

1 LAW OFFICE OF DANIEL N. GREENBAUM  
Daniel N. Greenbaum, Esq. (SBN 268104)  
2 14752 Otsego Street  
3 Sherman Oaks, CA 91403  
Telephone: (310) 200-2631  
4 Facsimile: (424) 243-7689  
Email: danielgreenbaumesq@gmail.com

5 Attorney for Plaintiff SHEFA LMV, LLC  
6

7 Ronie M. Schmelz (SBN 130798)  
Edwards Wildman Palmer LLP  
8 1901 Avenue of the Stars, Suite 1700  
Los Angeles, California 90067  
9 Telephone: 310.860.8708  
Facsimile: 310.860.3800  
10 Email: rschmelz@edwardswildman.com

11 Attorney for Defendant Luxo Laboratories, LTD.  
12

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

15 Coordination Proceeding  
16 Special Title (Rule 3.350)

17 PROPOSITION 65 COCAMIDE DEA  
18 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 LUXO LABORATORIES, LTD.**  
)

) 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 LMV, LLC  
3 (“Shefa”) and Defendant Luxo Laboratories, Ltd. (“Luxo”). Shefa and Luxo are collectively  
4 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 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**     Luxo is a corporation that manufactures, distributes, and/or sells liquid soaps in the  
9 State of California or has done so in the past.

10            **1.4**     The products covered by this Consent Judgment (“Covered Products”) are hand  
11 soaps distributed and/or sold by Luxo in the State of California that contain coconut oil  
12 diethanolamine condensate (cocamide diethanolamine) (referred to herein as “cocamide DEA”),  
13 including but not limited to Macadamia & White Ginger Body Wash. For purposes of this Consent  
14 Judgment, a Covered Product “contains cocamide DEA” if cocamide DEA is an intentionally added  
15 ingredient in the Covered Product.

16            **1.5**     On or about July 1, 2013 and July 31, 2013, Shefa served Luxo and various public  
17 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &  
18 Safety Code § 25249.7(d) (the “Notices”), alleging that Luxo was in violation of Proposition 65.

19            **1.6**     Shefa’s Notices alleges that the Covered Products expose consumers to cocamide  
20 DEA without the requisite Proposition 65 warnings.

21            **1.7**     Cocamide DEA is listed pursuant to Proposition 65 as a chemical known to the State  
22 of California to cause cancer.

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

26            **1.9**     Luxo denies the claims of alleged violations asserted against it in the Action and  
27 denies that it has any liability under Proposition 65 or Cal. Bus. & Prof. Code §§ 17200 *et seq.*  
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1           **1.10** The Parties enter into this Consent Judgment to resolve all Proposition 65 claims  
2 concerning the Covered Products set forth in the Notices and the Action.

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

7           **1.12** Nothing in this Consent Judgment shall prejudice, waive, or impair any right,  
8 remedy, argument, or defense the Parties may have in this or any other or future legal proceedings.

9           **1.13** The term “Effective Date” means the date on which this Consent Judgment is  
10 approved and entered by the Court.

## 11 **2. INJUNCTIVE RELIEF**

12           **Reformulation of Covered Products.** To the extent it has not already done so, as of the  
13 Effective Date, Luxo shall not manufacture, distribute, sell, or offer for sale any Covered Product  
14 that will be sold or offered for sale in California to consumers. Covered Products sold, distributed,  
15 or otherwise put into the stream of commerce by Luxo prior to the Effective Date are subject to the  
16 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           Luxo shall pay a total civil penalty payment of \$1,000.00 within ten (10) days of the  
20 Court’s entry of this Consent Judgment, as follows: the civil penalty shall be apportioned in  
21 accordance with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds  
22 remitted to the State of California’s Office of Environmental Health Hazard Assessment  
23 (“OEHHA”) and the remaining 25% of the penalty remitted to Plaintiff, both pursuant to the  
24 procedures set forth in 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  
28

1 this fee issue to be resolved after the material terms of the agreement had been settled. Luxo  
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, Luxo shall pay the  
7 amount of \$6,500.00 for fees and costs incurred investigating, litigating, and enforcing this matter,  
8 which sum shall include the fees and costs incurred (and yet to be incurred) negotiating, drafting,  
9 and obtaining 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 above shall be made within ten (10) days  
12 after the Court’s entry of this Consent Judgment, in three checks made payable as follows:

- 13 (a) one check to “OEHHA” in the amount of \$750.00;
- 14 (b) one check to “Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC” in  
15 the amount of \$250.00; and
- 16 (c) one check to “Law Office of Daniel N. Greenbaum” in the amount of \$6,500.00.

17 **3.4 Issuance of 1099 Forms**

18 After the settlement funds have been transmitted to Plaintiff’s counsel, Luxo shall issue  
19 separate 1099 forms, as follows:

- 20 (a) one 1099 form to the “Office of Environmental Health Hazard Assessment” (EIN:  
21 68-0284486) in the amount of \$750.00;
- 22 (b) a second 1099 form to “Shefa LMV, LLC” in the amount of \$250.00, whose address  
23 and tax identification number shall be furnished upon request; and
- 24 (c) a third 1099 to “Law Office of Daniel N. Greenbaum” (EIN: 46-4580172) in the  
25 amount of \$6,500.00.

26 **3.5 Issuance of Payments.**

1                   **3.5.1** All payments owed to Plaintiff, pursuant to Section 3.1, shall be delivered to  
2 the following payment address:

3                                   Daniel N. Greenbaum, Esq.  
4                                   Law Office of Daniel N. Greenbaum  
5                                   14752 Otsego Street  
6                                   Sherman Oaks, CA 91403

7                   **3.5.2** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1,  
8 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following address:

9                                   Mike Gyrics  
10                                  Fiscal Operations Branch Chief  
11                                  Office of Environmental Health Hazard Assessment  
12                                  P.O. Box 4010  
13                                  Sacramento, CA 95812-4010

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

16 **4. CLAIMS COVERED AND RELEASED**

17                   **4.1 Full and Binding Resolution of Proposition 65 Allegations:** This Consent  
18 Judgment is a full, final, and binding resolution of the Action as set forth in this Section 4. Shefa,  
19 on behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the public  
20 interest, waives all rights to participate in any action and releases and discharges (a) Luxo, its  
21 parents, shareholders, divisions, subdivisions, subsidiaries, affiliates, partners, sister companies, and  
22 each of their directors, officers, members, employees, and attorneys, successors, and assigns  
23 (collectively, the “Defendant Releasees”), and (b) finished product or ingredient manufacturers,  
24 distributors, and suppliers, and all entities to whom any Defendant Releasee directly or indirectly  
25 sell or sold or distributed any Covered Products, including, but not limited to, distributors,  
26 wholesalers, customers, retailers (including, but not limited to, The TJX Companies, Inc.),  
27 franchisees, cooperative members, and each of Defendant Releasees’ licensors and licensees  
28 (collectively, “Additional Releasees”), with respect to all claims, including, without limitation,  
causes of action (in law or in equity), suits, liabilities, demands, obligations, damages, costs, fines,  
penalties, expenses (including, but not limited to, investigation fees, expert fees, and attorneys’

1 fees) or losses (collectively “Claims”) regarding any alleged violation of Proposition 65 based on  
2 failure to warn about alleged exposures to cocamide DEA in any Covered Products shipped,  
3 distributed, or sold by Luxo and/or any of its retailers, including, but not limited to, The TJX  
4 Companies, Inc., prior to the Effective Date.

5 **4.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,  
6 representatives, attorneys, successors, and assignees, and in its representative capacity on behalf of  
7 the public interest, hereby provides a release that shall be effective as a full and final accord and  
8 satisfaction, as a bar to all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*,  
9 and any other statutory or common law that are or may be asserted against Defendant Releasees and  
10 Additional Releasees, whether known or unknown, suspected or unsuspected, arising out of alleged  
11 exposures to, and/or failure to warn of alleged exposures to the Covered Products shipped,  
12 distributed, or sold by Luxo prior to the Effective Date.

13 **4.3 General Release:** It is possible that other Claims not known to the Parties arising  
14 out of the facts alleged in the Notices or the Action will develop or be discovered. Shefa, on behalf  
15 of itself, its past and current agents, representatives, attorneys, successors, and assigns, and not in its  
16 representative capacity, acknowledges that this Consent Judgment is expressly intended to cover  
17 and include all such Claims, including all rights of action therefor. Shefa has full knowledge of the  
18 contents of California Civil Code § 1542. Shefa acknowledges that the Claims released in Sections  
19 4.1 and 4.2 include unknown Claims, and Shefa nevertheless waives California Civil Code § 1542  
20 as to any such unknown Claims. California Civil Code § 1542 reads as follows:

21 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
22 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**  
23 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
24 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**  
25 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**  
26 **HER SETTLEMENT WITH THE DEBTOR.”**

25 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or  
26 assignees, and not in its representative capacity, acknowledges and understands the significance and  
27 consequences of this specific waiver of California Civil Code § 1542.  
28

1           **4.4**     Compliance with the terms of this Consent Judgment by Luxo shall be deemed to  
2 constitute compliance by any Defendant Releasee and Additional Releasee with Proposition 65  
3 regarding alleged exposures to cocamide DEA in the Covered Products.

4           **4.5 Luxo's Release:** On behalf of itself and Defendant Releasees, Luxo waives all  
5 rights to institute any form of action against Shefa or Shefa's attorneys, consultants, and  
6 representatives for all actions taken or statements made in the course of this Action prior to the date  
7 of the execution of this Consent Judgment.

8           **5.     ENFORCEMENT**

9           Any Party may file suit to enforce the terms and conditions contained in this Consent  
10 Judgment, as provided in this Section 5. A Party may enforce any of the terms and conditions of  
11 this Consent Judgment only after that Party first provides thirty (30) days' written notice to the  
12 Party allegedly failing to comply with the terms and conditions of this Consent Judgment and  
13 attempts to resolve such Party's failure to comply in an open and good faith manner.

14           **6.     SOLE AGREEMENT**

15           **6.1**     This Consent Judgment contains the sole and entire agreement and understanding of  
16 and between the Parties with respect to the entire subject matter hereof, and any and all prior  
17 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
18 merged herein.

19           **6.2**     No representations, oral or otherwise, express or implied, other than those  
20 specifically referred to in this Consent Judgment have been made by any Party hereto.

21           **6.3**     No supplementation, modification, waiver, or termination of this Consent Judgment  
22 shall be binding unless executed in writing by the Parties.

23           **6.4**     No waiver of any of the provisions of this Consent Judgment shall be deemed or  
24 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such  
25 waiver constitute a continuing waiver.

26           **7.     MODIFICATION**

1 This Consent Judgment may be modified from time to time by (i) a written agreement of the Parties  
2 and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful  
3 motion or application of any Party and the entry of a modified consent judgment by the Court.

4 **8. GOVERNING LAW AND APPLICATION**

5 **8.1** The terms of this Consent Judgment shall be governed by the laws of the State of  
6 California and shall apply only to Covered Products that are sold or offered for sale in the State of  
7 California.

8 **8.2** In the event (i) Proposition 65 is repealed, preempted, or otherwise rendered  
9 inapplicable by reason of law generally, or as to the Covered Products specifically; (ii) the use of  
10 use of cocamide DEA in products or any other products sold in the State of California is removed  
11 from, and no longer subject to, Proposition 65; (iii) OEHHA establishes a “no significant risk level”  
12 (“NSRL”) for cocamide DEA or that are met by the Covered Products; or (iv) Covered Products  
13 may be lawfully sold without a Proposition 65 Warning, then Luxo shall have no further obligations  
14 pursuant to this Consent Judgment with respect to, and to the extent that, any of the Covered  
15 Products are so affected.

16 **8.3** This Consent Judgment shall apply to and be binding upon Shefa and Luxo and each  
17 of their respective, divisions, subdivisions, subsidiaries, successors, and assigns.

18 **8.4** The Parties, including their counsel, have participated in the preparation of this  
19 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

20 **8.5** This Consent Judgment was subject to revision and modification by the Parties and  
21 has been accepted and approved as to its final form by all Parties and their counsel.

22 **8.6** Each Party to this Consent Judgment agrees that any statute or rule of construction  
23 providing that ambiguities are to be resolved against the drafting Party should not be employed in  
24 the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California  
25 Civil Code § 1654.

26 **9. PROVISION OF NOTICE**

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1 All notices required pursuant to this Consent Judgment and correspondence shall be sent by  
2 first class and/or electronic mail to the following individuals at the addresses noted:

3 For Shefa: Daniel Greenbaum, Esq.  
4 Law Office of Daniel N. Greenbaum  
5 14752 Otsego Street  
6 Sherman Oaks, CA 91403  
7 danielgreenbaumesq@gmail.com

8 For Luxo: Ronie M. Schmelz, Esq.  
9 Edwards Wildman Palmer LLP  
10 1901 Avenue of the Stars, Suite 1700  
11 Los Angeles, California 90067  
12 **rschmelz@edwardswildman.com**

### 10. ATTORNEYS' FEES

11 **10.1** A Party who unsuccessfully brings or contests an action arising out of this Consent  
12 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs.

13 **10.2** For purposes of Section 10.1, the prevailing Party refers to the Party that was  
14 successful in obtaining relief more favorable to it than the relief the other Party was amenable to  
15 providing during the Parties' good faith attempt to resolve the dispute under Section 5.

16 **10.3** Nothing in this Section 10 shall preclude a Party from seeking an award of sanctions  
17 pursuant to law.

### 18 11. EXECUTION AND COUNTERPARTS

19 This Consent Judgment may be executed in counterparts and by means of facsimile and/or  
20 portable document format (pdf), which taken together shall be deemed to constitute one document.

### 21 12. COURT APPROVAL

22 **12.1** This Consent Judgment is not effective until the Effective Date.

23 **12.2** Shefa shall prepare and file a Motion for Approval of this Consent Judgment and  
24 Luxo shall make no objections to entry of this Consent Judgment.

25 **12.3** If for any reason this Consent Judgment is not entered by the Court, it shall be of no  
26 force or effect and shall never be introduced into evidence or otherwise used in any proceeding for  
27 any purpose other than to allow the Court to determine if there was a material breach of Section  
28 12.2 above.

1           **12.4** This Court shall retain jurisdiction of this matter to implement or modify the Consent  
2 Judgment.

3  
4 **13. AUTHORIZATION**

5           **13.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
6 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute  
7 the Consent Judgment on behalf of the Party represented and legally bind that Party.

8           **13.2** The undersigned have read, understand, and agree to all of the terms and conditions  
9 of this Consent Judgment.

10           **13.3** Except as explicitly provided herein, each Party is to bear its own fees and costs in  
11 connection with the Action.

12 AGREED TO:

13 Dated: 3/3/2014

SHEFA LMV, LLC

14  
15 By:   
16 \_\_\_\_\_

Alisa Fried

17 Approved as to form:

18 \_\_\_\_\_  
19 Daniel Greenbaum, Esq.  
20 Attorney for Shefa LMV, LLC

21 Dated:

LUXO LABORATORIES, LTD.

22  
23 By: \_\_\_\_\_

[name]

24  
25 Approved as to form:

26  
27 \_\_\_\_\_  
28 Ronie M. Schmelz, Esq.  
Attorney for Luxo Laboratories, Ltd.

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12 AGREED TO:

13 Dated: 3/3/2014

SHEFA LMV, LLC

14  
15 By:   
16 \_\_\_\_\_

Alisa Fried

17 Approved as to form:

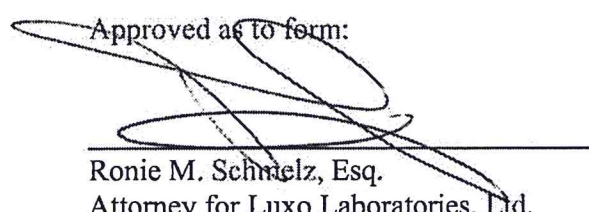
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19 \_\_\_\_\_  
20 Daniel Greenbaum, Esq.  
Attorney for Shefa LMV, LLC

21 Dated: 3/11/14

LUXO LABORATORIES, LTD.

22  
23 By: DAVID KAUFMAN   
24 \_\_\_\_\_  
25 [name]

26 Approved as to form:

27   
28 \_\_\_\_\_  
Ronie M. Schmelz, Esq.  
Attorney for Luxo Laboratories, Ltd.

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**ORDER AND JUDGMENT**

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

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

\_\_\_\_\_  
Judge of the Superior Court