

1 LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
2 The Hathaway Building
3 7120 Hayvenhurst Avenue
Suite 320
4 Van Nuys, CA 91406
Telephone: (818) 809-2199
5 Facsimile: (424) 243-7689
6 Email: dgreenbaum@greenbaumlawfirm.com

7 Attorney for Plaintiff SHEFA LMV, LLC

8 VENABLE LLP
Daniel Chammas (SBN 204825)
9 2049 Century Park East, Suite 2100
10 Los Angeles, CA 90067
Telephone: (310) 229-0302
11 Facsimile: (310) 229-9901
12 Email: DBChammas@Venable.com

13 Attorney for Defendant
WISCONSIN PHARMACAL COMPANY, LLC

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF ALAMEDA

17 Coordination Proceeding) JUDICIAL COUNCIL COORDINATION
18 Special Title (Rule 3.350)) PROCEEDING NO: 4765
19)
20)
21) [*Shefa LMV, LLC v. Walgreen Co., et al.*, Los
22 Angeles County Superior Court No.
23) BC520416]
24)
25) **[PROPOSED] STIPULATED CONSENT**
26) **JUDGMENT AS TO WISCONSIN**
27) **PHARMACAL COMPANY LLC**
28)
Judge: Hon. George C. Hernandez, Jr.
Action filed: October 11, 2013

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and Wisconsin Pharmacal Company, LLC**

3 This Stipulated Consent Judgment (“Consent Judgment”) is entered into by and between
4 plaintiff Shefa LMV, LLC (“Shefa LMV”) and Wisconsin Pharmacal Company, LLC (“WPC”), with
5 Shefa LMV and WPC sometimes collectively referred to herein as the “parties,” and individually as a
6 “party.” Shefa LMV is an entity organized in the State of California, which has asserted that it seeks
7 to promote awareness of exposure to toxic chemicals and to improve human health by reducing or
8 eliminating hazardous substances contained in consumer and commercial products. Shefa LMV
9 alleges that WPC employs ten (10) or more persons and is a person in the course of doing business for
10 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
11 Code section 25249.6, *et seq.* (“Proposition 65”).
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14 **1.2. General Allegations**

15 Shefa LMV alleges that WPC has manufactured, imported, distributed and/or sold soap sheet
16 products that contain cocamide diethanolamine (“Cocamide DEA”) without the requisite Proposition
17 65 warnings. Cocamide DEA is listed pursuant to Proposition 65 as a chemical known to the State of
18 California to cause cancer.
19

20 **1.3. Covered Product Description**

21 The products covered by this Consent Judgment are soap sheets manufactured, sold, or
22 distributed by WPC that contain or are alleged to contain Cocamide DEA, and which are distributed,
23 marketed, sold, or offered for sale in California by WPC or any supplier, distributor, or retailer,
24 including but not limited to the Coleman Soap Sheets. All such products are referred to herein
25 collectively as the “Covered Products,” or individually as a “Covered Product.”
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1 Nothing in this Consent Judgment shall be construed as an admission by WPC or by any of its
2 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
3 divisions, affiliates, franchises, licensees, customers, suppliers, manufacturers, distributors,
4 wholesalers, or retailers, of any fact, finding, conclusion, issue or violation of law, fault, wrongdoing,
5 or liability, including without limitation, any admission concerning any alleged violation of
6 Proposition 65, nor shall compliance with this Consent Judgment constitute or be construed as an
7 admission by WPC of any fact, finding, conclusion, issue or violation of law, fault, wrongdoing, or
8 liability, the same being specifically denied by WPC. This Consent Judgment shall not be offered or
9 admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency or
10 forum, except with respect to an action seeking to enforce the terms of this Consent Judgment. Except
11 as expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive, or impair any
12 right, remedy, argument, or defense the parties may have in any other or future legal proceeding
13 unrelated to these proceedings. However, this Section shall not diminish or otherwise affect WPC's
14 obligations, responsibilities and duties under this Consent Judgment.
15

17 **1.7. Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction
19 over WPC as to the allegations contained in the Complaint, that venue is proper in Alameda County
20 Superior Court, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
21 Judgment as a full and final resolution of all claims which were or could have been asserted in this
22 action based on the facts alleged in the Notices of Violation and the Complaint.
23

24 **1.8. Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the Court
26 enters Judgment pursuant to the terms of this Consent Judgment.
27

1 **2. INJUNCTIVE RELIEF**

2 **2.1.** Subject to the sell through period outlined in Section 2.3, any Covered Product manufactured
3 after the Effective Date that contains Cocamide DEA and that WPC thereafter sells in California,
4 markets or distributes for sale in California, or offers for sale to a third party for retail sale in California
5 shall provide the following warning on the product label:
6

7 [California Proposition 65] **WARNING: This product contains a**
8 **chemical known to the State of California to cause cancer.**

9 The words “California Proposition 65” may be included at WPC’s option.

10 The warnings must be at least the same size as the largest of any other health or safety warnings
11 appearing on the product label, as applicable, of such product, and the word “WARNING” shall be in
12 all capital letters.
13

14 To the extent that any subsequent revisions to Proposition 65 or its implementing regulations
15 require additional or different warning language, WPC may revise the above warning to comply with
16 such new law or regulations.

17 **2.2.** For purposes of this Consent Judgment, a Covered Product “contains Cocamide DEA” if
18 Cocamide DEA is an intentionally added ingredient in the Covered Product. For purposes of this
19 Consent Judgment, the term “distributes for sale into California” shall mean to directly ship a Covered
20 Product into California for sale in California or to sell a Covered Product to a distributor that WPC
21 knows will sell the Covered Product in California.
22

23 **2.3. Sell through period.**

24 WPC’s Covered Products that were manufactured for retail sale prior to the Effective Date shall
25 be subject to the release of liability pursuant to Section 5 of this Consent Judgment, without regard to
26 when such Covered Products were, or are in the future, sold to consumers. As a result, the obligations
27

1 of WPC as set forth in this Consent Judgment, including but not limited to Section 2.1, do not apply to
2 these products.

3 **3. RETENTION OF JURISDICTION; GOOD FAITH ATTEMPT TO RESOLVE DISPUTES;**
4 **ENFORCEMENT OF CONSENT JUDGMENT**

5 **3.1.** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
6 Consent Judgment.

7 **3.2.** Only after it complies with Section 3.3, Shefa LMV may, by motion or application for
8 an order to show cause before the Alameda County Superior Court, enforce the terms and conditions
9 contained in this Consent Judgment.

10 **3.3.** Prior to bringing any motion or application to enforce the requirements of Section 2
11 above, Shefa LMV shall provide WPC with a notice of violation and a copy of any test results which
12 purportedly support Shefa LMV's notice of violation. The parties shall then meet and confer regarding
13 the basis for Shefa LMV's anticipated motion or application in an attempt to resolve it informally,
14 including providing WPC a reasonable opportunity of at least thirty (30) days to cure any alleged
15 violation. Should such attempts at informal resolution fail, Shefa LMV may file its enforcement
16 motion or application. The prevailing party on any motion to enforce this Consent Judgment shall be
17 entitled to its reasonable attorney fees and costs incurred as a result of such motion or application. As
18 used in the preceding sentence, the term "prevailing party" means a party who is successful in
19 obtaining relief more favorable to it than the relief that the other party was amenable to providing in
20 writing and with specificity during the parties' good faith attempt to resolve the dispute that is the
21 subject of such enforcement action.
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25 **4. SETTLEMENT PAYMENT**

26 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's
27 fees and costs, WPC shall make the following payments:

1 **4.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

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

9 **4.2. Reimbursement of Shefa LMV’s Fees and Costs**

10 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute
11 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this
12 fee issue to be resolved after the material terms of the agreement had been settled. WPC expressed a
13 desire to resolve the fee and cost issue after the other settlement terms had been agreed. The parties
14 then attempted to (and did) reach an accord on the compensation due to Shefa LMV and its counsel
15 under general contract principles and the private attorney general doctrine codified at California Code
16 of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be
17 incurred on appeal. Under these legal principles, WPC shall pay the amount of \$13,000.00 within ten
18 (10) days of receiving the Notice of Entry of Judgment for fees and costs incurred by Shefa LMV for
19 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be
20 incurred) in negotiating, drafting, and obtaining the Court’s approval of this Consent Judgment.
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23 **4.3. Payment Procedures**

24 All payments required by Sections 4.1 and 4.2 shall be sent within ten (10) days after service
25 upon WPC’s counsel of the Notice of Entry of Judgment and Forms W-9 for each payee, and shall be
26 made in three checks payable as follows:
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- 1 (a) one check to "OEHHA" in the amount of \$4,500.00;
- 2 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in the
- 3 amount of \$1,500.00;
- 4 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$13,000.00.

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6 **4.4. Issuance of 1099 Forms**

7 After the settlement funds have been transmitted to Shefa LMV's counsel, WPC shall, as soon

8 as reasonably practicable, issue separate 1099 forms, as follows (copies of which shall be sent to the

9 addresses in section 4.5):

- 10 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN: 68-
- 11 0284486) in the amount of \$4,500.00;
- 12 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$1,500.00, whose address
- 13 and tax identification number shall be furnished upon request;
- 14 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
- 15 amount of \$13,000.00;
- 16

17 **4.5. Issuance of Payments.**

18 **4.5.1.** All payments owed to Shefa LMV, pursuant to Section 4.1, shall be delivered to

19 the following payment address:

20 Daniel N. Greenbaum, Esq.
21 Law Office of Daniel N. Greenbaum
22 The Hathaway Building
23 7120 Hayvenhurst Avenue
24 Suite 320
25 Van Nuys, CA 91406

26 **4.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1,
27 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

28

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

6 WPC shall also send a copy of the checks payable to OEHHA to the Law Office of Daniel N.
7 Greenbaum at the address set forth above in 4.5.1.

8 **5. APPLICATION OF CONSENT JUDGMENT; BINDING EFFECT; CLAIMS COVERED**
9 **AND RELEASED**

10 **5.1.** This Consent Judgment may apply to, be binding upon and benefit the Parties, and their
11 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
12 divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors,
13 successors and assigns and Shefa LMV on its own behalf and in the public interest. This Consent
14 Judgment shall have no application to Covered Products that are exclusively distributed and/or sold
15 outside the State of California. With respect to Covered Products that are distributed and/or sold both
16 inside and outside of California, the requirements contained in this Consent Judgment apply to the
17 Covered Products only to the extent that the distribution and/or sales occur in California.

18 **5.2.** This Consent Judgment is a full, final, and binding resolution between Shefa LMV, on
19 behalf of itself, and in the public interest, and WPC, and its respective officers, directors, shareholders,
20 employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees,
21 customers, distributors, wholesalers, retailers, predecessors, successors and assigns of any alleged
22 violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65
23 warnings of exposure to Cocamide DEA from the handling, use or consumption of the Covered
24 Products and fully and finally resolves all claims that have been or could have been asserted in this
25 action up to and including the Effective Date for failure to provide Proposition 65 warnings for the
26 Covered Products.
27

1 **5.3. Shefa LMV’s Public Release of Proposition 65 Claims**

2 Shefa LMV, acting on its behalf and in the public interest, releases and discharges:

3 (a) WPC, its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
4 companies, and affiliates, and their successors and assigns, including but not limited to Lake Consumer
5 Products, Inc. (collectively, the “Defendant Releasees”); and
6

7 (b) finished product or ingredient manufacturers, distributors, and suppliers, and all
8 entities to whom any Defendant Releasee directly or indirectly distributed or sold any Covered
9 Products, including but not limited to distributors, wholesalers, customers, retailers (including but not
10 limited to Walgreen Co. and Rite Aid Corporation), franchisees, cooperative members, and Defendant
11 Releasees’ licensors and licensees (collectively, “Additional Releasees”), from any and all claims,
12 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses
13 asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising from or
14 related to the failure to provide Proposition 65 warnings on the Covered Products regarding cocamide
15 DEA.
16

17 **5.4. Shefa LMV’s Individual Release of Claims**

18 Shefa LMV, on behalf of itself only, hereby releases and discharges the Defendant Releasees
19 and Additional Releasees from any and all known and unknown claims for alleged violations of
20 Proposition 65, or for any other statutory or common law claims, arising from or relating to alleged
21 exposures to cocamide DEA in the Covered Products as set forth in the Notices. It is possible that
22 other claims not known to the parties arising out of the facts alleged in the Notices of Violation or the
23 Complaint and relating to the Covered Products will develop or be discovered. Shefa LMV, on behalf
24 of itself only, acknowledges that this Consent Judgment is expressly intended to cover and include all
25 such claims, including all rights of action therefor. Shefa LMV has full knowledge of the contents of
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1 California Civil Code section 1542. Shefa LMV, on behalf of itself only, acknowledges that the claims
2 released in Section 5.3 and 5.4 above may include unknown claims, and nevertheless waives California
3 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as
4 follows:

5
6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
7 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
8 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
9 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
10 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

11 Shefa LMV, on behalf of itself only, acknowledges and understands the significance and consequences
12 of this specific waiver of California Civil Code section 1542.

13 **5.5. WPC and Shefa LMV's Mutual Release**

14 WPC, on one hand, and Shefa LMV, on the other hand, their past and current agents,
15 representatives, attorneys, successors, and/or assignees, hereby waive any and all claims they may
16 have against each other, their attorneys or other representatives, for any and all actions taken or
17 statements made or undertaken by them in connection with the Notices of Violation or the Complaint
18 involving the Covered Products; provided, however, that nothing in this Section shall affect or limit
19 any party's right to seek to enforce the terms of this Consent Judgment.

20 **5.6.** Compliance with the terms of this Consent Judgment constitutes compliance with
21 Proposition 65 with respect to exposures to Cocamide DEA from the Covered Products.

22 **6. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and shall
24 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
25 has been fully executed by the parties.
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1 **7. SEVERABILITY**

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

5
6 **8. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of California
8 and the obligations of WPC hereunder as to the Covered Products apply only within the State of
9 California.

10 **9. NOTICES**

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

16 To WPC:	To Shefa LMV:
17 Daniel Chammas, Esq.	Daniel N. Greenbaum, Esq.
Venable LLP	Law Office of Daniel N. Greenbaum
2049 Century Park East, Suite 2100	The Hathaway Building
Los Angeles, CA 90067	7120 Hayvenhurst Avenue
Telephone: (310) 229-0302	Suite 320
Facsimile: (310) 229-9901	Van Nuys, CA 91406

21 Any party, from time to time, may specify in writing to the other party a change of address to which all
22 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 signature,
25 each of which shall be deemed an original, and all of which, when taken together, shall constitute one
26 and the same document. A facsimile or PDF signature shall be as valid as the 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 referenced
3 in California Health & Safety Code section 25249.7(f) and with Title II of the California Code
4 Regulations, Section 3003.
5

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

7 Shefa LMV and WPC for themselves and their attorneys agree to employ their best efforts to
8 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
9 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
10 Health & Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this
11 Consent Judgment, which Shefa LMV shall draft and file, and WPC shall not oppose. If any third
12 party objection to the noticed motion is filed, Shefa LMV and WPC shall work together to file a joint
13 reply or separate replies if the parties so desire and appear at any hearing before the Court. This
14 provision is a material component of the Consent Judgment and shall be treated as such in the event of
15 a breach.
16

17 **13. MODIFICATION AND TERMINATION**

18 **13.1.** This Consent Judgment may be modified only: (1) by written agreement of the parties
19 and 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

22 **13.2.** If either party seeks to modify this Consent Judgment under Section 13.1, then the party
23 requesting the modification shall provide written notice to the other party of its intent (“Notice of
24 Intent”). If the party receiving the Notice of Intent seeks to meet and confer regarding the proposed
25 modification, then that party shall provide written notice to the other party within thirty (30) days of
26 receiving the Notice of Intent. If such notice is provided in a timely manner, then the parties shall
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1 meet and confer in good faith as required in this Section. The parties shall meet in person or on the
2 telephone within thirty (30) days of notification of intent to meet and confer. Within thirty (30) days
3 of such meeting, if the party receiving the Notice of Intent disputes the proposed modification, that
4 party shall provide the other party a written factual basis for its position. The parties shall continue to
5 meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes. The
6 parties may agree in writing to different deadlines for the meet and confer period.
7

8 **13.3.** Where the meet and confer process does not lead to a joint motion or application in
9 support of a modification of the Consent Judgment, then either party may seek judicial relief on its
10 own. In such a situation, the prevailing party may seek to recover costs and reasonable attorney's fees.
11 As used in the preceding sentence, the term "prevailing party" means a party who is successful in
12 obtaining relief more favorable to it than the relief that the other party was amenable to providing in
13 writing and with specificity during the parties' good faith attempt to resolve the dispute that is the
14 subject of the modification.
15

16 **13.4.** In the event that Proposition 65 is repealed, preempted or is otherwise rendered
17 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
18 rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered
19 inapplicable by reason of law generally as to the Covered Products, including, without limitation, the
20 removal of Cocamide DEA from OEHHA's list of Proposition 65 chemicals, then WPC shall notify
21 Shefa LMV and its counsel and shall have no further obligations pursuant to this Consent Judgment
22 with respect to, and to the extent that, the Covered Products are so affected.
23

24 **13.5.** This Consent Judgment shall terminate without further action by any party if and when
25 WPC no longer manufactures, distributes or sells all of the Covered Products and all of such Covered
26 Products previously "distributed for sale in California" have reached their expiration dates and are no
27

1 longer sold.

2 **14. ENTIRE AGREEMENT**

3 This Consent Judgment contains the sole and entire agreement and understanding of the parties
4 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
5 commitments and understandings related thereto. No representations, oral or otherwise, express or
6 implied, other than those contained herein have been made by any party hereto. No other agreements
7 with respect to the subject matter of this Consent Judgment not specifically referred to herein, oral or
8 otherwise, shall be deemed to exist or to bind any of the parties.
9

10 **15. AUTHORIZATION**

11 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party
12 he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent
13 Judgment on behalf of the party represented and legally bind that party. The undersigned have read,
14 understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly
15 provided herein, each party is to bear its own fees and costs.
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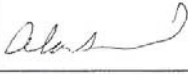
17 **16. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
18 **CONSENT JUDGMENT**


19 **16.1.** This Consent Judgment came before this Court upon the request of the parties. The parties
20 request the Court to review this Consent Judgment and to make the following findings pursuant to Cal.
21 Health & Safety Code § 25249.7(f)(4):

- 22 1. The injunctive relief required by the Consent Judgment complies with Cal. Health &
23 Safety Code § 25249.7;
- 24 2. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is
25 reasonable under California law; and
- 26 3. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.
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The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:
Date: 2/24/2015
By: 
Plaintiff, Shefa LMV, LLC
Print: Alisa Fried
Its: Managing Member

AGREED TO:
Date: 2/24/2015
By: 
Defendant, Wisconsin Pharmacal Company, LLC
Print: JEFFREY C. POTTS
Its: CHIEF OPERATIONAL & FINANCIAL OFFICER

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ORDER AND JUDGMENT

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

Dated: _____

Judge of the Superior Court