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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF LOS ANGELES

16
17 SHEFA LMV, LLC., a California limited
liability company,

18
19 Plaintiff,

20 vs.

21 AMAZON.COM, INC.; and DOES 1 through
22 20, inclusive,

23 Defendants.

) Unlimited Jurisdiction
)
) CASE NO. BC563331
)
) *Assigned to the*
) *Honorable Samantha P. Jessner*
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO AMAZON.COM, INC.**
)
) Date: May 10, 2016
) Time: 8:30 am
) Dept. 31
)
) [Filed Concurrently with Notice of Motion and
) Motion for Approval of Consent Judgment;
) Memorandum of Points & Authorities in
) Support Thereof; Declaration of Daniel N.
27 Greenbaum in Support Thereof; [Proposed]
28 Order for Approval of Consent Judgment]

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1. INTRODUCTION

1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC (“Shefa”) and Amazon.com, Inc. (“Settling Defendant”).

1.2 Shefa and Settling Defendant are referred to collectively as the “Parties.”

1.3 The Settling Defendant distributes and/or sells nail polish and/or nail polish varnish products(s) that contain Benzophenone in the State of California or has done so in the past without providing a warning that complies with Proposition 65.

1.4 On December 4, 2014, Shefa served a 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, et seq.) (the “Notice”) to Settling Defendant, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000.

1.5 The Notice alleged violations of Proposition 65 with respect to the presence of Benzophenone in the Covered Products.

1.6 On the November 7, 2014, Shefa filed the Complaint applicable to the Settling Defendant (“Complaint”) in the present action.

1.7 For purposes of this Consent Judgment only, the Parties stipulate that:

- i. this Court has jurisdiction over the allegations of violations contained in the operative Complaint applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint;
- ii. venue is proper in the County of Los Angeles; and
- iii. this Court has jurisdiction to enter this Consent Judgment.

1.8 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.

1 1.9 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
2 remedy, argument, or defense the Parties may have in legal proceedings that do not involve the
3 Covered Products

4 1.10 This Consent Judgment is the product of negotiation and compromise and is
5 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
6 this action.

7 **2. DEFINITIONS**

8 2.1 “Covered Product” means the “Brilliant Due Nail Polish Protector,” Amazon
9 Standard Identification Number B005OF21ZS.

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 **Cessation of Sales.** As of the Effective Date, Settling Defendant shall not
14 distribute or sell the Covered Product to California consumers.

15 **4. ENFORCEMENT**

16 4.1 Shefa may, by motion or application for an order to show cause before the
17 Superior Court of Los Angeles County, enforce the terms and conditions contained in this
18 Consent Judgment.

19 4.2 Prior to bringing any motion or application to enforce the requirements of Section
20 3 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
21 and a copy of any test results which purportedly support the Notice of Violation.

22 4.3 The Parties shall then meet and confer regarding the basis for the anticipated
23 motion or application in an attempt to resolve it informally, including providing Settling
24 Defendant(s) with a reasonable opportunity of at least thirty (30) days to cure any alleged
25 violation.

26 4.4 Should such attempts at informal resolution fail, Shefa may file an enforcement
27 motion or application.

28 4.5 This Consent Judgment may only be enforced by the Parties.

1 **5. PAYMENTS**

2 5.1 Within ten (10) business days of the Effective Date, Settling Defendant shall pay
3 the Total Settlement Payment of \$10,000.00 by delivering checks payable to "Shefa LMV, LLC"
4 and "Law Office of Daniel N. Greenbaum" as set forth below to counsel for Shefa:

5 5.2 The funds paid by Settling Defendant shall be allocated as follows:

6 a. **Civil Penalty.** A civil penalty in the amount of \$500.00 payable to "Shefa
7 LMV, LLC" pursuant to Health & Safety Code § 25249.7 (b), with such
8 money to be apportioned and distributed by Shefa in accordance with
9 Health & Safety Code § 25249.12 as follows: 25% to Shefa and 75% to
10 the State of California's Office of Environmental Health Hazard
11 Assessment.

12 b. **Attorneys' fees and Costs.** A reimbursement of Shefa's attorneys' fees
13 and costs in the amount of \$9,500.00 payable to the "Law Office of Daniel
14 N. Greenbaum."

15 **6. MODIFICATION**

16 6.1 **Written Consent.** This Consent Judgment may be modified from time to time by
17 express written agreement of the Parties with the approval of the Court, or by an order of this
18 Court upon motion and in accordance with law.

19 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
20 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
21 modify the Consent Judgment.

22 **7. CLAIMS COVERED AND RELEASED**

23 7.1 This Consent Judgment is a full, final, and binding resolution between (i) Shefa
24 on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its former
25 affiliates ("affiliate" means a person or entity who directly or indirectly owns or controls, is
26 owned or controlled by, or is under common ownership or control with, Settling Defendant), and
27 their current and past directors, officers, employees and attorneys ("Defendant Releasees"), and
28 each entity to whom any of them directly or indirectly distribute or sell Covered Products,

1 including but not limited to distributors, wholesalers, customers, retailers, franchisees,
2 cooperative members, licensors, and licensees (“Downstream Defendant Releasees”); of any
3 violation of Proposition 65 that was or could have been asserted in the Complaint against
4 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on
5 failure to warn about alleged exposure to Benzophenone contained in Covered Products that
6 were sold by Settling Defendant prior to the Effective Date.

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

12 7.3 Nothing in this Section 7 affects Shefa’s right to commence or prosecute an
13 action under Proposition 65 against any person other than Settling Defendant, Defendant
14 Releasees, or Downstream Defendant Releasees.

15 **8. NOTICE**

16 8.1 When Shefa is entitled to receive any notice under this Consent Judgment, the
17 notice shall be sent by first class mail to:

18 Daniel N. Greenbaum
19 Law Office of Daniel N. Greenbaum
20 7120 Hayvenhurst Ave., Suite 320
21 Van Nuys CA 91406

22 8.2 When Settling Defendant is entitled to receive any notice under this Consent
23 Judgment, the notice shall be sent by first class mail to the two addresses below:

24 Amazon.com, Inc.
25 Charles Wright
26 440 Terry Ave N.
27 Seattle, WA 98109

28 Norton Rose Fulbright US LLP
Jeffrey B. Margulies

1 555 South Flower Street
2 Forty-First Floor
3 Los Angeles, California 90071

4 8.3 Any Party may modify the person and address to whom the notice is to be sent by
5 sending the other Party notice by first class mail.

6 **9. COURT APPROVAL**

7 9.1 This Consent Judgment shall become effective upon entry by the Court.

8 9.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
9 Settling Defendant shall support entry of this Consent Judgment.

10 9.3 If this Consent Judgment is not entered by the Court, it shall be of no force or
11 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
12 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

13 **10. ATTORNEYS' FEES**

14 10.1 Should Shefa prevail on any motion, application for an order to show cause, or
15 other proceeding to enforce a violation of this Consent Judgment, Shefa shall be entitled to its
16 reasonable attorneys' fees and costs incurred as a result of such motion or application.

17 10.2 Should Settling Defendant prevail on any motion application for an order to show
18 cause or other proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees
19 and costs against Shefa as a result of such motion or application upon a finding by the Court that
20 Shefa's prosecution of the motion or application lacked substantial justification.

21 10.3 For purposes of this Consent Judgment, the term substantial justification shall
22 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§
23 2016, et seq.

24 10.4 Except as otherwise provided in this Consent Judgment, each Party shall bear its
25 own attorneys' fees and costs.

26 10.5 Nothing in this Section 10 shall preclude a Party from seeking an award of
27 sanctions pursuant to law.

28 **11. OTHER TERMS**

1 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
2 California.

3 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling
4 Defendant, its affiliates, and successors or assigns of any of them.

5 11.3 This Consent Judgment contains the sole and entire agreement and understanding
6 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
7 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
8 and therein.

9 11.4 There are no warranties, representations, or other agreements between the Parties
10 except as expressly set forth herein.

11 11.5 No representations, oral or otherwise, express or implied, other than those
12 specifically referred to in this Consent Judgment have been made by any Party hereto.

13 11.6 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.

15 11.7 No supplementation, modification, waiver, or termination of this Consent
16 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

17 11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or
18 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
19 such waiver constitute a continuing waiver.

20 11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights
21 Settling Defendant might have against any other party, whether or not that party is a Settling
22 Defendant.

23 11.10 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 11.11 The stipulations to this Consent Judgment may be executed in counterparts and
26 by means of facsimile or portable document format (pdf), which taken together shall be deemed
27 to constitute one document.

28

1 11.12 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
3 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
4 that Party.

5 11.13 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 11.14 This Consent Judgment was subject to revision and modification by the Parties
8 and has been accepted and approved as to its final form by all Parties and their counsel.

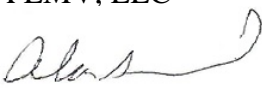
9 11.15 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment
10 shall not be interpreted against any Party as a result of the manner of the preparation of this
11 Consent Judgment.

12 11.16 Each Party to this Consent Judgment agrees that any statute or rule of
13 construction providing that ambiguities are to be resolved against the drafting Party should not
14 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
15 waive California Civil Code § 1654.

16
17 AGREED TO:

18
19 Dated: 5/2/2016

SHEFA LMV, LLC

By:  _____

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Dated: 5/2/2016

AMAZON.COM, INC.

DocuSigned by:
Andrew DeVore

By: _____
Andrew Devore
Vice President

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Amazon.com, 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