn
28 consumers and customers that the Products exposed users in California to Cocamide DEA. No

1 public enforcer has diligently prosecuted the allegations set forth in the Notice.

2 **1.5. No Admission**

3 DEFENDANT denies the material factual and legal allegations contained in Plaintiff's
4 Notice and maintains that all its products have at all times been in compliance with all laws,
5 including Proposition 65, that it has sold, manufactured, imported and/or distributed in California,
6 including the Products. Nothing in this Consent Judgment shall be construed as an admission by
7 DEFENDANT of any fact, finding, issue of law or violation of law, nor shall compliance with this
8 Consent Judgment constitute or be construed as an admission by DEFENDANT of any fact,
9 finding, conclusion, issue of law or violation of law, such being specifically denied by
10 DEFENDANT. However, this Section shall not diminish or otherwise affect DEFENDANT's
11 obligations, responsibilities and duties under this Consent Judgment.

12 **1.6. Consent to Jurisdiction**

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

18 **1.7. Execution Date**

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

21 **1.8. Effective Date**

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

24 **2. INJUNCTIVE RELIEF**

25 **2.1. Warning or Reformulation**

26 Commencing on December 1, 2013, DEFENDANT shall sell, distribute or otherwise
27 deliver, or cause to be sold, distributed or otherwise delivered into California, only Products
28 reformulated to contain no Cocamide DEA, unless such Products are sold or shipped with a clear

1 and reasonable warning as required by Proposition 65. For purposes of this Consent Judgment, a
2 product "contains cocamide DEA" if cocamide DEA is an intentionally added ingredient in the
3 product and/or part of the product formulation.

4 **2.2. Warning Obligation For Cocamide DEA-Containing Products**

5 Each warning required by Section 2.1 shall be prominently placed upon a product's label or
6 other labeling or displayed at the retail outlet with such conspicuousness, as compared with other
7 words, statements, designs, or devices in the label, labeling or display as to render it likely to be
8 read and understood by an ordinary individual under customary conditions of purchase or use.

9 Each warning shall be provided in a manner such that the consumer or user understands to which
10 specific Product the warning applies, so as to minimize the risk of consumer confusion.

11 DEFENDANT shall provide Proposition 65 warnings on the products as follows:

12 **WARNING:** This product contains Cocamide DEA, a chemical known to
13 the State of California to cause cancer.

14 The word "WARNING" shall be in bold. DEFENDANT may elect to include the words
15 "Wash hands after handling" on the warning but it is not required to do so. DEFENDANT shall
16 provide such warnings with the unit package of the products. Such warnings shall be prominently
17 affixed to or printed on each product's label or package. The font of the warning shall be at least
18 the same size as the font of other safety warnings, if any, on the product container.

19 **2.3. Sell Through Period**

20 Defendant's Products that were manufactured and distributed for retail sale prior to the
21 Effective Date shall be subject to the release of liability pursuant to Section 5 of this Consent
22 Judgment, without regard to when such Products were, or are in the future, sold to consumers. As a
23 result, the obligations of Defendant as set forth in this Consent Judgment, including but not limited
24 to the warning requirements of Section 2.2, do not apply to these products.

25 **3. ENFORCEMENT**

26 Shefa, by motion or application for an order to show cause before the Alameda County
27 Superior Court, or, if the case is transferred back to the Los Angeles County Superior Court at the
28 conclusion of the Coordination Action, the Los Angeles Superior Court, may enforce the terms and

1 conditions contained in this Consent Judgment. Prior to bringing any motion or application to
2 enforce the requirements of Section 2 above, Shefa shall provide the Defendant with Notice of
3 Violation and a copy of any test results which purportedly support Shefa's Notice of Violation.
4 The Parties shall then meet and confer regarding the basis for Shefa's anticipated motion or
5 application in an attempt to resolve the matter informally, including providing Settling Defendant a
6 reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such
7 attempts at informal resolution fail, Shefa may file its enforcement motion or application. The
8 prevailing party on any motion to enforce this Consent Judgment shall be entitled to its reasonable
9 attorney's fees and costs incurred as a result of such motion or application.

10 **4. MONETARY PAYMENTS**

11 **4.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

12 DEFENDANT shall pay a total civil penalty payment of \$4,150.00 within thirty (30) days
13 of the Effective Date, as follows: the civil penalty shall be apportioned in accordance with
14 California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the
15 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
16 remaining 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in
17 Section 4.3.

18 **4.2. Reimbursement of Plaintiff's Fees and Costs**

19 The Parties reached an accord on the compensation due to Plaintiff and its counsel under
20 general contract principles and the private attorney general doctrine codified at California Code of
21 Civil Procedure § 1021.5, for all work performed in this matter. Notwithstanding the work
22 performed by Plaintiff's counsel, should grounds arise for an appeal to be brought or defended
23 against by Plaintiff or Defendant, any fees or costs incurred for working on such an appeal are not
24 included in the fees stated herein. Moreover, before bringing or defending any such appellate
25 actions, Plaintiff's counsel shall discuss the matter with Defendant's counsel and will secure the
26 advance written approval of Defendant before incurring any fees and costs that can be charged to
27 Defendant.

28 Under these legal principles, DEFENDANT shall pay the amount of \$4,850.00 for fees

1 and costs incurred investigating, litigating and enforcing this matter, including the fees and costs
2 incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this
3 Consent Judgment in the public interest.

4 **4.3. Payment Procedures**

5 All payments required by Sections 4.1 and 4.2 shall be within thirty (30) days of the
6 Effective Date, in three checks made payable as follows:

- 7 (a) one check to "OEHHA" in the amount of \$3,112.50;
8 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Plaintiff, LLC" in the
9 amount of \$1,037.50;
10 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$4,850.00.

11 **4.4. Issuance of 1099 Forms**

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

- 14 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
15 68-0284486) in the amount of \$3,112.50;
16 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$1,037.50, whose
17 address and tax identification number shall be furnished upon request;
18 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
19 amount of \$4,850.00;

20 **4.5. Issuance of Payments.**

21 **4.5.1.** All payments owed to Plaintiff, pursuant to Section 4.1, shall be delivered to
22 the following payment address:

23 Daniel N. Greenbaum, Esq.
24 Law Office of Daniel N. Greenbaum
25 14752 Otsego Street
26 Sherman Oaks, CA 91403

27 **4.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1,
28 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 P.O. Box 4010
2 Sacramento, CA 95812-4010

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

5 **5. CLAIMS COVERED AND RELEASED**

6 **5.1. Full and Binding Resolution of Proposition 65 Allegations**

7 This Consent Judgment is a full, final and binding resolution between Shefa LMV on
8 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
9 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
10 (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute or sell
11 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
12 franchisees, cooperative members, licensors and licensees (“Downstream Defendant Releasees”) of
13 any violation of Proposition 65 that was or could have been asserted in the Complaint against
14 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
15 to warn about alleged exposure to cocamide DEA contained in Covered Products that were sold by
16 Settling Defendant prior to the Effective Date.

17 **5.2. Individual Release**

18 Shefa LMV, in its own capacity and *not* in its representative capacity on behalf of the
19 general public, and Shefa LMV’s agents, successors and assigns, hereby releases Defendant, its
20 parent, subsidiaries, affiliated entities that are under common ownership, directors, officers,
21 employees, attorneys, and each entity to whom Defendant directly or indirectly distributes or sells
22 Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers,
23 including specifically, but not limited to TJX Companies, Inc. and Ross Stores, Inc., franchisees,
24 cooperative members, licensors, and licensees (“Releasees”), from all claims arising out of or
25 resulting from, or relating directly or indirectly to, in whole or in part, the Products.

26 **5.3. General Release**

27 In furtherance of the foregoing, Shefa LMV, acting on its behalf and its past and current
28 agents, representatives, attorneys, and successors and/or assigns, and not in its representative
capacity, hereby waives any and all rights and benefits which it now has, or in the future may have,

1 conferred upon it with respect to the Products by virtue of the provisions of California Civil Code
2 section 1542, which provides as follows:

3
4 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
5 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
6 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
7 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
8 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
9 HER SETTLEMENT WITH THE DEBTOR.”**

10 Shefa LMV understands and acknowledges the significance and consequence of this waiver
11 of California Civil Code section 1542 is that if Shefa LMV suffers future damages arising out of or
12 resulting from, or related directly or indirectly to, in whole or in part, the Products, it will not be
13 able to make any claim for those damages against Defendant, its parent, subsidiaries or affiliates,
14 predecessors, officers, directors, employees, and all of their customers, manufacturers, distributors,
15 wholesalers, retailers, including but not limited to TJX Companies, Inc. and Ross Stores, Inc., or
16 any other person in the course of doing business, and the successors and assigns or any of them,
17 who may manufacture, use, maintain, distribute, sell or offer for sale the Products.

18 **5.4.** Compliance with the terms of this Consent Judgment by Defendant shall be deemed
19 to constitute compliance by any Defendant Releasee or Additional Releasee with Proposition 65
20 regarding alleged exposures to cocamide DEA in the Covered Products.

21 **5.5. Rich Brand's Release**

22 On behalf of itself and Defendant Releasees, Rich Brands waives all rights to institute any
23 form of action against Shefa or Shefa's attorneys, consultants and representatives for all actions
24 taken or statements made in the course of this Action prior to the date of the execution of this
25 Consent Judgment.

26 **6. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and
28 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
after it has been fully executed by all parties

7. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any of the provisions of this

1 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
2 provisions remaining shall not be adversely affected.

3 **8. GOVERNING LAW**

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

13 **9. NOTICES**

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

18
19 To DEFENDANT:

20 Richard Neill
21 Rich Brands, LLC
22 1819 E. Morten Ave
Ste 110
Phoenix, Arizona 85020

To Plaintiff:

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

23 With a copy to:

24 Rebecca Nittle, Esq.
25 Law Office of Rebecca Nittle
26 221 E. Marconi Ave
Phoenix, AZ 85022

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

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

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

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

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

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

21 **13. MODIFICATION**

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

25 In the event California's Office of Environmental Health Hazard Assessment ("OEHHA")
26 establishes a "safe harbor" limit for Cocamide DEA, the Parties agree that it shall be grounds for
27 modification of this Consent Judgment with regard to any products thereafter manufactured,
28 imported, distributed and/or sold by DEFENDANT for sale in the State of California which fall

1 within such "safe harbor" limits so established.

2 **14. AUTHORIZATION**

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

5 **15. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
6 **CONSENT JUDGEMENT**

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

- 10 1. The injunctive relief required by the Consent Judgment complies with Cal. Health
11 & Safety Code § 25249.7;
- 12 2. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is
13 reasonable under California law; and
- 14 3. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.

17 AGREED TO:

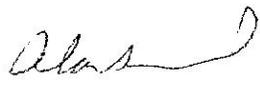
AGREED TO:

18 Date: 5/22/14

Date: MAY 22, 2014

20 Plaintiff,

Defendant,
Rich Brands, LLC

21 By: 

By: 

22 Print: Alisa Fried

Print: Richard Neill

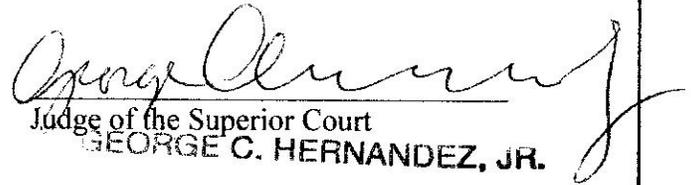
23 Its: Managing Member

Its: President

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Rich Brands, LLC, 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.

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