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12

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 Rich Brands, LLC
21 Defendant.

) 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 RICH BRANDS, LLC**
)
) Judge: Hon. George C. Hernandez, Jr.

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and Rich Brands, LLC**

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

11 **1.2. General Allegations**

12 Plaintiff alleges that DEFENDANT has manufactured, imported, distributed and/or sold
13 moisturizing bath and shower gelee products that contain cocamide diethanolamine (“Cocamide
14 DEA”) without the requisite Proposition 65 warnings. Cocamide DEA is on the Proposition 65 list
15 as known to cause birth defects and other reproductive harm.

16 **1.3. Product Description**

17 As used in this Consent Judgment, “Products” shall mean products containing Cocamide
18 DEA including, but not limited to, *Vitabath* Moisturizing Bath and Shower Gelee, that are
19 manufactured, imported, distributed and/or sold by DEFENDANT for sale in the State of
20 California. It is understood and agreed that “Products” shall not mean: (a) in the event
21 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) establishes a “safe
22 harbor” limit for Cocamide DEA, any products thereafter manufactured, imported, distributed
23 and/or sold by DEFENDANT for sale in the State of California which fall within such “safe
24 harbor” limits so established; and (b) in the event California’s OEHHA removes Cocamide DEA
25 from its list of Proposition 65 chemicals, any products thereafter manufactured, imported,
26 distributed and/or sold by DEFENDANT for sale in the State of California which contain
27 Cocamide DEA.

1 **1.4. Notice of Violation**

2 On July 1, 2013, Plaintiff served DEFENDANT and various public enforcement agencies
3 with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with
4 notice alleging that DEFENDANT was in violation of Proposition 65 for failing to warn
5 consumers and customers that the Products exposed users in California to Cocamide DEA. No
6 public enforcer has diligently prosecuted the allegations set forth in the Notice.

7 **1.5. No Admission**

8 DEFENDANT denies the material factual and legal allegations contained in Plaintiff’s
9 Notice and maintains that all its products have at all times been in compliance with all laws,
10 including Proposition 65, that it has sold, manufactured, imported and/or distributed in California,
11 including the Products. Nothing in this Consent Judgment shall be construed as an admission by
12 DEFENDANT of any fact, finding, issue of law or violation of law, nor shall compliance with this
13 Consent Judgment constitute or be construed as an admission by DEFENDANT of any fact,
14 finding, conclusion, issue of law or violation of law, such being specifically denied by
15 DEFENDANT. However, this Section shall not diminish or otherwise affect DEFENDANT’s
16 obligations, responsibilities and duties under this Consent Judgment.

17 **1.6. Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the parties stipulate that this Court has
19 jurisdiction over DEFENDANT as to the allegations contained in the Notice, that venue is proper
20 in the County of Los Angeles, and that this Court has jurisdiction to enter and enforce the
21 provisions of this Consent Judgment.

22 **1.7. Execution Date**

23 For purposes of this Consent Judgment, the term “Execution Date” shall mean the date this
24 Consent Judgment is signed by both parties.

25 **1.8. Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the
27 Court enters Judgment pursuant to the terms of this Consent Judgment.
28

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

2 **2.1. Warning Obligation For Cocamide DEA-Containing Products**

3 Commencing on December 1, 2013, DEFENDANT shall sell, distribute or otherwise deliver, or
4 cause to be sold, distributed or otherwise delivered into California, only Products reformulated to
5 contain no Cocamide DEA, unless such Products are sold or shipped with a clear and reasonable
6 warning as required by Proposition 65.

7 Each warning required by Section 2.1 shall be prominently placed upon a product's label or
8 other labeling or displayed at the retail outlet with such conspicuousness, as compared with other
9 words, statements, designs, or devices in the label, labeling or display as to render it likely to be
10 read and understood by an ordinary individual under customary conditions of purchase or use.

11 Each warning shall be provided in a manner such that the consumer or user understands to which
12 specific Product the warning applies, so as to minimize the risk of consumer confusion.

13 DEFENDANT shall provide Proposition 65 warnings on the products as follows:

14 WARNING: This product contains a chemical known to
15 the State of California to cause cancer.

16 The word "WARNING" shall be in bold. DEFENDANT may elect to include the words
17 "Wash hands after handling" on the warning but it is not required to do so. DEFENDANT shall
18 provide such warnings with the unit package of the products. Such warnings shall be prominently
19 affixed to or printed on each product's label or package. The font of the warning shall be at least
20 the same size as the font of other safety warnings, if any, on the product container.

21 **3. MONETARY PAYMENTS**

22 **3.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

23 DEFENDANT shall pay a total civil penalty payment of \$4,150.00 within thirty (30) days
24 of the Effective Date, as follows: the civil penalty shall be apportioned in accordance with
25 California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the
26 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
27 remaining 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in
28 Section 3.3.

1 **3.2. Reimbursement of Plaintiff’s Fees and Costs**

2 The Parties reached an accord on the compensation due to Plaintiff and its counsel under
3 general contract principles and the private attorney general doctrine codified at California Code of
4 Civil Procedure § 1021.5, for all work performed in this matter. Notwithstanding the work
5 performed by Plaintiff’s counsel, should grounds arise for an appeal to be brought or defended
6 against by Plaintiff or Defendant, any fees or costs incurred for working on such an appeal are not
7 included in the fees stated herein. Moreover, before bringing or defending any such appellate
8 actions, Plaintiff’s counsel shall discuss the matter with Defendant’s counsel and will secure the
9 advance written approval of Defendant before incurring any fees and costs that can be charged to
10 Defendant.

11 Under these legal principles, DEFENDANT shall pay the amount of \$4,850.00 for fees
12 and costs incurred investigating, litigating and enforcing this matter, including the fees and costs
13 incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of this
14 Consent Judgment in the public interest.

15 **3.3. Payment Procedures**

16 All payments required by Sections 3.1 and 3.2 shall be within thirty (30) days of the
17 Effective Date, in three checks made payable as follows:

- 18 (a) one check to “OEHHA” in the amount of \$3,112.50;
- 19 (b) one check to “Law Office of Daniel N. Greenbaum in Trust for Plaintiff, LLC” in the
20 amount of \$1,037.50;
- 21 (c) one check to “Law Office of Daniel N. Greenbaum” in the amount of \$4,850.00.

22 **3.4. Issuance of 1099 Forms**

23 After the settlement funds have been transmitted to Plaintiff’s counsel, DEFENDANT shall
24 issue separate 1099 forms, as follows:

- 25 (a) one 1099 form to the “Office of Environmental Health Hazard Assessment” (EIN:
26 68-0284486) in the amount of \$3,112.50;
- 27 (b) a second 1099 form to “Shefa LMV, LLC” in the amount of \$1,037.50, whose
28 address and tax identification number shall be furnished upon request;

1 (c) a third 1099 to “Law Office of Daniel N. Greenbaum” (EIN: 46-4580172) in the
2 amount of \$4,850.00;

3 **3.5. Issuance of Payments.**

4 **3.5.1.** All payments owed to Plaintiff, pursuant to Section 3.1, shall be delivered to
5 the following payment address:

6 Daniel N. Greenbaum, Esq.
7 Law Office of Daniel N. Greenbaum
8 14752 Otsego Street
9 Sherman Oaks, CA 91403

10 **3.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1,
11 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

12 Mike Gyrics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 P.O. Box 4010
16 Sacramento, CA 95812-4010

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

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1. Plaintiff’s Release of DEFENDANT**

21 Plaintiff, on behalf of itself, its past and current agents, representatives, attorneys, including
22 without limitation, Daniel N. Greenbaum, Esq., successors and assigns, and in the public interest,
23 hereby releases, effective as a full and final accord and satisfaction, DEFENDANT, its parents,
24 subsidiaries, affiliated entities that are under common ownership, and each entity to whom
25 DEFENDANT directly or indirectly distributes or sells Products, including, but not limited to,
26 downstream distributors, wholesalers, customers, retailers, including specifically, but not limited to
27 TJ Maxx, Ross Stores, Inc., franchisees, cooperative members, licensors, and licensees, and any
28 other person or entity in the course of doing business, and the successor and assigns of any of
them, who may use, maintain, distribute, advertise, market or sell Products, and the directors,
officers, employees, managers, members, agents, and representatives of each of the foregoing
 (“Releasees”), from all claims, including, without limitation, all actions and causes of actions in
 law or equity, suits, liabilities, demands, obligations, damages, costs, losses, fines, penalties or

1 expenses (including but not limited to, investigation fees, expert fees and attorneys' fees) of any
2 nature, character or kind whatsoever, whether known or unknown, suspected or unsuspected, fixed
3 or contingent that were brought or could have been brought against DEFENDANT or any
4 Releasees based on or arising out of alleged or actual exposure to Cocamide DEA from the
5 Products. Compliance with the terms of this Consent Judgment constitutes compliance with
6 Proposition 65 with respect to exposures to Cocamide DEA from the Products.

7 **4.2. DEFENDANT's Release of Plaintiff**

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

14 15 **5. COURT APPROVAL**

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

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and the obligations of DEFENDANT hereunder as to the Products apply only within the State of
26 California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered
27 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
28 rendered inapplicable or no longer required as a result of any such repeal or preemption or

1 rendered inapplicable by reason of law generally as to the Products, including, without limitation,
2 the removal of Cocamide DEA from OEHHA’s list of Proposition 65 chemicals, then
3 DEFENDANT shall have no further obligations pursuant to this Consent Judgment with respect to,
4 and to the extent that, the Products are so affected.

5 **8. NOTICES**

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

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11 To DEFENDANT:

12 Richard Neill
13 Rich Brands, LLC
14 1819 E. Morten Ave
15 Ste 110
16 Phoenix, Arizona 85020

To Plaintiff:

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

17 With a copy to:

18 Rebecca Nittle, Esq.
19 Law Office of Rebecca Nittle
20 221 E. Marconi Ave
21 Phoenix, AZ 85022

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

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

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

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

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

1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

2 Plaintiff and DEFENDANT agree to mutually employ their, and their counsel's, best efforts
3 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
4 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
5 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
6 Consent Judgment, which Plaintiff shall draft and file, and DEFENDANT shall not oppose. If any
7 third party objection to the noticed motion is filed, Plaintiff and DEFENDANT shall work together
8 to file a joint reply or separate replies if the parties so desire and appear at any hearing before the
9 Court. This provision is a material component of the Consent Judgment and shall be treated as
10 such in the event of a breach. If the Court does not grant the motion to approve this Consent
11 Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days
12 after the Court's denial of the motion to approve, then, payments, if any, made pursuant to Section
13 3 of this Consent Judgment will be returned to DEFENDANT.

14 **12. MODIFICATION**

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

18 **13. AUTHORIZATION**

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

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

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

- 26 1. The injunctive relief required by the Consent Judgment complies with Cal. Health
27 & Safety Code § 25249.7;

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- 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: 2/18/14

Date: February 14, 2014

Plaintiff,
Shefa LMV, LLC

Defendant,
Rich Brands, LLC

By: 

By: 

Print: Alisa Fried

Print: Richard Neill

Its: Managing Member

Its: President

ORDER AND JUDGMENT

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

Dated: _____

Judge of the Superior Court