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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA

16
17 Coordination Proceeding
Special Title (Rule 3.350)

18 PROPOSITION 65 COCAMIDE DEA
19 CASES

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO: 4765
)

) [*Shefa LMV, LLC v. Ross Stores, et al.*,
) Los Angeles County Superior Court
) No. BC521400]

) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO COMMONWEALTH SOAP &**
) **TOILETRIES, INC.**

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

23) Action filed: October 11, 2013
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1 **1. INTRODUCTION**

2 **1.1** This Consent Judgment is entered into by and between Plaintiff Shefa
3 LMV, LLC (“Shefa” or “Plaintiff”) and Defendant Commonwealth Soap & Toiletries, Inc.
4 (“CST”). Shefa and CST are collectively referred to as the “Parties” and individually as a “Party.”

5 **1.2** Shefa is a limited liability company in California that is acting as a private
6 enforcer pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California
7 Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”), and is enforcing Proposition 65.

8 **1.3** CST employs ten or more persons and is a person in the course of doing
9 business for purposes of Proposition 65.

10 **1.4** The products covered by this Consent Judgment are hand soaps
11 manufactured, distributed and/or sold by CST that contain coconut oil diethanolamine condensate
12 (cocamide diethanolamine) (referred to herein as “cocamide DEA”), including but not limited to the
13 Almond Foaming Hand Soap, Almond Hand Soap, Egyptian Cotton Foaming Hand Soap, White
14 Nectarine Hand Soap, Verbena Hand Soap, and Eucalyptus Aloe Hand Soap.

15 **1.5** The products covered by this Consent Judgment shall additionally include
16 liquid soaps on and after the Supplemental Notice Maturity Date.

17 **1.6** The products covered by this Consent Judgment are referred to as the
18 “Covered Products.”

19 **1.7** On or about July 1, 2013 a, Shefa served CST and various public
20 enforcement agencies with two “60-Day Notices of Violation” pursuant to Health & Safety Code
21 § 25249.7(d) (the “Original Notices”), alleging that CST was in violation of Proposition 65.

22 **1.8** Shefa’s Notices allege that the Covered Products expose consumers to
23 cocamide DEA without the requisite Proposition 65 warnings.

24 **1.9** Cocamide DEA is listed pursuant to Proposition 65 as a chemical known
25 to the State of California to cause cancer.

26 **1.10** On January 24, 2014, Shefa served CST and various public enforcement
27 agencies with a document entitled Supplemental 60-Day Notice of Violation (the “Supplemental
28 Notice”) alleging that CST was in violation of Proposition 65 for failing to warn consumers and

1 customers of alleged exposures to cocamide DEA in liquid soaps including, but not limited to the
2 Moisturizing Shower Gel.

3 **1.11** The seventy-first day following the service of the Supplemental Notice on
4 CST and all California public enforcers required to be served under Proposition 65 (i.e., California
5 Attorney General, California District Attorneys of every County in the State of California, and City
6 Attorneys for every city in the State of California with a population greater than 750,000), provided
7 that no such public enforcer has, before that date, filed a Proposition 65 enforcement action based
8 on the allegations in the Supplemental Notice, is the “Supplemental Notice Maturity Date.”

9 **1.12** The Original Notices and the Supplemental Notice are referred to herein
10 as the “Notices.”

11 **1.13** Shefa filed a First Amended Complaint (“Complaint”) in the
12 above-captioned action (“Action”), alleging Proposition 65 violations as to the Covered Products
13 and asserting causes of action against CST under Proposition 65 and Cal. Bus. & Prof. Code
14 §§ 17200 *et seq.*

15 **1.14** On or around March 11, 2014, Shefa added CST as a defendant in the
16 Complaint.

17 **1.15** The Complaint shall be deemed amended by this Consent Judgment upon
18 the Supplemental Notice Maturity Date to assert against CST the claims alleged in the Complaint
19 with respect to all Covered Products.

20 **1.16** CST denies the claims of alleged violations asserted against it in the
21 Action and denies that it has any liability under Proposition 65 or Cal. Bus. & Prof. Code §§ 17200.

22 **1.17** The Parties enter into this Consent Judgment to resolve all Proposition 65
23 claims concerning the Covered Products set forth in the Notices and the Action.

24 **1.18** Nothing in this Consent Judgment shall be construed as an admission by
25 the Parties of any fact, finding, conclusion of law, issue of law or violation of law, nor shall
26 compliance with this Consent Judgment constitute or be construed as an admission by the Parties of
27 any fact, conclusion of law, issue of law, or violation of law.
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1 **1.19** Nothing in this Consent Judgment shall prejudice, waive or impair any
2 right, remedy, argument or defense the Parties may have in this or any other or future legal
3 proceedings.

4 **1.20** The term “Effective Date” means the date on which this Consent
5 Judgment is approved and entered by the Court.

6 **2. INJUNCTIVE RELIEF**

7 **2.1 Reformulation of Covered Products.** As of the Effective Date, CST
8 shall not manufacture, distribute, sell or offer for sale any Covered Product that contains cocamide
9 DEA and that will be sold or offered for sale to California consumers. For purposes of this Consent
10 Judgment, a Covered Product “contains cocamide DEA” if cocamide DEA is an intentionally added
11 ingredient in the Covered Product. Covered Products sold, distributed or otherwise put into the
12 stream of commerce by CST prior to the Effective Date are nonetheless subject to the release of
13 claims in Section 4.

14 **3. MONETARY PAYMENTS**

15 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

16 CST shall pay a total civil penalty payment of \$3,000 within ten (10) days of Court entry
17 of this Consent Judgment, as follows: the civil penalty shall be apportioned in accordance with
18 California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the
19 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
20 remaining 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in
21 Section 3.3.

22 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

23 The parties acknowledge that Plaintiff and its counsel offered to resolve this dispute
24 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
25 this fee issue to be resolved after the material terms of the agreement had been settled. CST
26 expressed a desire to resolve the fee and cost issue after the other settlement terms had been
27 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to
28 Plaintiff and its counsel under general contract principles and the private attorney general doctrine

1 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,
2 except fees that may be incurred on appeal. Under these legal principles, CST shall pay the
3 amount of \$9,500 for fees and costs incurred investigating, litigating and enforcing this matter,
4 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining
5 the Court's approval of this Consent Judgment in the public interest.

6 **3.3 Payment Procedures**

7 All payments required by Sections 3.1 and 3.2 shall be within ten (10) days of Court entry
8 of this Consent Judgment, in three checks made payable as follows:

- 9 (a) one check to "OEHHA" in the amount of \$2,250.
10 (b) one check to "Law Office of Daniel N. Greenbaum, in Trust for Shefa LMV, LLC" in
11 the amount of \$750
12 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$9,500.

13 **3.4 Issuance of 1099 Forms**

14 After the settlement funds have been transmitted to Plaintiff's counsel, CST shall issue
15 separate 1099 forms, as follows:

- 16 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
17 68-0284486) in the amount of \$2,250;
18 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$750, whose address
19 and tax identification number shall be furnished upon request;
20 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the
21 amount of \$9,500;

22 **3.5 Issuance of Payments.**

23 **3.5.1** All payments owed to Plaintiff, pursuant to Section 3.1, shall
24 be delivered to the following payment address:

25 Daniel N. Greenbaum, Esq.
26 Law Office of Daniel N. Greenbaum
27 1467 South Holt Avenue #2
28 Los Angeles, CA 90035

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

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

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Full and Binding Resolution of Proposition 65 Allegations:** This
13 Consent Judgment is a full, final and binding resolution of the Action as set forth in this Section 4.
14 Shefa, on behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the
15 public interest, waives all rights to participate in any action and releases and discharges (a) CST, its
16 parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,
17 and their successors and assigns (collectively, the "Defendant Releasees"), and (b) finished product
18 or ingredient manufacturers, distributors, and suppliers, and all entities to whom any Defendant
19 Releasee directly or indirectly distributed or sold any Covered Products, including but not limited to
20 distributors, wholesalers, customers, retailers (including but not limited to TJX Companies, Inc.),
21 franchisees, cooperative members, and Defendant Releasees' licensors and licensees (collectively,
22 "Additional Releasees"), with respect to all claims, including, without limitation, causes of action
23 (in law or in equity), suits, liabilities, demands, obligations, damages, costs, fines, penalties,
24 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) or losses
25 (collectively "Claims") regarding any violation of Proposition 65 based on failure to warn about
26 alleged exposures to cocamide DEA in any Covered Products shipped, distributed or sold by CST
27 prior to the Effective Date.

28 **4.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,
representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,
hereby provides a release that shall be effective as a full and final accord and satisfaction, as a bar to

1 all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other statutory or
2 common law, that are or may be asserted against Defendant Releasees and Additional Releasees,
3 whether known or unknown, suspected or unsuspected, arising out of alleged exposures to, and/or
4 failure to warn of alleged exposures to, cocamide DEA or diethanolamine in the Covered Products
5 shipped, distributed or sold by CST prior to the Effective Date.

6 **4.3 General Release:** It is possible that other Claims not known to the Parties
7 arising out of the facts alleged in the Notices or the Action will develop or be discovered. Shefa, on
8 behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assigns,
9 and not in its representative capacity, acknowledges that this Consent Judgment is expressly
10 intended to cover and include all such Claims, including all rights of action therefor. Shefa has full
11 knowledge of the contents of California Civil Code § 1542. Shefa acknowledges that the Claims
12 released in Sections 4.1 and 4.2 include unknown Claims, and Shefa nevertheless waives California
13 Civil Code § 1542 as to any such unknown Claims. California Civil Code § 1542 reads as follows:

14 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
15 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
16 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
17 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
18 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
19 HER SETTLEMENT WITH THE DEBTOR.”**

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

23 **4.4 Compliance** with the terms of this Consent Judgment by CST shall be
24 deemed to constitute compliance by any Defendant Releasee or Additional Releasee with
25 Proposition 65 regarding alleged exposures to cocamide DEA in the Covered Products.

26 **4.5 CST’s Release:** On behalf of itself and Defendant Releasees, CST waives
27 all rights to institute any form of action against Shefa or Shefa’s attorneys, consultants and
28 representatives for all actions taken or statements made in the course of this Action prior to the date
of the execution of this Consent Judgment.

1 **5. ENFORCEMENT**

2 **5.1** Any Party may file suit to enforce the terms and conditions contained in
3 this Consent Judgment, as provided in this Section 5.1. A Party may enforce any of the terms and
4 conditions of this Consent Judgment only after that Party first provides 30 days' written notice to
5 the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and
6 attempts to resolve such Party's failure to comply in an open and good faith manner.

7 **6. COURT APPROVAL**

8 **6.1** This Consent Judgment is not effective until it is approved and entered by
9 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
10 within one year after it has been fully executed by all Parties.

11 **7. SOLE AGREEMENT**

12 **7.1** This Consent Judgment contains the sole and entire agreement and
13 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
14 discussions, negotiations, commitments or understandings related thereto, if any, are hereby merged
15 herein and therein. No representations, oral or otherwise, express or implied, other than those
16 specifically referred to in this Consent Judgment have been made by any Party hereto. No
17 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
18 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of
19 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
20 hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

21 **8. MODIFICATION**

22 **8.1** This Consent Judgment may be modified from time to time by (i) a written
23 agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or
24 (ii) upon a successful motion or application of any Party and the entry of a modified consent
25 judgment by the Court.

26 **9. GOVERNING LAW AND APPLICATION**

27 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
28 State of California and shall apply only to Covered Products that are sold or offered for sale in the

1 State of California. In the event that Proposition 65 is repealed, preempted or otherwise rendered
2 inapplicable by reason of law generally, or as to the Covered Products, then CST shall have no
3 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, any
4 Covered Products that are so affected.

5 **9.2** This Consent Judgment shall apply to and be binding upon Shefa and CST
6 and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

7 **9.3** The Parties, including their counsel, have participated in the preparation of
8 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
9 This Consent Judgment was subject to revision and modification by the Parties and has been
10 accepted and approved as to its final form by all Parties and their counsel.

11 **9.4** Each Party to this Consent Judgment agrees that any statute or rule of
12 construction providing that ambiguities are to be resolved against the drafting Party should not be
13 employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
14 waive California Civil Code § 1654.

15 **10. PROVISION OF NOTICE**

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

18 For Shefa: Daniel Greenbaum, Esq.,
19 1467 South Holt Ave. #2,
 Los Angeles, CA 90035

20 For CST: Ed Layne
21 Commonwealth Soap & Toiletries, Inc.
22 661 Quequechan Street
 Fall River, MA 02721

23 With a copy to:

24 Sarah Esmaili, Esq.
25 Arnold & Porter LLP
 Three Embarcadero Center, 10th Floor
26 San Francisco, CA 94111

27 **11. ATTORNEYS' FEES**

28 **11.1** A Party who unsuccessfully brings or contests an action arising out of this
Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and

1 costs. For purposes of this Section 11.1, the prevailing Party refers to the Party that was successful
2 in obtaining relief more favorable to it than the relief that the other Party was amenable to providing
3 during the Parties' good faith attempt to resolve the dispute under Section 5.1.

4 **11.2** Nothing in this Section 11 shall preclude a Party from seeking an award of
5 sanctions pursuant to law.

6 **12. EXECUTION AND COUNTERPARTS**

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

10 **13. COURT APPROVAL**

11 **13.1** This Consent Judgment shall not be effective until the Effective Date.
12 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and CST shall make
13 no objections to entry of this Consent Judgment. The Parties acknowledge that, pursuant to
14 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval
15 of this Consent Judgment, and Plaintiff shall draft and file such motion within fifteen days of the
16 date this Consent Judgment is fully executed by the Parties.

17 **13.2** If this Consent Judgment is not entered by the Court, it shall be of no force
18 or effect.

19 **13.3** This Court shall retain jurisdiction of this matter to implement or modify
20 the Consent Judgment.

21 **14. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

22 **14.1** Shefa agrees to comply with the reporting form requirements referenced in
23 California Health and Safety Code § 25249.7(f).

24 **15. AUTHORIZATION**

25 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully
26 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
27 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
28

1 The undersigned have read, understand and agree to all of the terms and conditions of this Consent
2 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

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

5 **16.1** This Consent Judgment came before this Court upon the request of the
6 Parties. The Parties request the Court to review this Consent Judgment and to make the following
7 findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

- 8 1. The injunctive relief required by the Consent Judgment complies with Cal. Health &
9 Safety Code § 25249.7;
- 10 2. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is
11 reasonable under California law; and
- 12 3. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.

13 AGREED TO:

14 Dated: 3/13/14

SHEFA LMV, LLC

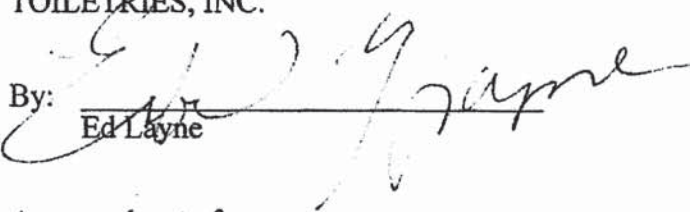
15 By: 
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[name]

17 Approved as to form:

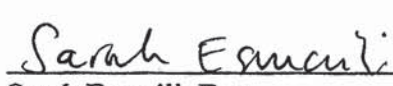
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19 _____
20 Daniel Greenbaum, Esq.
21 Attorney for Shefa LMV, LLC
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1 Dated: 3/13/14

2 COMMONWEALTH SOAP &
3 TOILETRIES, INC.

4 By: 
Ed Layne

5 Approved as to form:

6 
7 Sarah Esmaili, Esq.
8 Attorney for Commonwealth Soap &
9 Toiletries, Inc.

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Commonwealth Soap and Toiletry Company, 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

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