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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

Coordination Proceeding Special Title (Rule 3.350))	JUDICIAL COUNCIL COORDINATION PROCEEDING NO: 4765
)	
PROPOSITION 65 COCAMIDE DEA CASES)	[<i>Shefa LMV, LLC v. Ross Stores, et al.</i> , Los Angeles County Superior Court No. BC521400
)	
)	[PROPOSED] CONSENT JUDGMENT AS TO HARBOR, S.R.L.
)	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 LMV, LLC
3 (“Shefa”) and Defendant Harbor, s.r.l. (“Harbor”). Shefa and Harbor are collectively referred to as
4 the “Parties” and individually as a “Party.”

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

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

10 **1.4** The products covered by this Consent Judgment are hand soaps and other body
11 detergents manufactured, distributed and/or sold by Harbor that contain coconut oil diethanolamine
12 condensate (cocamide diethanolamine) (referred to herein as “cocamide DEA”), including but not
13 limited to Liquid Soap with Cocoa Butter (“Covered Products”).

14 **1.5** On or about July 3, 2013, Shefa served Harbor and various public enforcement
15 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §
16 25249.7(d) (the “Notices”), alleging that Harbor was in violation of Proposition 65.

17 **1.6** Shefa’s Notices alleges that the Covered Products expose consumers to cocamide
18 DEA without the requisite Proposition 65 warnings.

19 **1.7** Cocamide DEA is listed pursuant to Proposition 65 as a chemical known to the State
20 of California to cause cancer.

21 **1.8** Shefa filed a Complaint in the above-captioned action (“Action”), alleging
22 Proposition 65 violations as to the Covered Products and asserting causes of action against Harbor
23 under Proposition 65 and Cal. Bus. & Prof. Code §§ 17200 *et seq.*

24 **1.9** Harbor denies the claims of alleged violations asserted against it in the Action and
25 denies that it has any liability under Proposition 65 or Cal. Bus. & Prof. Code §§ 17200 *et seq.*

26 **1.10** The Parties enter into this Consent Judgment to resolve all Proposition 65 claims
27 concerning the Covered Products set forth in the Notices and the Action.
28

1 **1.11** Nothing in this Consent Judgment shall be construed as an admission by the Parties
2 of any fact, finding, conclusion of law, issue of law or violation of law, nor shall compliance with
3 this Consent Judgment constitute or be construed as an admission by the Parties of any fact,
4 conclusion of law, issue of law, or violation of law.

5 **1.12** Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
6 argument or defense the Parties may have in this or any other or future legal proceedings.

7 **1.13** The term “Effective Date” means the date on which this Consent Judgment is
8 approved and entered by the Court.

9 **2. INJUNCTIVE RELIEF**

10 **2.1 Reformulation of Covered Products.** As of the Effective Date, Harbor shall not
11 manufacture, distribute, sell or offer for sale to California consumers any Covered Product that
12 contains cocamide DEA.

13 **2.2** For purposes of this Consent Judgment, a Covered Product “contains cocamide
14 DEA” if cocamide DEA is an intentionally added ingredient in the Covered Product.

15 **2.3** Covered Products sold, distributed or otherwise put into the stream of commerce by
16 Harbor prior to the Effective Date are nonetheless subject to the release of claims in Section 4.

17 **3. MONETARY PAYMENTS**

18 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**
19 Harbor shall pay a total civil penalty payment of \$4,000.00 within ten (10) days of Court
20 entry of this Consent Judgment, as follows: the civil penalty shall be apportioned in accordance
21 with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to
22 the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
23 remaining 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in
24 Section 3.3.

25 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

26 The parties acknowledge that Plaintiff and its counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
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1 this fee issue to be resolved after the material terms of the agreement had been settled. Harbor
2 expressed a desire to resolve the fee and cost issue after the other settlement terms had been
3 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to
4 Plaintiff and its counsel under general contract principles and the private attorney general doctrine
5 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,
6 except fees that may be incurred on appeal. Under these legal principles, Harbor shall pay the
7 amount of \$11,000.00 for fees and costs incurred investigating, litigating and enforcing this matter,
8 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining
9 the Court's approval of this Consent Judgment in the public interest.

10 **3.3 Payment Procedures**

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

- 13 (a) one check to "OEHHA" in the amount of \$3,000.00;
14 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in
15 the amount of \$1,000.00;
16 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$11,000.00.

17 **3.4 Issuance of Payments.**

18 **3.4.1** All payments owed to Plaintiff, pursuant to Section 3.1, shall be delivered to
19 the following payment address:

20 Daniel N. Greenbaum, Esq.
21 Law Office of Daniel N. Greenbaum
22 14752 Otsego Street
23 Sherman Oaks, CA 91403

24 **3.4.2** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1,
25 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

26 Office of Environmental Health Hazard Assessment
27 Attn.: Mike Gyrics
28 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 at
2 the address set forth above in 3.5.1, as proof of payment to OEHHA.

3 **4. CLAIMS COVERED AND RELEASED**

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

20 **4.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,
21 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,
22 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a bar to
23 all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other statutory or
24 common law, that are or may be asserted against Defendant Releasees and Additional Releasees,
25 whether known or unknown, suspected or unsuspected, arising out of alleged exposures to, and/or
26 failure to warn of alleged exposures to, cocamide DEA or diethanolamine in the Covered Products
27 shipped, distributed or sold by Harbor prior to the Effective Date.

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1 **4.3 General Release:** It is possible that other Claims not known to the Parties arising
2 out of the facts alleged in the Notices or the Action will develop or be discovered. Shefa, on behalf
3 of itself, its past and current agents, representatives, attorneys, and successors and/or assigns, and
4 not in its representative capacity, acknowledges that this Consent Judgment is expressly intended to
5 cover and include all such Claims, including all rights of action therefor. Shefa has full knowledge
6 of the contents of California Civil Code § 1542. Shefa acknowledges that the Claims released in
7 Sections 4.1 and 4.2 include unknown Claims, and Shefa nevertheless waives California Civil Code
8 § 1542 as to any such unknown Claims. California Civil Code § 1542 reads as follows:

9
10 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
11 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
12 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
13 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
14 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
15 HER SETTLEMENT WITH THE DEBTOR.”**

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

19 **4.4** Compliance with the terms of this Consent Judgment by Harbor shall be deemed to
20 constitute compliance by any Defendant Releasee or Additional Releasee with Proposition 65
21 regarding alleged exposures to cocamide DEA in the Covered Products.

22 **4.5 Harbor’s Release:** On behalf of itself and Defendant Releasees, Harbor waives all
23 rights to institute any form of action against Shefa or Shefa’s attorneys, consultants and
24 representatives for all actions taken or statements made in the course of this Action prior to the date
25 of the execution of this Consent Judgment.

26 **5. ENFORCEMENT**

27 **5.1** Any Party may file suit to enforce the terms and conditions contained in this Consent
28 Judgment, as provided in this Section 5.1. A Party may enforce any of the terms and conditions of
this Consent Judgment only after that Party first provides 30 days’ written notice to the Party

1 allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts to
2 resolve such Party's failure to comply in an open and good faith manner.

3 **6. COURT APPROVAL**

4 **6.1** This Consent Judgment is not effective until it is approved and entered by the Court
5 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
6 year after it has been fully executed by all Parties.

7 **7. SOLE AGREEMENT**

8 **7.1** This Consent Judgment contains the sole and entire agreement and understanding of
9 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
10 negotiations, commitments or understandings related thereto, if any, are hereby merged herein and
11 therein.

12 **7.2** No representations, oral or otherwise, express or implied, other than those
13 specifically referred to in this Consent Judgment have been made by any Party hereto.

14 **7.3** No supplementation, modification, waiver or termination of this Consent Judgment
15 shall be binding unless executed in writing by the Party to be bound thereby.

16 **7.4** No waiver of any of the provisions of this Consent Judgment shall be deemed or
17 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
18 waiver constitute a continuing waiver.

19 **8. MODIFICATION**

20 **8.1** This Consent Judgment may be modified from time to time by (i) a written
21 agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or
22 (ii) upon a successful motion or application of any Party and the entry of a modified consent
23 judgment by the Court.

24 **9. GOVERNING LAW AND APPLICATION**

25 **9.1** The terms of this Consent Judgment shall be governed by the laws of the State of
26 California and shall apply only to Covered Products that are sold or offered for sale in the State of
27 California.
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1 **9.2** 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 Harbor 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 **9.3** This Consent Judgment shall apply to and be binding upon Shefa and Harbor and
6 their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

7 **9.4** The Parties, including their counsel, have participated in the preparation of this
8 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

9 **9.5** This Consent Judgment was subject to revision and modification by the Parties and
10 has been accepted and approved as to its final form by all Parties and their counsel.

11 **9.6** Each Party to this Consent Judgment agrees that any statute or rule of construction
12 providing that ambiguities are to be resolved against the drafting Party should not be employed in
13 the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
14 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
19 For Shefa: Daniel Greenbaum, Esq.,
20 Law Office of Daniel N. Greenbaum
21 14752 Otsego Street
22 Sherman Oaks, CA 91403

23 For Harbor: VALLA & Associates, Inc. p.c.
24 Attn.: Stefano Abbasciano, Esq.
25 1990 N. California Blvd., Suite 1060
26 Walnut Creek, CA 94596, USA

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 costs.

1 **11.2** For purposes of this Section 11.1, the prevailing Party refers to the Party that was
2 successful in obtaining relief more favorable to it than the relief that the other Party was amenable
3 to providing during the Parties' good faith attempt to resolve the dispute under Section 5.1.

4 **11.3** Nothing in this Section 11 shall preclude a Party from seeking an award of sanctions
5 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 **13.2** Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
13 Harbor shall make no objections to entry of this Consent Judgment.

14 **13.3** If this Consent Judgment is not entered by the Court, it shall be of no force or effect.

15 **13.4** This Court shall retain jurisdiction of this matter to implement or modify the Consent
16 Judgment.

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

18 **14.1** Shefa agrees to comply with the reporting form requirements referenced in
19 California Health and Safety Code § 25249.7(f).

20 **15. AUTHORIZATION**

21 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
22 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
23 the Consent Judgment on behalf of the Party represented and legally bind that Party.

24 **15.2** The undersigned have read, understand and agree to all of the terms and conditions
25 of this Consent Judgment.

26 **15.3** Except as explicitly provided herein, each Party is to bear its own fees and costs.

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

16.1 This Consent Judgment came before this Court upon the request of the Parties.

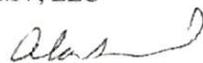
16.2 The Parties request the Court to review this Consent Judgment and to make the following findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

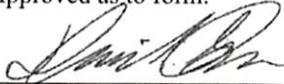
AGREED TO:

Dated:

SHEFA LMV, LLC

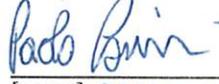
By: 
Alisa Fried

Approved as to form:

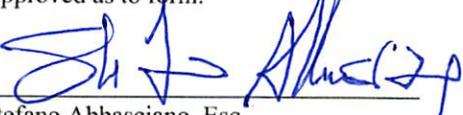

Daniel Greenbaum, Esq.
Attorney for Shefa LMV, LLC

Dated:

HARBOR, S.R.L.

By: 
[name] PAOLO CORSINI
THE OWNER

Approved as to form:


Stefano Abbasciano, Esq.
Attorney for Harbor, s.r.l.

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Harbor s.r.l., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: _____

Judge of the Superior Court