

1 LAW OFFICE OF DANIEL N. GREENBAUM  
2 Daniel N. Greenbaum, Esq. (SBN 268104)  
3 The Hathaway Building  
4 7120 Hayvenhurst Avenue  
5 Suite 320  
6 Van Nuys, CA 91406  
7 Telephone: (818) 809-2199  
8 Facsimile: (424) 243-7689  
9 Email: dgreenbaum@greenbaumlawfirm.com

10 Attorney for Plaintiff SHEFA LMV, LLC

11 VENABLE LLP  
12 Daniel Chammas (SBN 204825)  
13 2049 Century Park East, Suite 2100  
14 Los Angeles, CA 90067  
15 Telephone: (310) 229-0302  
16 Facsimile: (310) 229-9901  
17 Email: DBChammas@Venable.com

18 Attorney for Defendant  
19 LAKE CONSUMER PRODUCTS, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE COUNTY OF ALAMEDA

22 Coordination Proceeding ) JUDICIAL COUNCIL COORDINATION  
23 Special Title (Rule 3.350) ) PROCEEDING NO: 4765  
24 )  
25 )  
26 )  
27 ) [Shefa LMV, LLC v. Walgreen Co., et al., Los  
28 ) Angeles County Superior Court No.  
 ) BC520416]  
 )  
 ) [PROPOSED] STIPULATED CONSENT  
 ) JUDGMENT AS TO LAKE CONSUMER  
 ) PRODUCTS, INC.  
 )  
 ) Judge: Hon. George C. Hernandez, Jr.  
 )  
 )  
 ) Action filed: October 11, 2013  
 )

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and Lake Consumer Products**

3 This Stipulated Consent Judgment (“Consent Judgment”) is entered into by and between  
4 plaintiff Shefa LMV, LLC (“Shefa LMV”) and Lake Consumer Products, Inc. (“LCP”), with Shefa  
5 LMV and LCP sometimes collectively referred to herein as the “parties,” and individually as a “party.”  
6 Shefa 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 LCP  
9 employs ten (10) or more persons and is a person in the course of doing business for purposes of the  
10 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code section  
11 25249.6, *et seq.* (“Proposition 65”).  
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14 **1.2. General Allegations**

15 Shefa LMV alleges that LCP has manufactured, imported, distributed and/or sold shampoo  
16 products that contain cocamide diethanolamine (“Cocamide DEA”) without satisfactory Proposition 65  
17 warnings. Cocamide DEA is listed pursuant to Proposition 65 as a chemical known to the State of  
18 California to cause cancer.  
19

20 **1.3. Covered Product Description**

21 The products covered by this Consent Judgment are shampoos manufactured by LCP that  
22 contain or are alleged to contain Cocamide DEA, and which are distributed, marketed, sold, or offered  
23 for sale in California by LCP or any supplier, distributor, or retailer, including but not limited to the  
24 MG217 psoriasis medicated conditioning shampoo. All such products are referred to herein  
25 collectively as the “Covered Products,” or individually as a “Covered Product.”  
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1           **1.4. Notice of Violation**

2           On or about June 23, 2013, Shefa LMV served LCP and various public enforcement agencies  
3 with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with  
4 notice alleging that LCP was in violation of Proposition 65 for failing to warn consumers and  
5 customers that the Covered Products exposed users in California to Cocamide DEA. More than 60  
6 days have passed and no designated public enforcer has prosecuted the allegations set forth in the  
7 Notice.  
8

9           **1.5. Complaint**

10           On or about September 4, 2013, Shefa LMV filed a complaint in the Los Angeles County  
11 Superior Court against LCP alleging, inter alia, violations of Proposition 65, based on the alleged  
12 exposure to Cocamide DEA contained in certain products sold by LCP (the “Complaint”) without first  
13 providing clear and reasonable warnings in violation of California Health and Safety Code section  
14 25249.6. The action is titled, *Shefa LMV, LLC v. Walgreen Co. et al.*, Case No. BC520416. The action  
15 was subsequently transferred to the Alameda County Superior Court and added to the coordination  
16 proceeding styled, Proposition 65 Cocamide DEA Cases, JCCP 4765.  
17

18           **1.6. No Admission**

19           LCP denies the material, factual and legal allegations contained in Shefa LMV’s Notice and  
20 Complaint and specifically denies that the Proposition 65 warning contained on the product labels was  
21 insufficient or otherwise caused harm to any person. LCP maintains that the Covered Products were  
22 sold in California in compliance with all laws. The parties have entered into this Consent Judgment in  
23 order to settle, compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
24 Nothing in this Consent Judgment shall be construed as an admission by LCP or by any of its  
25 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
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1 divisions, affiliates, franchises, licensees, customers, suppliers, manufacturers, distributors,  
2 wholesalers, or retailers, of any fact, finding, conclusion, issue or violation of law, fault, wrongdoing,  
3 or liability, including without limitation, any admission concerning any alleged violation of  
4 Proposition 65, nor shall compliance with this Consent Judgment constitute or be construed as an  
5 admission by LCP of any fact, finding, conclusion, issue or violation of law, fault, wrongdoing, or  
6 liability, the same being specifically denied by LCP. This Consent Judgment shall not be offered or  
7 admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency or  
8 forum, except with respect to an action seeking to enforce the terms of this Consent Judgment. Except  
9 as expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive, or impair any  
10 right, remedy, argument, or defense the parties may have in any other or future legal proceeding  
11 unrelated to these proceedings. However, this Section shall not diminish or otherwise affect LCP's  
12 obligations, responsibilities and duties under this Consent Judgment.  
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15 **1.7. Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction  
17 over LCP as to the allegations contained in the Complaint, that venue is proper in Alameda County  
18 Superior Court, and that this Court has jurisdiction to enter and enforce the provisions of this Consent  
19 Judgment as a full and final resolution of all claims which were or could have been asserted in this  
20 action based on the facts alleged in the Notices of Violation and the Complaint.  
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22 **1.8. Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the Court  
24 enters Judgment pursuant to the terms of this Consent Judgment.  
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1 **2. INJUNCTIVE RELIEF**

2 **2.1.** Subject to the sell through period outlined in Section 2.3, any Covered Product manufactured  
3 after the Effective Date that contains Cocamide DEA and that LCP thereafter sells in California,  
4 distributes for sale in California, or offers for sale to a third party for retail sale in California shall  
5 provide the following warning on the product label:  
6

7 [California Proposition 65] **WARNING: This product contains**  
8 **chemicals known to the State of California to cause cancer.**

9 The words “California Proposition 65” may be included at LCP’s option.

10 The warnings must be at least the same size as the largest of any other health or safety warnings  
11 appearing on the product label, as applicable, of such product, and the word “WARNING” shall be in  
12 all capital letters.  
13

14 To the extent that any subsequent revisions to Proposition 65 or its implementing regulations  
15 require additional or different warning language, LCP may revise the above warning to comply with  
16 such new law or regulations.

17 **2.2.** For purposes of this Consent Judgment, a Covered Product “contains Cocamide DEA” if  
18 Cocamide DEA is an intentionally added ingredient in the Covered Product. For purposes of this  
19 Consent Judgment, the term “distributes for sale into California” shall mean to directly ship a Covered  
20 Product into California for sale in California or to sell a Covered Product to a distributor that LCP  
21 knows will sell the Covered Product in California.  
22

23 **2.3. Sell through period.**

24 LCP’s Covered Products that were manufactured for retail sale prior to the Effective Date shall  
25 be subject to the release of liability pursuant to Section 5 of this Consent Judgment, without regard to  
26 when such Covered Products were, or are in the future, sold to consumers. As a result, the obligations  
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1 of LCP as set forth in this Consent Judgment, including but not limited to Section 2.1, do not apply to  
2 these products.

3 **3. RETENTION OF JURISDICTION, GOOD FAITH ATTEMPT TO RESOLVE DISPUTES;**  
4 **ENFORCEMENT OF CONSENT JUDGMENT**

5 **3.1.** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this  
6 Consent Judgment.

7 **3.2.** Only after it complies with Sections 3.3, Shefa LMV may, by motion or application for  
8 an order to show cause before the Alameda County Superior Court, enforce the terms and conditions  
9 contained in this Consent Judgment.

10 **3.3.** Prior to bringing any motion or application to enforce the requirements of Section 2  
11 above, Shefa LMV shall provide LCP with a notice of violation and a copy of any test results which  
12 purportedly support Shefa LMV's notice of violation. The parties shall then meet and confer regarding  
13 the basis for Shefa LMV's anticipated motion or application in an attempt to resolve it informally,  
14 including providing LCP a reasonable opportunity of at least thirty (30) days to cure any alleged  
15 violation. Should such attempts at informal resolution fail, Shefa LMV may file its enforcement  
16 motion or application. The prevailing party on any motion to enforce this Consent Judgment shall be  
17 entitled to its reasonable attorney fees and costs incurred as a result of such motion or application. As  
18 used in the preceding sentence, the term "prevailing party" means a party who is successful in  
19 obtaining relief more favorable to it than the relief that the other party was amenable to providing in  
20 writing and with specificity during the parties' good faith attempt to resolve the dispute that is the  
21 subject of such enforcement action.  
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25 **4. SETTLEMENT PAYMENT**

26 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's  
27 fees and costs, LCP shall make the following payments:



- (a) one check to "OEHHA" in the amount of \$750;
- (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in the amount of \$250;
- (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$9,000.

**4.4. Issuance of 1099 Forms**

After the settlement funds have been transmitted to Shefa LMV's counsel, LCP shall, as soon as reasonably practicable, issue separate 1099 forms, as follows (copies of which shall be sent to the addresses in section 4.5):

- (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the amount of \$750;
- (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$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 \$9,000;

**4.5. Issuance of Payments.**

**4.5.1.** All payments owed to Shefa LMV, pursuant to Section 4.1, shall be delivered to the following payment address:

Daniel N. Greenbaum, Esq.  
Law Office of Daniel N. Greenbaum  
The Hathaway Building  
7120 Hayvenhurst Avenue  
Suite 320  
Van Nuys, CA 91406

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



1 Mike Gyurics  
2 Fiscal Operations Branch Chief  
3 Office of Environmental Health Hazard Assessment  
4 P.O. Box 4010  
5 Sacramento, CA 95812-4010

6 LCP shall also send a copy of the checks payable to OEHHA to the Law Office of Daniel N.  
7 Greenbaum at the address set forth above in 4.5.1.

8 **5. APPLICATION OF CONSENT JUDGMENT; BINDING EFFECT; CLAIMS COVERED**  
9 **AND RELEASED**

10 **5.1.** This Consent Judgment may apply to, be binding upon and benefit the Parties, and their  
11 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
12 divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors,  
13 successors and assigns and Shefa LMV on its own behalf and in the public interest. This Consent  
14 Judgment shall have no application to Covered Products that are exclusively distributed and/or sold  
15 outside the State of California. With respect to Covered Products that are distributed and/or sold both  
16 inside and outside of California, the requirements contained in this Consent Judgment apply to the  
17 Covered Products only to the extent that the distribution and/or sales occur in California.

18 **5.2.** This Consent Judgment is a full, final, and binding resolution between Shefa LMV, on  
19 behalf of itself, and in the public interest, and LCP, and their respective officers, directors,  
20 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees,  
21 licensees, customers, distributors, wholesalers, retailers, predecessors, successors and assigns of any  
22 alleged violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65  
23 warnings of exposure to cocamide DEA from the handling, use or consumption of the Covered  
24 Products and fully and finally resolves all claims that have been or could have been asserted in this  
25 action up to and including the Effective Date for failure to provide Proposition 65 warnings for the  
26 Covered Products.  
27

1 **5.3. Shefa LMV’s Public Release of Proposition 65 Claims**

2 Shefa LMV, acting on its behalf and in the public interest, releases and discharges:

3 (a) LCP, its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister  
4 companies, and affiliates, and their successors and assigns, including but not limited to Wisconsin  
5 Pharmacal Company, LLC (collectively, the “Defendant Releasees”); and

6 (b) finished product or ingredient manufacturers, distributors, and suppliers, and all  
7 entities to whom any Defendant Releasee directly or indirectly distributed or sold any Covered  
8 Products, including but not limited to distributors, wholesalers, customers, retailers (including but not  
9 limited to Walgreen Co. and Rite Aid Corporation), franchisees, cooperative members, and Defendant  
10 Releasees’ licensors and licensees (collectively, “Additional Releasees”), from any and all claims,  
11 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses  
12 asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising from or  
13 related to the failure to provide Proposition 65 warnings on the Covered Products regarding cocamide  
14 DEA.  
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17 **5.4. Shefa LMV’s Individual Release of Claims**

18 Shefa LMV, on behalf of itself only, hereby releases and discharges the Defendant Releasees  
19 and Additional Releasees from any and all known and unknown claims for alleged violations of  
20 Proposition 65, or for any other statutory or common law claims, arising from or relating to alleged  
21 exposures to cocamide DEA in the Covered Products as set forth in the Notices. It is possible that  
22 other claims not known to the parties arising out of the facts alleged in the Notices of Violation or the  
23 Complaint and relating to the Covered Products will develop or be discovered. Shefa LMV, on behalf  
24 of itself only, acknowledges that this Consent Judgment is expressly intended to cover and include all  
25 such claims, including all rights of action therefor. Shefa LMV has full knowledge of the contents of  
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1 California Civil Code section 1542. Shefa LMV, on behalf of itself only, acknowledges that the claims  
2 released in Section 5.3 and 5.4 above may include unknown claims, and nevertheless waives California  
3 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as  
4 follows:

5  
6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
7 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
8 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
9 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
10 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

11 Shefa LMV, on behalf of itself only, acknowledges and understands the significance and consequences  
12 of this specific waiver of California Civil Code section 1542.

13 **5.5. LCP and Shefa LMV's Mutual Release**

14 LCP, on one hand, and Shefa LMV, on the other hand, their past and current agents,  
15 representatives, attorneys, successors, and/or assignees, hereby waives any and all claims they may  
16 have against each other, their attorneys or other representatives, for any and all actions taken or  
17 statements made or undertaken by them in connection with the Notices of Violation or the Complaint  
18 involving the Covered Products; provided, however, that nothing in this Section shall affect or limit  
19 any party's right to seek to enforce the terms of this Consent Judgment.

20 **5.6.** Compliance with the terms of this Consent Judgment constitutes compliance with  
21 Proposition 65 with respect to exposures to cocamide DEA from the Covered Products.

22 **6. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
24 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
25 has been fully executed by the parties.  
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1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California  
7 and the obligations of LCP hereunder as to the Covered Products apply only within the State of  
8 California  
9

10 **9. NOTICES**

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

15 To LCP:

16 Daniel Chammas, Esq.  
17 Venable LLP  
18 2049 Century Park East, Suite 2100  
19 Los Angeles, CA 90067  
20 Telephone: (310) 229-0302  
21 Facsimile: (310) 229-9901

To Shefa LMV:

22 Daniel N. Greenbaum, Esq.  
23 Law Office of Daniel N. Greenbaum  
24 The Hathaway Building  
25 7120 Hayvenhurst Avenue  
26 Suite 320  
27 Van Nuys, CA 91406

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

30 **10. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

1 **11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

2 Shefa LMV and its attorneys agree to comply with the reporting form requirements referenced  
3 in California Health & Safety Code section 25249.7(f) and with Title II of the California Code  
4 Regulations, Section 3003.  
5

6 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

7 Shefa LMV and LCP for themselves and their attorneys agree to employ their best efforts to  
8 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
9 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California  
10 Health & Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this  
11 Consent Judgment, which Shefa LMV shall draft and file, and LCP shall not oppose. If any third party  
12 objection to the noticed motion is filed, Shefa LMV and LCP shall work together to file a joint reply or  
13 separate replies if the parties so desire and appear at any hearing before the Court. This provision is a  
14 material component of the Consent Judgment and shall be treated as such in the event of a breach.  
15

16 **13. MODIFICATION AND TERMINATION**

17 **13.1.** This Consent Judgment may be modified only: (1) by written agreement of the parties  
18 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
19 of any party and entry of a modified Consent Judgment by the Court.  
20

21 **13.2.** If either party seeks to modify this Consent Judgment under Section 13.1, then the party  
22 requesting the modification shall provide written notice to the other party of its intent (“Notice of  
23 Intent”). If the party receiving the Notice of Intent seeks to meet and confer regarding the proposed  
24 modification, then that party shall provide written notice to the other party within thirty (30) days of  
25 receiving the Notice of Intent. If such notice is provided in a timely manner, then the parties shall  
26 meet and confer in good faith as required in this Section. The parties shall meet in person or on the  
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1 telephone within thirty (30) days of notification of intent to meet and confer. Within thirty (30) days  
2 of such meeting, if the party receiving the Notice of Intent disputes the proposed modification, that  
3 party shall provide the other party a written factual basis for its position. The parties shall continue to  
4 meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes. The  
5 parties may agree in writing to different deadlines for the meet and confer period.  
6

7 **13.3.** Where the meet and confer process does not lead to a joint motion or application in  
8 support of a modification of the Consent Judgment, then either party may seek judicial relief on its  
9 own. In such a situation, the prevailing party may seek to recover costs and reasonable attorney's fees.  
10 As used in the preceding sentence, the term "prevailing party" means a party who is successful in  
11 obtaining relief more favorable to it than the relief that the other party was amenable to providing in  
12 writing and with specificity during the parties' good faith attempt to resolve the dispute that is the  
13 subject of the modification.  
14

15 **13.4.** In the event that Proposition 65 is repealed, preempted or is otherwise rendered  
16 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
17 rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered  
18 inapplicable by reason of law generally as to the Covered Products, including, without limitation, the  
19 removal of Cocamide DEA from OEHHA's list of Proposition 65 chemicals, then LCP shall notify  
20 Shefa LMV and its counsel and shall have no further obligations pursuant to this Consent Judgment  
21 with respect to, and to the extent that, the Covered Products are so affected.  
22

23 **13.5.** This Consent Judgment shall terminate without further action by any party if and when  
24 LCP no longer manufactures, distributes or sells all of the Covered Products and all of such Covered  
25 Products previously "distributed for sale in California" have reached their expiration dates and are no  
26 longer sold.  
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1 **14. ENTIRE AGREEMENT**

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

9 **15. AUTHORIZATION**

10 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party  
11 he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent  
12 Judgment on behalf of the party represented and legally bind that party. The undersigned have read,  
13 understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly  
14 provided herein, each party is to bear its own fees and costs.  
15

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

18 **16.1.** This Consent Judgment came before this Court upon the request of the parties. The parties  
19 request the Court to review this Consent Judgment and to make the following findings pursuant to Cal.  
20 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 the Consent Judgment is reasonable.  
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1 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
2 and agree to all of the terms and conditions of this Consent Judgment.  
3

4 AGREED TO:

5 Date: 02/24/2015


6 By:   
7 Shefa LMV, LLC

8 Print: Alisa Fried

9 Its: Managing Member

AGREED TO:

Date: 2/24/2015

By:   
Defendant Lake Consumer Products, Inc.

Print: JEFFREY C. FOTTS

Its: CHIEF OPERATING & FINANCIAL OFFICER

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Lake Consumer Products, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: \_\_\_\_\_

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Judge of the Superior Court

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