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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF ALAMEDA**

14 Coordination Proceeding
15 Special Title (Rule 3.350)

) **JUDICIAL COUNCIL COORDINATION**
) **PROCEEDING NO: 4765**
)
)

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

18
19 **PROPOSITION 65 COCAMIDE DEA**
20 **CASES**

) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO BIG LOTS STORES**
)

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

) Action filed: October 11, 2013
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1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and Big Lots Stores, Inc.**

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

13 **1.2. General Allegations**

14 On July 31, 2013, Shefa LMV issued Big Lots a 60 day notice of intent alleging Big Lots
15 has imported, distributed and/or sold shampoo, hand soap, pet shampoo, shower gel and /or liquid
16 soap products that contain cocamide diethanolamine (“Cocamide DEA”) without the requisite
17 Proposition 65 warnings. On November 22, 2013, Shefa LMV issued Big Lots a second 60-day
18 notice of intent similarly alleging Big Lots violated Proposition 65 as to personal care cleansing
19 products that contain has imported, distributed and/or sold personal care cleansing products that
20 contain Cocamide DEA and Diethanolamine without the requisite Proposition 65 warnings. On
21 July 15, 2014, Shefa LMV issued a third Notice alleging Big Lots violated Proposition 65 as to
22 personal care cleansing products that contain has imported, distributed and/or sold personal care
23 cleansing products that contain Diethanolamine without the requisite Proposition 65 warnings.
24 Cocamide DEA and Diethanolamine are listed pursuant to Proposition 65 as chemicals known to
25 the State of California to cause cancer.

26 Big Lots contends that it is a retailer, and does not manufacturer, distribute or import the
27 products at issue in this action, and did not “knowingly and intentionally” expose consumers to
28 Cocamide DEA or Diethanolamine. Further, Big Lots contends that the Products identified in the

1 notices and complaint do not expose individuals to Cocamide DEA and/or Diethanolamine within
2 the meaning of Proposition 65. Big Lots further contends that upon receipt of Shefa's first notice
3 of intent to sue, Big Lots took steps to remove noticed products from sale in California, and this
4 effort was completed before suit was filed. At the time Shefa issued the second and third Notices,
5 the Products had been removed from sale in California. Big Lots also contends that the personal
6 care products currently sold in California have been certified by their manufacturers and/or
7 reformulated by same to comply with Proposition 65.

8 **1.3. Product Description**

9 The products covered by this Consent Judgment identified in are shampoo, hand soap, pet
10 shampoo, shower gel and /or liquid soap products imported, distributed and/or sold by Big Lots
11 that contain or are alleged to contain Cocamide DEA and/or Diethanolamine which are
12 distributed, marketed, sold, or offered for sale in California. All such products are referred to
13 herein collectively as the "Covered Products," or individually as "Product."

14 **1.4. Notices of Violation**

15 On or about July 31, 2013, Shefa LMV served Big Lots and various public enforcement
16 agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided
17 recipients with notice alleging that Big Lots was in violation of Proposition 65 for failing to warn
18 consumers and customers that the Products exposed users in California to Cocamide DEA. On
19 November 22, 2013, Shefa served Big Lots with another Notice alleging that Products contained
20 Cocamide DEA and DEA. On July 15, 2014, Shefa served Big Lots with another Notice alleging
21 that Products contained DEA. No public enforcer has prosecuted the allegations set forth in the
22 Notice.

23 **1.5. Complaint**

24 On or about October 13, 2013, Shefa LMV filed a first amended complaint in the Los
25 Angeles County Superior Court alleging, inter alia, violations of Proposition 65 and Business and
26 Professions Code §17200, based on the alleged exposure to Cocamide DEA and Diethanolamine
27 contained in certain products sold by various defendants (the "Complaint"). The action is titled,
28 *Shefa LMV, LLC v. Ross Stores, Inc., et al. Case No. BC 521400*. The *Ross Stores* action was

1 subsequently transferred to the Alameda County Superior Court and added to the coordination
2 proceeding styled, Proposition 65 Cocamide DEA Cases, JCCP 4765. On March 11, 2013, Shefa
3 named Big Lots as a defendant in the *Ross Stores* actions pursuant to California Code of Civil
4 Procedure § 474. On or about June 27, 2014, Shefa LMV, dismissed the second cause of action
5 (alleging violation of Business and Professions Code §17200) as to all defendants.

6 **1.6. No Admission**

7 Big Lots denies the material, factual and legal allegations contained in Shefa LMV's
8 Notices and Complaint and maintains that the Products were sold in California in compliance
9 with all laws. Nothing in this Consent Judgment shall be construed as an admission by Big Lots
10 of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this
11 Consent Judgment constitute or be construed as an admission by Big Lots of any fact, finding,
12 conclusion, issue of law or violation of law, the same being specifically denied by Big Lots.
13 However, this Section shall not diminish or otherwise affect Big Lots' obligations, responsibilities
14 and duties under this Consent Judgment.

15 **1.7. Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the parties stipulate that this Court has
17 jurisdiction over Big Lots as to the allegations contained in the Complaint, that venue is proper in
18 Alameda County Superior Court, and that this Court has jurisdiction to enter and enforce the
19 provisions of this Consent Judgment.

20 **1.8. Execution Date**

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

23 **1.9. Effective Date**

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

26 **2. INJUNCTIVE RELIEF**

27 **2.1. Reformulation of Covered Products.** As of the Effective Date, Big Lots shall
28 not manufacture, distribute, sell or offer for sale any Covered Product that contains Cocamide

1 DEA and that will be sold or offered for sale to California consumers. For purposes of this
2 Consent Judgment, a Covered Product “contains Cocamide DEA” if Cocamide DEA is an
3 intentionally added ingredient in the Covered Product. For purposes of this Consent Judgment, a
4 Covered Product contains “Diethanolamine” if Diethanolamine is an intentionally added
5 ingredient in the Covered Product. Under federal law, manufacturers of Covered Products must
6 list Cocamide DEA and DEA as an ingredient on the label if it is intentionally added. As a
7 retailer, Big Lots may rely on the manufacturers labeling to determine compliance.

8 **2.2. Suppliers.** No more than 30 days after the Effective Date, Big Lots shall send a
9 letter to their vendor of each product identified in the 60 day notices requiring that Covered
10 Products not contain any Cocamide DEA, and shall instruct each vendor to use reasonable efforts
11 to eliminate Cocamide DEA on a nationwide basis.

12 **2.3. Sell Through Period.** Big Lots’s Covered Products that were manufactured and
13 distributed for retail sale prior to the Effective Date shall be subject to the release of liability
14 pursuant to Section 5 of this Consent Judgment, without regard to when such Covered Products
15 were, or are in the future, sold to consumers. As a result, the obligations of Big Lots as set forth
16 in this Consent Judgment, including but not limited Section 2.1, do not apply to these products.

17 **3. ENFORCEMENT**

18 Shefa may, by motion or application for an order to show cause before the Alameda
19 County Superior Court, enforce the terms and conditions contained in this Consent Judgment.
20 Prior to bringing any motion or application to enforce the requirements of Section 2 above, Shefa
21 shall provide Big Lots with a notice of violation and a copy of 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 it informally, including
24 providing Big Lots a reasonable opportunity of at least thirty (30) days to cure any alleged
25 violation. Should such attempts at informal resolution fail, Shefa may file its enforcement motion
26 or application. The prevailing party on any motion to enforce this Consent Judgment shall be
27 entitled to its reasonable attorney fees and costs incurred as a result of such motion or application.
28

1 **4. MONETARY PAYMENTS**

2 Big Lots agrees to a total settlement payment of Fourteen Thousand Dollars (\$14,000) to
3 be paid as set forth below.

4 **4.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

5 Big Lots shall pay a total civil penalty payment of \$3,000.00 within ten (10) days of the
6 Effective Date, as follows: the civil penalty shall be apportioned in accordance with California
7 Health & Safety Code sections 25249.12 (c) and (d), with 75% of the funds remitted to the State
8 of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
9 remaining 25% of the funds remitted to Shefa LMV, both pursuant to the procedures set forth in
10 Section 4.3.

11 **4.2. Reimbursement of Shefa LMV’s Fees and Costs**

12 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
14 this fee issue to be resolved after the material terms of the agreement had been settled. Big Lots
15 expressed a desire to resolve the fee and cost issue after the other settlement terms had been
16 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to Shefa
17 LMV and its counsel under general contract principles and the private attorney general doctrine
18 codified at California Code of Civil Procedure section 1021.5, for all work performed in this
19 matter, except fees that may be incurred on appeal. Under these legal principles, Big Lots shall
20 pay the amount of \$11,000.00 for fees and costs incurred by Shefa LMV for investigating,
21 litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred)
22 in negotiating, drafting, and obtaining the Court’s approval of this Consent Judgment.

23 **4.3. Payment Procedures**

24 All payments required by Sections 4.1 and 4.2 shall be within twenty (20) days of the
25 Effective Date, in three checks made payable as follows:

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

1 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$11,000.00.

2 **4.4. Issuance of 1099 Forms**

3 After the settlement funds have been transmitted to Shefa LMV's counsel, Big Lots shall
4 as soon as reasonable practicable issue separate 1099 forms, as follows:

5 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
6 68-0284486) in the amount of \$2,250.00;

7 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$750.00, whose
8 address and tax identification number shall be furnished upon request;

9 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
10 amount of \$11,000;

11 **4.5. Issuance of Payments.**

12 **4.5.1.** All payments owed to Shefa LMV, pursuant to Section 4.1, shall be delivered
13 to the following payment address:

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

17 **4.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1,
18 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following
19 addresses:

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

23 Big Lots shall also send a copy of the checks payable to OEHHA to the Law Office of Daniel N.
24 Greenbaum at the address set forth above in 4.5.1.

25 **5. CLAIMS COVERED AND RELEASED**

26 **5.1. Shefa LMV's Public Release of Proposition 65 Claims**

27 Shefa LMV, acting on its behalf and in the public interest, releases and discharges (a) Big
28 Lots, its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies,

1 and affiliates, and their successors and assigns (collectively, the “Defendant Releasees”) for any
2 violations or claims arising under Proposition 65 for unwarned exposures to Cocamide DEA and
3 Diethanolamine from the Covered Products shipped, distributed or sold by Big Lots prior to the
4 Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with
5 Proposition 65 with respect to exposures to Cocamide DEA and Diethanolamine from the
6 Covered Products.

7 **5.2. Shefa LMV’s Individual Release of Claims**

8 Shefa LMV, acting on its own behalf and on behalf of its agents, successors and assigns,
9 and not in its representative capacity, hereby releases the Defendant Releasees and the Additional
10 Releasees from all claims arising out of or resulting from, or relating directly or indirectly to, in
11 whole or in part, the Covered Products.

12 **5.3. Big Lots’s Release of Shefa LMV**

13 Big Lots on behalf of itself, its past and current agents, representatives, attorneys,
14 successors, and/or assignees, hereby waives any and all claims against Shefa LMV, its attorneys
15 and other representatives, for any and all actions taken or statements made (or those that could
16 have been taken or made) by Shefa LMV and its attorneys and other representatives, whether in
17 the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
18 matter with respect to the Covered Products.

19 **6. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one
22 year after it has been fully executed by the parties. In the event the Court does not approve this
23 Consent Judgment within one year, the funds paid pursuant to Section 4 of this Consent Judgment
24 shall be returned to Big Lots within ten (10) days after the expiration of one year.

25 **7. SEVERABILITY**

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

1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and the obligations of Big Lots hereunder as to the Covered Products apply only within
4 the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise
5 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
6 Judgment are rendered inapplicable or no longer required as a result of any such repeal or
7 preemption or rendered inapplicable by reason of law generally as to the Covered Products,
8 including, without limitation, the removal of Cocamide DEA from OEHHA's list of Proposition
9 65 chemicals, then Big Lots shall notify Shefa LMV and its counsel and shall have no further
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
11 Products are so affected.

12 **9. NOTICES**

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

17 To Big Lots:

18 Carol Brophy, Esq.
19 Sedgwick LLP
20 333 Bush Street, 30th Floor
San Francisco, CA 94104

To Shefa LMV:

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

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

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

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

1 **11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

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

4 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

5 Shefa LMV and Big Lots for themselves and their attorneys agree to employ their best
6 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
7 Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to
8 California Health & Safety Code section 25249.7, a noticed motion is required to obtain judicial
9 approval of this Consent Judgment, which Shefa LMV shall draft and file, and Big Lots shall not
10 oppose. If any third party objection to the noticed motion is filed, Shefa LMV and Big Lots shall
11 work together to file a joint reply or separate replies if the parties so desire and appear at any
12 hearing before the Court. This provision is a material component of the Consent Judgment and
13 shall be treated as such in the event of a breach. If the Court does not grant the motion to approve
14 this Consent Judgment, and if the parties choose not to pursue a modified Consent Judgment
15 within 30 days after the Court's denial of the motion to approve, then, upon remittitur, any and all
16 payments made pursuant to Section 4 of this Consent Judgment will be returned to Big Lots.

17 **13. MODIFICATION**

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

21 **14. ENTIRE AGREEMENT**

22 This Consent Judgment contains the sole and entire agreement and understanding of the
23 parties with respect to the entire subject matter hereof, and any and all prior discussions,
24 negotiations, commitments and understandings related thereto. No representations, oral or
25 otherwise, express or implied, other than those contained herein have been made by any party
26 hereto. No other agreements with respect to the subject matter of this Consent Judgment not
27 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
28 parties.

1 **15. AUTHORIZATION**

2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
3 Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
4 Consent Judgment on behalf of the Party represented and legally bind that Party. The
5 undersigned have read, understand and agree to all of the terms and conditions of this Consent
6 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

7 **16. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
8 **CONSENT JUDGMENT**

9 **16.1.** This Consent Judgment came before this Court upon the request of the Parties. The
10 Parties request the Court to review this Consent Judgment and to make the following findings
11 pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

17 The undersigned are authorized to execute this Consent Judgment and have read,
18 understood, and agree to all of the terms and conditions of this Consent Judgment.

19
20 AGREED TO:

21 Date: 8/16/14

22
23 By: 

24 Plaintiff, Shefa LMV, LLC

25 Print: Alisa Fried

26 Its: Managing Member

20 AGREED TO:

21 Date:  8/26/14

22 By: 

23 Ron Parisotto,
24 SVP, General Counsel and Corp. Secretary
25 Big Lots Stores, Inc.

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ORDER AND JUDGMENT

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

Dated: _____

Judge of the Superior Court