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18 JOHN PAUL PRODUCTS, LLC

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 COUNTY OF ALAMEDA

21 Coordination Proceeding ) JUDICIAL COUNCIL COORDINATION  
22 Special Title (Rule 3.350) ) PROCEEDING NO: 4765  
23 )  
24 PROPOSITION 65 COCAMIDE DEA ) [*Shefa LMV, LLC v. Petco Animal Supplies, et*  
25 CASES ) *al.*, Los Angeles County Superior Court  
26 ) No. BC521413]  
27 )  
28 ) **[PROPOSED] CONSENT JUDGMENT**  
AS TO JOHN PAUL PRODUCTS, LLC  
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  
3 LMV, LLC (“Shefa”) and Defendant John Paul Products, LLC (“JPP”) and for any product sold  
4 through its distribution channel.

5           **1.2**       Shefa and JPP are collectively referred to as the “Parties” and individually  
6 as a “Party.”

7           **1.3**       Shefa is a limited liability company in California that is acting as a private  
8 enforcer pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
9 Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”), and is enforcing Proposition 65.

10          **1.4**       JPP employs ten or more persons and is a person in the course of doing  
11 business for purposes of Proposition 65.

12          **1.5**       The products covered by this Consent Judgment (“Covered Products”) are  
13 pet shampoos and other pet care products manufactured, distributed and/or sold by JPP that contain  
14 or are alleged to contain coconut oil diethanolamine condensate (cocamide diethanolamine)  
15 (referred to herein as “cocamide DEA”), including but not limited to Tea Tree shampoo and Super  
16 Bright Shampoo, which are distributed, marketed, sold, or offered for sale in California by JPP or  
17 any supplier, distributor, or retailer, including but not limited to Petco Animal Supplies, Inc.,  
18 International Pet Supplies and Distribution, Inc., and any of their subsidiaries or affiliates.

19          **1.6**       On or about June 23, 2013, Shefa served JPP and various public  
20 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &  
21 Safety Code § 25249.7(d) (the “Notice”), alleging that JPP was in violation of Proposition 65.

22          **1.7**       Shefa’s Notice alleges that the Covered Products expose consumers to  
23 cocamide DEA without the requisite Proposition 65 warnings.

24          **1.8**       Cocamide DEA is listed pursuant to Proposition 65 as a chemical known  
25 to the State of California to cause cancer.

1           **1.9**       On or around September 4, 2013, Shefa filed a Complaint in the above-  
2 captioned action (“Action”), alleging Proposition 65 violations as to the Covered Products and  
3 asserting causes of action against JPP under Proposition 65..

4           **1.10**       JPP denies the claims of alleged violations asserted against it in the Action  
5 and denies that it has any liability under Proposition 65.

6           **1.11**       The Parties enter into this Consent Judgment to resolve all Proposition 65  
7 claims concerning the Covered Products set forth in the Notice and the Action.

8           **1.12**       Nothing in this Consent Judgment shall be construed as an admission by  
9 the Parties of any fact, finding, conclusion of law, issue of law or violation of law, nor shall  
10 compliance with this Consent Judgment constitute or be construed as an admission by the Parties of  
11 any fact, conclusion of law, issue of law, or violation of law.

12           **1.13**       Nothing in this Consent Judgment shall prejudice, waive or impair any  
13 right, remedy, argument or defense the Parties may have in this or any other or future legal  
14 proceedings.

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

17           **2.       INJUNCTIVE RELIEF**

18           **2.1       Reformulation of Covered Products.** As of the Effective Date, JPP  
19 shall not manufacture, distribute, sell or offer for sale any Covered Product that contains cocamide  
20 DEA and that will be sold or offered for sale to California consumers. All JPP products have been  
21 reformulated without Cocamide DEA.

22           **2.2**       For purposes of this Consent Judgment, a Covered Product “contains  
23 cocamide DEA” if cocamide DEA is an intentionally added ingredient in the Covered Product.

24           **2.3       Sell through period.** JPP’s Products that were manufactured, distributed,  
25 shipped, sold or that are otherwise in the stream of commerce prior to the Effective Date shall be  
26 subject to the release of liability pursuant to Section 5 of this Consent Judgment, without regard to  
27 when such Products were, or are in the future, sold to consumers. As a result, the obligations of JPP  
28

1 as set forth in this Consent Judgment, including but not limited Section 2.1, do not apply to these  
2 products. This settlement covers any sale of these products by Petco Animal Supplies, Inc.,  
3 International Pet Supplies and Distribution, Inc., or any of their subsidiaries or affiliates, and any  
4 other retail distributors prior to the Effective Date.

### 5 **3. ENFORCEMENT**

6 Shefa may, by motion or application for an order to show cause before the Alameda County  
7 Superior Court, or, if the case is transferred back to the Los Angeles County Superior Court at the  
8 conclusion of the Coordination Action, the Los Angeles Superior Court, may enforce the terms and  
9 conditions contained in this Consent Judgment. Prior to bringing any motion or application to  
10 enforce the requirements of Section 2 above, Shefa shall provide the Defendant with Notice of  
11 Violation and a copy of any test results which purportedly support Shefa's Notice of Violation. The  
12 Parties shall then meet and confer regarding the basis for Shefa's anticipated motion or application  
13 in an attempt to resolve the matter informally, including providing Settling Defendant a reasonable  
14 opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at  
15 informal resolution fail, Shefa may file its enforcement motion or application. The prevailing party  
16 on any motion to enforce this Consent Judgment shall be entitled to its reasonable attorney's fees  
17 and costs incurred as a result of such motion or application.

### 18 **4. MONETARY PAYMENTS**

#### 19 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

20 JPP shall pay a total civil penalty payment of \$1,000.00 within ten (10) days of Court  
21 entry of this Consent Judgment, as follows: the civil penalty shall be apportioned in accordance  
22 with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to  
23 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the  
24 remaining 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in  
25 Section 4.3.

#### 26 **4.2 Reimbursement of Plaintiff's Fees and Costs**

1 The parties acknowledge that Plaintiff and its counsel offered to resolve this dispute  
2 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
3 this fee issue to be resolved after the material terms of the agreement had been settled. JPP  
4 expressed a desire to resolve the fee and cost issue after the other settlement terms had been  
5 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to  
6 Plaintiff and its counsel under general contract principles and the private attorney general doctrine  
7 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,  
8 except fees that may be incurred on appeal. Under these legal principles, JPP shall pay the amount  
9 of \$7,500.00 for fees and costs incurred investigating, litigating and enforcing this matter,  
10 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining  
11 the Court's approval of this Consent Judgment in the public interest.

#### 12 **4.3 Payment Procedures**

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

- 15 (a) one check to "OEHHA" in the amount of \$750.00;
- 16 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in  
17 the amount of \$250.00;
- 18 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$7,500.00.

#### 19 **4.4 Issuance of 1099 Forms**

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

- 22 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:  
23 68-0284486) in the amount of \$750.00;
- 24 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$250.00, whose address  
25 and tax identification number shall be furnished upon request;
- 26 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the  
27 amount of \$7,500.00;

1                   **4.5        Issuance of Payments.**

2                   **4.5.1**        All payments owed to Plaintiff, pursuant to Section 4.1, shall  
3 be delivered to the following payment address:

4                                Daniel N. Greenbaum, Esq.  
5                                Law Office of Daniel N. Greenbaum  
6                                14752 Otsego Street  
7                                Sherman Oaks, CA 91403

8                   **4.5.2**        All payments owed to OEHHA (EIN: 68-0284486), pursuant  
9 to Section 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the  
10 following addresses:

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

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

18                   **5.        CLAIMS COVERED AND RELEASED**

19                   **5.1        Full and Binding Resolution of Proposition 65 Allegations:** This  
20 Consent Judgment is a full, final and binding resolution of the Action as set forth in this Section 5.  
21 Shefa, on behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the  
22 public interest, waives all rights to participate in any action and releases and discharges (a) JPP, its  
23 parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,  
24 and their successors and assigns (collectively, the "Defendant Releasees"), and (b) finished product  
25 or ingredient manufacturers, distributors, and suppliers, and all entities to whom any Defendant  
26 Releasee directly or indirectly distributed or sold any Covered Products, including but not limited to  
27 distributors, wholesalers, customers, retailers (including but not limited to Petco Animal Supplies,  
28 Inc., International Pet Supplies and Distribution, Inc., and any of their subsidiaries or affiliates),  
franchisees, cooperative members, and Defendant Releasees' licensors and licensees (collectively,  
"Additional Releasees"), with respect to all claims, including, without limitation, causes of action

1 (in law or in equity), suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
2 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) or losses  
3 (collectively "Claims") regarding any violation of Proposition 65 based on failure to warn about  
4 alleged exposures to cocamide DEA in any Covered Products shipped, distributed or sold by JPP  
5 prior to the Effective Date.

6 **5.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,  
7 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,  
8 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a bar to  
9 all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other statutory or  
10 common law, that are or may be asserted against Defendant Releasees and Additional Releasees,  
11 whether known or unknown, suspected or unsuspected, arising out of alleged exposures to, and/or  
12 failure to warn of alleged exposures to, cocamide DEA in the Covered Products shipped, distributed  
13 or sold by JPP prior to the Effective Date.

14 **5.3 General Release:** It is possible that other Claims not known to the Parties  
15 arising out of the facts alleged in the Notice or the Action will develop or be discovered. Shefa, on  
16 behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assigns,  
17 and not in its representative capacity, acknowledges that this Consent Judgment is expressly  
18 intended to cover and include all such Claims, including all rights of action therefor. Shefa has full  
19 knowledge of the contents of California Civil Code § 1542. Shefa acknowledges that the Claims  
20 released in Section 5.2 include unknown Claims, and Shefa nevertheless waives California Civil  
21 Code § 1542 as to any such unknown Claims. California Civil Code § 1542 reads as follows:

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."**

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

4           **5.4**       Compliance with the terms of this Consent Judgment by JPP shall be  
5 deemed to constitute compliance by any Defendant Releasee or Additional Releasee, (including  
6 Petco Animal Supplies, Inc., International Pet Supplies and Distribution, Inc., and any of their  
7 subsidiaries or affiliates) with Proposition 65 regarding alleged exposures to cocamide DEA in the  
8 Covered Products.

9           **5.5**       **JPP's Release:** On behalf of itself and Defendant Releasees, JPP waives  
10 all rights to institute any form of action against Shefa or Shefa's attorneys, consultants and  
11 representatives for all actions taken or statements made in the course of this Action prior to the date  
12 of the execution of this Consent Judgment.

## 13           **6. COURT APPROVAL**

14           **6.1**       This Consent Judgment is not effective until it is approved and entered by  
15 the Court and 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.

## 17           **7. SOLE AGREEMENT**

18           **7.1**       This Consent Judgment contains the sole and entire agreement and  
19 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
20 discussions, negotiations, commitments or understandings related thereto, if any, are hereby merged  
21 herein and therein.

22           **7.2**       No representations, oral or otherwise, express or implied, other than those  
23 specifically referred to in this Consent Judgment have been made by any Party hereto.

24           **7.3**       No supplementation, modification, waiver or termination of this Consent  
25 Judgment shall be binding unless executed in writing by the Party to be bound thereby.



1           7.4       No waiver of any of the provisions of this Consent Judgment shall be  
2 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor  
3 shall such waiver constitute a continuing waiver.

4           **8.       MODIFICATION**

5           8.1       This Consent Judgment may be modified from time to time by (i) a written  
6 agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or  
7 (ii) upon a successful motion or application of any Party and the entry of a modified consent  
8 judgment by the Court.

9           **9.       GOVERNING LAW AND APPLICATION**

10          9.1       The terms of this Consent Judgment shall be governed by the laws of the  
11 State of California and shall apply only to Covered Products that are sold or offered for sale in the  
12 State of California.

13          9.2       In the event that Proposition 65 is repealed, preempted or otherwise  
14 rendered inapplicable by reason of law generally, or in the event California's Office of  
15 Environmental Health Hazard Assessment ("OEHHA") establishes a "safe harbor" limit for  
16 Cocamide DEA, the Parties agree that it shall be grounds for modification of this Consent Judgment  
17 with regard to any products thereafter manufactured, imported, distributed and/or sold by JPP for  
18 sale in the State of California, that are so affected.

19          9.3       This Consent Judgment shall apply to and be binding upon Shefa and JPP  
20 and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

21          9.4       The Parties, including their counsel, have participated in the preparation of  
22 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

23          9.5       This Consent Judgment was subject to revision and modification by the  
24 Parties and has been accepted and approved as to its final form by all Parties and their counsel.

25          9.6       Each Party to this Consent Judgment agrees that any statute or rule of  
26 construction providing that ambiguities are to be resolved against the drafting Party should not be  
27

1 employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby  
2 waive California Civil Code § 1654.

3 **10. PROVISION OF NOTICE**

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

6 For Shefa: Daniel Greenbaum, Esq.,  
7 Law Office of Daniel N. Greenbaum  
8 14752 Otsego Street  
9 Sherman Oaks, CA 91403

10 For JPP: Michaeline A. Re  
11 Law Offices of Michaeline A. Re  
12 100 E. Corson Street, 3rd Floor  
13 Pasadena, CA 91103

14 **10.1** A Party who unsuccessfully brings or contests an action arising out of this  
15 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and  
16 costs.

17 **10.2** For purposes of this Section 10.1, the prevailing Party refers to the Party  
18 that was successful in obtaining relief more favorable to it than the relief that the other Party was  
19 amenable to providing during the Parties' good faith attempt to resolve the dispute under Section  
20 5.1.

21 **10.3** Nothing in this Section 10 shall preclude a Party from seeking an award of  
22 sanctions pursuant to law.

23 **11. EXECUTION AND COUNTERPARTS**

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

27 **12. COURT APPROVAL**

28 **12.1** This Consent Judgment shall not be effective until the Effective Date.

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

1           **12.3**       If this Consent Judgment is not entered by the Court, it shall be of no force  
2 or effect.

3           **12.4**       This Court shall retain jurisdiction of this matter to implement or modify  
4 the Consent Judgment.

5           **13. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

6           **13.1**       Shefa agrees to comply with the reporting form requirements referenced in  
7 California Health and Safety Code § 25249.7(f).

8           **14. AUTHORIZATION**

9           **14.1**       Each signatory to this Consent Judgment certifies that he or she is fully  
10 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
11 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.

12           **14.2**       The undersigned have read, understand and agree to all of the terms and  
13 conditions of this Consent Judgment.

14           **14.3**       Except as explicitly provided herein, each Party is to bear its own fees and  
15 costs.

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

18           **15.1**       This Consent Judgment came before this Court upon the request of the  
19 Parties. The Parties request the Court to review this Consent Judgment and to make the following  
20 findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

- 21           1. The injunctive relief required by the Consent Judgment complies with Cal. Health &  
22           Safety Code § 25249.7;
- 23           2. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is  
24           reasonable under California law; and
- 25           3. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.
- 26  
27  
28

1 AGREED TO:

SHEFA LMV, LLC

2 Dated: 5/23/14

3 By: 

Alisa Fried

4  
5  
6 Approved as to form:

7 

8 Daniel Greenbaum, Esq.  
9 Attorney for Shefa LMV, LLC

10 Dated: 5/22/14

11 JOHN PAUL PRODUCTS, LLC

12 By: 

John Capra

13 Approved as to form:

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16 Michaeline A. Re  
17 Attorney for John Paul Products, LLC  
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**ORDER AND JUDGMENT**

1  
2           Based upon the stipulated Consent Judgment between Shefa LMV, LLC and John Paul  
3 Products, LLC, the settlement is approved and the clerk is directed to enter judgment in accordance  
4 with the terms herein.

5  
6 Dated: \_\_\_\_\_

7  
8 \_\_\_\_\_  
9 Judge of the Superior Court