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9 SHEFA LMV, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT

SHEFA LMV, LLC,
Plaintiff,

v.

PETCO ANIMAL SUPPLIES, INC., a
Delaware Corporation; INTERNATIONAL
PET SUPPLIES AND DISTRIBUTION,
INC., a California Corporation; JOHN PAUL
PRODUCTS, LLC, a Nevada Limited
Liability Company; UNITED PET GROUP,
INC., a Delaware Corporation; and DOES 1
through 25, inclusive,

Defendants.

Case No. BC520413

[Unlimited Jurisdiction]

The Honorable Elizabeth Allen White

**STIPULATED CONSENT JUDGMENT
AS TO DEFENDANT UNITED PET
GROUP, INC.; [PROPOSED] ORDER
AND JUDGMENT**

Date Action Filed: September 4, 2013

NO TRIAL DATE SET

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and United Pet Group**

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

12 **1.2. General Allegations**

13 Shefa LMV alleges that UPG has manufactured, imported, distributed and/or sold shampoo
14 products that contain cocamide diethanolamine (“Cocamide DEA”) without the requisite Proposition
15 65 warnings. Cocamide DEA is listed pursuant to Proposition 65 as a chemical known to the State of
16 California to cause cancer.

17 **1.3. Product Description**

18 The products covered by this Consent Judgment are pet shampoos and other pet care products
19 manufactured by UPG that contain or are alleged to contain Cocamide DEA and which are distributed,
20 marketed, sold, or offered for sale in California by UPG or any supplier, distributor, or retailer,
21 including without limitation Petco Animal Supplies, Inc. and PetSmart, Inc., regardless of whether the
22 products bear UPG’s label. All such products are referred to herein collectively as the “Products,” or
23 individually as a “Product.”

24 **1.4. Notice of Violation**

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

3 **1.5. Complaint**

4 On or about September 4, 2013, Shefa LMV filed a complaint in the Los Angeles County
5 Superior Court against UPG alleging, inter alia, violations of Proposition 65, based on the alleged
6 exposure to Cocamide DEA contained in certain products sold by UPG (the "Complaint"). The action
7 is titled *Shefa LMV, LLC v. Petco Animal Supplies, Inc. et al.*, Case No. BC520413.

8 **1.6. No Admission**

9 UPG denies the factual and legal allegations contained in the Notice and the Complaint and
10 maintains that the Products were sold in California in compliance with all laws. Nothing in this
11 Consent Judgment shall be construed as an admission by UPG of any fact, finding, conclusion, issue of
12 law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
13 an admission by UPG of any fact, finding, conclusion, issue of law or violation of law, the same being
14 specifically denied by UPG. However, this Section shall not diminish or otherwise affect UPG's
15 obligations, responsibilities and duties under this Consent Judgment.

16 **1.7. Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction
18 over UPG as to the allegations contained in the Complaint, that venue is proper in Los Angeles County
19 Superior Court, or should the action be transferred, then in Alameda County Superior Court, and that
20 this Court or the Alameda County Superior Court has jurisdiction to enter and enforce the provisions of
21 this Consent Judgment.

22 **1.8. Execution Date**

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

25 **1.9. Effective Date**

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

1 **2. INJUNCTIVE RELIEF: WARNING OR REFORMULATION**

2 **2.1. Warning Obligation For Cocamide DEA-Containing Products**

3 On June 22, 2012, Cocamide DEA was added to California's Proposition 65 list of chemicals.
4 Prior to the expiration of the one-year safe harbor period, UPG reformulated its pet shampoo and pet
5 care products sold in California to remove Cocamide DEA as an ingredient. As a result, no such
6 products manufactured by UPG and sold in California as of the Effective Date of this Consent
7 Judgment contain Cocamide DEA. Moreover, upon receipt of the Notice UPG worked with retailer
8 and co-defendant Petco Animal Supplies, Inc. and retailer PetSmart, Inc. to remove all products
9 manufactured by UPG that contained Cocamide DEA from Petco and PetSmart stores in California.

10 As of the Effective Date, UPG shall not sell, distribute or otherwise deliver, or cause to be sold,
11 distributed or otherwise delivered into California, Products that contain Cocamide DEA, unless such
12 Products are sold or shipped with one of the clear and reasonable warnings set forth in Section 2.2.

13 **2.2. Mandatory Warning Procedures**

14 Each warning required by Section 2.1 shall be prominently placed upon a product's label or
15 other labeling or displayed at the retail outlet with such conspicuousness, as compared with other
16 words, statements, designs, or devices in the label, labeling or display as to render it likely to be read
17 and understood by an ordinary individual under customary conditions of purchase or use. Each
18 warning shall be provided in a manner such that the consumer or user understands to which specific
19 Product the warning applies, so as to minimize the risk of consumer confusion. UPG shall provide
20 Proposition 65 warnings on the products as follows:

21 **WARNING:** This product contains a chemical
22 known to the State of California to cause cancer.

23 The word "WARNING" shall be in bold. UPG may elect to include the words "Wash hands after
24 handling" on the warning but it is not required to do so. Defendant shall provide such warnings with
25 the unit package of the products. Such warnings shall be prominently affixed to or printed on each
26 product's label or package. The font of the warning shall be at least the same size as the font of other
27 safety warnings, if any, on the product container.
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3.3. Payment Procedures

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

- (a) one check to "OEHHA" in the amount of \$3,750;
- (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in the amount of \$1,250;
- (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$15,000.

3.4. Issuance of 1099 Forms

After the settlement funds have been transmitted to Shefa LMV's counsel, UPG shall as soon as reasonable practicable issue separate 1099 forms, as follows:

- (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the amount of \$3,750;
- (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$1,250, whose address and tax identification number shall be furnished upon request;
- (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the amount of \$15,000;

3.5. Issuance of Payments.

3.5.1. All payments owed to Shefa LMV, pursuant to Section 3.1, shall be delivered to the following payment address:

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

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

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

1 UPG shall also send a copy of the checks payable to OEHHA to the Law Office of Daniel N.
2 Greenbaum at the address set forth above in 3.5.1.

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1. Compliance with Proposition 65**

5 This Consent Judgment is a final and binding resolution between Shefa LMV, acting on behalf
6 of itself and, as to those matters raised in the Notice, the general public, and UPG, of: (a) any violation
7 of Proposition 65 with respect to the Products, and (b) any other statutory or common law claim, to the
8 fullest extent that any of the foregoing described in (a) or (b) were or could have been asserted by any
9 person or entity against UPG based upon, arising out of, or relating to UPG's compliance with
10 Proposition 65, or regulations promulgated thereunder, with respect to the Products, and any other
11 claim based in whole or in part on the facts alleged in the Complaint, whether based on actions
12 committed by UPG or any other entity within its chain of distribution, including but not limited to
13 manufacturers, wholesale or retail sellers or distributors, and any other person in the course of doing
14 business. As to alleged exposures to Products, and as to those matters raised in the Notice, compliance
15 with the terms of this Consent Judgment resolves any issue, now and in the future, concerning
16 compliance by UPG and its parent, subsidiaries or affiliates, predecessors, officers, directors,
17 employees, and all of their manufacturers, customers, distributors, wholesalers, retailers, or any other
18 person in the course of doing business, and the successors and assigns of any of these who may
19 manufacture, use, maintain, distribute, market, sell or offer for sale the Products, with the requirements
20 of Proposition 65.

21 **4.2. Shefa LMV's Release of UPG**

22 Shefa LMV, acting on its own behalf and, as to those matters raised in the Notice, on behalf of
23 the general public, and Shefa LMV's agents, successors and assigns, hereby releases UPG, its parent,
24 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
25 attorneys, and each entity to whom UPG directly or indirectly distributes or sells Products, including,
26 but not limited to, downstream distributors, wholesalers, customers, retailers, including specifically,
27 but not limited to, Petco Animal Supplies, Inc., International Pet Supplies and Distribution, Inc., and
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1 PetSmart, Inc. (including their parents, affiliates and subsidiaries), franchisees, cooperative members,
2 licensors, and licensees ("Releasees"), from all claims arising out of or resulting from, or relating
3 directly or indirectly to, in whole or in part, the Products ("Covered Claims").

4 In furtherance of the foregoing, Shefa LMV, acting on its behalf and, as to matters raised in the
5 Notice, on behalf of the general public, hereby waives any and all rights and benefits which it now has,
6 or in the future may have, conferred upon it with respect to the Products by virtue of the provisions of
7 California Civil Code section 1542, which provides as follows:

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

14 Shefa LMV understands and acknowledges the significance and consequence of this waiver of
15 California Civil Code section 1542 is that if Shefa LMV or, as to matters raised in the Notice, any
16 member of the general public suffers future damages arising out of or resulting from, or related directly
17 or indirectly to, in whole or in part, the Products, it or they will not be able to make any claim for those
18 damages against UPG, its parent, subsidiaries or affiliates, predecessors, officers, directors, employees,
19 and all of their customers, manufacturers, distributors, wholesalers, retailers, including but not limited
20 to Petco Animal Supplies, Inc. and PetSmart, Inc., or any other person in the course of doing business,
21 and the successors and assigns or any of them, who may manufacture, use, maintain, distribute, sell or
22 offer for sale the Products.

23 **4.3. UPG's Release of Shefa LMV**

24 UPG on behalf of itself, its past and current agents, representatives, attorneys, successors,
25 and/or assignees, hereby waives any and all claims against Shefa LMV, its attorneys and other
26 representatives, for any and all actions taken or statements made (or those that could have been taken
27 or made) by Shefa LMV and its attorneys and other representatives, whether in the course of
28 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
respect to the Products.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall
3 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
4 has been fully executed by the parties. In the event the Court does not approve this Consent Judgment
5 within one year, the funds paid pursuant to Section 3 of this Consent Judgment shall be returned to
6 UPG within ten (10) days after the expiration of one year.

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and the obligations of UPG hereunder as to the Products apply only within the State of California. In
14 the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of
15 law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or no
16 longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law
17 generally as to the Products, including, without limitation, the removal of Cocamide DEA from
18 OEHHHA's list of Proposition 65 chemicals, then UPG shall notify Shefa LMV and its counsel and
19 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
20 that, the Products are so affected.

21 **8. NOTICES**

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

1 To UPG:

To Shefa LMV:

2 Levi W. Heath
3 Barnes & Thornburg LLP
4 2029 Century Park East, Suite 300
Los Angeles, CA 90067

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

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

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

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

12 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

13 Shefa LMV and its attorneys agree to comply with the reporting form requirements referenced
14 in California Health & Safety Code section 25249.7(f).

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 Shefa LMV and UPG for themselves and their attorneys agree to employ their best efforts to
17 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
18 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
19 Health & Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this
20 Consent Judgment, which Shefa LMV shall draft and file, and UPG shall not oppose. If any third
21 party objection to the noticed motion is filed, Shefa LMV and UPG shall work together to file a joint
22 reply or separate replies if the parties so desire and appear at any hearing before the Court. This
23 provision is a material component of the Consent Judgment and shall be treated as such in the event of
24 a breach. If the Court does not grant the motion to approve this Consent Judgment, and if the parties
25 choose not to pursue a modified Consent Judgment within 30 days after the Court's denial of the
26 motion to approve, then, upon remittitur, any and all payments made pursuant to Section 3 of this
27 Consent Judgment will be returned to UPG.

1 **12. MODIFICATION**

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

5 **13. ENTIRE AGREEMENT**

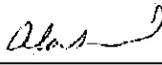
6 This Consent Judgment contains the sole and entire agreement and understanding of the parties
7 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
8 commitments and understandings related thereto. No representations, oral or otherwise, express or
9 implied, other than those contained herein have been made by any party hereto. No other agreements
10 with respect to the subject matter of this Consent Judgment not specifically referred to herein, oral or
11 otherwise, shall be deemed to exist or to bind any of the parties.

12 **14. AUTHORIZATION**

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

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16 AGREED TO:

17 Date: 11/21/13

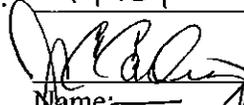
18 By: 
19 Shefa LMV, LLC

20 Print: Alisa Fried

21 Its: Managing Member

AGREED TO:

22 Date: 1/10/14

23 By: 
24 Name: Joseph Conley
25 United Pet Group, Inc.

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and United Pet Group, Inc., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: _____

Judge of the Superior Court