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SHEFA LMV, LLC

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF ALAMEDA

10 Coordination Proceeding  
11 Special Title (Rule 3.350)

) JUDICIAL COUNCIL COORDINATION  
) PROCEEDING NO: 4765

)  
)

) [*Shefa LMV, LLC v. Petco Animal Supplies, et*  
) *al.*, Los Angeles County Superior Court  
) No. BC521413]

15 PROPOSITION 65 COCAMIDE DEA  
16 CASES

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

)  
)

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

)  
)

) Action filed: October 11, 2013

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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  
28

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 material, factual and legal allegations contained in Shefa LMV’s Notice and  
10 Complaint and maintains that the Products were sold in California in compliance with all laws.  
11 Nothing in this Consent Judgment shall be construed as an admission by UPG of any fact, finding,  
12 conclusion, issue of law or violation of law, nor shall compliance with this Consent Judgment  
13 constitute or be construed as an admission by UPG of any fact, finding, conclusion, issue of law or  
14 violation of law, the same being specifically denied by UPG. However, this Section shall not diminish  
15 or otherwise affect UPG’s 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 known to  
22 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.

1                   **2.3. Sell Through Period**

2                   UPG’s Products that were manufactured, distributed, shipped, sold, or that are otherwise in the  
3 stream of commerce prior to the Effective Date of this Consent Judgment shall be released from any  
4 claims that were brought or that could have been brought by Shefa in the Complaint, as though they  
5 were Claims within the meaning of Section 4.1. As a result, the obligations of UPG as set forth in this  
6 Consent Judgment, including but not limited to the warning requirements of Section 2.2, do not apply  
7 to these products.  
8

9                   **3. MONETARY PAYMENTS**

10                   **3.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

11                   UPG shall pay a total civil penalty payment of \$5,000 within ten (10) days of the Execution  
12 Date, as follows: the civil penalty shall be apportioned in accordance with California Health & Safety  
13 Code sections 25249.12 (c) and (d), with 75% of the funds remitted to the State of California’s Office  
14 of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the funds  
15 remitted to Shefa LMV, both pursuant to the procedures set forth in Section 3.3.  
16

17                   **3.2. Reimbursement of Shefa LMV’s Fees and Costs**

18                   The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute  
19 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this  
20 fee issue to be resolved after the material terms of the agreement had been settled. UPG expressed a  
21 desire to resolve the fee and cost issue after the other settlement terms had been agreed. The Parties  
22 then attempted to (and did) reach an accord on the compensation due to Shefa LMV and its counsel  
23 under general contract principles and the private attorney general doctrine codified at California Code  
24 of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be  
25 incurred on appeal. Under these legal principles, UPG shall pay the amount of \$15,000 for fees and  
26 costs incurred by Shefa LMV for investigating, litigating and enforcing this matter, including the fees  
27 and costs incurred (and yet to be incurred) in negotiating, drafting, and obtaining the Court’s approval  
28 of this Consent Judgment.

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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

1                   **3.5.2.**       All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1,  
2 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

3  
4                   Mike Gyrics  
5                   Fiscal Operations Branch Chief  
6                   Office of Environmental Health Hazard Assessment  
7                   P.O. Box 4010  
8                   Sacramento, CA 95812-4010

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

11  
12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1. Shefa LMV’s Public Release of Proposition 65 Claims**

14 Shefa LMV, acting on its behalf and in the public interest, releases and discharges (a) UPG, its  
15 parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,  
16 and their successors and assigns (collectively, the “Defendant Releasees”), and (b) finished product or  
17 ingredient manufacturers, distributors, and suppliers, and all entities to whom any Defendant Releasee  
18 directly or indirectly distributed or sold any Products, including but not limited to distributors,  
19 wholesalers, customers, retailers (including but not limited to Petco Animal Supplies, Inc., PetSmart,  
20 Inc., and International Pet Supplies and Distribution, Inc.), franchisees, cooperative members, and  
21 Defendant Releasees’ licensors and licensees (collectively, “Additional Releasees”), for any violations  
22 or claims arising under Proposition 65 for unwarned exposures to Cocamide DEA from the Products  
23 shipped, distributed or sold by UPG prior to the Effective Date, as set forth in the Notice. Compliance  
24 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to  
25 exposures to Cocamide DEA from the Products.

26 **4.2. Shefa LMV’s Individual Release of Claims**

27 Shefa LMV, acting on its own behalf and on behalf of its agents, successors and assigns,  
28 hereby releases the Defendant Releasees and the Additional Releasees from all claims arising out of or  
resulting from, or relating directly or indirectly to, in whole or in part, the Products.

1           **4.3. General Release**

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

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

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

21           **4.4. UPG’s Release of Shefa LMV**

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

To Shefa LMV:

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

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

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.

15  
16 AGREED TO:

17 Date: 11/21/13

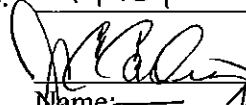
18 By:   
19 Shefa LMV, LLC

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