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FILED
ALAMEDA COUNTY

JUN 13 2014

CLERK OF THE SUPERIOR COURT
 By *Jacobs* Deputy

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 14 COMMONWEALTH SOAP & TOILETRIES, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

Coordination Proceeding
 Special Title (Rule 3.350)

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO: 4765

PROPOSITION 65 COCAMIDE DEA
 CASES

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

) **[PROPOSED] AMENDED CONSENT**
) **JUDGMENT AS TO COMMONWEALTH**
) **SOAP & TOILETRIES, INC.**

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

) Action filed: October 11, 2013

1 **1. INTRODUCTION**

2 **1.1** This Consent Judgment is entered into by and between Plaintiff Shefa
3 LMV, LLC (“Shefa” or “Plaintiff”) and Defendant Commonwealth Soap & Toiletries, Inc.
4 (“CST”). Shefa and CST are collectively referred to as the “Parties” and individually as a “Party.”

5 **1.2** Shefa is a limited liability company in California that is acting as a private
6 enforcer pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California
7 Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”), and is enforcing Proposition 65.

8 **1.3** CST employs ten or more persons and is a person in the course of doing
9 business for purposes of Proposition 65.

10 **1.4** The products covered by this Consent Judgment are hand soaps
11 manufactured, distributed and/or sold by CST that contain coconut oil diethanolamine condensate
12 (cocamide diethanolamine) (referred to herein as “cocamide DEA”), including but not limited to the
13 Almond Foaming Hand Soap, Almond Hand Soap, Egyptian Cotton Foaming Hand Soap, White
14 Nectarine Hand Soap, Verbena Hand Soap, and Eucalyptus Aloe Hand Soap.

15 **1.5** The products covered by this Consent Judgment shall additionally include
16 liquid soaps on and after the Supplemental Notice Maturity Date.

17 **1.6** The products covered by this Consent Judgment are referred to as the
18 “Covered Products.”

19 **1.7** On or about July 1, 2013 a, Shefa served CST and various public
20 enforcement agencies with two “60-Day Notices of Violation” pursuant to Health & Safety Code
21 § 25249.7(d) (the “Original Notices”), alleging that CST was in violation of Proposition 65.

22 **1.8** Shefa’s Notices alleges that the Covered Products expose consumers to
23 cocamide DEA without the requisite Proposition 65 warnings.

24 **1.9** Cocamide DEA is listed pursuant to Proposition 65 as a chemical known
25 to the State of California to cause cancer.

26 **1.10** On January 24, 2014, Shefa served CST and various public enforcement
27 agencies with a document entitled Supplemental 60-Day Notice of Violation (the “Supplemental
28 Notice”) alleging that CST was in violation of Proposition 65 for failing to warn consumers and

1 customers of alleged exposures to cocamide DEA in liquid soaps including, but not limited to the
2 Moisturizing Shower Gel.

3 **1.11** The seventy-first day following the service of the Supplemental Notice on
4 CST and all California public enforcers required to be served under Proposition 65 (i.e., California
5 Attorney General, California District Attorneys of every County in the State of California, and City
6 Attorneys for every city in the State of California with a population greater than 750,000), provided
7 that no such public enforcer has, before that date, filed a Proposition 65 enforcement action based
8 on the allegations in the Supplemental Notice, is the "Supplemental Notice Maturity Date."

9 **1.12** The Original Notices and the Supplemental Notice are referred to herein
10 as the "Notices."

11 **1.13** Shefa filed a First Amended Complaint ("Complaint") in the
12 above-captioned action ("Action"), alleging Proposition 65 violations as to the Covered Products
13 and asserting causes of action against CST under Proposition 65 and Cal. Bus. & Prof. Code
14 §§ 17200 *et seq.*

15 **1.14** On or around March 11, 2014, Shefa added CST as a defendant in the
16 Complaint.

17 **1.15** The Complaint shall be deemed amended by this Consent Judgment upon
18 the Supplemental Notice Maturity Date to assert against CST the claims alleged in the Complaint
19 with respect to all Covered Products.

20 **1.16** CST denies the claims of alleged violations asserted against it in the
21 Action and denies that it has any liability under Proposition 65 or Cal. Bus. & Prof. Code §§ 17200.

22 **1.17** The Parties enter into this Consent Judgment to resolve all Proposition 65
23 claims concerning the Covered Products set forth in the Notices and the Action.

24 **1.18** Nothing in this Consent Judgment shall be construed as an admission by
25 the Parties of any fact, finding, conclusion of law, issue of law or violation of law, nor shall
26 compliance with this Consent Judgment constitute or be construed as an admission by the Parties of
27 any fact, conclusion of law, issue of law, or violation of law.
28

1 **1.19** Nothing in this Consent Judgment shall prejudice, waive or impair any
2 right, remedy, argument or defense the Parties may have in this or any other or future legal
3 proceedings.

4 **1.20** The term "Effective Date" means the date on which this Consent
5 Judgment is approved and entered by the Court.

6 **2. INJUNCTIVE RELIEF**

7 **2.1 Reformulation of Covered Products.** As of the Effective Date, CST
8 shall not manufacture, distribute, sell or offer for sale any Covered Product that contains cocamide
9 DEA and that will be sold or offered for sale to California consumers.

10 **2.2** For purposes of this Consent Judgment, a Covered Product "contains
11 cocamide DEA" if cocamide DEA is an intentionally added ingredient in the Covered Product.

12 **2.3 Sell through period.** CST's Covered Products that were manufactured
13 and distributed for retail sale prior to the Effective Date shall be subject to the release of liability
14 pursuant to Section 5 of this Consent Judgment, without regard to when such Covered Products
15 were, or are in the future, sold to consumers. As a result, the obligations of CST as set forth in this
16 Consent Judgment, including but not limited Section 2.1, do not apply to such Covered Products.

17 **3. ENFORCEMENT**

18 Shefa may, by motion or application for an order to show cause before the Alameda County
19 Superior Court, or, if the case is transferred back to the Los Angeles County Superior Court at the
20 conclusion of the Coordination Action, the Los Angeles Superior Court, enforce the terms and
21 conditions contained in this Consent Judgment. Prior to bringing any motion or application to
22 enforce the requirements of Section 2 above, Shefa shall provide CST with Notice of Violation and
23 a copy of any test results which purportedly support Shefa's Notice of Violation. The Parties shall
24 then meet and confer regarding the basis for Shefa's anticipated motion or application in an attempt
25 to resolve the matter informally, including providing CST a reasonable opportunity of at least thirty
26 (30) days to cure any alleged violation. Should such attempts at informal resolution fail, Shefa may
27 file its enforcement motion or application. The prevailing Party on any motion to enforce this
28

1 Consent Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result of
2 such motion or application.

3 **4. MONETARY PAYMENTS**

4 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

5 CST shall pay a total civil penalty payment of \$3,000 within ten (10) days of Court entry
6 of this Consent Judgment, as follows: the civil penalty shall be apportioned in accordance with
7 California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the
8 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
9 remaining 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in
10 Section 4.3.

11 **4.2 Reimbursement of Plaintiff's Fees and Costs**

12 The parties acknowledge that Plaintiff and its counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
14 this fee issue to be resolved after the material terms of the agreement had been settled. CST
15 expressed a desire to resolve the fee and cost issue after the other settlement terms had been
16 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to
17 Plaintiff and its counsel under general contract principles and the private attorney general doctrine
18 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,
19 except fees that may be incurred on appeal. Under these legal principles, CST shall pay the
20 amount of \$9,500 for fees and costs incurred investigating, litigating and enforcing this matter,
21 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining
22 the Court's approval of this Consent Judgment in the public interest.

23 **4.3 Payment Procedures**

24 All payments required by Sections 4.1 and 4.2 shall be within ten (10) days Court entry of
25 this Consent Judgment, in three checks made payable as follows:

- 26 (a) one check to "OEHHA" in the amount of \$2,250.
27 (b) one check to "Law Office of Daniel N. Greenbaum, in Trust for Shefa LMV, LLC" in
28 the amount of \$750

1 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$9,500.

2 **4.4 Issuance of 1099 Forms**

3 After the settlement funds have been transmitted to Plaintiff's counsel, CST shall issue
4 separate 1099 forms, as follows:

5 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
6 68-0284486) in the amount of \$2,250;

7 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$750, whose address
8 and tax identification number shall be furnished upon request;

9 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the
10 amount of \$9,500;

11 **4.5 Issuance of Payments.**

12 **4.5.1** All payments owed to Plaintiff, pursuant to Section 4.1, shall
13 be delivered to the following payment address:

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

18 **4.5.2** All payments owed to OEHHA (EIN: 68-0284486), pursuant
19 to Section 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the
20 following addresses:

21 Mike Gyrics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 P.O. Box 4010
25 Sacramento, CA 95812-4010

26 With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum at
27 the address set forth above in 4.5.1, as proof of payment to OEHHA.

28 **5. CLAIMS COVERED AND RELEASED**

5.1 Full and Binding Resolution of Proposition 65 Allegations: This
Consent Judgment is a full, final and binding resolution of the Action as set forth in this Section 5.

1 Shefa, on behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the
2 public interest, waives all rights to participate in any action and releases and discharges (a) CST, its
3 parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,
4 and their successors and assigns (collectively, the "Defendant Releasees"), and (b) finished product
5 or ingredient manufacturers, distributors, and suppliers, and all entities to whom any Defendant
6 Releasee directly or indirectly distributed or sold any Covered Products, including but not limited to
7 distributors, wholesalers, customers, retailers (including but not limited to TJX Companies, Inc.),
8 franchisees, cooperative members, and Defendant Releasees' licensors and licensees (collectively,
9 "Additional Releasees"), with respect to all claims, including, without limitation, causes of action
10 (in law or in equity), suits, liabilities, demands, obligations, damages, costs, fines, penalties,
11 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) or losses
12 (collectively "Claims") regarding any violation of Proposition 65 based on failure to warn about
13 alleged exposures to cocamide DEA in any Covered Products shipped, distributed or sold by CST
14 prior to the Effective Date.

15 **5.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,
16 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,
17 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a bar to
18 all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other statutory or
19 common law, that are or may be asserted against Defendant Releasees and Additional Releasees,
20 whether known or unknown, suspected or unsuspected, arising out of alleged exposures to, and/or
21 failure to warn of alleged exposures to, cocamide DEA or diethanolamine in the Covered Products
22 shipped, distributed or sold by CST prior to the Effective Date.

23 **5.3 General Release:** It is possible that other Claims not known to the Parties
24 arising out of the facts alleged in the Notices or the Action will develop or be discovered. Shefa, on
25 behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assigns,
26 and not in its representative capacity, acknowledges that this Consent Judgment is expressly
27 intended to cover and include all such Claims, including all rights of action therefor. Shefa has full
28 knowledge of the contents of California Civil Code § 1542. Plaintiff acknowledges that the Claims

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

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

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

12 **5.4** Compliance with the terms of this Consent Judgment by CST shall be
13 deemed to constitute compliance by any Defendant Releasee or Additional Releasee with
14 Proposition 65 regarding alleged exposures to cocamide DEA in the Covered Products.

15 **5.5 CST’s Release:** On behalf of itself and Defendant Releasees, CST waives
16 all rights to institute any form of action against Shefa or Shefa’s attorneys, consultants and
17 representatives for all actions taken or statements made in the course of this Action prior to the date
18 of the execution of this Consent Judgment.

19 **6. COURT APPROVAL**

20 **6.1** This Consent Judgment is not effective until it is approved and entered by
21 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
22 within one year after it has been fully executed by all Parties.

23 **7. SOLE AGREEMENT**

24 **7.1** This Consent Judgment contains the sole and entire agreement and
25 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
26 discussions, negotiations, commitments or understandings related thereto, if any, are hereby merged
27 herein and therein. No representations, oral or otherwise, express or implied, other than those
28 specifically referred to in this Consent Judgment have been made by any Party hereto. No
supplementation, modification, waiver or termination of this Consent Judgment shall be binding
unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of

1 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
2 hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

3 **8. MODIFICATION**

4 **8.1** This Consent Judgment may be modified from time to time by (i) a written
5 agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or
6 (ii) upon a successful motion or application of any Party and the entry of a modified consent
7 judgment by the Court.

8 **9. GOVERNING LAW AND APPLICATION**

9 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
10 State of California and shall apply only to Covered Products that are sold or offered for sale in the
11 State of California. In the event that California's Office of Environmental Health Hazard
12 Assessment ("OEHHA") establishes a "safe harbor" limit for cocamide DEA, the Parties agree that
13 it shall be grounds for modification of this Consent Judgment with regard to any products thereafter
14 manufactured, imported, distributed and/or sold by CST for sale in the State of California which fall
15 within such "safe harbor" limit so established.

16 **9.2** This Consent Judgment shall apply to and be binding upon Shefa and CST
17 and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

18 **9.3** The Parties, including their counsel, have participated in the preparation of
19 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
20 This Consent Judgment was subject to revision and modification by the Parties and has been
21 accepted and approved as to its final form by all Parties and their counsel.

22 **9.4** Each Party to this Consent Judgment agrees that any statute or rule of
23 construction providing that ambiguities are to be resolved against the drafting Party should not be
24 employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
25 waive California Civil Code § 1654.

26 **10. PROVISION OF NOTICE**

27 All notices required pursuant to this Consent Judgment and correspondence shall be sent to
28 the following:

1 For Shefa: Daniel Greenbaum, Esq.,
2 Law Office of Daniel N. Greenbaum
3 14752 Otsego Street,
4 Sherman Oaks, CA 91403

5 For CST: Ed Layne
6 Commonwealth Soap & Toiletries, Inc.
7 661 Quequechan Street
8 Fall River, MA 02721

9 With a copy to:

10 Sarah Esmaili, Esq.
11 Arnold & Porter LLP
12 Three Embarcadero Center, 10th Floor
13 San Francisco, CA 94111

14 11. ATTORNEYS' FEES

15 11.1 A Party who unsuccessfully brings or contests an action arising out of this
16 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and
17 costs. For purposes of this Section 11.1, the prevailing Party refers to the Party that was successful
18 in obtaining relief more favorable to it than the relief that the other Party was amenable to providing
19 during the Parties' good faith attempt to resolve the dispute under Section 3.

20 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of
21 sanctions pursuant to law.

22 12. EXECUTION AND COUNTERPARTS

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

26 13. COURT APPROVAL

27 13.1 This Consent Judgment shall not be effective until the Effective Date.
28 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and CST shall make
no objections to entry of this Consent Judgment. The Parties acknowledge that, pursuant to
California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval
of this Consent Judgment, and Plaintiff shall draft and file such motion within fifteen days of the
date this Consent Judgment is fully executed by the Parties.

1 **13.2** If this Consent Judgment is not entered by the Court, it shall be of no force
2 or effect.

3 **13.3** This Court shall retain jurisdiction of this matter to implement or modify
4 the Consent Judgment.

5 **14. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

6 **14.1** Shefa agrees to comply with the reporting form requirements referenced in
7 California Health and Safety Code § 25249.7(f).

8 **15. AUTHORIZATION**

9 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
11 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
12 The undersigned have read, understand and agree to all of the terms and conditions of this Consent
13 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

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

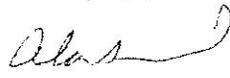
16 **16.1** This Consent Judgment came before this Court upon the request of the
17 Parties. The Parties request the Court to review this Consent Judgment and to make the following
18 findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

1 AGREED TO:

2 Dated: 5/19/14

SHEFA LMV, LLC

3 By: 
4 _____

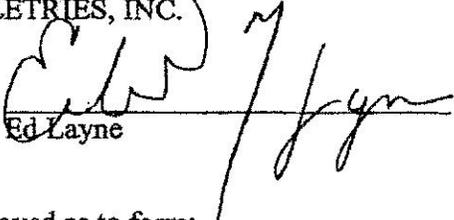
Alisa Fried

5 Approved as to form:

6 
7 _____
8 Daniel Greenbaum, Esq.
9 Attorney for Shefa LMV, LLC

10 Dated: 5/19/14

11 COMMONWEALTH SOAP &
12 TOILETRIES, INC.

13 By: 
14 _____

Ed Layne

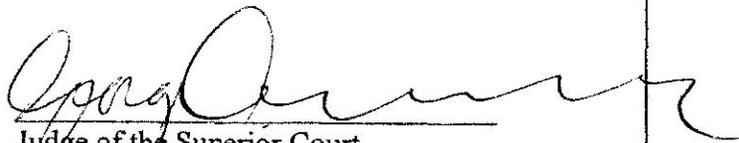
15 Approved as to form:

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17 _____
18 Sarah Esmaili, Esq.
19 Attorney for Commonwealth Soap &
20 Toiletries, Inc.
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3 **ORDER AND JUDGMENT**

4 Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Commonwealth
5 Soap and Toiletry Company, Inc., the settlement is approved and the clerk is directed to enter
6 judgment in accordance with the terms herein.

7 Dated: 6/13/2014

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

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