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SHEFA LMV, LLC

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9 Canada L6T 5E7
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11 Attorneys for Defendant
EVERGREEN CONSUMER BRANDS, ULC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES
15 CENTRAL DISTRICT

17 SHEFA LMV, LLC,)

18 Plaintiff,)

19 v.)

20 EVERGREEN CONSUMER BRANDS, ULC;)
21 and DOES 1 THROUGH 25, Inclusive)

22 Defendant.)

Case No.: BC 529481

Unlimited Jurisdiction

Honorable Richard Fruin
Dept. 15

**[PROPOSED] CONSENT JUDGMENT
AND ORDER THERON**

(Health and Safety Code Section 25249.5
et seq.)

TOXIC TORT / ENVORONMENTAL

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and Evergreen Consumer Brands**

3 This Settlement Agreement is entered into by and between plaintiff Shefa LMV, LLC (“Shefa
4 LMV”) and EVERGREEN CONSUMER BRANDS (“EVERGREEN”), with Shefa LMV and
5 EVERGREEN collectively referred to as the “parties,” and individually as a “party.” Shefa LMV is
6 an entity organized in the State of California, which has asserted that it seeks to promote awareness
7 of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
8 substances contained in consumer and commercial products. Shefa LMV alleges that EVERGREEN
9 employs ten or more persons and is a person in the course of doing business for purposes of the Safe
10 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et*
11 *seq.* (“Proposition 65”).

12 **1.2. General Allegations**

13 Shefa LMV alleges that EVERGREEN has manufactured, imported, distributed and/or sold
14 shampoo products that contain Cocamide Diethanolamine (“Cocamide DEA”) without the requisite
15 Proposition 65 warnings. Cocamide DEA is on the Proposition 65 list as known to cause birth
16 defects and other reproductive harm.

17 **1.3. Product Description**

18 As used in this Settlement Agreement, “Products” shall mean products containing Cocamide
19 DEA, specifically, Silkience Hair Care 2-1 Shampoo & Conditioner and Silkience Moisturizing
20 Shampoo, that are manufactured, imported, distributed and/or sold by EVERGREEN for sale in the
21 State of California.

22 **1.4. Notice of Violation**

23 On July 31, 2013, Shefa LMV served EVERGREEN and various public enforcement agencies
24 with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with
25 notice alleging that EVERGREEN was in violation of Proposition 65 for failing to warn consumers
26 and customers that the Products exposed users in California to Cocamide DEA. No public enforcer
27 has diligently prosecuted the allegations set forth in the Notice.

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1 **1.5. No Admission**

2 EVERGREEN denies the material, factual and legal allegations contained in Shefa LMV's
3 Notice and maintains that it has at all times been in compliance with all laws and all products that it
4 has sold, manufactured, imported and/or distributed in California, including the Products. Nothing in
5 this Settlement Agreement shall be construed as an admission by EVERGREEN of any fact, finding,
6 issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be
7 construed as an admission by EVERGREEN of any fact, finding, conclusion, issue of law or
8 violation of law. However, this Section shall not diminish or otherwise affect EVERGREEN's
9 obligations, responsibilities and duties under this Settlement Agreement.

10 **1.6. Consent to Jurisdiction**

11 For purposes of this Settlement Agreement only, the parties stipulate that California courts
12 have jurisdiction over EVERGREEN as to the allegations contained in the Notice, that venue is
13 proper in the County of Los Angeles, and that this Court has jurisdiction to enter and enforce the
14 provisions of this Settlement Agreement.

15 **1.7. Execution Date**

16 For purposes of this Settlement Agreement, the term "Execution Date" shall mean the date
17 this Settlement Agreement is signed by both parties.

18 **1.8. Effective Date**

19 For purposes of this Settlement Agreement, the term "Effective Date" shall mean November
20 12, 2013.

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22 **2. INJUNCTIVE RELIEF: WARNING OR REFORMULATION**

23 **2.1. Warning Obligation For Cocamide DEA-Containing Products**

24 Commencing on November 15, 2013, EVERGREEN shall sell, distribute or otherwise
25 deliver, or cause to be sold, distributed or otherwise delivered into California, only Products
26 reformulated to remove Cocamide DEA as an ingredient, unless such Products are sold or shipped
27 with one of the clear and reasonable warnings set forth in Section 2.2.

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1 **2.2. Mandatory Warning Procedures**

2 Each warning required by Section 2.1 shall be prominently placed upon a product's label or
3 other labeling or displayed at the retail outlet with such conspicuousness, as compared with other
4 words, statements, designs, or devices in the label, labeling or display as to render it likely to be read
5 and understood by an ordinary individual under customary conditions of purchase or use. Each
6 warning shall be provided in a manner such that the consumer or user understands to which specific
7 Product the warning applies, so as to minimize the risk of consumer confusion.

8 **2.3. Sell Through Period**

9 Notwithstanding the restrictions of Section 2.1, any of EVERGREEN's downstream
10 customers that have in inventory any of the Covered Products that contain Cocamide DEA that
11 exceed the Cocamide DEA Limits shall have six (6) months from the Effective Date without penalty
12 or cost to sell such Covered Products or otherwise display a warning pursuant to Proposition 65.

13
14 **3. MONETARY PAYMENTS**

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

16 EVERGREEN shall pay a total civil penalty payment of \$5,000, within ten (10) days of
17 Courts entry of this Consent Judgment, as follows: the civil penalty shall be apportioned in
18 accordance with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds
19 remitted to the State of California's Office of Environmental Health Hazard Assessment
20 ("OEHHA") and the remaining 25% of the penalty remitted to Shefa LMV, both pursuant to the
21 procedures set forth in Section 3.3.

22 **3.2. Reimbursement of Shefa LMV's Fees and Costs**

23 The parties acknowledge that Shefa LMV 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.
26 EVERGREEN expressed a desire to resolve the fee and cost issue after the other settlement terms
27 had been agreed. The Parties then attempted to (and did) reach an accord on the compensation due
28 to Shefa LMV and its counsel under general contract principles and the private attorney general

1 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in this
2 matter, except fees that may be incurred on appeal. Under these legal principles, EVERGREEN
3 shall pay the amount of \$6,750 for fees and costs incurred investigating, litigating and enforcing this
4 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
5 obtaining approval of this Settlement Agreement 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 the Courts
8 entry of this Consent Judgment, in three checks made payable as follows:

- 9 (a) one check to “OEHHA” in the amount of \$3,750;
- 10 (b) one check to “Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC” in
11 the amount of \$1,250;
- 12 (c) one check to “Law Office of Daniel N. Greenbaum” in the amount of \$6,750.

13 **3.4. Issuance of 1099 Forms**

14 EVERGREEN shall issue separate 1099 forms, as follows:

- 15 (a) one 1099 form to the “Office of Environmental Health Hazard Assessment” (EIN: 68-
16 0284486) in the amount of \$3,750;
- 17 (b) a second 1099 form to “Shefa LMV, LLC” in the amount of \$1,250, whose address and
18 tax identification number shall be furnished to defendant at the time this settlement is
19 executed.
- 20 (c) a third 1099 to “Law Office of Daniel N. Greenbaum” (EIN: 45-3084082) in the amount
21 of \$6,750.

22 **3.5. Issuance of Payments.**

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

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

28 **3.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1,

1 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

2 Mike Gyrics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
P.O. Box 4010
5 Sacramento, CA 95812-4010

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

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1. Shefa LMV’s Release of EVERGREEN**

10 Plaintiff, acting on its own behalf, releases EVERGREEN, its parents, subsidiaries, affiliated
11 entities that are under common ownership, directors, officers, employees, attorneys, and each entity
12 to whom EVERGREEN directly or indirectly distributes or sells Products, including, but not limited
13 to, downstream distributors, wholesalers, customers, retailers, including specifically, but not limited
14 to Big Lots Inc., and any subsidiary, franchisees, cooperative members, licensors, and licensees
15 (“Releasees”), from all claims for violations of Proposition 65 based on exposure to Cocamide DEA
16 from the Products as set forth in the Notice. Compliance with the terms of this Settlement Agreement
17 constitutes compliance with Proposition 65, for Plaintiff’s purposes only, with respect to exposures to
18 Cocamide DEA from the Products as set forth in the Notice.

19 Shefa LMV, also, in its individual capacity only and not in its representative capacity,
20 provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar
21 to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
22 liabilities and demands of Shefa LMV of any nature, character or kind, whether known or unknown,
23 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Cocamide
24 DEA in the Products manufactured, distributed or sold by EVERGREEN.

25 **4.2. EVERGREEN’s Release of Shefa LMV**

26 EVERGREEN on behalf of itself, its past and current agents, representatives, attorneys,
27 successors, and/or assignees, hereby waives any and all claims against Shefa LMV, its attorneys and
28 other representatives, for any and all actions taken or statements made (or those that could have been

1 taken or made) by Shefa LMV and its attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
3 respect to the Products.

4 **5. SEVERABILITY**

5 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this
6 Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable
7 provisions remaining shall not be adversely affected.

8 **6. GOVERNING LAW**

9 The terms of this Settlement Agreement shall be governed by the laws of the State of
10 California and the obligations of EVERGREEN hereunder as to the Products apply only within the
11 State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered
12 inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are
13 rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered
14 inapplicable by reason of law generally as to the Products, including, without limitation, the removal
15 of Cocamide DEA from OEHHA's list of Proposition 65 chemicals, then EVERGREEN shall notify
16 Shefa LMV and its counsel and may have no further obligations pursuant to this Settlement
17 Agreement with respect to, and to the extent that, the Products are so affected.

18 **7. NOTICES**

19 Unless specified herein, all correspondence and notices required to be provided pursuant to
20 this Settlement Agreement shall be in writing and (i) personally delivered, (ii) sent by first-class,
21 (registered or certified mail) return receipt requested, or (iii) sent by overnight courier to one party
22 from the other party at the following addresses:

23 To EVERGREEN:

24 Steven Immel
25 100 Delta Park Blvd
26 Brampton, Ontario
Canada L6T 5E7

To Shefa LMV:

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

27 Any party, from time to time, may specify in writing to the other party a change of address to which
28 all notices and other communications shall be sent.

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8. COUNTERPARTS; FACSIMILE/PDF SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or PDF signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or PDF signature shall be as valid as the original.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Shefa LMV and its attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

10. ADDITIONAL POST EXECUTION ACTIVITIES

Shefa LMV and EVERGREEN agree to mutually employ their, and their counsel's, best efforts to support the entry of this agreement as a Settlement Agreement in a timely manner.

11. MODIFICATION

This Settlement Agreement may be modified only: (1) by written agreement of the parties and upon entry of a modified Settlement Agreement by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Settlement Agreement by the Court.

12. AUTHORIZATION


The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

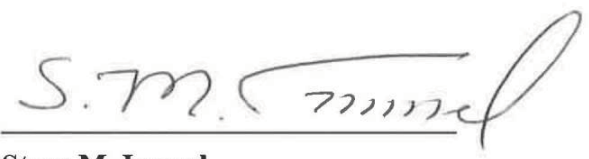
AGREED TO:

AGREED TO:

Date: 11/22/13

Date: 11-22-2013

By: 

By: 

Plaintiff, Shefa LMV, LLC
Print: Alisa Fried
Its: Managing Member

Steve M. Immel
Defendant, EVERGREEN CONSUMER BRANDS

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IT IS SO ORDERED:

DATE: _____

BY: _____

Hon. Richard Fruin
Los Angeles Superior Court

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