

1 **SETTLEMENT AGREEMENT**

2 **1. INTRODUCTION**

3 **1.1. Shefa LMV, LLC and CRABTREE & EVELYN, LTD.**

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

13 **1.2. General Allegations**

14 Shefa LMV alleges that CRABTREE & EVELYN has manufactured, imported, distributed
15 and/or sold shampoo and shower gel products that contain cocamide diethanolamine (“cocamide
16 DEA”) without the requisite Proposition 65 warnings. Cocamide DEA is on the Proposition 65 list
17 as known to cause birth defects and other reproductive harm.

18 **1.3. Product Description**

19 As used in this Settlement Agreement, “Products” shall mean products containing cocamide
20 DEA, specifically, Savannah Gardens Shower Gel, UPC #044936182843, that are manufactured,
21 imported, distributed and/or sold by CRABTREE & EVELYN for sale in the State of California.

22 **1.4. Notice of Violation**

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

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1.5. No Admission

CRABTREE & EVELYN denies the material, factual and legal allegations contained in Shefa LMV's Notice and maintains that it has at all times been in compliance with all laws and all products that it has sold, manufactured, imported and/or distributed in California, including the Products. Nothing in this Settlement Agreement shall be construed as an admission by CRABTREE & EVELYN of any fact, finding, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by CRABTREE & EVELYN of any fact, finding, conclusion, issue of law or violation of law. However, this Section shall not diminish or otherwise affect CRABTREE & EVELYN's obligations, responsibilities and duties under this Settlement Agreement.

1.6. Consent to Jurisdiction

For purposes of this Settlement Agreement only, the parties stipulate that California courts have jurisdiction over CRABTREE & EVELYN as to the allegations contained in the Notice, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to enter and enforce the provisions of this Settlement Agreement.

1.7. Execution Date

For purposes of this Settlement Agreement, the term "Execution Date" shall mean the date this Settlement Agreement is signed by both parties.

1.8. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 1, 2013.

2. INJUNCTIVE RELIEF: WARNING OR REFORMULATION

2.1. Warning Obligation For Cocamide DEA-Containing Products

Commencing on October 15, 2013, CRABTREE & EVELYN shall sell, distribute or otherwise deliver, or cause to be sold, distributed or otherwise delivered into California, only Products reformulated to remove cocamide DEA as an ingredient, unless such Products are sold or shipped with one of the clear and reasonable warnings set forth in Section 2.2.

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2.2. Mandatory Warning Procedures

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

3. MONETARY PAYMENTS

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

CRABTREE & EVELYN shall pay a total civil penalty payment of \$2,000, within ten (10) days of the Execution Date, as follows: the civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Shefa LMV, both pursuant to the procedures set forth in Section 3.3.

3.2. Reimbursement of Shefa LMV's Fees and Costs

The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. CRABTREE & EVELYN expressed a desire to resolve the fee and cost issue after the other settlement terms had been agreed. The Parties then attempted to (and did) reach an accord on the compensation due to Shefa LMV and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, CRABTREE & EVELYN shall pay the amount of \$5,000 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining approval of this Settlement Agreement in the public interest.

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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 \$1,500;
- (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in the amount of \$500;
- (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$5,000.

3.4. Issuance of 1099 Forms

CRABTREE & EVELYN shall 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 \$1,500;
- (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$500, whose address and tax identification number shall be furnished to defendant at the time this settlement is executed.
- (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the amount of \$5,000.

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

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1. Shefa LMV's Release of CRABTREE & EVELYN**

5 Plaintiff, acting on its own behalf, releases CRABTREE & EVELYN, its parents,
6 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
7 attorneys, and each entity to whom CRABTREE & EVELYN directly or indirectly distributes or
8 sells Products, including, but not limited to, downstream distributors, wholesalers, customers,
9 retailers, including specifically, but not limited to The TJX Companies, Inc., ("TJX") and any TJX
10 subsidiary, franchisees, cooperative members, licensors, and licensees ("Releasees"), from all
11 claims for violations of Proposition 65 based on exposure to cocamide DEA from the Products as
12 set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes
13 compliance with Proposition 65, for Plaintiff's purposes only, with respect to exposures to
14 cocamide DEA from the Products as set forth in the Notice.

15 Shefa LMV, also, in its individual capacity only and *not* in its representative capacity,
16 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
17 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
18 claims, liabilities and demands of Shefa LMV of any nature, character or kind, whether known or
19 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the
20 cocamide DEA in the Products manufactured, distributed or sold by CRABTREE & EVELYN.

21 **4.2. CRABTREE & EVELYN's Release of Shefa LMV**

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

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1 **5. SEVERABILITY**

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

5 **6. GOVERNING LAW**

6 The terms of this Settlement Agreement shall be governed by the laws of the State of
7 California and the obligations of CRABTREE & EVELYN hereunder as to the Products apply
8 only within the State of California. In the event that Proposition 65 is repealed, preempted or is
9 otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
10 Settlement Agreement are rendered inapplicable or no longer required as a result of any such
11 repeal or preemption or rendered inapplicable by reason of law generally as to the Products,
12 including, without limitation, the removal of cocamide DEA from OEHHA's list of Proposition 65
13 chemicals, then CRABTREE & EVELYN shall notify Shefa LMV and its counsel and may have
14 no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that,
15 the Products are so affected.

16 **7. NOTICES**

17 Unless specified herein, all correspondence and notices required to be provided pursuant to
18 this Settlement Agreement shall be in writing and (i) personally delivered, (ii) sent by first-class,
19 (registered or certified mail) return receipt requested, or (iii) sent by overnight courier to one party
20 from the other party at the following addresses:

21 To CRABTREE & EVELYN:

22 Colleen Creevy Cording, Esq.
23 Crabtree & Evelyn, Ltd.
24 102 Peake Brook Road
Woodstock, CT 06281

To Shefa LMV:

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

25 With a copy to:

26 Carol Brophy, Esq.
27 Sedgwick LLP
333 Bush St 30th Fl.
28 San Francisco, CA 94104

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

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

4 This Settlement Agreement may be executed in counterparts and by facsimile or PDF
5 signature, each of which shall be deemed an original, and all of which, when taken together, shall
6 constitute one and the same document. A facsimile or PDF signature shall be as valid as the
7 original.

8 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

11 **10. ADDITIONAL POST EXECUTION ACTIVITIES**

12 Shefa LMV and CRABTREE & EVELYN agree to mutually employ their, and their
13 counsel's, best efforts to support the entry of this agreement as a Settlement Agreement in a timely
14 manner.

15 **11. MODIFICATION**

16 This Settlement Agreement may be modified only: (1) by written agreement of the parties
17 and upon entry of a modified Settlement Agreement by the Court thereon; or (2) upon a successful
18 motion of any party and entry of a modified Settlement Agreement by the Court.

19 **12. AUTHORIZATION**

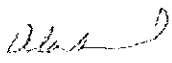
20 The undersigned are authorized to execute this Settlement Agreement and have read,
21 understood, and agree to all of the terms and conditions of this Settlement Agreement.

22 AGREED TO:

AGREED TO:

23
24 Date: 11/4/13

Date: 11/12/13

25
26 By: 

By: 

27 Print: Alisa Fried

Colleen Cording

28 Its: Managing Member

Defendant, CRABTREE & EVELYN,
LTD.