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12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 Coordination Proceeding
16 Special Title (Rule 3.350)

17 PROPOSITION 65 COCAMIDE DEA
18 CASES

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO: 4765

) [*Shefa LMV, LLC v. Ross Stores, et al.*,
) Los Angeles County Superior Court
) No. BC521400

) **[PROPOSED] AMENDED CONSENT**
) **JUDGMENT AS TO ENCHANTE**
) **ACCESSORIES, INC.**

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

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23 Action filed: October 11, 2013
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1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and ENCHANTE ACCESSORIES, INC.**

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

12 **1.2. General Allegations**

13 Shefa LMV alleges that ENCHANTE ACCESSORIES has manufactured, imported,
14 distributed and/or sold shampoo and shower gel products that contain cocamide diethanolamine
15 (“cocamide DEA”) without the requisite Proposition 65 warnings. Cocamide DEA is on the
16 Proposition 65 list as known to cause cancer.

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, Sleep therapy lavender honey shower gel, and Calming
20 chamomile pet shampoo, that are manufactured, imported, distributed and/or sold by ENCHANTE
21 ACCESSORIES for sale in the State of California.

22 **1.4. Notice of Violation**

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

1 **1.5. No Admission**

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

11 **1.6. Consent to Jurisdiction**

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

16 **1.7. Execution Date**

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

19 **1.8. Effective Date**

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

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

23 **2.1. Reformulation**

24 Commencing on October 15, 2013, ENCHANTE ACCESSORIES shall sell, distribute or
25 otherwise deliver, or cause to be sold, distributed or otherwise delivered into California, only
26 Products reformulated to contain no cocamide DEA.

27 **2.2. Suppliers**

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

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

4 **2.3. Sell Through Period**

5 Notwithstanding the restrictions of Section 2.1, any of ENCHANTE'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 ENCHANTE ACCESSORIES shall pay a total civil penalty payment of \$2,000.00 within
13 ten (10) days of the Execution Date, as follows: the civil penalty shall be apportioned in
14 accordance with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds
15 remitted to the State of California's Office of Environmental Health Hazard Assessment
16 ("OEHHA") and the remaining 25% of the penalty remitted to Shefa LMV, both pursuant to the
17 procedures set forth in Section 3.3.

18 **3.2. Reimbursement of Shefa LMV's Fees and Costs**

19 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute
20 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
21 this fee issue to be resolved after the material terms of the agreement had been settled.
22 ENCHANTE ACCESSORIES expressed a desire to resolve the fee and cost issue after the other
23 settlement terms had been agreed. The Parties then attempted to (and did) reach an accord on the
24 compensation due to Shefa LMV and its counsel under general contract principles and the private
25 attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work
26 performed in this matter, except fees that may be incurred on appeal. Under these legal
27 principles, ENCHANTE ACCESSORIES shall pay the amount of \$5,000.00 for fees and costs
28 incurred investigating, litigating and enforcing this matter, including the fees and costs incurred

1 (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of this Consent
2 Judgment in the public interest.

3 **3.3. Payment Procedures**

4 All payments required by Sections 3.1 and 3.2 shall be within ten (10) days of the
5 Execution Date, in three checks made payable as follows:

- 6 (a) one check to “OEHHA” in the amount of \$1,500.00;
- 7 (b) one check to “Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC” in
8 the amount of \$500.00;
- 9 (c) one check to “Law Office of Daniel N. Greenbaum” in the amount of \$5,000.00.

10 **3.4. Issuance of 1099 Forms**

11 After the settlement funds have been transmitted to Shefa LMV’s counsel, ENCHANTE
12 ACCESSORIES shall issue separate 1099 forms, as follows:

- 13 (a) one 1099 form to the “Office of Environmental Health Hazard Assessment” (EIN:
14 68-0284486) in the amount of \$1,500.00;
- 15 (b) a second 1099 form to “Shefa LMV, LLC” in the amount of \$500.00, whose
16 address and tax identification number shall be furnished upon request;
- 17 (c) a third 1099 to “Law Office of Daniel N. Greenbaum” (EIN: 46-4580172) in the
18 amount of \$5,000.00;

19 **3.5. Issuance of Payments.**

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

22
23 Daniel N. Greenbaum, Esq.
24 Law Office of Daniel N. Greenbaum
1467 South Holt Avenue #2
Los Angeles, CA 90035

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

27 Mike Gyrics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

P.O. Box 4010
Sacramento, CA 95812-4010

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. Shefa LMV's Release of ENCHANTE ACCESSORIES

Plaintiff, acting on its own behalf and in the public interest, releases ENCHANTE ACCESSORIES, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom ENCHANTE ACCESSORIES 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., Big Lots 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.

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

4.2. ENCHANTE ACCESSORIES's Release of Shefa LMV

ENCHANTE ACCESSORIES 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 taken or made) by Shefa LMV and its attorneys and other

1 representatives, whether in the course of investigating claims or otherwise seeking to enforce
2 Proposition 65 against it in this matter with respect to the Products.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
6 after it has been fully executed by all parties. In the event the Court does not approve this Consent
7 Judgment within one year, the funds paid pursuant to Section 3 of this Consent Judgment shall be
8 returned to ENCHANTE ACCESSORIES within ten (10) days after the expiration of one year.

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

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

24 **8. NOTICES**

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

1
2 To ENCHANTE ACCESSORIES:

3 David Irons
4 ENCHANTE ACCESSORIES, INC.
5 4 East 34th Street
6 New York, NY 10016

7 With a copy to:

8 Carol Brophy, Esq.
9 Sedgwick LLP
10 333 Bush St 30th Fl
11 San Francisco, CA 94104

To Shefa LMV:

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

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

12 **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.

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

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

18 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

1 choose not to pursue a modified Consent Judgment within 30 days after the Court's denial of the
2 motion to approve, then, upon remittitur, any and all payments made pursuant to Section 3 of this
3 Consent Judgment will be returned to ENCHANTE ACCESSORIES.

4 **12. MODIFICATION**

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

8 **13. AUTHORIZATION**


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

11 AGREED TO:

AGREED TO:

12
13 Date: 10/11/13

Date: 10-11-2013

14
15 By: 
Plaintiff, Shefa LMV, LLC

By: 
David Irons
Defendant, ENCHANTE
ACCESSORIES, INC.

16 Print: Alisa Fried

17 Its: Managing Member

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Enchante Accessories, 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