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TPR Holdings, LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF LOS ANGELES  
15 CENTRAL DISTRICT  
16

17 SHEFA LMV, LLC,  
18 Plaintiff,  
19 v.  
20 ROSS STORES, INC., et al.,  
21 Defendant.

) Case No.: BC521400  
) Unlimited Jurisdiction  
) *Honorable Suzanne Bruguera*  
) *Department 71*  
) **[PROPOSED]**  
) **CONSENT JUDGMENT**  
) **Hearing Set For:**  
) Date:  
) Time:  
) Place: 111N. Hill St., Los Angeles, CA 90012  
)

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 the  
16 County of Los Angeles, and that this Court has jurisdiction to enter and enforce the provisions of  
17 this Consent Judgment.

#### 18 **1.8. 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 **1.9. 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: WARNING OR REFORMULATION**

### 25 **2.1. Reformulation of Covered Products**

26 As of the Effective Date, Defendant shall not manufacture, distribute, sell or offer for sale  
27 any Covered Product that contains Cocamide DEA and that will be sold or offered for sale to  
28 California consumers. For purposes of this Consent Judgment, a product “contains cocamide

1 DEA” if cocamide DEA is an intentionally added ingredient in the product and/or part of the  
2 product formulation.

### 3 **2.2. Suppliers**

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

### 8 **2.3. Sell Through Period**

9 Notwithstanding the restrictions of Section 2.1, any of TPR’s downstream customers that  
10 have in inventory any of the Covered Products that contain Cocamide DEA that exceed the  
11 Cocamide DEA Limits shall have six (6) months from the Effective Date without penalty or cost to  
12 sell such Covered Products or otherwise display a warning pursuant to Proposition 65.

## 13 **3. MONETARY PAYMENTS**

### 14 **3.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

15 TPR shall pay a total civil penalty payment of \$2,000 within ten (10) days of the  
16 Execution Date, as follows: the civil penalty shall be apportioned in accordance with California  
17 Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of  
18 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining  
19 25% of the penalty remitted to Shefa LMV, both pursuant to the procedures set forth in Section  
20 3.3.

### 21 **3.2. Reimbursement of Shefa LMV’s Fees and Costs**

22 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute  
23 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
24 this fee issue to be resolved after the material terms of the agreement had been settled. TPR  
25 expressed a desire to resolve the fee and cost issue after the other settlement terms had been  
26 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to Shefa  
27 LMV and its counsel under general contract principles and the private attorney general doctrine  
28 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,

1 except fees that may be incurred on appeal. Under these legal principles, TPR shall pay the  
2 amount of \$9,000 for fees and costs incurred investigating, litigating and enforcing this matter,  
3 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining  
4 the Court's approval of this Consent Judgment in the public interest.

### 5 **3.3. Payment Procedures**

6 All payments required by Sections 3.1 and 3.2 shall be within ten (10) days of the date this  
7 agreement is approved and entered and no longer subject to appeal, in three checks made payable  
8 as follows:

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

### 13 **3.4. Issuance of 1099 Forms**

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

- 16 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:  
17 68-0284486) in the amount of \$1,500;
- 18 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$500, whose address  
19 and tax identification number shall be furnished upon request;
- 20 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the  
21 amount of \$9,000;

### 22 **3.5. Issuance of Payments.**

23 **3.5.1.** All payments owed to Shefa LMV, pursuant to Section 3.1, shall be  
24 delivered to the following payment address:

25 Daniel N. Greenbaum, Esq.  
26 Law Office of Daniel N. Greenbaum  
27 1467 South Holt Avenue #2  
28 Los Angeles, CA 90035

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

1 Mike Gyrics  
2 Fiscal Operations Branch Chief  
3 Office of Environmental Health Hazard Assessment  
4 P.O. Box 4010  
5 Sacramento, CA 95812-4010

6 With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum  
7 at the address set forth above in 3.5.1, as proof of payment to OEHHA.

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1. Shefa LMV's Release of TPR**

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

21 Shefa LMV, also, in its individual capacity only and *not* in its representative capacity,  
22 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
23 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,  
24 claims, liabilities and demands of Shefa LMV of any nature, character or kind, whether known or  
25 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the  
26 cocamide DEA in the Covered Products.

27 **4.2. TPR's Release of Shefa LMV**

28 TPR 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

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

4 **5. COURT APPROVAL**

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

8 **6. SEVERABILITY**

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

12 **7. GOVERNING LAW**

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

27  
28 To TPR:

To Shefa LMV:

1 Stuart J. Litman  
2 TPR Holdings LLC  
3 950 Third Ave 3rd Floor  
4 New York, New York 10022

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

5 with a copy to:

6 Albert M. Cohen  
7 Loeb & Loeb LLP  
8 10100 Santa Monica Boulevard, Suite 2200  
9 Los Angeles, CA 90035

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

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

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

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

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

19 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

20 Shefa LMV and TPR agree to mutually employ their, and their counsel's, best efforts to  
21 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
22 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California  
23 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this  
24 Consent Judgment, which Shefa LMV shall draft and file, and TPR shall not oppose. If any third  
25 party objection to the noticed motion is filed, Shefa LMV and TPR shall work together to file a  
26 joint reply or separate replies if the parties so desire and appear at any hearing before the Court.  
27 This provision is a material component of the Consent Judgment and shall be treated as such in the  
28 event of a breach.

**12. MODIFICATION**

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

1 of any party and entry of a modified Consent Judgment by the Court.

2 **13. 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 **IT IS SO STIPULATED.**

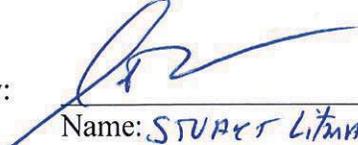
6  
7 AGREED TO:

8 AGREED TO:

9 Date: 3/10/14

10 Date: 3/10/14

11 By:   
12 Plaintiff, Shefa LMV, LLC  
13 Print: Alisa Fried  
14 Its: Managing Member

15 By:   
16 Name: STUART LITMAN  
17 Defendant, TPR Holdings, LLC

1  
2 **ORDER AND JUDGMENT**

3 Based upon the stipulated Consent Judgment between Shefa LMV, LLC and TPR Holdings,  
4 LLC, the settlement is approved, all other claims under Proposition 65 alleging that Releasees sold  
5 or distributed Covered Products containing Cocamide DEA prior to six months after the Effective  
6 Date are hereby barred, and the clerk is directed to enter judgment in accordance with the terms  
7 herein.

8  
9 Dated: \_\_\_\_\_

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11 \_\_\_\_\_  
12 Judge of the Superior Court

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