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18 JOHN PAUL MITCHELL SYSTEMS

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF ALAMEDA

21 Coordination Proceeding
22 Special Title (Rule 3.350)

23 PROPOSITION 65 COCAMIDE DEA
24 CASES

25) JUDICIAL COUNCIL COORDINATION
26) PROCEEDING NO: 4765

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

29) **[PROPOSED] CONSENT JUDGMENT**
30) **AS TO JOHN PAUL MITCHELL**
31) **SYSTEMS**

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

33) Action filed: October 11, 2013

1 **1. INTRODUCTION**

2 **1.1** This Consent Judgment is entered into by and between Plaintiff Shefa
3 LMV, LLC (“Shefa”) and Defendant John Paul Mitchell Systems, a California corporation
4 (“JPMS”).

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

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

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

12 **1.5** The products covered by this Consent Judgment (“Covered Products”) are
13 shampoos, hand washes, hand soaps, body washes and liquid soaps manufactured, distributed
14 and/or sold by JPMS that contain or are alleged to contain coconut oil diethanolamine condensate
15 (cocamide diethanolamine) (referred to herein as “Cocamide DEA”), including but not limited to
16 Tea Tree Special Shampoo, which are distributed, marketed, sold, or offered for sale in California
17 by JPMS or any supplier, distributor, or retailer and any of their subsidiaries or affiliates..

18 **1.6** On or about July 11, 2013, Shefa served JPMS and various public
19 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
20 Safety Code § 25249.7(d) (the “Notice”), alleging that JPMS was in violation of Proposition 65.

21 **1.7** Shefa’s Notice alleges that the Covered Products expose consumers to
22 Cocamide DEA without the requisite Proposition 65 warnings.

23 **1.8** Cocamide DEA is listed pursuant to Proposition 65 as a chemical known
24 to the State of California to cause cancer.

25 **1.9** On or around January 14, 2014, Shefa filed a Complaint in the above-
26 captioned action (“Action”), alleging Proposition 65 violations as to the Covered Products and
27 asserting causes of action against JPMS under Proposition 65.

1 **1.10** JPMS denies the claims of alleged violations asserted against it in the
2 Action and denies that it has any liability under Proposition 65.

3 **1.11** The Parties enter into this Consent Judgment to resolve all Proposition 65
4 claims concerning the Covered Products set forth in the Notice and the Action.

5 **1.12** Nothing in this Consent Judgment shall be construed as an admission by
6 the Parties of any fact, finding, conclusion of law, issue of law or violation of law, nor shall
7 compliance with this Consent Judgment constitute or be construed as an admission by the Parties of
8 any fact, conclusion of law, issue of law, or violation of law.

9 **1.13** Nothing in this Consent Judgment shall prejudice, waive or impair any
10 right, remedy, argument or defense the Parties may have in this or any other or future legal
11 proceedings.

12 **1.14** The term “Effective Date” means the date on which this Consent
13 Judgment is approved and entered by the Court.

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15 **2. INJUNCTIVE RELIEF**

16 **2.1 Reformulation of Covered Products.** As of the Effective Date, JPMS
17 shall not manufacture, distribute, sell or offer for sale any Covered Product that contains Cocamide
18 DEA that will be sold or offered for sale to California consumers, and all JPMS products have been
19 reformulated without Cocamide DEA.

20 **2.2** For purposes of this Consent Judgment, a Covered Product “contains
21 Cocamide DEA” if Cocamide DEA is an intentionally added ingredient in the Covered Product.

22 **2.3 Sell through period.** JPMS’s Products that were manufactured,
23 distributed, shipped, sold that are otherwise in the stream of commerce prior to the Effective Date
24 shall be subject to the release of liability pursuant to Section 5 of this Consent Judgment, without
25 regard to when such Products were, or are in the future, sold to consumers. As a result, the
26 obligations of JPMS as set forth in this Consent Judgment, including but not limited Section 2.1, do
27 not apply to these products.

1 **3. ENFORCEMENT**

2 Shefa may, by motion or application for an order to show cause before the Alameda County
3 Superior Court, or, if the case is transferred back to the Los Angeles County Superior Court at the
4 conclusion of the Coordination Action, the Los Angeles Superior Court, may enforce the terms and
5 conditions contained in this Consent Judgment. Prior to bringing any motion or application to
6 enforce the requirements of Section 2 above, Shefa shall provide the Defendant with Notice of
7 Violation and a copy of any test results which purportedly support Shefa's Notice of Violation. The
8 Parties shall then meet and confer regarding the basis for Shefa's anticipated motion or application
9 in an attempt to resolve the matter informally, including providing Settling Defendant a reasonable
10 opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at
11 informal resolution fail, Shefa may file its enforcement motion or application. The prevailing party
12 on any motion to enforce this Consent Judgment shall be entitled to its reasonable attorney's fees
13 and costs incurred as a result of such motion or application.

14 **4. MONETARY PAYMENTS**

15 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

16 JPMS shall pay a total civil penalty payment of \$4,000.00 within ten (10) days of Court
17 entry of this Consent Judgment, as follows: the civil penalty shall be apportioned in accordance
18 with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to
19 the 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 4.3.

22 **4.2 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. JPMS
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

1 Plaintiff and its counsel under general contract principles and the private attorney general doctrine
2 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,
3 except fees that may be incurred on appeal. Under these legal principles, JPMS shall pay the
4 amount of \$12,000.00 for fees and costs incurred investigating, litigating and enforcing this matter,
5 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining
6 the Court's approval of this Consent Judgment in the public interest.

7 **4.3 Payment Procedures**

8 All payments required by Sections 4.1 and 4.2 shall be within ten (10) days Court entry of
9 this Consent Judgment, in three checks made payable as follows:

- 10 (a) one check to "OEHHA" in the amount of \$3,000.00;
- 11 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in
12 the amount of \$1,000.00;
- 13 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$12,000.00.

14 **4.4 Issuance of 1099 Forms**

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

- 17 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
18 68-0284486) in the amount of \$3,000.00;
- 19 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$1,000.00, whose
20 address and tax identification number shall be furnished upon request;
- 21 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
22 amount of \$12,000.00;

23 **4.5 Issuance of Payments.**

24 **4.5.1** All payments owed to Plaintiff, pursuant to Section 4.1, shall
25 be delivered to the following payment address:

26 Daniel N. Greenbaum, Esq.
27 Law Office of Daniel N. Greenbaum
28 14752 Otsego Street

Sherman Oaks, CA 91403

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3 **4.5.2** All payments owed to OEHHA (EIN: 68-0284486), pursuant
4 to Section 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the
5 following addresses:

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

11 With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum at
12 the address set forth above in 4.5.1, as proof of payment to OEHHA.

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14 **5. CLAIMS COVERED AND RELEASED**

15 **5.1 Full and Binding Resolution of Proposition 65 Allegations:** This
16 Consent Judgment is a full, final and binding resolution of the Action as set forth in this Section 5.
17 Shefa, on behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the
18 public interest, waives all rights to participate in any action and releases and discharges (a) JPMS,
19 its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and
20 affiliates, and their successors and assigns (collectively, the "Defendant Releasees"), and (b)
21 finished product or ingredient manufacturers, distributors, and suppliers, and all entities to whom
22 any Defendant Releasee directly or indirectly distributed or sold any Covered Products, including
23 but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members,
24 and Defendant Releasees' licensors and licensees (collectively, "Additional Releasees"), with
25 respect to all claims, including, without limitation, causes of action (in law or in equity), suits,
26 liabilities, demands, obligations, damages, costs, fines, penalties, expenses (including, but not
27 limited to, investigation fees, expert fees and attorneys' fees) or losses (collectively "Claims")
28 regarding any violation of Proposition 65 based on failure to warn about alleged exposures to
Cocamide DEA in any Covered Products shipped, distributed or sold by JPMS prior to the Effective
Date.

1 **5.2 Individual Release:** Shefa, on behalf of itself, its past and current
2 agents, representatives, attorneys, and successors and/or assignees, and *not* in its representative
3 capacity, hereby provides a release that shall be effective as a full and final accord and satisfaction,
4 as a bar to all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other
5 statutory or common law, that are or may be asserted against Defendant Releasees and Additional
6 Releasees, whether known or unknown, suspected or unsuspected, arising out of alleged exposures
7 to, and/or failure to warn of alleged exposures to, Cocamide DEA in the Covered Products shipped,
8 distributed or sold by JPMS prior to the Effective Date.

9 **5.3 General Release:** It is possible that other Claims not known to the Parties
10 arising out of the facts alleged in the Notice or the Action will develop or be discovered. Shefa, on
11 behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assigns,
12 and not in its representative capacity, acknowledges that this Consent Judgment is expressly
13 intended to cover and include all such Claims, including all rights of action therefor. Shefa has full
14 knowledge of the contents of California Civil Code § 1542. Shefa acknowledges that the Claims
15 released in Section 5.2 include unknown Claims, and Shefa nevertheless waives California Civil
16 Code § 1542 as to any such unknown Claims. California Civil Code § 1542 reads as follows:

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

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

24 **5.4** Compliance with the terms of this Consent Judgment by JPMS shall be
25 deemed to constitute compliance by any Defendant Releasee or Additional Releasee with
26 Proposition 65 regarding alleged exposures to Cocamide DEA in the Covered Products.
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1 **5.5 JPMS's Release:** On behalf of itself and Defendant Releasees, JPMS
2 waives all rights to institute any form of action against Shefa or Shefa's attorneys, consultants and
3 representatives for all actions taken or statements made in the course of this Action prior to the date
4 of the execution of this Consent Judgment.

5 **6. COURT APPROVAL**

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

9 **7. SOLE AGREEMENT**

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

14 **7.2** No representations, oral or otherwise, express or implied, other than those
15 specifically referred to in this Consent Judgment have been made by any Party hereto.

16 **7.3** No supplementation, modification, waiver or termination of this Consent
17 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

18 **7.4** No waiver of any of the provisions of this Consent Judgment shall be
19 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
20 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**

1 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
3 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.

4 **14.2** The undersigned have read, understand and agree to all of the terms and
5 conditions of this Consent Judgment.

6 **14.3** Except as explicitly provided herein, each Party is to bear its own fees and
7 costs.

8 **15. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY**
9 **OF CONSENT JUDGMENT**

10 **15.1** This Consent Judgment came before this Court upon the request of the
11 Parties. The Parties request the Court to review this Consent Judgment and to make the following
12 findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

18
19 AGREED TO:

SHEFA LMV, LLC

20 Dated: 5/21/14

By: 

Alisa Fried

21
22
23
24 Approved as to form:


25
26 Daniel Greenbaum, Esq.
Attorney for Shefa LMV, LLC

Dated: 5-14-14

JOHN PAUL MITCHELL SYSTEMS,
LLC

By: Luke Jacobellis
Luke Jacobellis, President

5-15-14

Approved as to form:

Michael A. Re
Michaeline A. Re
Attorney for John Paul Mitchell Systems,
a California corporation

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and John Paul Mitchell Systems, LLC, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: _____

Judge of the Superior Court