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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA
15

16 Coordination Proceeding) JUDICIAL COUNCIL COORDINATION
Special Title (Rule 3.350)) PROCEEDING NO: 4765
17)
18 PROPOSITION 65 COCAMIDE DEA) [*Shefa LMV, LLC v. Ross Stores, et al.*,
CASES) Los Angeles County Superior Court
19) No. BC521400
20)
21) **[PROPOSED] AMENDED CONSENT**
22) **JUDGMENT AS TO ALLESANDRA**
23) **COLLECTION S.A.S.**
24)
25) Judge: Hon. George C. Hernandez, Jr.
26)
27)
28) Action filed: October 11, 2013

1 **1. INTRODUCTION**

2 **1.1. SHEFA LMV, LLC and ALESSANDRA COLLECTION SAS.**

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

12 **1.2. General Allegations**

13 Shefa LMV alleges that ALESSANDRA has manufactured, imported, distributed and/or
14 sold shampoo and shower gel products that contain cocamide diethanolamine (“cocamide DEA”)
15 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, Joc Care Rehydrating Shampoo, that are manufactured,
20 imported, distributed and/or sold by ALESSANDRA in the State of California.

21 **1.4. Notice of Violation**

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

27 **1.5. No Admission**

 ALESSANDRA denies the material, factual and legal allegations contained in Shefa

1 LMV's Notice and maintains that it has at all times been in compliance with all laws and all
2 products that it has sold, manufactured, imported and/or distributed in California, including the
3 Products. Nothing in this Consent Judgment shall be construed as an admission by
4 ALESSANDRA of any fact, finding, issue of law or violation of law, nor shall compliance with
5 this Consent Judgment constitute or be construed as an admission by ALESSANDRA of any fact,
6 finding, conclusion, issue of law or violation of law. However, this Section shall not diminish or
7 otherwise affect ALESSANDRA's obligations, responsibilities and duties under this Consent
8 Judgment.

9 **1.6. Consent to Jurisdiction**

10 For purposes of this Consent Judgment only, the parties stipulate that this Court has
11 jurisdiction over ALESSANDRA as to the allegations contained in the Notice, that venue is proper
12 in the County of Los Angeles, and that this Court has jurisdiction to enter and enforce the
13 provisions of this Consent Judgment.

14 **1.7. Execution Date**

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

17 **1.8. Effective Date**

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

20 **2. INJUNCTIVE RELIEF: REFORMULATION**

21 **2.1. Reformulation of Covered Products**

22 As of the Effective Date, ALLESANDRA shall not manufacture, distribute, sell or offer for
23 sale any Covered Product that contains Cocamide DEA and that will be sold or offered for sale to
24 California consumers. For purposes of this Consent Judgment, a product does not
25 containcocamide DEA if cocamide DEA is not an intentionally added ingredient in the product, is
26 not part of the product formulation or the amount of cocamide DEA poses no significant risk.

27 **2.2. Suppliers**

28 No more than 30 days after the Effective Date, ALLESANDRA shall issue specifications to

1 its suppliers of Covered Products requiring that Covered Products not contain cocamide DEA, and
2 shall instruct each supplier to use reasonable efforts to eliminate Covered Products that contain
3 cocamide DEA on a nationwide basis.

4 **2.3. Sell Through Period**

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

10 **3. MONETARY PAYMENTS**

11 **3.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

12 ALESSANDRA shall pay a total civil penalty payment of \$520. The civil penalty shall be
13 apportioned in accordance with California Health & Safety Code § 25249.12 (c) and (d), with
14 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
15 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Shefa LMV, both
16 pursuant to the procedures set forth in Section 3.3.

17 **3.2. Reimbursement of Shefa LMV's Fees and Costs**

18 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute
19 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
20 this fee issue to be resolved after the material terms of the agreement had been settled.

21 ALESSANDRA expressed a desire to resolve the fee and cost issue after the other settlement
22 terms had been agreed. The Parties then attempted to (and did) reach an accord on the
23 compensation due to Shefa LMV and its counsel under general contract principles and the private
24 attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all legal
25 work ever performed in this matter. Under these legal principles, ALESSANDRA shall pay the
26 amount of \$6,000 for all fees and costs, including fees and costs incurred and to be incurred
27 investigating, litigating and enforcing this matter, and in negotiating, drafting, and obtaining the
28 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 made within ten (10) days of the
3 later of (1) the expiration of the time for filing a notice of appeal of this Consent Judgment; and
4 (2) if this Consent Judgment is appealed, the date that a remittitur is issued affirming this Consent
5 Judgment. Payment shall be made in three checks made payable as follows:

- 6 (a) one check to "OEHHA" in the amount of \$390;
7 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in
8 the amount of \$130;
9 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$6,000.

10 **3.4. Issuance of 1099 Forms**

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

- 14 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
15 68-0284486) in the amount of \$390;
16 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$130, whose address
17 and tax identification number shall be furnished upon request;
18 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
19 amount of \$6,000;

20 **3.5. Issuance of Payments.**

21 **3.5.1.** All payments owed to Shefa LMV, pursuant to Section 3.1, shall be
22 delivered to the following payment address:

23 Daniel N. Greenbaum, Esq.
24 Law Office of Daniel N. Greenbaum
25 14752 Otsego Street
26 Sherman Oaks, CA 91403

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

28 Mike Gyrics

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

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

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1. Release of ALESSANDRA**

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

19 **4.2.** Shefa LMV and its owners and managers and any entity under common ownership of
20 Plaintiff, in their individual capacities only and *not* in its representative capacities, hereby release
21 ALESSANDRA, its parents, subsidiaries, affiliated entities that are under common ownership,
22 directors, officers, employees, attorneys, and each entity to whom ALESSANDRA directly or
23 indirectly distributes or sells Products, including, but not limited to, downstream distributors,
24 wholesalers, customers, retailers, including specifically, but not limited to Ross Stores, Inc.,
25 franchisees, cooperative members, licensors, and licensees ("Releasees"), from all claims for
26 violations of Proposition 65 up through the date on which this Consent Judgment is signed by both
27 parties, including, without limitation, any claims based on exposure to cocamide DEA from the
28 Products as set forth in the Notice.

4.3. ALESSANDRA's Release of Shefa LMV

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

7 **4.3. Section 1542 Waiver.**

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

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

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

19 **5. COURT APPROVAL**

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

23 **6. SEVERABILITY**

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

27 **7. GOVERNING LAW**

28 The terms of this Consent Judgment shall be governed by the laws of the State of California

1 and the obligations of ALESSANDRA hereunder as to the Products apply only within the State of
2 California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered
3 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
4 rendered inapplicable or no longer required as a result of any such repeal or preemption or
5 rendered inapplicable by reason of law generally as to the Products, including, without limitation,
6 the removal of cocamide DEA from OEHHA's list of Proposition 65 chemicals, then
7 ALESSANDRA shall have no further obligations pursuant to this Consent Judgment with respect
8 to, and to the extent that, the Products are so affected.

9 **8. NOTICES**

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

14
15 To ALESSANDRA:

16 Alessandra Baiesi
17 Alessandra Collection S.r.l.
18 Via Grazia, 11
19 40069 Zola Predosa (BO)
20 Italy

To Shefa LMV:

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

21 With a copy to:

22 Aaron C. Gundzik
23 Gartenberg Gelfand Hayton & Selden LLP,
24 801 S. Figueroa St., Ste. 2170
25 Los Angeles, CA 90017

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

28 **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.

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

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

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

25 **12. MODIFICATION**

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

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13. AUTHORIZATION

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

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.

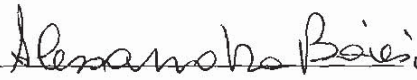
AGREED TO:

AGREED TO:

Date: 3/28/14

Date: 28th MARCH 2014

By: 
Plaintiff, Shefa LMV, LLC

By: 

Print: Alisa Fried
Its: Managing Member

Defendant, ALESSANDRA
COLLECTION S.A.S.