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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15 CENTRAL DISTRICT

BY FAX

17 SHEFA LMV, LLC,)

18 Plaintiff,)

19 v.)

20 SWISS NATURALS, INC dba BIOFORCE)
21 USA; and DOES 1 THROUGH 25, Inclusive)

22 Defendant.)

Case No.: BC 529365

Unlimited Jurisdiction

Honorable Debre Katz Weintraub
Dept. 47

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

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and Swiss Naturals, Inc. dba Bioforce USA**

3 This Consent Judgment is entered into by and between plaintiff Shefa LMV, LLC
4 (“Plaintiff”) and SWISS NATURALS, INC. dba BIOFORCE USA (“Defendant”), collectively
5 referred to as the “parties,” and individually as a “party.” Plaintiff is an entity organized in the
6 State of California, which has asserted that it seeks to promote awareness of exposure to toxic
7 chemicals and to improve human health by reducing or eliminating hazardous substances contained
8 in consumer and commercial products. Plaintiff alleges that DEFENDANT is a “person” in the
9 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
10 1986, California Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

11 **1.2. General Allegations**

12 Acting on its own behalf and in its representative capacity for as an enforcer of the public
13 interest on behalf of the people of California, Plaintiff alleges that DEFENDANT has
14 manufactured, imported, distributed and/or sold shampoo and shower gel products that contain
15 cocamide diethanolamine (“Cocamide DEA”) without the requisite Proposition 65 warnings.
16 Cocamide DEA is on the Proposition 65 list as known to cause birth defects and other reproductive
17 harm.

18 **1.3. Product Description**

19 As used in this Consent Judgment, “Products” shall mean products containing Cocamide
20 DEA that are manufactured, imported, distributed and/or sold by DEFENDANT for sale in the
21 State of California including, but not limited to, Herbavita Line Normalizing Shampoo, Herbavita
22 Line Luminous Shampoo, and Herbavita Line Super Shampoo.

23 **1.4. Notice of Violation**

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

1 **1.5. No Admission**

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

10 **1.6. Consent to Jurisdiction**

11 For purposes of this Consent Judgment only, the parties stipulate that this Court has
12 jurisdiction over DEFENDANT as to the allegations contained in the Notice, that venue is proper
13 in the County of Los Angeles, and that this Court has jurisdiction to enter and enforce the
14 provisions of this Consent Judgment.

15 **1.7. Execution Date**

16 For purposes of this Consent Judgment, the term “Execution Date” shall mean the date this
17 Consent Judgment is signed by both parties.

18 **1.8. Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the
20 Court enters Judgment pursuant to the terms of this Consent Judgment.

21
22 **2. INJUNCTIVE RELIEF: WARNING OR REFORMULATION**

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

24 Commencing on December 1, 2013, DEFENDANT shall not sell, distribute or otherwise
25 deliver, or cause to be sold, distributed or otherwise delivered into California, only Products
26 reformulated to contain no Cocamide DEA, unless such Products are sold or shipped with one of
27 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
5 read and understood by an ordinary individual under customary conditions of purchase or use.
6 Each warning shall be provided in a manner such that the consumer or user understands to which
7 specific 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 DEFENDANT'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
12 penalty or cost to sell such Covered Products or otherwise display a warning pursuant to
13 Proposition 65.

14 **3. MONETARY PAYMENTS**

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

16 DEFENDANT shall pay a total civil penalty payment of \$1000.00 within ten (10) days of
17 the Execution Date, as follows: the civil penalty shall be apportioned in accordance with
18 California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the
19 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 3.3.

22 **3.2. 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.
26 DEFENDANT 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
28 due to Plaintiff 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, DEFENDANT
3 shall pay the amount of \$9000.00 for fees and costs incurred investigating, litigating and
4 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,
5 drafting, and obtaining the Court’s approval of this Consent Judgment 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
8 Execution Date, in three checks made payable as follows:

- 9 (a) one check to “OEHHA” in the amount of \$750.00;
10 (b) one check to “Law Office of Daniel N. Greenbaum in Trust for Plaintiff, LLC” in the
11 amount of \$250.00;
12 (c) one check to “Law Office of Daniel N. Greenbaum” in the amount of \$9000.00.

13 **3.4. Issuance of 1099 Forms**

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

- 16 (a) one 1099 form to the “Office of Environmental Health Hazard Assessment” (EIN:
17 68-0284486) in the amount of \$750.00;
18 (b) a second 1099 form to “Shefa LMV, LLC” in the amount of \$250.00, whose
19 address and tax identification number shall be furnished upon request;
20 (c) a third 1099 to “Law Office of Daniel N. Greenbaum” (EIN: 45-3084082) in the
21 amount of \$9000.00;

22 **3.5. Issuance of Payments.**

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

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

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

1 OEHHA
2 515 Clay Street, 16th Floor
3 Oakland CA 94612
4 (510) 622-3200

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

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1. Plaintiff's Release of DEFENDANT**

9 Plaintiff, acting on its own behalf and in the public interest, releases DEFENDANT, its
10 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,
11 employees, attorneys, and each entity to whom DEFENDANT directly or indirectly distributes or
12 sells Products, including, but not limited to, downstream distributors, wholesalers, customers,
13 retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), from all claims
14 for violations of Proposition 65 up through the date on which this Consent Judgment is signed by
15 both parties based on exposure to Cocamide DEA from the Products as set forth in the Notice.
16 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
17 with respect to exposures to Cocamide DEA from the Products as set forth in the Notice.

18 Plaintiff, also, in its representative capacity, provides a release herein which shall be
19 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
20 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
21 Plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected,
22 limited to and arising out of alleged or actual exposures to the Cocamide DEA in the Products
23 manufactured, distributed or sold by DEFENDANT.

24 Plaintiff, acting on its own behalf and in its representative capacity for as an enforcer of the
25 public interest on behalf of the people of California, hereby relinquishes, to the full extent
26 permitted by law, the provisions, rights and benefits of California Civil Code section 1542, which
27 provides that:

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1 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
2 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
3 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY**
4 **HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
5 **SETTLEMENT WITH THE DEBTOR.**

6 **4.2. DEFENDANT's Release of Plaintiff**

7 DEFENDANT on behalf of itself, its past and current agents, representatives, attorneys,
8 successors, and/or assignees, hereby waives any and all claims against Plaintiff, its attorneys and
9 other representatives, for any and all actions taken or statements made (or those that could have
10 been taken or made) by Plaintiff and its attorneys and other representatives, whether in the course
11 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
12 respect to the Products.

13 **5. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
16 after it has been fully executed by all parties. In the event the Court does not approve this Consent
17 Judgment within one year, the funds paid pursuant to Section 3 of this Consent Judgment shall be
18 returned to DEFENDANT within ten (10) days after the expiration of one year.

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and the obligations of DEFENDANT hereunder as to the Products apply only within the State of
26 California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered
27 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
28 rendered inapplicable or no longer required as a result of any such repeal or preemption or

1 rendered inapplicable by reason of law generally as to the Products, including, without limitation,
2 the removal of Cocamide DEA from OEHHA's list of Proposition 65 chemicals, then
3 DEFENDANT shall notify Plaintiff and its counsel and may have no further obligations pursuant
4 to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

5 **8. NOTICES**

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

10
11 To DEFENDANT:

12 Rocky C. Tsai,
13 ROPES & GRAY LLP
14 3 Embarcadero Center
San Francisco, CA 94111-4006

To PLAINTIFF:

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

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

18 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

22 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

25 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

26 Plaintiff and DEFENDANT agree to mutually employ their, and their counsel's, best efforts
27 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
28 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California

1 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
 2 Consent Judgment, which Plaintiff shall draft and file, and DEFENDANT shall not oppose. If any
 3 third party objection to the noticed motion is filed, Plaintiff and DEFENDANT shall work together
 4 to file a joint reply or separate replies if the parties so desire and appear at any hearing before the
 5 Court. This provision is a material component of the Consent Judgment and shall be treated as
 6 such in the event of a breach. If the Court does not grant the motion to approve this Consent
 7 Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days
 8 after the Court's denial of the motion to approve, then, upon remittitur, any and all payments made
 9 pursuant to Section 3 of this Consent Judgment will be returned to DEFENDANT.

10 **12. MODIFICATION**

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

14 **13. AUTHORIZATION**


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

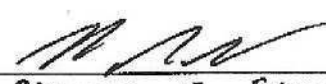
19 AGREED TO:

AGREED TO:

21 Date: 11/25/13

Date: Nov. 25, 2013

22 By: 
 23 Plaintiff, Shefa LMV, LLC

By: 
 Pierce S. Sioussat

24 Print: Alisa Fried
 25 Its: Managing Member

Defendant, Bioforce USA

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IT IS SO ORDERED:

DATE: _____

BY: _____

Hon. Debre Katz Weintraub

Los Angeles Superior Court