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8 CENTER FOR ENVIRONMENTAL HEALTH

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12
13 Coordination Proceeding Special Title:) Judicial Council Coordination
14 PROPOSITION 65 COCAMIDE DEA CASES) Proceeding
15) Case No. 4765
16 _____)
17 This Document Relates To:) **[PROPOSED] CONSENT**
18 *CEH v. Fantasia Industries Corporation, et al.*,) **JUDGMENT AS TO ROSS STORES,**
A.C.S.C. Case No. RG 13-696756) **INC.**
19 *Shefa LMV, LLC v. Ross Stores, Inc., et al.*,)
20 L.A.C.S.C. Case No. BC-521400)

21
22 **1. INTRODUCTION**

23 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
24 Environmental Health (“CEH”), Shefa LMV, LLC (“Shefa”), and defendant Ross Stores, Inc.
25 (“Settling Defendant”). CEH, Shefa, and Settling Defendant are referred to collectively as the
26 “Parties.” CEH and Shefa are referred to collectively as “Plaintiffs.”
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1 1.2 Settling Defendant is a corporation that employs ten (10) or more persons and
2 that manufactures, distributes, and/or sells shampoo and liquid soaps that contain coconut oil
3 diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the
4 State of California or has done so in the past.

5 1.3 On July 1, 2013 and July 19, 2013, Shefa and CEH served 60-Day Notices of
6 Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,
7 California Health & Safety Code § 25249.5, *et seq.*) (the “Notices”) to Settling Defendant, the
8 California Attorney General, the District Attorneys of every County in the State of California, and
9 the City Attorneys for every City in the State of California with a population greater than
10 750,000. The Notices allege violations of Proposition 65 with respect to the presence of
11 cocamide DEA in shampoo and liquid soaps that are manufactured, distributed, and/or sold by
12 Settling Defendant.

13 1.4 On September 16, 2013, Shefa filed the action entitled *Shefa LMV, LLC v.*
14 *Ross Stores, Inc., et al.*, Case No. BC-521400, in the Superior Court of California for Los Angeles
15 County, naming Settling Defendant as a party to that action. The *Ross Stores* action has been
16 coordinated with several other related Proposition 65 actions in the Proposition 65 Cocamide
17 DEA Cases, Case No. JCCP 4765, which is currently pending before this Court. On September
18 24, 2013, CEH filed the action entitled *CEH v. Fantasia Industries Corporation, et al.*, Case No.
19 RG 13-696756, in the Superior Court of California for Alameda County, naming Settling
20 Defendant as a party to that action. The *Fantasia* action has also been coordinated with several
21 other related Proposition 65 actions in the *Proposition 65 Cocamide DEA Cases*.

22 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
23 Court has jurisdiction over the allegations of violations contained in the operative Complaints
24 applicable to Settling Defendant (the “Complaints”) and personal jurisdiction over Settling
25 Defendant as to the acts alleged in the Complaints; (ii) venue is proper in the County of Alameda;
26 and (iii) this Court has jurisdiction to enter this Consent Judgment.

27 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
28 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance

1 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
2 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
3 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
4 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
5 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
6 this action.

7 **2. DEFINITIONS**

8 2.1 “Covered Products” means soap and shampoo products manufactured,
9 distributed, and/or sold by Bio Creative Enterprises and Jakenna Cosmetics, Inc.

10 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
11 the Court.

12 **3. INJUNCTIVE RELIEF**

13 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
14 Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product that
15 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
16 purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
17 intentionally added ingredient in the product and/or part of the product formulation.

18 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
19 Date, Settling Defendant shall issue specifications to its suppliers of Covered Products requiring
20 that Covered Products not contain any cocamide DEA, and shall instruct each supplier to use
21 reasonable efforts to eliminate Covered Products containing cocamide DEA on a nationwide
22 basis.

23 3.3 **Action Regarding Specific Products.**

24 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the
25 following products: (i) the Petal Fresh Botanicals Stimulating Aloe & Peppermint Facial
26 Cleanser, SKU No. 7-13708-70101-7; and (ii) the Organic Home Lemon Hand Wash, SKU Nos.
27 4-00088-63318-1, 4-00088-63324-2, and 4-00096-97430-6 (the “Section 3.3 Products”). On or
28 before the Effective Date, Settling Defendant shall also: (i) cease shipping the Section 3.3

1 Products to any of its stores and/or customers that resell the Section 3.3 Products in California;
2 and (ii) send instructions to its stores and/or customers that resell the Section 3.3 Products in
3 California instructing them either to: (a) return all the Section 3.3 Products to Settling Defendant
4 for destruction, or (b) directly destroy the Section 3.3 Products.

5 3.3.2 Any destruction of the Section 3.3 Products shall be in compliance with all
6 applicable laws.

7 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall
8 provide CEH with written certification from Settling Defendants confirming compliance with the
9 requirements of this Section 3.3.

10 **4. ENFORCEMENT**

11 4.1 CEH or Shefa may, by motion or application for an order to show cause before
12 the Superior Court of Alameda County, enforce the terms and conditions contained in this
13 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
14 Section 3 above, CEH or Shefa shall provide Settling Defendant with a Notice of Violation and a
15 copy of any test results which purportedly support CEH or Shefa's Notice of Violation. The
16 Parties shall then meet and confer regarding the basis for CEH or Shefa's anticipated motion or
17 application in an attempt to resolve it informally, including providing Settling Defendant a
18 reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such
19 attempts at informal resolution fail, CEH or Shefa may file its enforcement motion or application.
20 This Consent Judgment may only be enforced by the Parties.

21 **5. PAYMENTS**

22 5.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective
23 Date, Settling Defendant shall pay the total sum of \$15,000 as a settlement payment. Each
24 settlement payment from Settling Defendant shall be paid in four (4) separate checks delivered to
25 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
26 Defendant shall be allocated between the following categories:

27 5.1.1 \$1,650 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
28 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12

1 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard
2 Assessment). The check for this civil penalty shall be made payable to the Center for
3 Environmental Health.

4 5.1.2 \$2,250 as payment in lieu of civil penalty to CEH pursuant to Health &
5 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use
6 such funds to continue its work educating and protecting people from exposures to toxic
7 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
8 Judgment and to purchase and test Settling Defendant’s products to confirm compliance. In
9 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
10 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
11 educate and protect people from exposures to toxic chemicals. The method of selection of such
12 groups can be found at the CEH web site at www.ceh.org/justicefund. The check for this
13 payment in lieu of civil penalty shall be made payable to the Center for Environmental Health.

14 5.1.3 \$11,100 as reimbursement of a portion of CEH’s reasonable attorneys’ fees
15 and costs. A check for \$9,600 shall be made payable to the Lexington Law Group, and a check
16 for \$1,500 shall be made payable to the Center for Environmental Health.

17 **6. MODIFICATION**

18 6.1 **Written Consent.** This Consent Judgment may be modified from time to
19 time by express written agreement of the Parties with the approval of the Court, or by an order of
20 this Court upon motion and in accordance with law.

21 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
22 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
23 modify the Consent Judgment.

24 **7. CLAIMS COVERED AND RELEASED**

25 7.1 This Consent Judgment is a full, final, and binding resolution between (i) CEH
26 on behalf of itself and the public interest; (ii) Shefa on behalf of itself and the public interest; and
27 (iii) Settling Defendant, and its parents, subsidiaries, affiliated entities that are under common
28 ownership, directors, officers, employees, and attorneys (“Defendant Releasees”), of any

1 violation of Proposition 65 that was or could have been asserted in the Complaints against
2 Settling Defendant and Defendant Releasees based on failure to warn about alleged exposure to
3 cocamide DEA contained in Covered Products that were sold by Settling Defendant prior to the
4 Effective Date.

5 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant
6 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant
7 and its Defendant Releasees with respect to any alleged failure to warn about cocamide DEA in
8 Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective
9 Date.

10 7.3 Nothing in this Section 7 affects CEH or Shefa's right to commence or
11 prosecute an action under Proposition 65 against any person other than Settling Defendant and
12 Defendant Releasees.

13 **8. NOTICE**

14 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by first class and electronic mail to:

16 Mark Todzo
17 Lexington Law Group
18 503 Divisadero Street
19 San Francisco, CA 94117
20 mtodzo@lexlawgroup.com

21 8.2 When Shefa is entitled to receive any notice under this Consent Judgment, the
22 notice shall be sent by first class and electronic mail to:

23 Daniel N. Greenbaum
24 Law Office of Daniel N. Greenbaum
25 14752 Otsego Street
26 Sherman Oaks, CA 91403
27 danielgreenbaumesq@gmail.com

28 8.3 When Settling Defendant is entitled to receive any notice under this Consent
Judgment, the notice shall be sent by first class and electronic mail to:

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Will Troutman
Norton Rose Fulbright US LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071
william.troutman@nortonrosefulbright.com

8.4 Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

9. COURT APPROVAL

9.1 This Consent Judgment shall become effective upon entry by the Court. CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this Consent Judgment.

9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall never be introduced into evidence or otherwise used in any proceeding for any purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

10. ATTORNEYS' FEES

10.1 Should CEH or Shefa prevail on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment, CEH or Shefa shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should Settling Defendant prevail on any motion application for an order to show cause or other proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result of such motion or application upon a finding by the Court that CEH or Shefa's prosecution of the motion or application lacked substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure § 2016, *et seq.*

10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its own attorneys' fees and costs.

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

1 **11. OTHER TERMS**

2 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
3 of California.

4 11.2 This Consent Judgment shall apply to and be binding upon CEH, Shefa, and
5 Settling Defendant, and its respective divisions, subdivisions, and subsidiaries, and the successors
6 or assigns of any of them.

7 11.3 This Consent Judgment contains the sole and entire agreement and
8 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
9 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
10 merged herein and therein. There are no warranties, representations, or other agreements between
11 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
12 implied, other than those specifically referred to in this Consent Judgment have been made by any
13 Party hereto. No other agreements not specifically contained or referenced herein, oral or
14 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
15 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
16 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
17 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
18 whether or not similar, nor shall such waiver constitute a continuing waiver.

19 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
20 that Settling Defendant might have against any other party, whether or not that party is a settling
21 defendant.

22 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
23 Consent Judgment.

24 11.6 The stipulations to this Consent Judgment may be executed in counterparts
25 and by means of facsimile or portable document format (pdf), which taken together shall be
26 deemed to constitute one document.

27 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into

1 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
2 Party.

3 11.8 The Parties, including their counsel, have participated in the preparation of
4 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
5 This Consent Judgment was subject to revision and modification by the Parties and has been
6 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
7 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
8 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
9 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
10 be resolved against the drafting Party should not be employed in the interpretation of this Consent
11 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

12
13 **IT IS SO STIPULATED:**

14 **CENTER FOR ENVIRONMENTAL HEALTH**

15
16 
17 _____
18 Charlie Pizarro
19 Associate Director

20 **ROSS STORES, INC.**

21
22 _____
23 Signature

24
25 _____
26 Printed Name

27
28 _____
29 Title

1 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
2 Party.

3 11.8 The Parties, including their counsel, have participated in the preparation of
4 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
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10 be resolved against the drafting Party should not be employed in the interpretation of this Consent
11 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

12

13 **IT IS SO STIPULATED:**

14 **CENTER FOR ENVIRONMENTAL HEALTH**

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17 _____
Charlie Pizarro
Associate Director

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19 **ROSS STORES, INC.**

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22 _____
Signature

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24 KEVIN ANDREW CLUNIS
Printed Name

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26 VICE PRESIDENT-LEGAL
Title

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SHEFA LMV, LLC



Alisa Fried
Managing Member

IT IS SO ORDERED:

Dated: _____, 2015

Judge of the Superior Court