

FILED
ALAMEDA COUNTY

JUN 13 2014

CLERK OF THE SUPERIOR COURT

By Guerrero Deputy

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Attorneys for Defendant
RUDY PROFUMI SRL

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 RUDY PROFUMI**
) **S.R.L.**
) Judge: Hon. George C. Hernandez, Jr.
)
) Action filed: October 11, 2013



1
2 **1. INTRODUCTION**

3 **1.1. SHEFA LMV, LLC and RUDY PROFUMI SRL.**

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

13 **1.2. General Allegations**

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

18 **1.3. Product Description**

19 As used in this Consent Judgment, "Products" shall mean products containing cocamide
20 DEA including, but not limited to, Curly Hair Shampoo, Pineapple & Kiwi Shower Gel,
21 Nourishing Shampoo and New Generation Shampoo, that are manufactured, imported, distributed
22 and/or sold by RUDY PROFUMI in the State of California.

23 **1.4. Notice of Violation**

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

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1.5. No Admission

RUDY PROFUMI denies the material, factual and legal allegations contained in Shefa LMV's Notice and maintains that it has at all times been in compliance with all laws and all products that it has sold, manufactured, imported and/or distributed in California, including the Products. Nothing in this Consent Judgment shall be construed as an admission by RUDY PROFUMI 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 RUDY PROFUMI of any fact, finding, conclusion, issue of law or violation of law. However, this Section shall not diminish or otherwise affect RUDY PROFUMI's obligations, responsibilities and duties under this Consent Judgment.

1.6. Consent to Jurisdiction

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

1.7. Execution Date

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

1.8. Effective Date

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

2. INJUNCTIVE RELIEF

2.1. Reformulation of Covered Products

As of the Effective Date, RUDY PROFUMI shall not manufacture, distribute, sell or offer for sale any Covered Product that contains Cocamide DEA and that will be sold or offered for sale



1 to California consumers. For purposes of this Consent Judgment, a product "contains cocamide
2 DEA" if cocamide DEA is an intentionally added ingredient in the product and/or part of the
3 product formulation.

4 **2.2. Suppliers**

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

9 **2.3. Sell Through Period**

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

15 **3. ENFORCEMENT**

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

28 **4. MONETARY PAYMENTS**

1 **4.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

2 RUDY PROFUMI shall pay a total civil penalty payment of \$14,480. The civil penalty
3 shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c) and (d),
4 with 75% of these funds remitted to the State of California's Office of Environmental Health
5 Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Shefa LMV,
6 both pursuant to the procedures set forth in Section 4.3.

7 **4.2. Reimbursement of Shefa LMV's Fees and Costs**

8 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute
9 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
10 this fee issue to be resolved after the material terms of the agreement had been settled. RUDY
11 PROFUMI expressed a desire to resolve the fee and cost issue after the other settlement terms had
12 been agreed. The Parties then attempted to (and did) reach an accord on the compensation due to
13 Shefa LMV and its counsel under general contract principles and the private attorney general
14 doctrine codified at California Code of Civil Procedure § 1021.5, for all legal work ever
15 performed in this matter. Under these legal principles, RUDY PROFUMI shall pay the amount of
16 \$6,000 for all fees and costs, including fees and costs incurred and to be incurred investigating,
17 litigating and enforcing this matter, and in negotiating, drafting, and obtaining the Court's
18 approval of this Consent Judgment in the public interest.

19 **4.3. Payment Procedures**

20 All payments required by Sections 4.1 and 4.2 shall be made within ten (10) days of the
21 later of (1) the expiration of the time for filing a notice of appeal of this Consent Judgment; and
22 (2) if this Consent Judgment is appealed, the date that a remittitur is issued affirming this Consent
23 Judgment. Payment shall be made in three checks made payable as follows:

- 24 (a) one check to "OEHHA" in the amount of \$10,860;
25 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in
26 the amount of \$3,620;
27 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$6,000.

28 **4.4. Issuance of 1099 Forms**

1 After the settlement funds have been transmitted to Shefa LMV's counsel, and within the
2 time frame required by law, RUDY PROFUMI or its attorneys shall issue separate 1099 forms,
3 as follows:

- 4 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
5 68-0284486) in the amount of \$10,860;
6 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$3,620, whose address
7 and tax identification number shall be furnished upon request;
8 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
9 amount of \$6,000;

10 **4.5. Issuance of Payments.**

11 **4.5.1.** All payments owed to Shefa LMV, pursuant to Section 4.1, shall be
12 delivered to the following payment address:

13 Daniel N. Greenbaum, Esq.
14 Law Office of Daniel N. Greenbaum
15 14752 Otsego Street
16 Sherman Oaks, CA 91403

17 **4.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section
18 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following
19 addresses:

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

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

27 **5. CLAIMS COVERED AND RELEASED**

28 **5.1. Release of RUDY PROFUMI**

Plaintiff, acting on its own behalf and in the public interest, releases RUDY PROFUMI, its
parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,
employees, attorneys, and each entity to whom RUDY PROFUMI directly or indirectly distributes

1 or sells Products, including, but not limited to, downstream distributors, wholesalers, customers,
2 retailers, including specifically, but not limited to Ross Stores, Inc., franchisees, cooperative
3 members, licensors, and licensees ("Releasees"), from all claims for violations of Proposition 65
4 up through the date on which this Consent Judgment is signed by both parties based on exposure to
5 cocamide DEA from the Products as set forth in the Notice. Compliance with the terms of this
6 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
7 cocamide DEA from the Products as set forth in the Notice.

8 **5.2.** Shefa LMV and its owners and managers and any entity under common ownership of
9 Plaintiff, in their individual capacities only and *not* in its representative capacities, hereby release
10 RUDY PROFUMI, its parents, subsidiaries, affiliated entities that are under common ownership,
11 directors, officers, employees, attorneys, and each entity to whom RUDY PROFUMI directly or
12 indirectly distributes or sells Products, including, but not limited to, downstream distributors,
13 wholesalers, customers, retailers, including specifically, but not limited to Ross Stores, Inc.,
14 franchisees, cooperative members, licensors, and licensees ("Releasees"), from all claims for
15 violations of Proposition 65 up through the date on which this Consent Judgment is signed by both
16 parties, including, without limitation, any claims based on exposure to cocamide DEA from the
17 Products as set forth in the Notice.

18 **5.3. RUDY PROFUMI's Release of Shefa LMV**

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

25 **5.4 Section 1542 Waiver.**

26 In furtherance of the foregoing, the Parties, Shefa LMV on its own behalf and *not* in its
27 representative capacity and RUDY PROFUMI, acting on their own behalf and their past and
28 current agents, representatives, attorneys, and successors and/or assigns, , hereby waives any and

1 all rights and benefits which it now has, or in the future may have, conferred upon it with respect to
2 the Products by virtue of the provisions of California Civil Code section 1542, which provides as
3 follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
5 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
6 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

7 The Parties voluntarily, and with full knowledge of its significance, waive and relinquish
8 any and all rights that they have under Section 1542, as well as under the provisions of all
9 comparable, equivalent or similar state and federal statutes and principles of common and
10 decisional law.

11 **6. COURT APPROVAL**

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

15 **7. SEVERABILITY**

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

19 **8. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and the obligations of RUDY PROFUMI hereunder as to the Products apply only within the State
22 of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered
23 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
24 rendered inapplicable or no longer required as a result of any such repeal or preemption or
25 rendered inapplicable by reason of law generally as to the Products, including, without limitation,
26 the removal of cocamide DEA from OEHHA's list of Proposition 65 chemicals, then RUDY
27 PROFUMI shall have no further obligations pursuant to this Consent Judgment with respect to, and
28 to the extent that, the Products are so affected.

1 **9. NOTICES**

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

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7 To RUDY PROFUMI:

8 Attn: Lorenzo Calabrese
9 Via Einstein, 2/4
10 20090 Assago (MI)
11 Italy

7 To Shefa LMV:

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

11 With a copy to:

12 Aaron C. Gundzik
13 Gartenberg Gelfand Hayton & Selden LLP,
14 801 S. Figueroa St., Ste. 2170
15 Los Angeles, CA 90017

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

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

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

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

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

24 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

25 By this Consent Judgment and upon its approval, the Parties waive their right to trial
26 on the merits, and waive their rights to seek appellate review of this Consent Judgment and any and
27 all interim rulings, including any pleading, procedural, and discovery orders, only, however, as
28 they relate to RUDY PROFUMI. Shefa LMV and RUDY PROFUMI agree to mutually employ

1 their, and their counsel's, best efforts to support the entry of this agreement as a Consent Judgment
2 and obtain approval of the Consent Judgment by the Court in a timely manner. The parties
3 acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is
4 required to obtain judicial approval of this Consent Judgment, which Shefa LMV shall draft and
5 file, and RUDY PROFUMI shall not oppose. RUDY PROFUMI may, however, file a statement in
6 response to Shefa LMV's motion. If any third party objection to the noticed motion is filed, Shefa
7 LMV and RUDY PROFUMI shall work together to file a joint reply or separate replies if the
8 parties so desire and appear at any hearing before the Court. This provision is a material
9 component of the Consent Judgment and shall be treated as such in the event of a breach. If this
10 Consent Judgment is not approved by the Court, (a) this Consent Judgment shall terminate and
11 become null and void, and the action shall revert to the status that existed prior to the execution
12 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
13 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have
14 any effect, nor shall any such matter be admissible in evidence for any purpose in this action, or in
15 any other proceeding; and (c) the parties agree to meet and confer to determine whether to modify
16 the terms of the Consent Judgment and to resubmit it for approval.

17 **13. MODIFICATION**

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

21 **14. AUTHORIZATION**

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

24 **15. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
25 **CONSENT JUDGMENT**

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

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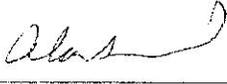
1. The injunctive relief required by the Consent Judgment complies with Cal. Health & Safety Code § 25249.7;
2. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is reasonable under California law; and
3. The civil penalty amount to be paid pursuant to Consent Judgment is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

AGREED TO:

AGREED TO:

Date: 5/20/14

Date: 2015/2014

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

By: 
Defendant, RUDY PROFUMI S.R.L.



ORDER AND JUDGMENT

1 Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Rudy Profumi s.r.l.,
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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8 GEORGE C. HERNANDEZ, JR.
9 Judge of the Superior Court

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