

**SETTLEMENT AGREEMENT**

**BETWEEN**

**SHEFA LMV, LLC**

**AND**

**LAFCO ENTERPRISES, INC.**

Shefa LMV, LLC ("Shefa") and Lafco Enterprises Inc. (hereto referred to as "Lafco"), (Shefa and Lafco collectively referred to as, the "Parties") enter into this agreement ("Settlement Agreement") for the purpose of avoiding prolonged and costly litigation to settle Shefa's allegations that Lafco violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the "Effective Date").

**1.0 Introduction**

1.1 Shefa is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 Lafco previously sold, at various times, Liquid Soaps, Body Washes, Bubble Baths and Shampoos, including but not limited to Claus Porto Cerina, UPC #: 5601135090420 (referred to throughout as the "Covered Products"). The Covered Products are limited to those sold by Lafco only.

1.3 Shefa alleges that Covered Products contain Cocamide Diethanolamine ("Cocamide DEA") and that Lafco did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* §

25249.5, *et seq.* ("Proposition 65")).

1.4 On June 22, 2012, the Governor of California added Cocamide DEA to the list of chemicals known to the State to cause cancer. These additions took place more than twelve (12) months before Shefa served its "Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" which is further described below.

1.5 Cocamide DEA is referred to hereafter as the "Listed Chemical".

1.6 On or about June 13, 2014, SHEFA served Lafco, along with Amazon.com, Inc. and other various parties; as well as certain relevant public enforcement agencies with documents entitled "Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" regarding Covered Products containing the Listed Chemical.

1.7 The Sixty-Day Notice (referred to as "Notice") alleged that Lafco and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemical.

1.8 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute").

1.9 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.

1.10 Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Lafco, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

1.11 Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Shefa or Lafco may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

## **2.0 Release**

2.1 This Settlement Agreement is a full, final, and binding resolution between Shefa, acting in its individual capacity, and not its representative capacity, on the one hand, and (a) Lafco, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively "Releasees") and (b) all entities, including but not limited to Amazon.Com, Inc., to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Downstream Releasees"), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the

Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date.

2.2 The Covered Products are limited to those placed into the stream of commerce by Lafco. Shefa, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Products sold up to the Effective Date, including without limitation to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

2.3 Shefa acknowledges that it is familiar with Section 1542 of Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT

WITH THE DEBTOR.

Shefa, its past and current agents, representatives, attorneys, successors, and/or assignees, in its individual and not representative capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

**3.0 Lafco's Duties**

3.1 Lafco agrees, promises, and represents that after the Effective Date Lafco shall reformulate any Covered Products manufactured after the Effective Date and offered for sale in California to exclude Cocamide DEA in the Covered Products.

3.2 Lafco agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells in the State of California any Covered Products in existing inventory that have not been reformulated, it will provide warnings on such Covered Products that comply with Proposition 65.

3.3 The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase.

3.4 The Parties agree that product labeling stating that "**WARNING: This product contains chemicals known to the State of California to cause cancer**" shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in existing inventory that had not been reformulated and were distributed

and/or sold by Releasees or Downstream Releasees after the Effective Date.

#### **4.0 Payments**

4.1 Lafco agrees, to pay a total of twelve thousand dollars (\$12,000.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: Ten thousand five hundred dollars (\$10,500.00) of such payment shall be paid to Law Office of Daniel N. Greenbaum, as Shefa's attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Lafco's attention. The check shall be delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406. By the Effective Date, Law Office of Daniel N. Greenbaum shall provide Lafco with its EIN.

4.1.2 Penalty: Lafco shall issue two (2) separate checks for a total amount of one thousand five hundred dollars (\$1,500.00) as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of one thousand one hundred and twenty-five dollars (\$1,125.00), representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC in the amount of three hundred seventy-five dollars (\$375.00), representing 25% of the total penalty.

4.1.3 The OEHHA payment shall be delivered to: Office of Environmental Health Hazard Assessment, Attn.: Mike Gyrics, Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95812-4010. The payment to Shefa shall be delivered to: Daniel N. Greenbaum, 7120

Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

4.1.4 Tax Forms: Additionally, two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,125.00. The second 1099 shall be issued in the amount of \$375.00 to Shefa and delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

## **5.0 Authority to Enter Into Settlement Agreement**

5.1 Shefa represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Shefa to this Settlement Agreement.

5.2 Lafco represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Lafco to this Settlement Agreement.

## **6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California**

6.1 Shefa shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

## **7.0 Execution in Counterparts and Facsimile**

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document.

7.2 A facsimile or portable document format (PDF) signature shall be as valid as the original.

## **8.0 Entire Agreement**

8.1 This Settlement Agreement contains the sole and entire agreement and

understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings.

8.2 No other agreements, oral or otherwise, exist to bind any of the Parties.

#### **9.0 Modification of Settlement Agreement**

9.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

#### **10.0 Application of Settlement Agreement**

10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, Shefa and the Releasees and Downstream Releasees identified in Section 2 above.

#### **11.0 Enforcement of Settlement Agreement**

11.1 Any party may file suit before the Superior Court of the County of Alameda, consistent with the terms and conditions set forth in paragraphs 11.2 and 11.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

11.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Lafco by Shefa, unless the party seeking enforcement or alleging violation notifies the other party of the specific acts alleged to breach this Settlement Agreement at least 90 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 11.3 below. Any notice to Lafco must contain (a) the name of the product, (b) specific dates when the product was sold after



the Effective Date in California without reformulation, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

11.3 Within 30 days of receiving the notice described in Section 11.2, Lafco shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to Lafco, or (2) refute the information provided under Section 11.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 11.1.

## **12.0 Notification Requirements**

12.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For Shefa:

Daniel N. Greenbaum, Esq.  
Law Office of Daniel N. Greenbaum  
7120 Hayvenhurst Avenue  
Suite 320  
Van Nuys, CA 91406

For Lafco:

Anthony Cortez  
Greenberg Traurig, LLP  
1201 K Street  
Suite 1100  
Sacramento, CA 95814

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

### **13.0 SEVERABILITY**

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

### **14.0 Governing Law**

14.1 The Terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

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

14.3 This Consent Judgment shall apply to and be binding upon Shefa and Lafco and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

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

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

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

### **15.0 AUTHORIZATION**

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

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

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

## **16.0 CONSENT JUDGMENT**

16.1 In the event that anyone appears and attempts to make a claim against Lafco, and Downstream Releasee or any of their subsidiaries or affiliates, alleging that such entity violated Proposition 65 in the manufacture, distribution or sale of any Covered Product, Lafco may send Shefa a written request for Shefa to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the public interest for the released Products, and to seek court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law.

16.2 If so requested, the parties agree to reasonably cooperate, and to use their best efforts and that of their counsel to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

16.3 In consideration for bringing such a lawsuit and seeking approval of the proposed consent judgment referenced above, Lafco shall be required to pay additional attorney's fees and costs of \$10,000.00, made payable to the Law Office of Daniel N. Greenbaum, and deliverable as referenced above.

16.4 These additional payment terms shall be included and incorporated into the proposed consent judgment.

AGREED TO:

Dated: 9/28/14

SHEFA LMV, LLC




By: \_\_\_\_\_

Alisa Fried

Dated: 10/14/14

LAFCO ENTERPRISES, INC.



By: \_\_\_\_\_

Marty Shapiro