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SHEFA LMV, LLC

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3 Embarcadero Center  
9 San Francisco, CA 94111-4006  
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10 Fax: (415) 315-4856  
11 Email: Rocky.Tsai@ropesgray.com

12 Attorneys for Defendant  
Swiss Naturals, Inc. dba Bioforce USA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF LOS ANGELES  
15 CENTRAL DISTRICT

17 SHEFA LMV, LLC,  
18 Plaintiff,  
19 v.

20 SWISS NATURALS, INC. dba BIOFORCE  
21 USA; and DOES 1 THROUGH 25, inclusive,  
22 Defendant.

) Case No.: BC 529365  
)  
) Unlimited Jurisdiction  
)  
) Honorable Debre Katz Weintraub  
) Dept. 47  
)  
) ~~AMENDED CONSENT JUDGMENT AND~~  
) **AMENDED CONSENT JUDGMENT AND**  
) **ORDER THEREON**

23 Date: February 10, 2014  
Time: 8:30  
24 Place: 111 N Hill St, Los Angeles, CA 90012

25 \_\_\_\_\_  
26 **BY FAX**  
27

**RECEIVED**  
**DEC 12 2013**  
**ROOM 102**

**FILED**  
Superior Court of California  
County of Los Angeles

**FEB 10 2014** *REC*

Sherri R. Carter, Executive Officer/Clerk  
By *R. Castle* Deputy  
R. Castle

02/13/2014

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and Swiss Naturals, Inc. dba Bioforce USA**

3 This Consent Judgment is entered into by and between plaintiff Shefa LMV, LLC  
4 (“Plaintiff”) and defendant SWISS NATURALS, INC. dba BIOFORCE USA (“DEFENDANT”),  
5 collectively referred to as the “parties,” and individually as a “party.” Plaintiff is an entity  
6 organized in the State of California, which has asserted that it seeks to promote awareness of  
7 exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous  
8 substances contained in consumer and commercial products. Plaintiff alleges that DEFENDANT  
9 is a “person” in the course of doing business for purposes of the Safe Drinking Water and Toxic  
10 Enforcement Act of 1986, California Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

11 **1.2. General Allegations**

12 Acting on its own behalf and in its representative capacity as an enforcer of the public  
13 interest on behalf of the people of California, Plaintiff alleges that DEFENDANT has  
14 manufactured, imported, distributed and/or sold shampoo and/or shower gel products that contain  
15 cocamide diethanolamine (“Cocamide DEA”) (the “Products”) without the requisite Proposition 65  
16 warnings. Cocamide DEA is on the Proposition 65 list as known to cause birth defects and other  
17 reproductive harm.

18 **1.3. Product Description**

19 As used in this Consent Judgment, “Products” shall mean all products containing Cocamide  
20 DEA that are manufactured, imported, distributed and/or sold by DEFENDANT for sale in the  
21 State of California including, but not limited to, Herbavita Line Normalizing Shampoo, Herbavita  
22 Line Luminous Shampoo, and Herbavita Line Super Shampoo.

23 **1.4. Notice of Violation**

24 On September 23, 2013, Plaintiff served DEFENDANT and various public enforcement  
25 agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided  
26 recipients with notice alleging that DEFENDANT was in violation of Proposition 65 for failing to  
27 warn consumers and customers that the Products exposed users in California to Cocamide DEA.  
28 No public enforcer has diligently prosecuted the allegations set forth in the Notice.

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1           **1.5. No Admission**

2           DEFENDANT denies the material, factual and legal allegations contained in Plaintiff's  
3 Notice and maintains that it has at all times been in compliance with all laws and all products that  
4 it has sold, manufactured, imported and/or distributed in California, including the Products.  
5 Nothing in this Consent Judgment shall be construed as an admission by DEFENDANT of any  
6 fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment  
7 constitute or be construed as an admission by DEFENDANT of any fact, finding, conclusion, issue  
8 of law or violation of law. However, this Section shall not diminish or otherwise affect  
9 DEFENDANT's obligations, responsibilities and duties under this Consent Judgment.

10           **1.6. Consent to Jurisdiction**

11           For purposes of this Consent Judgment only, the parties stipulate that this Court has  
12 jurisdiction over DEFENDANT as to the allegations contained in the Notice, that venue is proper  
13 in the County of Los Angeles, and that this Court has jurisdiction to enter and enforce the  
14 provisions of this Consent Judgment.

15           **1.7. Execution Date**

16           For purposes of this Consent Judgment, the term "Execution Date" shall mean the date this  
17 Consent Judgment is signed by both parties.

18           **1.8. Effective Date**

19           For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the  
20 Court enters Judgment pursuant to the terms of this Consent Judgment.

21  
22           **2. INJUNCTIVE RELIEF: WARNING OR REFORMULATION**

23           **2.1. Warning Obligation For Cocamide DEA-Containing Products**

24           Commencing on December 1, 2013, DEFENDANT shall not sell, distribute or otherwise  
25 deliver, or cause to be sold, distributed or otherwise delivered into California, Products containing  
26 Cocamide DEA, unless such Products are sold or shipped with one of the clear and reasonable  
27 warnings set forth in Section 2.2.

28           **2.2. Mandatory Warning Procedures**

1 Each warning required by Section 2.1 shall be prominently placed upon a product's label or  
2 other labeling or displayed at the retail outlet with such conspicuousness, as compared with other  
3 words, statements, designs, or devices in the label, labeling or display as to render it likely to be  
4 read and understood by an ordinary individual under customary conditions of purchase or use.  
5 Each warning shall be provided in a manner such that the consumer or user understands to which  
6 specific Product the warning applies, so as to minimize the risk of consumer confusion.

### 7 **2.3. Sell Through Period**

8 Notwithstanding the restrictions of Section 2.1, any of DEFENDANT's downstream  
9 customers that have in inventory any of the Covered Products that contain Cocamide DEA that  
10 exceed the Cocamide DEA Limits shall have six (6) months from the Effective Date without  
11 penalty or cost to sell such Covered Products or otherwise display a warning pursuant to  
12 Proposition 65.

## 13 **3. MONETARY PAYMENTS**

### 14 **3.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

15 DEFENDANT shall pay a total civil penalty payment of \$1000.00 within ten (10) days of  
16 the Effective Date, as follows: the civil penalty shall be apportioned in accordance with California  
17 Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of  
18 California's Office of Environmental Health Hazard Assessment ("OEHHHA") and the remaining  
19 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in Section 3.3.

### 20 **3.2. Reimbursement of Plaintiff's Fees and Costs**

21 The parties acknowledge that Plaintiff and its counsel offered to resolve this dispute  
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
23 this fee issue to be resolved after the material terms of the agreement had been settled.  
24 DEFENDANT expressed a desire to resolve the fee and cost issue after the other settlement terms  
25 had been agreed. The Parties then attempted to (and did) reach an accord on the compensation  
26 due to Plaintiff and its counsel under general contract principles and the private attorney general  
27 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in this  
28 matter, except fees that may be incurred on appeal. Under these legal principles, DEFENDANT

1 shall pay the amount of \$9000.00 for fees and costs incurred investigating, litigating and  
2 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,  
3 drafting, and obtaining the Court's approval of this Consent Judgment in the public interest.

4 **3.3. Payment Procedures**

5 All payments required by Sections 3.1 and 3.2 shall be within ten (10) days of the  
6 Effective Date, in three checks made payable as follows:

- 7 (a) one check to "OEHHA" in the amount of \$750.00;
- 8 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Plaintiff, LLC" in the  
9 amount of \$250.00;
- 10 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$9000.00.

11 **3.4. Issuance of 1099 Forms**

12 After the settlement funds have been transmitted to Plaintiff's counsel, DEFENDANT shall  
13 issue separate 1099 forms, as follows:

- 14 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:  
15 68-0284486) in the amount of \$750.00;
- 16 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$250.00, whose  
17 address and tax identification number shall be furnished upon request;
- 18 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the  
19 amount of \$9000.00;

20 **3.5. Issuance of Payments.**

21 **3.5.1.** All payments owed to Plaintiff, pursuant to Section 3.1, shall be delivered to  
22 the following payment address:

23 Daniel N. Greenbaum, Esq.  
24 Law Office of Daniel N. Greenbaum  
25 1467 South Holt Avenue #2  
26 Los Angeles, CA 90035

27 **3.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1,  
28 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

OEHHA  
515 Clay Street, 16th floor  
Oakland, California 94612

02/13/2014

1  
2 With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum  
3 at the address set forth above in 3.5.1, as proof of payment to OEHHA.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1. Plaintiff's Release of DEFENDANT**

6 Plaintiff, acting on its own behalf and in its representative capacity as an enforcer of  
7 the public interest on behalf of the people of California, releases DEFENDANT, its parents,  
8 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,  
9 attorneys, and each entity to whom DEFENDANT directly or indirectly distributes or sells  
10 Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers,  
11 franchisees, cooperative members, licensors, and licensees ("Releasees"), from all claims for  
12 violations of Proposition 65 up through the date on which this Consent Judgment is signed by both  
13 parties based on exposure to Cocamide DEA from the Products as set forth in the Notice.  
14 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
15 with respect to exposures to Cocamide DEA from the Products as set forth in the Notice.

16 Plaintiff, acting on its own behalf and in its representative capacity as an enforcer of  
17 the public interest on behalf of the people of California, provides a release herein which shall  
18 be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
19 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of  
20 any enforcer pursuant to Proposition 65 of any nature, character or kind, whether known or  
21 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the  
22 Cocamide DEA in the Products manufactured, imported, distributed and/or sold by  
23 DEFENDANT.

24 Plaintiff, acting on its own behalf and in its representative capacity as an enforcer of the  
25 public interest on behalf of the people of California, hereby relinquishes, to the full extent  
26 permitted by law, the provisions, rights and benefits of California Civil Code section 1542, which  
27 provides that:  
28

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

6           **4.2. DEFENDANT's Release of Plaintiff**

7           DEFENDANT on behalf of itself, its past and current agents, representatives, attorneys,  
8           successors, and/or assignees, hereby waives any and all claims against Plaintiff, its attorneys and  
9           other representatives, for any and all actions taken or statements made (or those that could have  
10          been taken or made) by Plaintiff and its attorneys and other representatives, whether in the course  
11          of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
12          respect to the Products.

13          **5. COURT APPROVAL**

14          This Consent Judgment is not effective until it is approved and entered by the Court, and in  
15          any event, shall be null and void if, for any reason, it is not approved and entered by the Court  
16          within one year after it has been fully executed by all parties. In the event the Court does not  
17          approve this Consent Judgment, any funds paid pursuant to Section 3 of this Consent Judgment  
18          shall be returned to DEFENDANT within ten (10) days after the earlier of any final order by the  
19          Court denying approval of the Consent Judgment, or the expiration of one year.

20          **6. SEVERABILITY**

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

24          **7. GOVERNING LAW**

25          The terms of this Consent Judgment shall be governed by the laws of the State of California  
26          and the obligations of DEFENDANT hereunder as to the Products apply only within the State of  
27          California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered  
28          inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are

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1 rendered inapplicable or no longer required as a result of any such repeal or preemption or  
2 rendered inapplicable by reason of law generally as to the Products, including, without limitation,  
3 the removal of Cocamide DEA from OEHHA's list of Proposition 65 chemicals, then  
4 DEFENDANT shall notify Plaintiff and its counsel and may have no further obligations pursuant  
5 to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

6 **8. NOTICES**

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

11  
12 To DEFENDANT:

13 Rocky C. Tsai,  
14 ROPES & GRAY LLP  
15 3 Embarcadero Center  
San Francisco, CA 94111-4006

To Plaintiff:

Daniel N. Greenbaum, Esq.  
Law Office of Daniel N. Greenbaum  
1467 South Holt Avenue #2  
Los Angeles, CA 90035

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

18 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

19 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,  
20 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
21 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

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

25 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

26 Plaintiff and DEFENDANT agree to mutually employ their, and their counsel's, best efforts  
27 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
28 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California



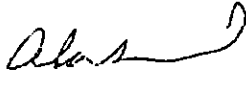
1 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this  
 2 Consent Judgment, which Plaintiff shall draft and file, and DEFENDANT shall not oppose. If any  
 3 third party objection to the noticed motion is filed, Plaintiff and DEFENDANT shall work together  
 4 to file a joint reply or separate replies if the parties so desire and appear at any hearing before the  
 5 Court. This provision is a material component of the Consent Judgment and shall be treated as  
 6 such in the event of a breach. If the Court does not grant the motion to approve this Consent  
 7 Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days  
 8 after the Court's denial of the motion to approve, then, upon remittitur, any and all payments made  
 9 pursuant to Section 3 of this Consent Judgment will be returned to DEFENDANT.

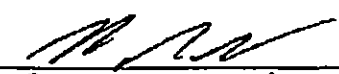
10 **12. MODIFICATION**

11 This Consent Judgment may be modified only: (1) by written agreement of the parties and  
 12 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
 13 of any party and entry of a modified Consent Judgment by the Court.

14 **13. AUTHORIZATION**

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

19 AGREED TO:  
 20  
 21 Date: 11/25/13  
 22 By:   
 23 Plaintiff, Shefa LMV, LLC  
 24 Print: Alisa Fried  
 25 Its: Managing Member

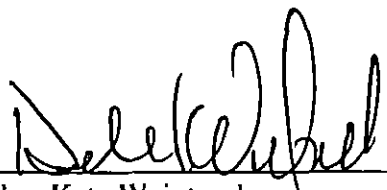
AGREED TO:  
 21 Date: Nov. 25, 2013  
 22 By:   
 23 Pierce S. Sioussat  
 24 President  
 25 Defendant, Bioforce USA

28

001100014

1 IT IS SO ORDERED.

2 DATE: 2/10/14

BY:   
Hon. Debra Katz Weintraub  
Los Angeles Superior Court

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# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/10/14

DEPT. 47

HONORABLE DEBRE K. WEINTRAUB

JUDGE R. CASTLE

DEPUTY CLERK

HONORABLE #11

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G. HIRONAKA C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BC529365

SHEFA LMV LLC  
VS  
SWISS NATURALS INC

Plaintiff

Counsel

DANIEL M. GREENBAUM [X]

Defendant

Counsel

ROPES & GRAY LLP  
BY: ROCKY C. TSAI [X]  
{VIA TELEPHONE}

**NATURE OF PROCEEDINGS:**

NOTICE OF MOTION AND MOTION FOR APPROVAL OF CONSENT JUDGMENT AND ORDER FOR ENTRY OF CONSENT JUDGMENT;

CASE MANAGEMENT CONFERENCE;

Matters are called for hearing.

The Court issues its oral tentative.

The Court, having read and considered all papers filed, rules as follows:

The Case Management Conference is placed OFF CALENDAR.

The Court makes the findings as set forth in California Health And Safety Code Section 25249.7.

Plaintiff Shefa LMV, LLC's motion for approval of consent judgment is GRANTED.

The Court signs and files the consent judgment this date.

Plaintiff to give notice.

02/13/2014

<p><b>MINUTES ENTERED</b> 02/10/14 <b>COUNTY CLERK</b></p>
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