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12

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

16 Coordination Proceeding
Special Title (Rule 3.350)

17 PROPOSITION 65 COCAMIDE DEA
18 CASES
19

) 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 HOME & BODY COMPANY,**
) **INC.**
)

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

) 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 Home & Body Company, Inc. (“HBC”).

4 **1.2** Shefa and HBC are collectively referred to as the “Parties” and
5 individually as a “Party.”

6 **1.3** Shefa is a limited liability company in California that is acting as a private
7 enforcer pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California
8 Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”), and is enforcing Proposition 65.

9 **1.4** HBC employs ten or more persons and is a person in the course of doing
10 business for purposes of Proposition 65.

11 **1.5** The products covered by this Consent Judgment (“Covered Products”) are
12 shampoos, hand washes, hand soaps, and body washes manufactured, distributed and/or sold by
13 HBC that contain coconut oil diethanolamine condensate (cocamide diethanolamine) (referred to
14 herein as “cocamide DEA”), including but not limited to Olive Oil Lavender shampoo, Verbena
15 hand wash, Fig. 77 Soap Society hand soap, Amber Rose Olive Leaf Olive Oil body wash,
16 Raspberry Lime hand soap, English Rose hand soap, French Vanilla hand soap, Sweet Pea hand
17 soap, Almond Tree body wash, Rich Olive Oil Citrus Mint hand soap, and Almond Oil Oatmeal
18 Honey hand soap.

19 **1.6** On or about July 1, 2013, Shefa served HBC 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 HBC 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.

26 **1.9** On or about March 11, 2014, Shefa named HBC as a defendant in the
27 complaint in the above-captioned action (“Action”), alleging Proposition 65 violations as to the
28

1 Covered Products and asserting causes of action against HBC under Proposition 65 and Cal. Bus. &
2 Prof. Code §§ 17200 *et seq.*

3 **1.10** HBC denies the claims of alleged violations asserted against it in the
4 Action and denies that it has any liability under Proposition 65 or Cal. Bus. & Prof. Code §§ 17200
5 *et seq.*

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, HBC
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.

21 **2.2** For purposes of this Consent Judgment, a Covered Product “contains
22 cocamide DEA” if cocamide DEA is an intentionally added ingredient in the Covered Product.

23 **2.3** Covered Products sold, distributed or otherwise put into the stream of
24 commerce by HBC prior to the Effective Date are nonetheless subject to the release of claims in
25 Section 4.

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

3 HBC shall pay a total civil penalty payment of \$3,000.00 within ten (10) days of Court
4 entry of this Consent Judgment, as follows: the civil penalty shall be apportioned in accordance
5 with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to
6 the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
7 remaining 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in
8 Section 3.3.

9 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

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

21 **3.3 Payment Procedures**

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

- 24 (a) one check to “OEHHA” in the amount of \$2,250.00;
25 (b) one check to “Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC” in
26 the amount of \$750.00;
27 (c) one check to “Law Office of Daniel N. Greenbaum” in the amount of \$9,500.00.
28

1 **3.4 Issuance of 1099 Forms**

2 After the settlement funds have been transmitted to Plaintiff's counsel, HBC shall issue
3 separate 1099 forms, as follows:

- 4 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
5 68-0284486) in the amount of \$2,250.00;
6 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$750.00, whose address
7 and tax identification number shall be furnished upon request;
8 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
9 amount of \$9,500.00;

10 **3.5 Issuance of Payments.**

11 **3.5.1** All payments owed to Plaintiff, pursuant to Section 3.1, shall
12 be delivered to the following payment address:

13
14 Daniel N. Greenbaum, Esq.
15 Law Office of Daniel N. Greenbaum
16 14752 Otsego Street
17 Sherman Oaks, CA 91403

18 **3.5.2** All payments owed to OEHHA (EIN: 68-0284486), pursuant
19 to Section 3.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the
20 following addresses:

21 Mike Gyrics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 P.O. Box 4010
25 Sacramento, CA 95812-4010

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

28 **4. CLAIMS COVERED AND RELEASED**

4.1 Full and Binding Resolution of Proposition 65 Allegations: This
Consent Judgment is a full, final and binding resolution of the Action as set forth in this Section 4.
Shefa, on behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the

1 public interest, waives all rights to participate in any action and releases and discharges (a) HBC, its
2 parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,
3 and their successors and assigns (collectively, the “Defendant Releasees”), and (b) finished product
4 or ingredient manufacturers, distributors, and suppliers, and all entities to whom any Defendant
5 Releasee directly or indirectly distributed or sold any Covered Products, including but not limited to
6 distributors, wholesalers, customers, retailers (including but not limited to the TJX Companies, Inc.
7 and Ross Stores, Inc.), franchisees, cooperative members, and Defendant Releasees’ licensors and
8 licensees (collectively, “Additional Releasees”), with respect to all claims, including, without
9 limitation, causes of action (in law or in equity), suits, liabilities, demands, obligations, damages,
10 costs, fines, penalties, expenses (including, but not limited to, investigation fees, expert fees and
11 attorneys’ fees) or losses (collectively “Claims”) regarding any violation of Proposition 65 based on
12 failure to warn about alleged exposures to cocamide DEA in any Covered Products shipped,
13 distributed or sold by HBC prior to the Effective Date.

14 **4.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,
15 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,
16 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a bar to
17 all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other statutory or
18 common law, that are or may be asserted against Defendant Releasees and Additional Releasees,
19 whether known or unknown, suspected or unsuspected, arising out of alleged exposures to, and/or
20 failure to warn of alleged exposures to, cocamide DEA or diethanolamine in the Covered Products
21 shipped, distributed or sold by HBC prior to the Effective Date.

22 **4.3 General Release:** It is possible that other Claims not known to the Parties
23 arising out of the facts alleged in the Notice or the Action will develop or be discovered. Shefa, on
24 behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assigns,
25 and not in its representative capacity, acknowledges that this Consent Judgment is expressly
26 intended to cover and include all such Claims, including all rights of action therefor. Shefa has full
27 knowledge of the contents of California Civil Code § 1542. Shefa acknowledges that the Claims
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1 released in Sections 4.1 and 4.2 include unknown Claims, and Shefa nevertheless waives California
2 Civil Code § 1542 as to any such unknown Claims. California Civil Code § 1542 reads as follows:

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

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

12 **4.4** Compliance with the terms of this Consent Judgment by HBC shall be
13 deemed to constitute compliance by any Defendant Releasee or Additional Releasee with
14 Proposition 65 regarding alleged exposures to cocamide DEA in the Covered Products.

15 **4.5 HBC’s Release:** On behalf of itself and Defendant Releasees, HBC
16 waives all rights to institute any form of action against Shefa or Shefa’s attorneys, consultants and
17 representatives for all actions taken or statements made in the course of this Action prior to the date
18 of the execution of this Consent Judgment.

19 **5. ENFORCEMENT**

20 **5.1** Any Party may file suit to enforce the terms and conditions contained in
21 this Consent Judgment, as provided in this Section 5.

22 **5.2** A Party may enforce any of the terms and conditions of this Consent
23 Judgment only after that Party first provides 30 days’ written notice to the Party allegedly failing to
24 comply with the terms and conditions of this Consent Judgment and attempts to resolve such Party’s
25 failure to comply in an open and good faith manner.

26 **6. COURT APPROVAL**

27 **6.1** This Consent Judgment is not effective until it is approved and entered by
28 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
within one year after it has been fully executed by all Parties.

1 **7. SOLE AGREEMENT**

2 **7.1** This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
4 discussions, negotiations, commitments or understandings related thereto, if any, are hereby merged
5 herein and therein.

6 **7.2** No representations, oral or otherwise, express or implied, other than those
7 specifically referred to in this Consent Judgment have been made by any Party hereto.

8 **7.3** No supplementation, modification, waiver or termination of this Consent
9 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

10 **7.4** No waiver of any of the provisions of this Consent Judgment shall be
11 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
12 shall such waiver constitute a continuing waiver.

13 **8. MODIFICATION**

14 **8.1** This Consent Judgment may be modified from time to time by (i) a written
15 agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or
16 (ii) upon a successful motion or application of any Party and the entry of a modified consent
17 judgment by the Court.

18 **9. GOVERNING LAW AND APPLICATION**

19 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
20 State of California and shall apply only to Covered Products that are sold or offered for sale in the
21 State of California.

22 **9.2** In the event that Proposition 65 is repealed, preempted or otherwise
23 rendered inapplicable by reason of law generally, or as to the Covered Products, then HBC shall
24 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
25 any Covered Products that are so affected.

26 **9.3** This Consent Judgment shall apply to and be binding upon Shefa and
27 HBC and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.
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1 **9.4** The Parties, including their counsel, have participated in the preparation of
2 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

3 **9.5** This Consent Judgment was subject to revision and modification by the
4 Parties and has been accepted and approved as to its final form by all Parties and their counsel.

5 **9.6** Each Party to this Consent Judgment agrees that any statute or rule of
6 construction providing that ambiguities are to be resolved against the drafting Party should not be
7 employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
8 waive California Civil Code § 1654.

9 **10. PROVISION OF NOTICE**

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

12 For Shefa: Daniel Greenbaum, Esq.,
13 Law Office of Daniel N. Greenbaum
14 14752 Otsego Street
 Sherman Oaks, CA 91403

15 For HBC: Hazem Haddad
16 Home and Body Company, Inc.
17 18352 Enterprise
 Huntington Beach Ca 92648

18 With a copy to:
19 Sarah Esmaili, Esq.
20 Arnold & Porter LLP
 Three Embarcadero Center, 10th Floor
 San Francisco, CA 94111

21 **11. ATTORNEYS' FEES**

22 **11.1** A Party who unsuccessfully brings or contests an action arising out of this
23 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and
24 costs.

25 **11.2** For purposes of Section 11.1, the prevailing Party refers to the Party that
26 was successful in obtaining relief more favorable to it than the relief that the other Party was
27 amenable to providing during the Parties' good faith attempt to resolve the dispute under Section 5.
28

1 **11.3** Nothing in this Section 11 shall preclude a Party from seeking an award of
2 sanctions pursuant to law.

3 **12. EXECUTION AND COUNTERPARTS**

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

7 **13. COURT APPROVAL**

8 **13.1** This Consent Judgment shall not be effective until the Effective Date.

9 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and HBC shall
10 make no objections to entry of this Consent Judgment. The Parties acknowledge that, pursuant to
11 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval
12 of this Consent Judgment, and Plaintiff shall draft and file such motion within fifteen days of the
13 date this Consent Judgment is fully executed by the Parties, and HBC shall not oppose it.

14 **13.2** If this Consent Judgment is not entered by the Court, it shall be of no force
15 or effect.

16 **13.3** This Court shall retain jurisdiction of this matter to implement or modify
17 the Consent Judgment.

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

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

21 **15. AUTHORIZATION**

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

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

27 **15.3** Except as explicitly provided herein, each Party is to bear its own fees and
28 costs.

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

3 **16.1** This Consent Judgment came before this Court upon the request of the
4 Parties. The Parties request the Court to review this Consent Judgment and to make the following
5 findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

11

12 AGREED TO:

13 Dated: 3/13/14

SHEFA LMV, LLC

14

15 By: 
16 _____

17 [name]

18 Approved as to form:

19 
20 _____

21 Daniel Greenbaum, Esq.
22 Attorney for Shefa LMV, LLC

23

24

25

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1 Dated: 3/12/14

HOME & BODY COMPANY, INC.

2
3 By: 
4 Hazem Haddad

5
6 Approved as to form:

7
8 Sarah Esmaili
9 Sarah Esmaili, Esq.
10 Attorney for Home and Body Company,
11 Inc.

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Home and Body 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