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LAW OFFICE OF DANIEL N. GREENBAUM  
Daniel N. Greenbaum, Esq. (SBN 268104)  
14752 Otsego Street  
Sherman Oaks, CA 91403  
Telephone: (310) 200-2631  
Facsimile: (424) 243-7689  
Email: danielgreenbaumesq@gmail.com

Attorneys for Plaintiff  
SHEFA LMV, LLC

Sarah Esmaili (No. 206053)  
ARNOLD & PORTER LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111  
Telephone: (415) 471-3283  
Facsimile: (415) 4711-3400

Attorneys for Defendant  
E.T. BROWNE DRUG COMPANY, INC.

**FILED**  
ALAMEDA COUNTY

JUN 13 2014

CLERK OF THE SUPERIOR COURT  
By *[Signature]* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

Coordination Proceeding  
Special Title (Rule 3.350)  
PROPOSITION 65 COCAMIDE DEA CASES

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NO: 4765

**[PROPOSED] AMENDED CONSENT  
JUDGMENT AS TO E.T. BROWNE DRUG  
COMPANY, INC.**

*[Shefa LMV, LLC v. Target Corporation, et al.,  
Los Angeles County Superior Court  
No. BC520410]*

Action filed: October 11, 2013

1     **1. INTRODUCTION**

2             **1.1 Shefa LMV, LLC and E.T. Browne Drug Company, Inc.**

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

12            **1.2 General Allegations**

13            Plaintiff alleges that Defendant has manufactured, imported, distributed and/or sold  
14    shampoo and shower gel products that contain coconut oil diethanolamine condensate (cocamide  
15    diethanolamine) (referred to herein as "cocamide DEA") without the requisite Proposition 65  
16    warnings. Cocamide DEA is listed as a carcinogen under Proposition 65.

17            **1.3 Notices of Violation**

18            On June 22, 2013, Plaintiff served Defendant and various public enforcement agencies with  
19    a document entitled "60-Day Notice of Violation" (the "Original Notice") alleging that Defendant  
20    was in violation of Proposition 65 for failing to warn consumers and customers of alleged exposures  
21    to cocamide DEA in shampoos. No public enforcer has diligently prosecuted the allegations set  
22    forth in the Original Notice.

23            On January 24, 2014, Plaintiff served Defendant and various public enforcement agencies  
24    with a document entitled 60-Day Notice of Violation alleging that Defendant was in violation of  
25    Proposition 65 for failing to warn consumers and customers of alleged exposures to cocamide DEA  
26    in liquid soaps (the "Supplemental Notice"). The seventy-first day following the service of the  
27    Supplemental Notice on Defendant and all California public enforcers required to be served under  
28    Proposition 65 (i.e., California Attorney General, California District Attorneys of every County in

1 the State of California, and City Attorneys for every city in the State of California with a population  
2 greater than 750,000), provided that no such public enforcer has, before that date, filed a  
3 Proposition 65 enforcement action based on the allegations in the Supplemental Notice, is the  
4 "Supplemental Notice Maturity Date." The Original Notice and the Supplemental Notice are  
5 referred to herein as the "Notices."

#### 6 **1.4 Product Description**

7 The products covered by this Consent Judgment are shampoo products including, but not  
8 limited to, Palmer's Coconut Oil Formula Shampoo with Vitamin E and Palmer's Olive Oil  
9 Formula Shampoo with Vitamin E, that are manufactured, imported, distributed and/or sold by  
10 Defendant for sale in the State of California. The products covered by this Consent Judgment shall  
11 additionally include liquid soaps on and after the Supplemental Notice Maturity Date. The products  
12 covered by this Consent Judgment are referred to as the "Covered Products."

#### 13 **1.5 Complaint**

14 On September 4, 2013 Plaintiff, acting in the public interest under Cal. Health & Safety  
15 Code § 25249.7(d), filed its original complaint against Defendant and Target Corporation in the  
16 above-captioned action ("Action"). On October 11, 2013, Plaintiff filed its First Amended  
17 Complaint alleging violations of Proposition 65 and Cal. Bus. & Prof. Code §§ 17200 *et seq.*  
18 regarding alleged exposures to cocamide DEA in shampoo products. The First Amended  
19 Complaint shall be deemed amended by this Consent Judgment upon the Supplemental Notice  
20 Maturity Date to allege such claims as to all Covered Products.

#### 21 **1.6 No Admission**

22 Defendant denies the material, factual and legal allegations contained in the Notices and  
23 asserted in the Action and maintains that it has at all times been in compliance with all laws and all  
24 products that it has sold, manufactured, imported and/or distributed in California, including the  
25 Covered Products. Nothing in this Consent Judgment shall be construed as an admission by  
26 Defendant of any fact, finding, issue of law or violation of law, nor shall compliance with this  
27 Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,  
28

1 issue of law or violation of law. However, this Section 1.6 shall not diminish or otherwise affect  
2 Defendant's obligations, responsibilities and duties under this Consent Judgment.

3 **1.7 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
5 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in  
6 Alameda County Superior Court, and that this Court or, if the case is transferred back to the Los  
7 Angeles County Superior Court at the conclusion of the Coordination Action, the Los Angeles  
8 Superior Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

9 **1.8 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on  
11 which the Court approves and enters judgment pursuant to the terms of this Consent Judgment.

12 **2. INJUNCTIVE RELIEF**

13 **2.1 Reformulation of Covered Products**

14 As of the Effective Date, Defendant shall not manufacture, distribute, sell or offer for sale  
15 any Covered Product that contains cocamide DEA and that will be sold or offered for sale to  
16 California consumers. For purposes of this Consent Judgment, a Covered Product "contains  
17 cocamide DEA" if cocamide DEA is an intentionally added ingredient in the Covered Product.

18 **2.2 Sell Through Period**

19 Defendant's Covered Products that were manufactured and distributed for retail sale prior to  
20 the Effective Date shall be subject to the release of liability pursuant to Section 5 of this Consent  
21 Judgment, without regard to when such Covered Products were, or are in the future, sold to  
22 consumers. As a result, the obligations of Defendant as set forth in this Consent Judgment,  
23 including but not limited to Section 2.1, do not apply to such Covered Products.

24 **3. ENFORCEMENT**

25 Shefa may, by motion or application for an order to show cause before the Alameda County  
26 Superior Court, or, if the case is transferred back to the Los Angeles County Superior Court at the  
27 conclusion of the Coordination Action, the Los Angeles Superior Court, enforce the terms and  
28 conditions contained in this Consent Judgment. Prior to bringing any motion or application to

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

9 **4. MONETARY PAYMENTS**

10 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

11 Defendant shall pay a total civil penalty payment of \$10,000 within ten (10) days of the  
12 Effective Date, as follows: the civil penalty shall be apportioned in accordance with California  
13 Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of  
14 California's Office of Environmental Health Hazard Assessment ("OEHHHA") and the remaining  
15 25% of these funds remitted to Plaintiff, both pursuant to the procedures set forth in Section 4.3.

16 **4.2 Reimbursement of Plaintiff's Fees and Costs**

17 The Parties acknowledge that Plaintiff and its counsel offered to resolve this dispute without  
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
19 issue to be resolved after the material terms of the agreement had been settled. Defendant expressed  
20 a desire to resolve the fee and cost issue after the other settlement terms had been agreed. The  
21 Parties then attempted to (and did) reach an accord on the compensation due to Plaintiff and its  
22 counsel under general contract principles and the private attorney general doctrine codified at  
23 California Code of Civil Procedure § 1021.5 for all work performed in this matter, except fees that  
24 may be incurred on appeal. Under these legal principles, Defendant shall pay the amount of  
25 \$12,000 for fees and costs incurred investigating, litigating and enforcing this matter, including the  
26 fees and costs incurred (and yet to be incurred) negotiating, drafting and obtaining the Court's  
27 approval of this Consent Judgment in the public interest.

1           **4.3     Payment Procedures**

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

- 4           (a)   one check to "OEHHA" in the amount of \$7,500;
- 5           (b)   one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in  
6           the amount of \$2,500; and
- 7           (c)   one check to "Law Office of Daniel N. Greenbaum" in the amount of \$12,000.

8           **4.4     Issuance of W-9 and 1099 Forms**

9           Plaintiff shall provide W-9 forms for all payees under this Consent Judgment prior to entry  
10 of the Consent Judgment. After the settlement funds have been transmitted to Plaintiff's counsel,  
11 Defendant shall issue separate 1099 forms, as follows:

- 12           (a)   one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:  
13           68-0284486) in the amount of \$7,500;
- 14           (b)   a second 1099 form in the amount of \$2,500 to "Shefa LMV, LLC," whose address  
15           and tax identification number shall be furnished upon request; and
- 16           (c)   a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the  
17           amount of \$12,500.

18           **4.5     Issuance of Payments.**

19           All payments shall be delivered to the following payment address:

20                           Daniel N. Greenbaum, Esq.  
21                           Law Office of Daniel N. Greenbaum  
22                           14752 Otsego Street  
23                           Sherman Oaks, CA 91403

24           **5.     CLAIMS COVERED AND RELEASED**

25           **5.1     Plaintiff's Release of Defendant**

26           Plaintiff, on behalf of itself and its past and current agents, representatives, attorneys,  
27 successors and assigns, and in the public interest, waives all right to participate in any action and  
28 releases and discharges (a) Defendant and its parents, subsidiaries, affiliated entities that are under  
common ownership, directors, officers, employees, divisions, partners, shareholders, attorneys and



1 their successors and assigns (collectively, the "Defendant Releasees"), and (b) each entity to whom  
2 any Defendant Releasee directly or indirectly distributed or sold any Covered Products, including,  
3 but not limited to, downstream distributors, wholesalers, customers, retailers (including but not  
4 limited to Target Corporation), franchisees, cooperative members, licensors and licensees  
5 (collectively, "Downstream Releasees"), with respect to all claims, including but not limited to  
6 causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, fees  
7 (including but not limited to expert fees, attorneys' fees and investigation fees) or losses  
8 (collectively, "Claims") regarding any violation of Proposition 65 based on failure to warn about  
9 alleged exposure to cocamide DEA, or alleged exposure to cocamide DEA, in any Covered  
10 Products shipped, distributed or sold by Defendant prior to the Effective Date.

11 Compliance with the terms of this Consent Judgment by Defendant constitutes compliance  
12 with Proposition 65 by any Defendant Releasee or Downstream Releasee with respect to any  
13 alleged exposure to cocamide DEA from the Covered Products as set forth in the Notices and the  
14 Action.

## 15 **5.2 Plaintiff's General Release of Defendant**

16 In addition, Plaintiff, on behalf of itself and its past and current agents, representatives,  
17 attorneys, successors and assigns, in its individual capacity only and not in its representative  
18 capacity, provides a release herein which shall be effective as a full and final accord and  
19 satisfaction, and as a bar to all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et*  
20 *seq.*, and any other statutory or common law, whether known or unknown, suspected or  
21 unsuspected, limited to and arising out of alleged exposure to, and/or failure to warn of alleged  
22 exposure to, cocamide DEA or diethanolamine in the Covered Products manufactured, distributed  
23 or sold by Defendant. It is possible that other Claims not known to the Parties arising out of the  
24 facts alleged in the Notices or the Action will develop or be discovered. Plaintiff, on behalf of itself  
25 and its past and current agents, representatives, attorneys, successors and assigns, and not in its  
26 representative capacity, acknowledges that this Consent Judgment is expressly intended to cover  
27 and include all such Claims, including all rights of action therefor. Plaintiff has full knowledge of  
28 the contents of California Civil Code § 1542. Plaintiff acknowledges that the Claims released in

1 Section 5.2 include unknown Claims, and Plaintiff nevertheless waives California Civil Code §  
2 1542 as to any such unknown Claims. California Civil Code § 1542 reads as follows:

3 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
5 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN  
6 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
7 SETTLEMENT WITH THE DEBTOR."

8 Plaintiff, on behalf of itself and its past and current agents, representatives, attorneys, and  
9 successors and assigns, and not in its representative capacity, acknowledges and understands the  
10 significance and consequences of this specific waiver of California Civil Code § 1542.

### 11 **5.3 Defendant's Release of Plaintiff**

12 Defendant, on behalf of itself and its past and current agents, representatives, attorneys, and  
13 successors and assignees, hereby waives any and all claims against Plaintiff and its attorneys and  
14 other representatives, for any and all actions taken or statements made (or those that could have  
15 been taken or made) by Plaintiff and its attorneys and other representatives, whether in the course of  
16 investigating claims or of otherwise seeking to enforce Proposition 65 against it in this matter with  
17 respect to the Covered Products.

### 18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and  
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
21 after it has been fully executed by all Parties.

### 22 **7. SEVERABILITY**

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

### 26 **8. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California  
28 and the obligations of Defendant hereunder as to the Covered Products apply only within the State  
of California. In the event California's Office of Environmental Health Hazard Assessment  
("OEHHHA") establishes a "safe harbor" limit for Cocamide DEA, the Parties agree that it shall be



1 grounds for modification of this Consent Judgment with regard to any products thereafter  
2 manufactured, imported, distributed and/or sold by Defendant for sale in the State of California  
3 which fall within such "safe harbor" limits so established.

4 **9. NOTICES**

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

9  
10 To Defendant:

11 Robert Neis  
12 E.T. Browne Drug Company, Inc.  
13 440 Sylvan Avenue  
14 Englewood Cliffs, NJ 07632

To Plaintiff:

15 Daniel N. Greenbaum, Esq.  
16 Law Office of Daniel N. Greenbaum  
17 14752 Otsego Street  
18 Sherman Oaks, CA 91403

19 With a copy to:

20 Sarah Esmaili, Esq.  
21 Arnold & Porter LLP  
22 Three Embarcadero Center, 10th Floor  
23 San Francisco, CA 94111

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

26 **10. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,  
28 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.

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

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

1     **12.     ADDITIONAL POST-EXECUTION ACTIVITIES**

2             **12.1**   The Parties acknowledge that, pursuant to California Health & Safety Code §  
3     25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, and  
4     Plaintiff shall draft and file such motion and Defendant shall not oppose it.

5             **12.2**   Within five business days of entry of this Consent Judgment, Plaintiff shall file a  
6     request for dismissal without prejudice as to Defendant Target Corporation in the action entitled  
7     *Shefa LMV, LLC v. Target Corporation, et al.*, Los Angeles County Superior Court No. BC520410.

8     **13.     MODIFICATION**

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

12    **14.     AUTHORIZATION**

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

15    **15.     REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
16    **CONSENT JUDGMENT**

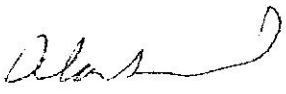
17            **15.1**   This Consent Judgment came before this Court upon the request of the Parties. The  
18    Parties request the Court to review this Consent Judgment and to make the following findings  
19    pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

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AGREED TO:

Date: 5/19/14

By: 

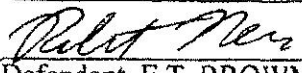
Plaintiff, Shefa LMV, LLC

Print: Alisa Fried

Its: Managing Member

AGREED TO:

Date: 5-19-14

By: 

Defendant, E.T. BROWNE DRUG  
COMPANY, INC.

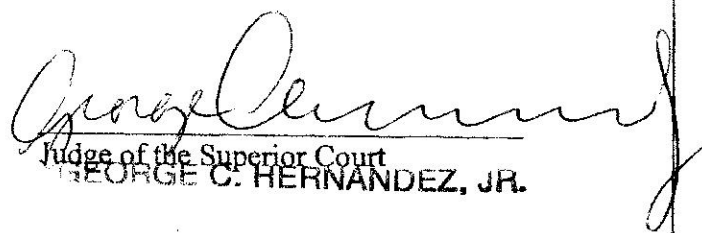
Print: Robert Neis

Its: President

1 **ORDER AND JUDGMENT**

2 Based upon the stipulated Consent Judgment between Shefa LMV, LLC and E.T. Browne  
3 Drug Company, Inc., the settlement is approved and the clerk is directed to enter judgment in  
4 accordance with the terms herein.

5  
6 Dated: 6/13/2014

7   
8 \_\_\_\_\_  
9 Judge of the Superior Court  
10 GEORGE C. HERNANDEZ, JR.

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