

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment is entered into by and between Plaintiff Shefa LMV, LLC
3 (“Shefa”) and Defendant Luxo Laboratories, Ltd. (“Luxo”). Shefa and Luxo are collectively
4 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 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 Luxo is a corporation that manufactures, distributes, and/or sells liquid soaps in the
9 State of California or has done so in the past.

10 1.4 The products covered by this Consent Judgment (“Covered Products”) are hand
11 soaps distributed and/or sold by Luxo in the State of California that contain coconut oil
12 diethanolamine condensate (cocamide diethanolamine) (referred to herein as “cocamide DEA”),
13 including but not limited to Macadamia & White Ginger Body Wash. For purposes of this Consent
14 Judgment, a Covered Product “contains cocamide DEA” if cocamide DEA is an intentionally added
15 ingredient in the Covered Product.

16 1.5 On or about July 1, 2013 and July 31, 2013, Shefa served Luxo and various public
17 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
18 Safety Code § 25249.7(d) (the “Notices”), alleging that Luxo was in violation of Proposition 65.

19 1.6 Shefa’s Notices alleges that the Covered Products expose consumers to cocamide
20 DEA without the requisite Proposition 65 warnings.

21 1.7 Cocamide DEA is listed pursuant to Proposition 65 as a chemical known to the State
22 of California to cause cancer.

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

26 1.9 Luxo denies the claims of alleged violations asserted against it in the Action and
27 denies that it has any liability under Proposition 65 or Cal. Bus. & Prof. Code §§ 17200 *et seq.*
28

1 **1.10** The Parties enter into this Consent Judgment to resolve all Proposition 65 claims
2 concerning the Covered Products set forth in the Notices and the Action.

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

7 **1.12** For purposes of this Consent Judgment only, the parties stipulate that this Court has
8 jurisdiction over DEFENDANT as to the allegations contained in the Complaint, that venue is
9 proper in Alameda County Superior Court, and that this Court or, if the case is transferred back to
10 the Los Angeles County Superior Court at the conclusion of the Coordination Action, the Los
11 Angeles Superior Court has jurisdiction to enter and enforce the provisions of this Consent
12 Judgment.

13 **1.13** Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
14 remedy, argument, or defense the Parties may have in this or any other or future legal proceedings.

15 **1.14** The term "Effective Date" means the date on which this Consent Judgment is
16 approved and entered by the Court.

17 **2. INJUNCTIVE RELIEF**

18 **2.1 Reformulation of Covered Products.**

19 As of the Effective Date, Luxo shall not manufacture, distribute, sell or offer for sale any
20 Covered Product that contains Cocamide DEA and that will be sold or offered for sale to California
21 consumers. For purposes of this Consent Judgment, a product "contains cocamide DEA" if
22 cocamide DEA is an intentionally added ingredient in the product and/or part of the product
23 formulation.

24 **2.2 Sell Through Period**

25 Luxo's Products that were manufactured and distributed for retail sale prior to the Effective
26 Date shall be subject to the release of liability pursuant to Section 4 of this Consent Judgment,
27 without regard to when such Products were, or are in the future, sold to consumers. As a result, the
28

1 obligations of Luxo as set forth in this Consent Judgment, including but not limited to Section 2.1,
2 do not apply to these products.

3 .
4 **3. MONETARY PAYMENTS**

5 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

6 Luxo shall pay a total civil penalty payment of \$1,000.00 within ten (10) days of the
7 Court's entry of this Consent Judgment, as follows: the civil penalty shall be apportioned in
8 accordance with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds
9 remitted to the State of California's Office of Environmental Health Hazard Assessment
10 ("OEHHA") and the remaining 25% of the penalty remitted to Plaintiff, both pursuant to the
11 procedures set forth in Section 3.3.

12 **3.2 Reimbursement of Plaintiff's Fees and Costs**

13 The parties acknowledge that Plaintiff and its counsel offered to resolve this dispute
14 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
15 this fee issue to be resolved after the material terms of the agreement had been settled. Luxo
16 expressed a desire to resolve the fee and cost issue after the other settlement terms had been
17 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to
18 Plaintiff and its counsel under general contract principles and the private attorney general doctrine
19 codified at California Code of Civil Procedure § 1021.5 for all work performed in this matter,
20 except fees that may be incurred on appeal. Under these legal principles, Luxo shall pay the
21 amount of \$6,500.00 for fees and costs incurred investigating, litigating, and enforcing this matter,
22 which sum shall include the fees and costs incurred (and yet to be incurred) negotiating, drafting,
23 and obtaining the Court's approval of this Consent Judgment in the public interest.

24 **3.3 Payment Procedures**

25 All payments required by Sections 3.1 and 3.2 above shall be made within ten (10) days
26 after the Court's entry of this Consent Judgment, in three checks made payable as follows:

- 27 (a) one check to "OEHHA" in the amount of \$750.00;

1 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in
2 the amount of \$250.00; and

3 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$6,500.00.

4 **3.4 Issuance of 1099 Forms**

5 After the settlement funds have been transmitted to Plaintiff's counsel, Luxo shall issue
6 separate 1099 forms, as follows:

7 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
8 68-0284486) in the amount of \$750.00;

9 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$250.00, whose address
10 and tax identification number shall be furnished upon request; and

11 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
12 amount of \$6,500.00.

13 **3.5 Issuance of Payments.**

14 **3.5.1** All payments owed to Plaintiff, pursuant to Section 3.1, shall be delivered to
15 the following payment address:

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

20 **3.5.2** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1,
21 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following address:

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

27 With a copy of the check payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum at
28 the address set forth above in 3.5.1, as proof of payment to OEHHA.

29 **4. CLAIMS COVERED AND RELEASED**

1 **4.1 Full and Binding Resolution of Proposition 65 Allegations:** This Consent
2 Judgment is a full, final, and binding resolution of the Action as set forth in this Section 4. Shefa,
3 on behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the public
4 interest, waives all rights to participate in any action and releases and discharges (a) Luxo, its
5 parents, shareholders, divisions, subdivisions, subsidiaries, affiliates, partners, sister companies, and
6 each of their directors, officers, members, employees, and attorneys, successors, and assigns
7 (collectively, the "Defendant Releasees"), and (b) finished product or ingredient manufacturers,
8 distributors, and suppliers, and all entities to whom any Defendant Releasee directly or indirectly
9 sell or sold or distributed any Covered Products, including, but not limited to, distributors,
10 wholesalers, customers, retailers (including, but not limited to, The TJX Companies, Inc.),
11 franchisees, cooperative members, and each of Defendant Releasees' licensors and licensees
12 (collectively, "Additional Releasees"), with respect to all claims, including, without limitation,
13 causes of action (in law or in equity), suits, liabilities, demands, obligations, damages, costs, fines,
14 penalties, expenses (including, but not limited to, investigation fees, expert fees, and attorneys'
15 fees) or losses (collectively "Claims") regarding any alleged violation of Proposition 65 based on
16 failure to warn about alleged exposures to cocamide DEA in any Covered Products shipped,
17 distributed, or sold by Luxo and/or any of its retailers, including, but not limited to, The TJX
18 Companies, Inc., prior to the Effective Date.

19 **4.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,
20 representatives, attorneys, successors, and assignees, and not in its representative capacity on behalf
21 of the public interest, hereby provides a release that shall be effective as a full and final accord and
22 satisfaction, as a bar to all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*,
23 and any other statutory or common law that are or may be asserted against Defendant Releasees and
24 Additional Releasees, whether known or unknown, suspected or unsuspected, arising out of alleged
25 exposures to, and/or failure to warn of alleged exposures to the Covered Products shipped,
26 distributed, or sold by Luxo prior to the Effective Date.

1 **4.3 General Release:** It is possible that other Claims not known to the Parties arising
2 out of the facts alleged in the Notices or the Action will develop or be discovered. Shefa, on behalf
3 of itself, its past and current agents, representatives, attorneys, successors, and assigns, and *not* in its
4 representative capacity, acknowledges that this Consent Judgment is expressly intended to cover
5 and include all such Claims, including all rights of action therefor. Shefa has full knowledge of the
6 contents of California Civil Code § 1542. Shefa acknowledges that the Claims released in Sections
7 4.1 and 4.2 include unknown Claims, and Shefa nevertheless waives California Civil Code § 1542
8 as to any such unknown Claims. California Civil Code § 1542 reads as follows:

9
10 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
11 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
12 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
13 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
14 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
15 HER SETTLEMENT WITH THE DEBTOR.”**

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

19 **4.4** Compliance with the terms of this Consent Judgment by Luxo shall be deemed to
20 constitute compliance by any Defendant Releasee and Additional Releasee with Proposition 65
21 regarding alleged exposures to cocamide DEA in the Covered Products.

22 **4.5 Luxo’s Release:** On behalf of itself and Defendant Releasees, Luxo waives all
23 rights to institute any form of action against Shefa or Shefa’s attorneys, consultants, and
24 representatives for all actions taken or statements made in the course of this Action prior to the date
25 of the execution of this Consent Judgment.

26 **5. ENFORCEMENT**

27 Shefa may, by motion or application for an order to show cause before the Alameda County
28 Superior Court, or, if the case is transferred back to the Los Angeles County Superior Court at the
conclusion of the Coordination Action, the Los Angeles Superior Court, may enforce the terms and

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

10 **6. SOLE AGREEMENT**

11 **6.1** This Consent Judgment contains the sole and entire agreement and understanding of
12 and between the Parties with respect to the entire subject matter hereof, and any and all prior
13 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
14 merged herein.

15 **6.2** No representations, oral or otherwise, express or implied, other than those
16 specifically referred to in this Consent Judgment have been made by any Party hereto.

17 **6.3** No supplementation, modification, waiver, or termination of this Consent Judgment
18 shall be binding unless executed in writing by the Parties.

19 **6.4** No waiver of any of the provisions of this Consent Judgment shall be deemed or
20 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
21 waiver constitute a continuing waiver.

22 **7. MODIFICATION**

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

26 **8. GOVERNING LAW AND APPLICATION**

1 **8.1** The terms of this Consent Judgment shall be governed by the laws of the State of
2 California and shall apply only to Covered Products that are sold or offered for sale in the State of
3 California.

4 **8.2** In the event (i) Proposition 65 is repealed, preempted, or otherwise rendered
5 inapplicable by reason of law generally, or as to the Covered Products specifically; (ii) the use of
6 use of cocamide DEA in products or any other products sold in the State of California is removed
7 from, and no longer subject to, Proposition 65; (iii) OEHHA establishes a “no significant risk level”
8 (“NSRL”) for cocamide DEA or that are met by the Covered Products; or (iv) Covered Products
9 may be lawfully sold without a Proposition 65 Warning, then Luxo shall have no further obligations
10 pursuant to this Consent Judgment with respect to, and to the extent that, any of the Covered
11 Products are so affected.

12 **8.3** This Consent Judgment shall apply to and be binding upon Shefa and Luxo and each
13 of their respective, divisions, subdivisions, subsidiaries, successors, and assigns.

14 **8.4** The Parties, including their counsel, have participated in the preparation of this
15 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

16 **8.5** This Consent Judgment was subject to revision and modification by the Parties and
17 has been accepted and approved as to its final form by all Parties and their counsel.

18 **8.6** Each Party to this Consent Judgment agrees that any statute or rule of construction
19 providing that ambiguities are to be resolved against the drafting Party should not be employed in
20 the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
21 Civil Code § 1654.

22 **9. PROVISION OF NOTICE**

23 All notices required pursuant to this Consent Judgment and correspondence shall be sent by
24 first class and/or electronic mail to the following individuals at the addresses noted:

25 For Shefa: Daniel Greenbaum, Esq.
26 Law Office of Daniel N. Greenbaum
27 14752 Otsego Street
28 Sherman Oaks, CA 91403
 danielgreenbaumesq@gmail.com

1 For Luxo: Ronie M. Schmelz, Esq.
2 Edwards Wildman Palmer LLP
3 1901 Avenue of the Stars, Suite 1700
4 Los Angeles, California 90067
5 rschmelz@edwardswildman.com

6 **10. ATTORNEYS' FEES**

7 **10.1** A Party who unsuccessfully brings or contests an action arising out of this Consent
8 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs.

9 **10.2** For purposes of Section 10.1, the prevailing Party refers to the Party that was
10 successful in obtaining relief more favorable to it than the relief the other Party was amenable to
11 providing during the Parties' good faith attempt to resolve the dispute under Section 5.

12 **10.3** Nothing in this Section 10 shall preclude a Party from seeking an award of sanctions
13 pursuant to law.

14 **11. EXECUTION AND COUNTERPARTS**

15 This Consent Judgment may be executed in counterparts and by means of facsimile and/or
16 portable document format (pdf), which taken together shall be deemed to constitute one document.

17 **12. COURT APPROVAL**

18 **12.1** This Consent Judgment is not effective until the Effective Date.

19 **12.2** Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
20 Luxo shall make no objections to entry of this Consent Judgment.

21 **12.3** If for any reason this Consent Judgment is not entered by the Court, it shall be of no
22 force or effect and shall never be introduced into evidence or otherwise used in any proceeding for
23 any purpose other than to allow the Court to determine if there was a material breach of Section
24 12.2 above.

25 **12.4** This Court shall retain jurisdiction of this matter to implement or modify the Consent
26 Judgment.

27 **13. AUTHORIZATION**

1 **13.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
2 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
3 the Consent Judgment on behalf of the Party represented and legally bind that Party.

4 **13.2** The undersigned have read, understand, and agree to all of the terms and conditions
5 of this Consent Judgment.

6 **13.3** Except as explicitly provided herein, each Party is to bear its own fees and costs in
7 connection with the Action.

8 **14. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
9 **CONSENT JUDGMENT**

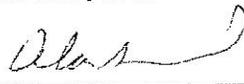
10 This Consent Judgment came before this Court upon the request of the Parties. The
11 Parties request the Court to review this Consent Judgment and to make the following findings
12 pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

18 AGREED TO:

19 Dated: 5/15/14

SHEFA LMV, LLC

21 By: 
22 _____

Alisa Fried

23 Approved as to form:

24 _____
25 Daniel Greenbaum, Esq.
26 Attorney for Shefa LMV, LLC

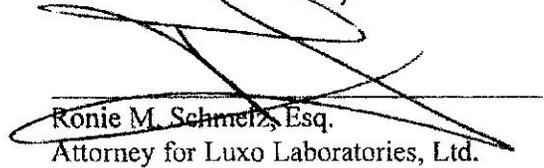
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: May 15/2014

LUXO LABORATORIES, LTD.

By: DAVID KAUFMAN
[name]


Approved as to form:

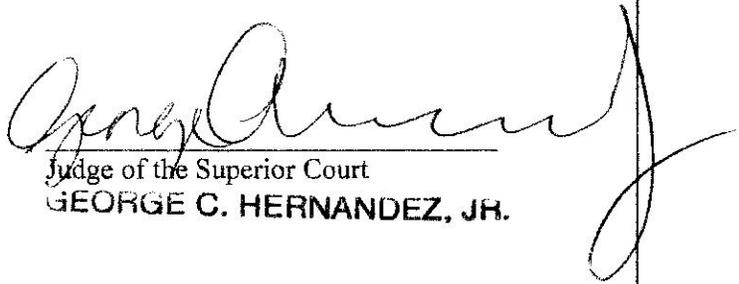

~~Ronie M. Schmetz, Esq.
Attorney for Luxo Laboratories, Ltd.~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Luxo Laboratories, Ltd., 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.