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25 SUPERIOR COURT OF THE STATE OF CALIFORNIA
26 COUNTY OF ALAMEDA
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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] CONSENT JUDGMENT
) AS TO RUDY PROFUMI S.R.L.

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

) Action filed: October 11, 2013
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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”) without the requisite Proposition 65 warnings. Cocamide DEA is on the Proposition 65 list as
16 known to cause birth defects and other reproductive harm.

17 **1.3. Product Description**

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

22 **1.4. Notice of Violation**

23 On July 1, 2013, Shefa LMV served RUDY PROFUMI and various public enforcement
24 agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided
25 recipients with notice alleging that RUDY PROFUMI was in violation of Proposition 65 for failing
26 to warn consumers and customers that the Products exposed users in California to cocamide DEA.
27 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 Notice, that venue is proper in the County of Los Angeles, and that this 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: WARNING OR REFORMULATION

2.1. Warning Obligation For Cocamide DEA-Containing Products

Commencing on December 31, 2013, RUDY PROFUMI shall not sell, distribute or otherwise deliver, or cause to be sold, distributed or otherwise delivered into California, Products, unless such Products are sold or shipped with one of the clear and reasonable warnings set forth in Section 2.2 or the Products contain no cocamide DEA or levels of cocamide DEA that pose no significant risk.

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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)

RUDY PROFUMI shall pay a total civil penalty payment of \$14,480. 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. RUDY PROFUMI 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 legal work ever performed in this matter. Under these legal principles, RUDY PROFUMI shall pay the amount of \$6,000 for all fees and costs, including fees and costs incurred and to be incurred investigating, litigating and enforcing this matter, and in negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public interest.

3.3. Payment Procedures

All payments required by Sections 3.1 and 3.2 shall be made within ten (10) days of the



1 later of (1) the expiration of the time for filing a notice of appeal of this Consent Judgment; and
2 (2) if this Consent Judgment is appealed, the date that a remittitur is issued affirming this Consent
3 Judgment. Payment shall be made in three checks made payable as follows:

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

8 **3.4. Issuance of 1099 Forms**

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

- 12 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
13 68-0284486) in the amount of \$10,860;
- 14 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$3,620, whose address
15 and tax identification number shall be furnished upon request;
- 16 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
17 amount of \$6,000;

18 **3.5. Issuance of Payments.**

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

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

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

27 Mike Gyrics
Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 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. 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 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.

4.2. Shefa LMV and its owners and managers and any entity under common ownership of Plaintiff, in their individual capacities only and *not* in its representative capacities, hereby release 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 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, including, without limitation, any claims based on exposure to cocamide DEA from the Products as set forth in the Notice.

4.3. RUDY PROFUMI’s Release of Shefa LMV

RUDY PROFUMI 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

1 have been taken or made) by Shefa LMV and its attorneys and other representatives, whether in the
2 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
3 matter with respect to the Products.

4 **4.3. Section 1542 Waiver.**

5 The forgoing releases include releases of unknown claims. All Parties acknowledge that
6 they have read, considered, and understand the provisions and significance of Section 1542 of the
7 California Civil Code, which reads as follows:

8 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
9 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
10 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
11 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

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

16 **5. 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.

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of California
26 and the obligations of RUDY PROFUMI hereunder as to the Products apply only within the State
27 of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered
28 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are

1 rendered inapplicable or no longer required as a result of any such repeal or preemption or
2 rendered inapplicable by reason of law generally as to the Products, including, without limitation,
3 the removal of cocamide DEA from OEHHA's list of Proposition 65 chemicals, then RUDY
4 PROFUMI shall have no further obligations pursuant to this Consent Judgment with respect to, and
5 to the extent that, the Products are so affected.

6 **8. NOTICES**

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

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12 To RUDY PROFUMI:

13 Attn: Lorenzo Calabrese
14 Via Einstein, 2/4
15 20090 Assago (MI)
16 Italy

To Shefa LMV:

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

16 With a copy to:

17 Aaron C. Gundzik
18 Gartenberg Gelfand Hayton & Selden LLP,
19 801 S. Figueroa St., Ste. 2170
Los Angeles, CA 90017

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

22 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

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

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

1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

22 **12. MODIFICATION**

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

26 **13. AUTHORIZATION**

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

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**14. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF
CONSENT JUDGMENT**

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

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: 3/5/14

Date: 05/02/2014

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

By: 
Lorenzo Calabrese
Defendant, RUDY PROFUMI S.r.l.

