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Rich Brands, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

Coordination Proceeding) JUDICIAL COUNCIL COORDINATION
Special Title (Rule 3.350)) PROCEEDING NO: 4765
PROPOSITION 65 COCAMIDE DEA)
CASES) [*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.
Action filed: October 11, 2013

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: in the event California’s
21 OEHHA removes Cocamide DEA from its list of Proposition 65 chemicals, any products thereafter
22 manufactured, imported, distributed and/or sold by DEFENDANT for sale in the State of
23 California which contain Cocamide DEA.

24
25 **1.4. Notice of Violation**

26 On July 1, 2013, Plaintiff served DEFENDANT and various public enforcement agencies
27 with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with
28 notice alleging that DEFENDANT was in violation of Proposition 65 for failing to warn

1 consumers and customers that the Products exposed users in California to Cocamide DEA. No
2 public enforcer has diligently prosecuted the allegations set forth in the Notice.

3 **1.5. No Admission**

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

13 **1.6. Consent to Jurisdiction**

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

18 **1.7. 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 **1.8. 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 25 **2. INJUNCTIVE RELIEF: WARNING OR REFORMULATION**

26 **2.1. Warning Obligation For Cocamide DEA-Containing Products**

27 Commencing on December 1, 2013, DEFENDANT shall sell, distribute or otherwise deliver, or
28 cause to be sold, distributed or otherwise delivered into California, only Products reformulated to

1 contain no Cocamide DEA, unless such Products are sold or shipped with *a* clear and reasonable
2 warning as required by Proposition 65.

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

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

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

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

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

17 **3. MONETARY PAYMENTS**

18 **3.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

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

25 **3.2. Reimbursement of Plaintiff's Fees and Costs**

26 The Parties reached an accord on the compensation due to Plaintiff and its counsel under
27 general contract principles and the private attorney general doctrine codified at California Code of
28 Civil Procedure § 1021.5, for all work performed in this matter. Notwithstanding the work

1 performed by Plaintiff's counsel, should grounds arise for an appeal to be brought or defended
2 against by Plaintiff or Defendant, any fees or costs incurred for working on such an appeal are not
3 included in the fees stated herein. Moreover, before bringing or defending any such appellate
4 actions, Plaintiff's counsel shall discuss the matter with Defendant's counsel and will secure the
5 advance written approval of Defendant before incurring any fees and costs that can be charged to
6 Defendant.

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

11 **3.3. Payment Procedures**

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

- 14 (a) one check to "OEHHA" in the amount of \$3,112.50;
- 15 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Plaintiff, LLC" in the
16 amount of \$1,037.50;
- 17 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$4,850.00.

18 **3.4. Issuance of 1099 Forms**

19 After the settlement funds have been transmitted to Plaintiff's counsel, DEFENDANT shall
20 issue separate 1099 forms, as follows:

- 21 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
22 68-0284486) in the amount of \$3,112.50;
- 23 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$1,037.50, whose
24 address and tax identification number shall be furnished upon request;
- 25 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
26 amount of \$4,850.00;

27 **3.5. Issuance of Payments.**

- 28 **3.5.1.** All payments owed to Plaintiff, pursuant to Section 3.1, shall be delivered to

1 the following payment address:

2 Daniel N. Greenbaum, Esq.
3 Law Office of Daniel N. Greenbaum
4 14752 Otsego Street
5 Sherman Oaks, CA 91403

6 **3.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1,
7 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

8 Mike Gyrics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010
12 Sacramento, CA 95812-4010

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

15 **4. CLAIMS COVERED AND RELEASED**

16 **4.1. Full and Binding Resolution of Proposition 65 Allegations**

17 This Consent Judgment is a full, final and binding resolution of the Action as set forth in
18 this Section 4. Shefa, on behalf of itself, its attorneys, agents, representatives, successors and
19 assigns, and in the public interest, waives all rights to participate in any action and releases and
20 discharges (a) Rich Brands, its parents, shareholders, divisions, subdivisions, subsidiaries, partners,
21 sister companies, and affiliates, and their successors and assigns, and the directors, officers,
22 employees, managers, members, agents and representatives of each of the foregoing (collectively,
23 the “Defendant Releasees”), and (b) finished product or ingredient manufacturers, distributors, and
24 suppliers, and all entities to whom any Defendant Releasee directly or indirectly distributed or sold
25 any Covered Products, including but not limited to distributors, wholesalers, customers, retailers
26 (including but not limited to TJX Companies, Inc. and Ross Stores, Inc.), franchisees, cooperative
27 members, and Defendant Releasees’ licensors and licensees, and the directors, officers, employees,
28 managers, members, agents and representatives of each of the foregoing (collectively, “Additional
Releasees”), with respect to all claims, including, without limitation, causes of action (in law or in
equity), suits, liabilities, demands, obligations, damages, costs, fines, penalties, expenses
(including, but not limited to, investigation fees, expert fees and attorneys’ fees) or losses
(collectively “Claims”) regarding any violation of Proposition 65 based on failure to warn about

1 alleged exposures to cocamide DEA in any Covered Products shipped, distributed or sold by Rich
2 Brands prior to the Effective Date.

3 **4.2. Individual Release**

4 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and
5 successors and/or assignees, and *not* in its representative capacity, hereby provides a release that
6 shall be effective as a full and final accord and satisfaction, as a bar to all Claims under Proposition
7 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other statutory or common law, that are or may
8 be asserted against Defendant Releasees and Additional Releasees, whether known or unknown,
9 suspected or unsuspected, arising out of alleged exposures to, and/or failure to warn of alleged
10 exposures to, cocamide DEA or diethanolamine in the Covered Products shipped, distributed or
11 sold by Rich Brands prior to the Effective Date.

12 **4.3. General Release**

13 It is possible that other Claims not known to the Parties arising out of the facts alleged in
14 the Notices or the Action will develop or be discovered. Shefa, on behalf of itself, its past and
15 current agents, representatives, attorneys, and successors and/or assigns, and not in its
16 representative capacity, acknowledges that this Consent Judgment is expressly intended to cover
17 and include all such Claims, including all rights of action therefor. Shefa has full knowledge of the
18 contents of California Civil Code § 1542. Shefa acknowledges that the Claims released in Sections
19 4.1 and 4.2 include unknown Claims, and Shefa nevertheless waives California Civil Code § 1542
20 as to any such unknown Claims. California Civil Code § 1542 reads as follows:

21
22 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
23 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
24 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
25 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
26 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**
27 **HER SETTLEMENT WITH THE DEBTOR.”**

28 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and
successors and/or assignees, and not in its representative capacity, acknowledges and understands
the significance and consequences of this specific waiver of California Civil Code § 1542.

4.4. Compliance with the terms of this Consent Judgment by DEFENDANT shall be

1 deemed to constitute compliance by any Defendant Releasee or Additional Releasee with
2 Proposition 65 regarding alleged exposures to cocamide DEA in the Covered Products.

3 **4.5. Rich Brand's Release**

4 On behalf of itself and Defendant Releasees, Rich Brands waives all rights to institute any
5 form of action against Shefa or Shefa's attorneys, consultants and representatives for all actions
6 taken or statements made in the course of this Action prior to the date of the execution of this
7 Consent Judgment.

8 **5. COURT APPROVAL**

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

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of California
18 and the obligations of DEFENDANT hereunder as to the Products apply only within the State of
19 California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered
20 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
21 rendered inapplicable or no longer required as a result of any such repeal or preemption or
22 rendered inapplicable by reason of law generally as to the Products, including, without limitation,
23 the removal of Cocamide DEA from OEHHA's list of Proposition 65 chemicals, then
24 DEFENDANT shall have no further obligations pursuant to this Consent Judgment with respect to,
25 and to the extent that, the Products are so affected.

26 **8. NOTICES**

27 Unless specified herein, all correspondence and notices required to be provided pursuant to
28 this Consent Judgment shall be in writing and (i) personally delivered, (ii) sent by first-class,

1 (registered or certified mail) return receipt requested, or (iii) sent by overnight courier to one party
2 from the other party at the following addresses:

3
4 To DEFENDANT:

5 Richard Neill
6 Rich Brands, LLC
7 1819 E. Morten Ave
8 Ste 110
9 Phoenix, Arizona 85020

To Plaintiff:

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

8 With a copy to:

9 Rebecca Nittle, Esq.
10 Law Office of Rebecca Nittle
11 221 E. Marconi Ave
12 Phoenix, AZ 85022

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

14
15 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

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

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

22 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

23 Plaintiff and DEFENDANT agree to mutually employ their, and their counsel's, best efforts
24 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
25 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
26 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
27 Consent Judgment, which Plaintiff shall draft and file, and DEFENDANT shall not oppose. If any
28 third party objection to the noticed motion is filed, Plaintiff and DEFENDANT shall work together

1 to file a joint reply or separate replies if the parties so desire and appear at any hearing before the
2 Court. This provision is a material component of the Consent Judgment and shall be treated as
3 such in the event of a breach. If the Court does not grant the motion to approve this Consent
4 Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days
5 after the Court’s denial of the motion to approve, then, payments, if any, made pursuant to Section
6 3 of this Consent Judgment will be returned to DEFENDANT.

7 **12. MODIFICATION**

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

11 In the event California’s Office of Environmental Health Hazard Assessment (“OEHHA”)
12 establishes a “safe harbor” limit for Cocamide DEA, the Parties agree that it shall be grounds for
13 modification of this Consent Judgment with regard to any products thereafter manufactured,
14 imported, distributed and/or sold by DEFENDANT for sale in the State of California which fall
15 within such “safe harbor” limits so established.

16 **13. AUTHORIZATION**

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

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

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

- 24 1. The injunctive relief required by the Consent Judgment complies with Cal. Health
25 & Safety Code § 25249.7;
- 26 2. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is
27 reasonable under California law; and
- 28 3. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.

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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