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12 Attorneys for Defendant

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 Coordination Proceeding ) JUDICIAL COUNCIL COORDINATION  
16 Special Title (Rule 3.350) ) PROCEEDING NO: 4765  
17 PROPOSITION 65 COCAMIDE DEA )  
CASES ) [*Shefa LMV, LLC v. Target, et al.*,  
18 ) Los Angeles County Superior Court  
19 ) No. BC520410]  
20 ) **[PROPOSED] CONSENT JUDGMENT**  
21 ) **AS TO PRO'S CHOICE BEAUTY CARE,**  
22 ) **INC.**  
23 ) Judge: Hon. George C. Hernandez, Jr.  
24 )  
25 ) Action filed: September 4, 2013  
26 ) Action Coordinated: December 4, 2013  
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- 1 • ProtectConsumers, LLC served Farouk Systems, Inc., and Rite Aid Corporation on  
2 September 28, 2013;
- 3 • ProtectConsumers, LLC served Ultimark Products and CVS Pharmacy, Inc. on  
4 September 28, 2013;
- 5 • ProtectConsumers, LLC served Sexy Hair Concepts and Target Corporation on  
6 September 28, 2013

7 No public enforcer has prosecuted the allegations set forth in the Notice.

8  
9 **1.5 Complaint.** On or about September 4, 2013, Shefa LMV filed a complaint in the  
10 Superior Court in and for the County of Los Angeles against other entities, *Shefa LMV, LLC*  
11 *v. Target corporation*, Case No. BC520410, alleging violations of Proposition 65, based on the  
12 alleged exposures to Cocamide DEA contained in certain products sold by Defendants  
13 (“Complaint”). After this case was coordinated with other Cocamide DEA cases in the Superior  
14 Court in and for the County of Alameda, *Proposition 65 Cocamide DEA Cases*, Case No. JCCP  
15 4765, Shefa LMV filed a DOE amendment related to the Target complaint, adding Pro’s Choice  
16 as a DOE on September 30, 2014. No other complaints have been filed with respect to any other  
17 Notice of Violation.

18 **1.6 No Admission.** Pro’s Choice denies the material, factual and legal allegations  
19 contained in Shefa LMV’s Notice and Complaint and maintains that it has at all times been in  
20 compliance with all laws and all products that it has sold, manufactured, imported and/or  
21 distributed in California, including the Products. Nothing in this Consent Judgment shall be  
22 construed as an admission by Pro’s Choice of any fact, finding, issue of law or violation of law,  
23 nor shall compliance with this Consent Judgment constitute or be construed as an admission by  
24 Pro’s Choice of any fact, finding, conclusion, issue of law or violation of law. However, this  
25 Section shall not diminish or otherwise affect Pro’s Choice’s obligations, responsibilities and  
26 duties under this Consent Judgment.

27 **1.7 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the parties  
28 stipulate that this Court has jurisdiction over Pro’s Choice as to the allegations contained in the  
31 Complaint, that venue is proper in Alameda County Superior Court, and that this Court or, if the

1 case is transferred back to the Los Angeles County Superior Court at the conclusion of the  
2 Coordination Action, the Los Angeles Superior Court has jurisdiction to enter and enforce the  
3 provisions of this Consent Judgment.

4 **1.8 Execution Date.** For purposes of this Consent Judgment, the term “Execution Date”  
5 shall mean the date this Consent Judgment is signed by both parties.

6 **1.9 Effective Date.** For purposes of this Consent Judgment, the term “Effective Date”  
7 shall mean the date the Court enters Judgment pursuant to the terms of this Consent Judgment.

8 **2. INJUNCTIVE RELIEF**

9 **2.1 Reformulation of Covered Products.** As of the Effective Date, Pro’s Choice shall  
10 not manufacture, distribute, sell or offer for sale any Covered Product that contains Cocamide  
11 DEA and that will be sold or offered for sale to California consumers. For purposes of this  
12 Consent Judgment, a product “contains Cocamide DEA” if Cocamide DEA is an intentionally  
13 added ingredient in the product and/or part of the product formulation.

14 **2.2 Suppliers.** No more than 30 days after the Effective Date, Pro’s Choice shall issue  
15 specifications to its suppliers of Covered Products requiring that Covered Products not contain  
16 any Cocamide DEA, and shall instruct each supplier to use reasonable efforts to eliminate  
17 Covered Products containing Cocamide DEA on a nationwide basis.

18 **2.3 Sell Through Period.** Pro’s Choice’s Products that were manufactured and  
19 distributed for retail sale prior to the Effective Date shall be subject to the release of liability  
20 pursuant to Section 5 of this Consent Judgment, without regard to when such Products were, or  
21 are in the future, sold to consumers. As a result, the obligations of Pro’s Choice as set forth in  
22 this Consent Judgment, including but not limited to Section 2.1, do not apply to these products.

23 **3. ENFORCEMENT**

24 Shefa may, by motion or application for an order to show cause before the Alameda County  
25 Superior Court, or, if the case is transferred back to the Los Angeles County Superior Court at  
26 the conclusion of the Coordination Action, the Los Angeles Superior Court, may enforce the  
27 terms and conditions contained in this Consent Judgment. Prior to bringing any motion or  
28 application to enforce the requirements of Section 2 above, Shefa shall provide the Defendant  
31 with Notice of Violation and a copy of any test results which purportedly support Shefa’s Notice

1 of Violation. The Parties shall then meet and confer regarding the basis for Shefa's anticipated  
2 motion or application in an attempt to resolve the matter informally, including providing Settling  
3 Defendant a reasonable opportunity of at least thirty (30) days to cure any alleged violation.  
4 Should such attempts at informal resolution fail, Shefa may file its enforcement motion or  
5 application. The prevailing party on any motion to enforce this Consent Judgment shall be  
6 entitled to its reasonable attorney's fees and costs incurred as a result of such motion or  
7 application.

8 **4. MONETARY PAYMENTS**

9 Pro's Choice agrees to a total settlement payment of Twenty-One Thousand Dollars  
10 (\$21,000.00) to be paid as set forth below.

11 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

12 Pro's Choice shall pay a total civil penalty payment of \$6,000.00 within ten (10) days of  
13 the Effective Date, as follows: the civil penalty shall be apportioned in accordance with  
14 California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the  
15 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the  
16 remaining 25% of the penalty remitted to Shefa LMV, both pursuant to the procedures set forth  
17 in Section 4.3.

18 **4.2 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  
21 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
22 Pro's Choice expressed a desire to resolve the fee and cost issue after the other settlement terms  
23 had been agreed. The Parties then attempted to (and did) reach an accord on the compensation  
24 due to Shefa LMV and its counsel under general contract principles and the private attorney  
25 general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed  
26 in this matter, except fees that may be incurred on appeal. Under these legal principles, Pro's  
27 Choice shall pay the amount of \$15,000.00 for fees and costs incurred investigating, litigating  
28 and enforcing this matter, including the fees and costs incurred (and yet to be incurred)

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1 negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public  
2 interest.

3 **4.3 Payment Procedures**

4 All payments required by Sections 4.1 and 4.2 shall be within ten (10) days of the  
5 Effective Date, in three checks made payable as follows:

- 6 (a) one check to "OEHHA" in the amount of \$4,500.00;
- 7 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV,  
8 LLC" in the amount of \$1,500.00;
- 9 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$15,000.00;

10 **4.4 Issuance of 1099 Forms**

11 After the settlement funds have been transmitted to Shefa LMV's counsel, Pro's Choice  
12 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 \$4,500.00;
- 15 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$1,500.00, 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 \$15,000.00;

19 **4.5 Issuance of Payments.**

20 All payments owed shall be delivered to the following payment address:

21 Daniel N. Greenbaum, Esq.  
22 Law Office of Daniel N. Greenbaum  
23 7120 Hayvenhurst Avenue  
24 Suite 320  
Van Nuys, CA 91406

25 **5. CLAIMS COVERED AND RELEASED**

26 **5.1 Shefa LMV's Release of Pro's Choice**

27 Plaintiff, acting on its own behalf and in the public interest, releases Pro's Choice, its  
28 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,  
31 employees, attorneys, and each entity to whom Pro's Choice directly or indirectly distributes or

1 sells Products, including, but not limited to, downstream distributors, wholesalers, customers,  
2 retailers, including specifically, but not limited to Target Corporation, Rite Aid Corporation,  
3 Amazon.com, Inc. and CVS Pharmacy, Inc., franchisees, cooperative members, licensors, and  
4 licensees ("Releasees"), from all claims for violations of Proposition 65 up through the date on  
5 which this Consent Judgment is signed by both parties based on exposure to Cocamide DEA  
6 from the Products as set forth in the Notice. Compliance with the terms of this Consent  
7 Judgment constitutes compliance with Proposition 65 with respect to exposures to Cocamide  
8 DEA from the Products as set forth in the Notice.

### 9 **5.2 Pro's Choice's Release of Shefa LMV**

10 Pro's Choice on behalf of itself, its past and current agents, representatives, attorneys,  
11 successors, and/or assignees, hereby waives any and all claims against Shefa LMV, its attorneys  
12 and other representatives, for any and all actions taken or statements made by Shefa LMV and its  
13 attorneys and other representatives, whether in the course of investigating claims or otherwise  
14 seeking to enforce Proposition 65 against it in this matter with respect to the Products.

### 15 **6. 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  
18 year after it has been fully executed by all parties.

### 19 **7. 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 **8. GOVERNING LAW**

24 **8.1** The terms of this Consent Judgment shall be governed by the laws of the State of  
25 California and shall apply only to Covered Products that are sold or offered for sale in the State  
26 of California.

27 **8.2** In the event that Proposition 65 is repealed, preempted or otherwise rendered  
28 inapplicable by reason of law generally, or as to the Covered Products, then Pro's Choice shall

1 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
2 that, any Covered Products that are so affected.

3 **8.3** This Consent Judgment shall apply to and be binding upon Shefa and Pro's Choice  
4 and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

5 **8.4** The Parties, including their counsel, have participated in the preparation of this  
6 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

7 **8.5** This Consent Judgment was subject to revision and modification by the Parties and  
8 has been accepted and approved as to its final form by all Parties and their counsel.

9 **8.6** Each Party to this Consent Judgment agrees that any statute or rule of construction  
10 providing that ambiguities are to be resolved against the drafting Party shall not be employed in  
11 the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive  
12 California Civil Code § 1654.

13 **9. NOTICES**

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

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19 To Pro's Choice:

20 Anthony J. Cortez, Greenberg Traurig, LLP, 1201 K Street, Suite 1100, Sacramento, CA 95814

21

22 To Shefa LMV:

23 Daniel N. Greenbaum, Esq., Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Avenue,  
24 Suite 320, Van Nuys, CA 91406

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

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1 **10. ATTORNEYS' FEES**

2 **10.1** A Party who unsuccessfully brings or contests an action arising out of this  
3 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and  
4 costs.

5 **10.2** For purposes of this Section 11.1, the prevailing Party refers to the Party that was  
6 successful in obtaining relief more favorable to it than the relief that the other Party was  
7 amenable to providing during the Parties' good faith attempt to resolve the dispute under Section  
8 5.1.

9 **10.3** Nothing in this Section 11 shall preclude a Party from seeking an award of  
10 sanctions pursuant to law.

11 **11. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

16 **12. COURT APPROVAL**

17 **12.1** This Consent Judgment shall not be effective until the Effective Date.

18 **12.2** Shefa shall prepare and file a Motion for Approval of this Consent Judgment and  
19 Pro's Choice shall make no objections to entry of this Consent Judgment.

20 **12.3** If this Consent Judgment is not entered by the Court, it shall be of no force or  
21 effect.

22 **12.4** This Court shall retain jurisdiction of this matter to implement or modify the  
23 Consent Judgment.

24 **13. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

25 **13.1** Shefa LMV and Pro's Choice agree to mutually employ their, and their counsel's,  
26 best efforts to support the entry of the agreement as a Consent Judgment and obtain approval of  
27 the Consent Judgment by the Court in a timely manner.

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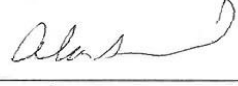
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1. The injunctive relief required by the Consent Judgment complies with Cal. Health & Safety Code § 25249.7;
2. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is reasonable under California law; and
3. The civil penalty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

AGREED TO:

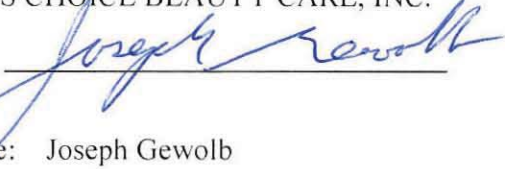
Dated: 2/3/2015

SHEFA LMV, LLC

By:   
Alisa Fried

Dated: 1/28/15

PRO'S CHOICE BEAUTY CARE, INC.

By: 

Name: Joseph Gewolb

Title: Chief Financial Officer

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Pro's Choice Beauty Supply, Inc., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court