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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

Attorney for Plaintiff SHEFA LMV, LLC

VALLA & Associates, Inc. p.c.
Stefano Abbasciano, Esq. (SBN 277680)
1990 N. California Blvd., Suite 1060,
Walnut Creek, CA 94596, USA
Phone: (925)705-7623
Facsimile: (925)705-7629
Email: stefano.abbasciano@vallalaw.com

Attorneys for Defendant
Harbor s.r.l.

FILED
ALAMEDA COUNTY

JUN 13 2014

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

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] CONSENT JUDGMENT AS TO HARBOR, S.R.L.
)	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 LMV, LLC
3 (“Shefa”) and Defendant Harbor, s.r.l. (“Harbor”). Shefa and Harbor are collectively referred to as
4 the “Parties” and individually as a “Party.”

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

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

10 **1.4** The products covered by this Consent Judgment are hand soaps and other body
11 detergents manufactured, distributed and/or sold by Harbor that contain coconut oil diethanolamine
12 condensate (cocamide diethanolamine) (referred to herein as “cocamide DEA”), including but not
13 limited to Liquid Soap with Cocoa Butter (“Covered Products”).

14 **1.5** On or about July 3, 2013, Shefa served Harbor and various public enforcement
15 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §
16 25249.7(d) (the “Notices”), alleging that Harbor was in violation of Proposition 65.

17 **1.6** Shefa’s Notices alleges that the Covered Products expose consumers to cocamide
18 DEA without the requisite Proposition 65 warnings.

19 **1.7** Cocamide DEA is listed pursuant to Proposition 65 as a chemical known to the State
20 of California to cause cancer.

21 **1.8** Shefa filed a Complaint in the above-captioned action (“Action”), alleging
22 Proposition 65 violations as to the Covered Products and asserting causes of action against Harbor
23 under Proposition 65 and Cal. Bus. & Prof. Code §§ 17200 *et seq.*

24 **1.9** Harbor denies the claims of alleged violations asserted against it in the Action and
25 denies that it has any liability under Proposition 65 or Cal. Bus. & Prof. Code §§ 17200 *et seq.*

26 **1.10** The Parties enter into this Consent Judgment to resolve all Proposition 65 claims
27 concerning the Covered Products set forth in the Notices and the Action.

28

1 **1.11** Nothing in this Consent Judgment shall be construed as an admission by the Parties
2 of any fact, finding, conclusion of law, issue of law or violation of law, nor shall compliance with
3 this Consent Judgment constitute or be construed as an admission by the Parties of any fact,
4 conclusion of law, issue of law, or violation of law.

5 **1.12** Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
6 argument or defense the Parties may have in this or any other or future legal proceedings.

7 **1.13** The term "Effective Date" means the date on which this Consent Judgment is
8 approved and entered by the Court.

9 **2. INJUNCTIVE RELIEF**

10 **2.1 Reformulation of Covered Products.** As of the Effective Date, Harbor shall not
11 manufacture, distribute, sell or offer for sale to California consumers any Covered Product that
12 contains cocamide DEA.

13 **2.2** For purposes of this Consent Judgment, a Covered Product "contains cocamide
14 DEA" if cocamide DEA is an intentionally added ingredient in the Covered Product.

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

20 **3. ENFORCEMENT**

21 Shefa may, by motion or application for an order to show cause before the Alameda County
22 Superior Court, or, if the case is transferred back to the Los Angeles County Superior Court at the
23 conclusion of the Coordination Action, the Los Angeles Superior Court, may enforce the terms and
24 conditions contained in this Consent Judgment. Prior to bringing any motion or application to
25 enforce the requirements of Section 2 above, Shefa shall provide the Defendant with Notice of
26 Violation and a copy of any test results which purportedly support Shefa's Notice of Violation. The
27 Parties shall then meet and confer regarding the basis for Shefa's anticipated motion or application
28 in an attempt to resolve the matter informally, including providing Settling Defendant a reasonable

1 opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at
2 informal resolution fail, Shefa may file its enforcement motion or application. The prevailing party
3 on any motion to enforce this Consent Judgment shall be entitled to its reasonable attorney's fees
4 and costs incurred as a result of such motion or application.

5 **4. MONETARY PAYMENTS**

6 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

7 Harbor shall pay a total civil penalty payment of \$4,000.00 within ten (10) days of Court
8 entry of this Consent Judgment, as follows: the civil penalty shall be apportioned in accordance
9 with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to
10 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
11 remaining 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in
12 Section 4.3.

13 **4.2 Reimbursement of Plaintiff's Fees and Costs**

14 The parties acknowledge that Plaintiff and its counsel offered to resolve this dispute
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
16 this fee issue to be resolved after the material terms of the agreement had been settled. Harbor
17 expressed a desire to resolve the fee and cost issue after the other settlement terms had been
18 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to
19 Plaintiff and its counsel under general contract principles and the private attorney general doctrine
20 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,
21 except fees that may be incurred on appeal. Under these legal principles, Harbor shall pay the
22 amount of \$11,000.00 for fees and costs incurred investigating, litigating and enforcing this matter,
23 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining
24 the Court's approval of this Consent Judgment in the public interest.

25 **4.3 Payment Procedures**

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

- 28 (a) one check to "OEHHA" in the amount of \$3,000.00;

1 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in
2 the amount of \$1,000.00;

3 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$11,000.00.

4 **4.4 Issuance of Payments.**

5 **4.4.1** All payments owed to Plaintiff, pursuant to Section 4.1, shall be delivered to
6 the following payment address:

7 Daniel N. Greenbaum, Esq.
8 Law Office of Daniel N. Greenbaum
9 14752 Otsego Street
10 Sherman Oaks, CA 91403

11 **4.4.2** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1,
12 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

13 Office of Environmental Health Hazard Assessment
14 Attn.: Mike Gyrics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-4010

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

21 **5. CLAIMS COVERED AND RELEASED**

22 **5.1 Full and Binding Resolution of Proposition 65 Allegations:** This Consent
23 Judgment is a full, final and binding resolution of the Action as set forth in this Section 5. Shefa, on
24 behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the public
25 interest, waives all rights to participate in any action and releases and discharges (a) Harbor, its
26 parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,
27 and their successors and assigns (collectively, the "Defendant Releasees"), and (b) finished product
28 or ingredient manufacturers, distributors, and suppliers, and all entities to whom any Defendant
Releasee directly or indirectly distributed or sold any Covered Products, including but not limited to
distributors, wholesalers, customers, retailers (including but not limited to TJX Companies, Inc.),
franchisees, cooperative members, and Defendant Releasees' licensors and licensees (collectively,

1 "Additional Releasees"), with respect to all claims, including, without limitation, causes of action
2 (in law or in equity), suits, liabilities, demands, obligations, damages, costs, fines, penalties,
3 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) or losses
4 (collectively "Claims") regarding any violation of Proposition 65 based on failure to warn about
5 alleged exposures to cocamide DEA in any Covered Products shipped, distributed or sold by Harbor
6 prior to the Effective Date.

7 **5.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,
8 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,
9 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a bar to
10 all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other statutory or
11 common law, that are or may be asserted against Defendant Releasees and Additional Releasees,
12 whether known or unknown, suspected or unsuspected, arising out of alleged exposures to, and/or
13 failure to warn of alleged exposures to, cocamide DEA or diethanolamine in the Covered Products
14 shipped, distributed or sold by Harbor prior to the Effective Date.

15 **5.3 General Release:** It is possible that other Claims not known to the Parties arising
16 out of the facts alleged in the Notices or the Action will develop or be discovered. Shefa, on behalf
17 of itself, its past and current agents, representatives, attorneys, and successors and/or assigns, and
18 *not* in its representative capacity, acknowledges that this Consent Judgment is expressly intended to
19 cover and include all such Claims, including all rights of action therefor. Shefa has full knowledge
20 of the contents of California Civil Code § 1542. California Civil Code § 1542 reads as follows:

21
22 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
23 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
24 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
25 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
26 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**
27 **HER SETTLEMENT WITH THE DEBTOR."**

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

1 5.4 Compliance with the terms of this Consent Judgment by Harbor shall be deemed to
2 constitute compliance by any Defendant Releasee or Additional Releasee with Proposition 65
3 regarding alleged exposures to cocamide DEA in the Covered Products.

4 5.5 **Harbor's Release:** On behalf of itself and Defendant Releasees, Harbor waives all
5 rights to institute any form of action against Shefa or Shefa's attorneys, consultants and
6 representatives for all actions taken or statements made in the course of this Action prior to the date
7 of the execution of this Consent Judgment.

8 **6. COURT APPROVAL**

9 6.1 This Consent Judgment is not effective until it is approved and entered by the Court
10 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
11 year after it has been fully executed by all Parties.

12 **7. SOLE AGREEMENT**

13 7.1 This Consent Judgment contains the sole and entire agreement and understanding of
14 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
15 negotiations, commitments or understandings related thereto, if any, are hereby merged herein and
16 therein.

17 7.2 No representations, oral or otherwise, express or implied, other than those
18 specifically referred to in this Consent Judgment have been made by any Party hereto.

19 7.3 No supplementation, modification, waiver or termination of this Consent Judgment
20 shall be binding unless executed in writing by the Party to be bound thereby.

21 7.4 No waiver of any of the provisions of this Consent Judgment shall be deemed or
22 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
23 waiver constitute a continuing waiver.

24 **8. MODIFICATION**

25 8.1 This Consent Judgment may be modified from time to time by (i) a written
26 agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or
27 (ii) upon a successful motion or application of any Party and the entry of a modified consent
28 judgment by the Court.

1 **9. GOVERNING LAW AND APPLICATION**

2 **9.1** The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and shall apply only to Covered Products that are sold or offered for sale in the State of
4 California.

5 **9.2** In the event that Proposition 65 is repealed, preempted or otherwise rendered
6 inapplicable by reason of law generally, or as to the Covered Products, then Harbor shall have no
7 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, any
8 Covered Products that are so affected.

9 **9.3** This Consent Judgment shall apply to and be binding upon Shefa and Harbor and
10 their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

11 **9.4** The Parties, including their counsel, have participated in the preparation of this
12 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

13 **9.5** This Consent Judgment was subject to revision and modification by the Parties and
14 has been accepted and approved as to its final form by all Parties and their counsel.

15 **9.6** Each Party to this Consent Judgment agrees that any statute or rule of construction
16 providing that ambiguities are to be resolved against the drafting Party should not be employed in
17 the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
18 Civil Code § 1654.

19 **10. PROVISION OF NOTICE**

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

22
23 For Shefa: Daniel Greenbaum, Esq.,
 Law Office of Daniel N. Greenbaum
24 14752 Otsego Street
 Sherman Oaks, CA 91403

25
26 For Harbor: VALLA & Associates, Inc. p.c.
 Attn.: Stefano Abbasciano, Esq.
27 1990 N. California Blvd., Suite 1060
 Walnut Creek, CA 94596, USA

1 **11. ATTORNEYS' FEES**

2 **11.1** A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

4 **11.2** For purposes of this Section 11.1, the prevailing Party refers to the Party that was
5 successful in obtaining relief more-favorable to it than the relief that the other Party was amenable
6 to providing during the Parties' good faith attempt to resolve the dispute under Section 5.1.

7 **11.3** Nothing in this Section 11 shall preclude a Party from seeking an award of sanctions
8 pursuant to law.

9 **12. EXECUTION AND COUNTERPARTS**

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

13 **13. COURT APPROVAL**

14 **13.1** This Consent Judgment shall not be effective until the Effective Date.

15 **13.2** Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
16 Luxo shall make no objections to entry of this Consent Judgment.

17 **13.3** If this Consent Judgment is not entered by the Court, it shall be of no force or effect.

18 **13.4** This Court shall retain jurisdiction of this matter to implement or modify the Consent
19 Judgment.

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

21 **14.1** Shefa agrees to comply with the reporting form requirements referenced in
22 California Health and Safety Code § 25249.7(f).

23 **15. AUTHORIZATION**

24 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
26 the Consent Judgment on behalf of the Party represented and legally bind that Party.

27 **15.2** The undersigned have read, understand and agree to all of the terms and conditions
28 of this Consent Judgment.

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15.3 Except as explicitly provided herein, each Party is to bear its own fees and costs.

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

16.1 This Consent Judgment came before this Court upon the request of the Parties.

16.2 The Parties request the Court to review this Consent Judgment and to make the following findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

- 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: 5/21/14

SHEFA LMV, LLC

By: 
Alisa Fried

Approved as to form:

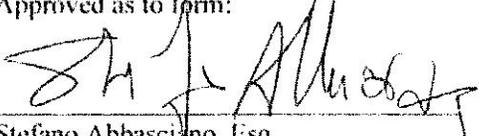

Daniel Greenbaum, Esq.
Attorney for Shefa LMV, LLC

Dated: 5/21/14

HARBOR, S.R.L.

By: 
[name] PAOLO CORSINI
THE OWNER

Approved as to form:

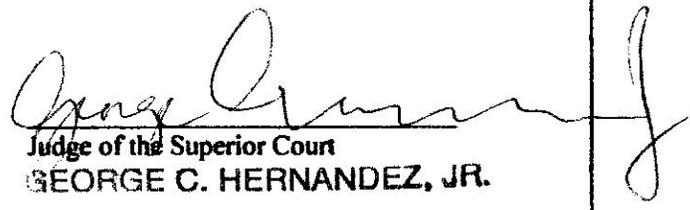

Stefano Abbasciano, Esq.
Attorney for Harbor, s.r.l.

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Harbor s.r.l., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: 6/13/2014


Judge of the Superior Court
GEORGE C. HERNANDEZ, JR.