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

14 Coordination Proceeding) JUDICIAL COUNCIL COORDINATION
15 Special Title (Rule 3.350)) PROCEEDING NO: 4765
16 PROPOSITION 65 COCAMIDE DEA)
17 CASES) [*Shefa LMV, LLC v. Ross Stores, et al.*,
Los Angeles County Superior Court
No. BC521400
18)
19) **[PROPOSED] CONSENT JUDGMENT**
20) **AS TO DEFENDANT BLUE CROSS**
21) **LABORATORIES, INC.**
22)
23) Judge: Hon. George C. Hernandez, Jr.
24)
25)
26)
27)
28)
Action filed: October 11, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties.** This Consent Judgment is entered into by and between plaintiff Shefa LMV,
3 LLC ("Shefa LMV") and Blue Cross Laboratories, Inc. ("Blue Cross") with Shefa LMV and BLUE
4 CROSS collectively referred to as the "Parties," and individually as "Party." Shefa LMV is an entity
5 organized in the State of California, which has asserted that it seeks to promote awareness of
6 exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
7 substances contained in consumer and commercial products. Shefa LMV alleges that BLUE CROSS
8 employs ten or more persons and is a person in the course of doing business for purposes of the Safe
9 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6, et
10 seq. ("Proposition 65").

11 **1.2 General Allegations.** Shefa LMV alleges that BLUE CROSS has manufactured,
12 imported, distributed and/or sold soap products that contain Cocamide Diethanolamine ("Cocamide
13 DEA") without the requisite Proposition 65 warnings. Cocamide DEA is on the Proposition 65 list as
14 a chemical known to the State of California to cause cancer.

15 **1.3 Product Description.** As used in this Consent Judgment, "Products" shall mean soap,
16 shampoo and bubble bath products containing Cocamide DEA, including, but not limited to Iron Man
17 3 Berry Blast Bubble Bath that are manufactured, imported, distributed and/or sold by BLUE CROSS
18 for sale in the State of California.

19 **1.4 Notice of Violation.** On or about July 31, 2013, Shefa LMV served BLUE CROSS and
20 various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the
21 "Notice") that provided recipients with notice of Shefa LMV's allegation that BLUE CROSS was in
22 violation of Proposition 65 for failing to warn consumers and customers that the Products exposed
23 users in California to Cocamide DEA. No public enforcer has diligently prosecuted the allegations
24 set forth in the Notice.

25 **1.5 Complaint.** On or about September 16, 2013, Shefa LMV filed a complaint in the
26 Superior Court in and for the County of Los Angeles, *Shefa LMV, LLC v. Ross Stores, Inc.*, Case No.
27 BC521400, alleging violations of Proposition 65, based on the alleged exposures to Cocamide DEA
28 contained in certain products sold by Valeant ("Complaint"). On or about, October 17, 2013, Shefa

1 LMV filed a First Amended Complaint alleging violations of Proposition 65 and Business and
2 Professions code section 17200. On or about December 4, 2013, the Hon. George C. Hernandez
3 issued an order coordinating the *Shefa LMV LLC v. Ross, et al.* action with other Cocamide DEA
4 cases in the Superior Court in and for the County of Alameda, *Proposition 65 Cocamide DEA Cases*,
5 Case No. JCCP No. 4765. This action was coordinated with similar cases alleging Proposition 65
6 Cocamide DEA violations in Alameda County Superior Court on or about December 4, 2013, Case
7 No. JCCP 4765. On or about January 16, 2014, Shefa LMV filed an Amendment to the *Shefa v. Ross*
8 *Stores, et al.* action naming Blue Cross as a Defendant.

9 **1.6 No Admission.** BLUE CROSS denies the material, factual and legal allegations
10 contained in Shefa LMV's Notice and Complaint and maintains that it has at all times been in
11 compliance with all laws and all products that it has sold, manufactured, imported and/or distributed
12 in California, including the Products. Nothing in this Consent Judgment shall be construed as an
13 admission by BLUE CROSS of any fact, finding, issue of law or violation of law, nor shall
14 compliance with this Consent Judgment constitute or be construed as an admission by BLUE CROSS
15 of any fact, finding, conclusion, issue of law or violation of law. However, this Section shall not
16 diminish or otherwise affect BLUE CROSS's obligations, responsibilities and duties under this
17 Consent Judgment.

18 **1.7 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the parties
19 stipulate that this Court has jurisdiction over BLUE CROSS as to the allegations contained in the
20 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
21 enter and enforce the provisions of this Consent Judgment.

22 **1.8 Execution Date.** For purposes of this Consent Judgment, the term "Execution Date"
23 shall mean the date this Consent Judgment is signed by both parties.

24 **1.9 Effective Date.** For purposes of this Consent Judgment, the term "Effective Date" shall
25 mean the date the Court enters Judgment pursuant to the terms of this Consent Judgment.

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

27 **2.1 Reformulation of Covered Products**

1 As of the Effective Date, BLUE CROSS shall not manufacture, distribute, sell or offer for
2 sale any Covered Product that contains Cocamide DEA and that will be sold or offered for sale to
3 California consumers. For purposes of this Consent Judgment, a product "contains Cocamide DEA"
4 if Cocamide DEA is an intentionally added ingredient in the product and/or part of the product
5 formulation.

6 **2.2 Suppliers**

7 No more than 30 days after the Effective Date, BLUE CROSS shall issue specifications to its
8 suppliers of Covered Products requiring that Covered Products not contain any Cocamide DEA, and
9 shall instruct each supplier to use reasonable efforts to eliminate Covered Products containing
10 Cocamide DEA on a nationwide basis.

11 **2.3 Sell Through Period**

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

16 **3. MONETARY PAYMENTS**

17 BLUE CROSS agrees to a total settlement payment of \$12,000.00 to be paid as set forth
18 below.

19 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

20 BLUE CROSS shall pay a total civil penalty payment of \$2,000.00 within ten (10) days of the
21 Effective Date, as follows: the civil penalty shall be apportioned in accordance with California Health
22 & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of California's
23 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the
24 penalty remitted to Shefa LMV, both pursuant to the procedures set forth in Section 3.3.

25 **3.2 Reimbursement of Shefa LMV's Fees and Costs**

26 The parties acknowledge that Shefa LMV 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 this
28 fee issue to be resolved after the material terms of the agreement had been settled. BLUE CROSS

1 expressed a desire to resolve the fee and cost issue after the other settlement terms had been agreed.
2 The Parties then attempted to (and did) reach an accord on the compensation due to Shefa LMV and
3 its counsel under general contract principles and the private attorney general doctrine codified at
4 California Code of Civil Procedure § 1021.5, for all work performed in this matter, except fees that
5 may be incurred on appeal. Under these legal principles, BLUE CROSS shall pay the amount of
6 \$10,000.00 for fees and costs incurred investigating, litigating and enforcing this matter, including
7 the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's
8 approval of this Consent Judgment in the public interest.

9 **3.3 Payment Procedures**

10 All payments required by Sections 3.1 and 3.2 shall be within ten (10) days of the Effective
11 Date, in three checks made payable as follows:

- 12 (a) one check to "OEHHA" in the amount of \$1,500.00;
- 13 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in
14 the amount of \$500.00;
- 15 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$10,000.00;

16 **3.4 Issuance of 1099 Forms**

17 After the settlement funds have been transmitted to Shefa LMV's counsel, BLUE CROSS
18 shall issue separate 1099 forms, as follows:

- 19 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
20 68-0284486) in the amount of \$1,500.00;
- 21 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$500.00, whose address
22 and tax identification number shall be furnished upon request;
- 23 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
24 amount of \$10,000.00;

25 **3.5 Issuance of Payments.**

26 All payments owed shall be delivered to the following payment address:

27

28 Daniel N. Greenbaum, Esq.
Law Office of Daniel N. Greenbaum

14752 Otsego Street
Sherman Oaks, CA 91403

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 public interest, waives all rights to participate in any action and releases and discharges (a) BLUE CROSS, its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and assigns (collectively, the "Blue Cross Releasees"), and (b) finished product or ingredient manufacturers, distributors, and suppliers, and all entities to whom any Blue Cross Releasee directly or indirectly distributed or sold any Covered Products, including but not limited to distributors, wholesalers, customers, retailers (including but not limited to Dollar Tree Stores, Inc.), franchisees, cooperative members, and Blue Cross Releasees' licensors and licensees (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' fees) or losses (collectively "Claims") 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 BLUE CROSS prior to the Effective Date.

The consent judgment also specifically includes and releases this settling defendant from claims that might or may arise against it under Proposition 65 with respect to any and all specific products identified in the 60 day notice served by the plaintiff acting in the public interest on this defendant prior to initiation of legal proceedings.

4.2 Individual Release:

Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity, hereby provides a release that shall be effective as a full and final accord and satisfaction, as a bar to all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other statutory or common law, that are or may be asserted against Blue Cross Releasees and Additional Releasees, whether known or unknown,

1 suspected or unsuspected, arising out of alleged exposures to, and/or failure to warn of alleged
2 exposures to, cocamide DEA or diethanolamine in the Covered Products shipped, distributed or sold
3 by BLUE CROSS prior to the Effective Date.

4 **4.3 Compliance:**

5 Compliance with the terms of this Consent Judgment by BLUE CROSS shall be deemed to
6 constitute compliance by any Blue Cross Releasee or Additional Releasee with Proposition 65
7 regarding alleged exposures to cocamide DEA in the Covered Products.

8 **4.4 BLUE CROSS's Release:**

9 On behalf of itself and Blue Cross Releasees, BLUE CROSS waives all rights to institute any
10 form of action against Shefa or Shefa's attorneys, consultants and representatives for all actions taken
11 or statements made in the course of this Action prior to the date of the execution of this Consent
12 Judgment, except for its rights arising out of claims that this settling defendant has specifically relied
13 upon representations made by plaintiff's representatives that this settlement and release once
14 approved by the court will have a res judicata, direct and collateral estoppel effect on any and all
15 other legal actions and against any and all other plaintiffs who are suing now or may in the future sue
16 this defendant in the public interest in connection with or arising from claims that this defendant has
17 manufactured, imported, distributed and/or sold soap products that contain Cocamide Diethanolamine
18 ("Cocamide DEA") without the requisite Proposition 65 warnings, prior to the date of court approval
19 of this Agreement.

20 **5. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and shall
22 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
23 has been fully executed by all parties.

24 **6. SEVERABILITY**

25 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
26 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
27 remaining shall not be adversely affected.

1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and shall apply only to Covered Products that are sold or offered for sale in the State of
4 California.

5 7.2 In the event that Proposition 65 is repealed, preempted or otherwise rendered
6 inapplicable by reason of law generally, or as to the Covered Products, then BLUE CROSS shall
7 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
8 any Covered Products that are so affected.

9 7.3 This Consent Judgment shall apply to and be binding upon Shefa and BLUE CROSS
10 and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

11 7.4 The Parties, including their counsel, have participated in the preparation of this
12 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

13 7.5 This Consent Judgment was subject to revision and modification by the Parties and
14 has been accepted and approved as to its final form by all Parties and their counsel.

15 7.6 Each Party to this Consent Judgment agrees that any statute or rule of construction
16 providing that ambiguities are to be resolved against the drafting Party shall not be employed in the
17 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil
18 Code § 1654.

19 **8. NOTICES**

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

24 To BLUE CROSS:
25 LAW OFFICES OF LAWRENCE P. ADAMSKY
26 LAWRENCE P. ADAMSKY, ESQ.
27 9701 Wilshire Blvd., Suite 1000
28 Beverly Hills, CA 90012

 To Shefa LMV:
 Daniel N. Greenbaum, Esq.

1 Law Office of Daniel N. Greenbaum
2 14752 Otsego Street
3 Sherman Oaks, CA 91403

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

6 **9. ATTORNEYS' FEES**

7 9.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
8 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

9 9.2 For purposes of this Section 11.1, the prevailing Party refers to the Party that was
10 successful in obtaining relief more favorable to it than the relief that the other Party was amenable to
11 providing during the Parties' good faith attempt to resolve the dispute under Section 5.1.

12 9.3 Nothing in this Section 11 shall preclude a Party from seeking an award of sanctions
13 pursuant to law.

14 **10. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
16 each of which shall be deemed an original, and all of which, when taken together, shall constitute one
17 and the same document. A facsimile or pdf signature shall be as valid as the original.

18 **11. COURT APPROVAL**

19 11.1 This Consent Judgment shall not be effective until the Effective Date.

20 11.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
21 Harbor shall make no objections to entry of this Consent Judgment.

22 11.3 If this Consent Judgment is not entered by the Court, it shall be of no force or effect.

23 11.4 This Court shall retain jurisdiction of this matter to implement or modify the Consent
24 Judgment.

25 **12. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

26 12.1 Shefa LMV and BLUE CROSS agree to mutually employ their, and their counsel's,
27 best efforts to support the entry of the agreement as a Consent Judgment and obtain approval of the
28 Consent Judgment by the Court in a timely manner.

1 12.2 The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7,
2 a noticed motion is required to obtain judicial approval of this Consent Judgment, which Shefa LMV
3 shall draft and file, and BLUE CROSS shall not oppose.

4 12.3 If any third party objection to the noticed motion is filed, Shefa LMV and BLUE
5 CROSS shall work together to file a joint reply or separate replies if the parties so desire and appear
6 at any hearing before the Court.

7 12.4 This provision is a material component of the Consent Judgment and shall be treated
8 as such in the event of a breach.

9 12.5 If the Court does not grant the motion to approve this Consent Judgment, and if the
10 parties choose not to pursue a modified Consent Judgment within 30 days after the Court's denial of
11 the motion to approve, then, upon remittitur, any and all payments made pursuant to Section 3 of this
12 Consent Judgment will be returned to BLUE CROSS.

13 **13. MODIFICATION**

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

17 **14. ENFORCEMENT**

18 Shefa may, by motion or application for an order to show cause before the Superior Court of
19 Alameda County, enforce the terms and conditions contained in this Consent Judgment. Prior to
20 bringing any motion or application to enforce the requirements of Section 3 above, Shefa shall
21 provide the Defendant with Notice of Violation and a copy of any test results which purportedly
22 support Shefa's Notice of Violation. The Parties shall then meet and confer regarding the basis for
23 Shefa's anticipated motion or application in an attempt to resolve the matter informally, including
24 providing Settling Defendant a reasonable opportunity of at least thirty (30) days to cure any alleged
25 violation.

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1 Should such attempts at informal resolution fail, Shefa may file its enforcement motion or
2 application. The prevailing party on any motion to enforce this Consent Judgment shall be entitled to
3 its reasonable attorney's fees and costs incurred as a result of such motion or application. This
4 Consent Judgment may only be enforced by the Parties.

5 **15. AUTHORIZATION**

6 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
7 the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
8 Consent Judgment on behalf of the Party represented and legally bind that Party.

9 15.2 The undersigned have read, understand and agree to all of the terms and conditions of
10 this Consent Judgment.

11 15.3 Except as explicitly provided herein, each Party is to bear its own fees and costs.

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

14 16.1 This Consent Judgment came before this Court upon the request of the Parties.

15 16.2 The Parties request the Court to review this Consent Judgment and to make the
16 following findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

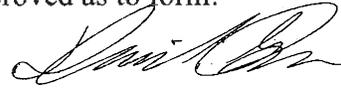
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26 AGREED TO:
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Dated: 5/9/14

SHEFA LMV, LLC

By: 
[name]

Approved as to form:

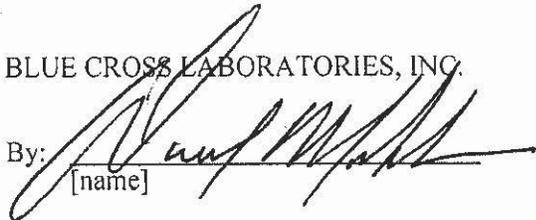

Daniel Greenbaum, Esq.
Attorney for Shefa LMV, LLC

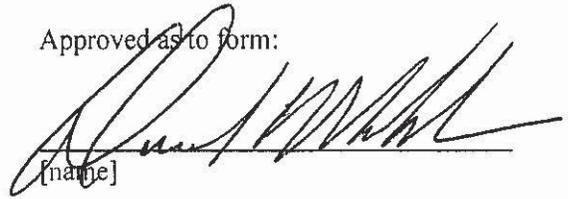
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Dated: 5/9/2014

BLUE CROSS LABORATORIES, INC.

By: 
[name]

Approved as to form:

[name]

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and BLUE CROSS LABORATORIES, 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