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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 TPR HOLDINGS, LLC**
)
) Judge: Hon. George C. Hernandez, Jr.
)
) Action filed: October 11, 2013
)
)

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and TPR Holdings, LLC**

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

11 **1.2. General Allegations**

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

16 **1.3. Product Description**

17 As used in this Consent Judgment, "Covered Products" shall mean products containing
18 Cocamide DEA including, but not limited to, Zirh Alexander the Great, Zirh Charlemagne Cooling
19 Icy Scent and Zirh Cyrus Persian Ruler, that are manufactured, imported, distributed and/or sold by
20 TPR for sale in the State of California.

21 **1.4. Notice of Violation**

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

27 **1.5. Complaint**

28 On or about September 16, 2013, Shefa LMV filed a complaint in the Superior Court in and

1 for the County of Los Angeles against TPR, (*Shefa LMV, LLC v. ROSS STORES INC ET AL*, Case
2 No. BC521400), alleging violations of Proposition 65, based on the alleged exposures to Cocamide
3 DEA contained in the Covered Products (“Complaint”).

4 **1.6. No Admission**

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

13 **1.7. Consent to Jurisdiction**

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

19 **1.8. Effective Date**

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

22 **2. INJUNCTIVE RELIEF**

23 **2.1. Reformulation of Covered Products**

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

28 **2.2. Sell Through Period**

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

6 **3. ENFORCEMENT**

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

19 **4. MONETARY PAYMENTS**

20 **4.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

21 TPR shall pay a total civil penalty payment of \$2,000 within ten (10) days of the Effective
22 Date, as follows: the civil penalty shall be apportioned in accordance with California Health &
23 Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of California's
24 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the
25 penalty remitted to Shefa LMV, both pursuant to the procedures set forth in Section 4.3.

26 **4.2. Reimbursement of Shefa LMV's Fees and Costs**

27 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute
28 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving

1 this fee issue to be resolved after the material terms of the agreement had been settled. TPR
2 expressed a desire to resolve the fee and cost issue after the other settlement terms had been
3 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to Shefa
4 LMV and its counsel under general contract principles and the private attorney general doctrine
5 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,
6 except fees that may be incurred on appeal. Under these legal principles, TPR shall pay the
7 amount of \$9,000 for fees and costs incurred investigating, litigating and enforcing this matter,
8 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining
9 the Court's approval of this Consent Judgment in the public interest.

10 **4.3. Payment Procedures**

11 All payments required by Sections 4.1 and 4.2 shall be within ten (10) days of the date this
12 agreement is approved and entered and no longer subject to appeal, in three checks made payable
13 as follows:

- 14 (a) one check to "OEHHA" in the amount of \$1,500;
- 15 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in
16 the amount of \$500;
- 17 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$9,000.

18 **4.4. Issuance of 1099 Forms**

19 After the settlement funds have been transmitted to Shefa LMV's counsel, TPR shall issue
20 separate 1099 forms, as follows:

- 21 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
22 68-0284486) in the amount of \$1,500;
- 23 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$500, whose address
24 and tax identification number shall be furnished upon request;
- 25 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the
26 amount of \$9,000;

27 **4.5. Issuance of Payments.**

- 28 **4.5.1.** All payments owed to Shefa LMV, pursuant to Section 4.1, shall be

1 delivered to the following payment address:

2 Daniel N. Greenbaum, Esq.
3 Law Office of Daniel N. Greenbaum
4 14752 Otsego Street
5 Sherman Oaks, CA 91403

6 **4.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1,
7 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

8 Mike Gyrics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010
12 Sacramento, CA 95812-4010

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

15 **5. CLAIMS COVERED AND RELEASED**

16 **5.1. Shefa LMV's Release of TPR**

17 Plaintiff, acting on its own behalf and in the public interest, releases TPR, its parents,
18 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
19 attorneys, and each entity to whom TPR directly or indirectly distributed, distributes, or sells or
20 sold the Covered Products, including, but not limited to, downstream distributors, wholesalers,
21 customers, retailers, including specifically, but not limited to the TJX Companies, Ross Stores,
22 Inc., Marshalls of MA, Inc., and Marshalls of CA, LLC, franchisees, cooperative members,
23 licensors, and licensees ("Releasees"), from all claims for violations of Proposition 65 up through
24 the Effective Date based on exposure to Cocamide DEA from the Covered Products as set forth in
25 the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
26 Proposition 65 with respect to exposures to Cocamide DEA from the Covered Products as set forth
27 in the Notice.

28 Shefa LMV, also, in its individual capacity only and *not* in its representative capacity,
provides a release herein which shall be effective as a full and final accord and satisfaction, as a
bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
claims, liabilities and demands of Shefa LMV of any nature, character or kind, whether known or

1 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the
2 cocamide DEA in the Covered Products.

3 **5.2. TPR's Release of Shefa LMV**

4 TPR on behalf of itself, its past and current agents, representatives, attorneys, successors,
5 and/or assignees, hereby waives any and all claims against Shefa LMV, its attorneys and other
6 representatives, for any and all actions taken or statements made (or those that could have been
7 taken or made) by Shefa LMV and its attorneys and other representatives, whether in the course of
8 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
9 respect to the Covered Products.

10 **6. COURT APPROVAL**

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

14 **7. SEVERABILITY**

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

18 **8. GOVERNING LAW**

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

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:

6
7 To TPR:

8 Stuart J. Litman
9 TPR Holdings LLC
10 950 Third Ave 3rd Floor
11 New York, New York 10022

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 Albert M. Cohen
13 Loeb & Loeb LLP
14 10100 Santa Monica Boulevard, Suite 2200
15 Los Angeles, CA 90035

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

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

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

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

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

25 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

26 Shefa LMV and TPR agree to mutually employ their, and their counsel's, best efforts to
27 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
28 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
Consent Judgment, which Shefa LMV shall draft and file, and TPR shall not oppose. If any third

1 party objection to the noticed motion is filed, Shefa LMV and TPR shall work together to file a
2 joint reply or separate replies if the parties so desire and appear at any hearing before the Court.
3 This provision is a material component of the Consent Judgment and shall be treated as such in the
4 event of a breach. If the Court does not grant the motion to approve this Consent Judgment.////

5 **13. MODIFICATION**

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

9 **14. AUTHORIZATION**

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

12 **15.1 REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
13 **CONSENT JUDGMENT**

14 **15.1** This Consent Judgment came before this Court upon the request of the
15 Parties.

16 **15.2** The Parties request the Court to review this Consent Judgment and to make
17 the following findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

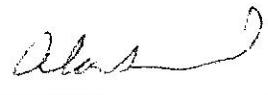
IT IS SO STIPULATED.

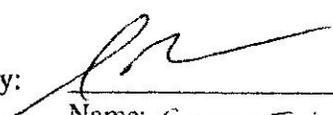
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Date: 5/12/14

Date: 5/12/14

By: 

By: 

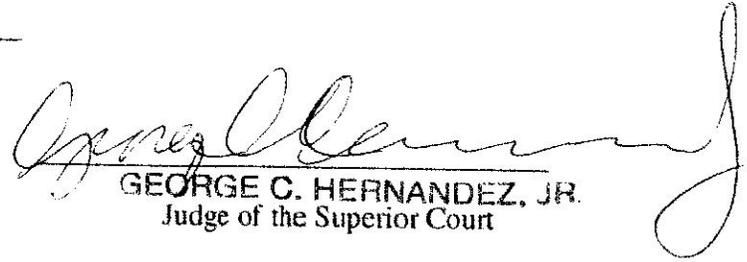
Plaintiff, Shefa LMV, LLC
Print: Alisa Fried
Its: Managing Member

Name: STUART L. MANN
Defendant, TPR Holdings, LLC

ORDER AND JUDGMENT

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

Dated: 6/13/2024


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

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