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16 Attorneys for Defendant
17 ENCHANTE ACCESSORIES, INC.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF LOS ANGELES
20 UNLIMITED CIVIL JURISDICTION

21 SHEFA LMV, LLC,

22 Plaintiff,

23 v.

24 ENCHANTE ACCESSORIES, INC.,

25 Defendant.

26 Case No.: BC521400

27 **[PROPOSED]**
CONSENT JUDGMENT

Honorable Soussan G. Bruguera

1. INTRODUCTION

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

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

1.2. General Allegations

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

1.3. Product Description

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

1.4. Notice of Violation

On July 1, 2013, Shefa LMV served ENCHANTE ACCESSORIES and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with notice alleging that ENCHANTE ACCESSORIES was in violation of Proposition 65 for failing 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.

1 **1.5. No Admission**

2 ENCHANTE ACCESSORIES denies the material, factual and legal allegations contained
3 in Shefa LMV's Notice and maintains that it has at all times been in compliance with all laws and
4 all 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
7 this Consent Judgment constitute or be construed as an admission by ENCHANTE
8 ACCESSORIES of any fact, finding, conclusion, issue of law or violation of law. However, this
9 Section shall not diminish or otherwise affect ENCHANTE ACCESSORIES's obligations,
10 responsibilities and duties 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 Notice, that
14 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to enter and
15 enforce the provisions of this Consent Judgment.

16 **1.7. Execution Date**

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

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
23 **2. INJUNCTIVE RELIEF: WARNING OR REFORMULATION**

24 **2.1. Warning Obligation For Cocamide DEA-Containing Products**

25 Commencing on October 15, 2013, ENCHANTE ACCESSORIES shall not sell, distribute
26 or otherwise deliver, or cause to be sold, distributed or otherwise delivered into California, only
27 Products reformulated to contain no cocamide DEA, unless such Products are sold or shipped with
28 one of the clear and reasonable warnings set forth in Section 2.2.

2.2. Mandatory Warning Procedures

Each warning required by Section 2.1 shall be prominently placed upon a product's label or other labeling or displayed at the retail outlet with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

3. MONETARY PAYMENTS

3.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)

ENCHANTE ACCESSORIES shall pay a total civil penalty payment of \$2000, within ten (10) days of the Execution Date, as follows: the civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Shefa LMV, both pursuant to the procedures set forth in Section 3.3.

3.2. Reimbursement of Shefa LMV's Fees and Costs

The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. ENCHANTE ACCESSORIES expressed a desire to resolve the fee and cost issue after the other settlement terms had been agreed. The Parties then attempted to (and did) reach an accord on the compensation due to Shefa LMV and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, ENCHANTE ACCESSORIES shall pay the amount of \$5,000 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public interest.

1 **3.3. Payment Procedures**

2 All payments required by Sections 3.1 and 3.2 shall be within ten (10) days of the
3 Execution Date, in three checks made payable as follows:

- 4 (a) one check to “OEHHA” in the amount of \$1,500;
5 (b) one check to “Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC” in
6 the amount of \$500;
7 (c) one check to “Law Office of Daniel N. Greenbaum” in the amount of \$5,000.

8 **3.4. Issuance of 1099 Forms**

9 ENCHANTE ACCESSORIES shall issue separate 1099 forms, as follows:

- 10 (a) one 1099 form to the “Office of Environmental Health Hazard Assessment” (EIN:
11 68-0284486) in the amount of \$ 1,500;
12 (b) a second 1099 form to “Shefa LMV, LLC” in the amount of \$500,, whose address
13 and tax identification number shall be furnished to defendant at the time this
14 settlement is executed.
15 (c) a third 1099 to “Law Office of Daniel N. Greenbaum” (EIN: 45-3084082) in the
16 amount of \$ 5000.

17 **3.5. Issuance of Payments.**

18 **3.5.1.** All payments owed to Shefa LMV, pursuant to Section 3.1, shall be
19 delivered to the following payment address:

20 Daniel N. Greenbaum, Esq.
21 Law Office of Daniel N. Greenbaum
22 1467 South Holt Avenue #2
23 Los Angeles, CA 90035

24 **3.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1,
25 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

26 Mike Gyrics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
 P.O. Box 4010
 Sacramento, CA 95812-4010

With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum

at the address set forth above in 3.5.1, as proof of payment to OEHHA.

4. CLAIMS COVERED AND RELEASED

4.1. Shefa LMV's Release of ENCHANTE ACCESSORIES

Plaintiff, acting on its own behalf and in the public interest, releases ENCHANTE ACCESSORIES, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom ENCHANTE ACCESSORIES directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, including specifically, but not limited to Ross Stores, Inc., franchisees, cooperative 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 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to cocamide DEA from the Products as set forth in the Notice.

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 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the cocamide DEA in the Products manufactured, distributed or sold by ENCHANTE ACCESSORIES.

4.2. ENCHANTE ACCESSORIES's Release of Shefa LMV

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

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
4 after it has been fully executed by all parties. In the event the Court does not approve this Consent
5 Judgment within one year, the funds paid pursuant to Section 3 of this Consent Judgment shall be
6 returned to ENCHANTE ACCESSORIES within ten (10) days after the expiration of one year.

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

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

22 **8. NOTICES**

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

To ENCHANTE ACCESSORIES:

To Shefa LMV:

David Irons
ENCHANTE ACCESSORIES, INC.
4 East 34th Street
New York, NY 10016

Daniel N. Greenbaum, Esq.
Law Office of Daniel N. Greenbaum
1467 South Holt Avenue #2
Los Angeles, CA 90035

With a copy to:

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

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

9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES

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

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

Shefa LMV and ENCHANTE ACCESSORIES agree to mutually employ their, and their counsel's, best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent 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 ENCHANTE ACCESSORIES shall not oppose. If any third party objection to the noticed motion is filed, Shefa LMV and ENCHANTE ACCESSORIES shall work together to file a joint reply or separate replies if the parties so desire and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach. If the Court does not grant the motion to approve this Consent Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days after the Court's denial of the

1 motion to approve, then, upon remittitur, any and all payments made pursuant to Section 3 of this
2 Consent Judgment will be returned to ENCHANTE ACCESSORIES.

3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**


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


10 AGREED TO:

AGREED TO:

11
12 Date: 10/11/13

Date: 10-11-2013

13
14 By: 
Plaintiff, Shefa LMV, LLC

By: 
David Irons
Defendant, ENCHANTE
ACCESSORIES, INC.

15 Print: Alisa Fried

16 Its: Managing Member