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9 1535 Beachey Place
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10 Telephone: (310)900-4000
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11 Email: RSorensen@dermalogica.com

12 Attorney for Defendant DERMALOGICA, INC.

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF ALAMEDA

16
17 Coordination Proceeding
Special Title (Rule 3.350)

18
19
20 PROPOSITION 65 COCAMIDE DEA
CASES

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO: 4765
)
)
) [*Shefa LMV, LLC v. Big Lots Stores, Inc., et*
) *al.*, Los Angeles County Superior Court No.
) BC566941]
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DERMALOGICA, INC.**
)
) Judge: Hon. George C. Hernandez, Jr.
)
) Action filed: December 16, 2014
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1. INTRODUCTION

1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC (“Shefa”) and Dermalogica, Inc. (“Settling Defendant”). Shefa and Settling Defendant are referred to collectively as the “Parties.”

1.2 The Settling Defendant manufactures, distributes, and/or sells types of products identified on Exhibit A that contain diethanolamine (“DEA”) in the State of California or has done so in the past.

1.3 On the date identified on Exhibit A, Shefa served a 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, et seq.) (“Notices”) to Settling Defendant, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000. The Notices allege violations of Proposition 65 with respect to the presence of DEA in the types of products identified in Exhibit A.

1.4 On the date(s) identified on Exhibit A, Shefa filed the Complaint applicable to the Settling Defendant (“Complaint”) for the Proposition 65 Action identified in Exhibit A.

1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this Court has jurisdiction over the allegations of violations contained in the operative Complaint applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent Judgment.

1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any other legal proceeding. This Consent Judgment is the product of negotiation

1 and compromise and is accepted by the Parties for purposes of settling, compromising, and
2 resolving issues disputed in this action.

3 **2. DEFINITIONS**

4 2.1 “Covered Products” means the types of products identified on the Exhibit
5 A for each Settling Defendant.

6 2.2 “Effective Date” means the date on which this Consent Judgment is
7 entered by the Court.

8 **3. INJUNCTIVE RELIEF**

9 3.1 Reformulation of Covered Products. As of the Effective Date, Settling
10 Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product that
11 contains DEA and that will be sold or offered for sale to California consumers. For purposes of
12 this Consent Judgment, a product “contains DEA” if DEA is an intentionally added ingredient in
13 the product and/or intentionally added part of the product formulation.

14 3.2 Specification to Suppliers. No more than thirty (30) days after the
15 Effective Date, Settling Defendant shall issue specifications to its supplier(s) of Covered
16 Products requiring that Covered Products not contain any DEA, and shall instruct each supplier
17 to use reasonable efforts to eliminate Covered Products containing DEA on a nationwide basis.

18 3.3 Action Regarding Specific Products.

19 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the
20 specific products (if any) identified as Section 3.3 Products on the Exhibit A for such Settling
21 Defendant (“Section 3.3 Products”) in California unless such products have been reformulated
22 such that they do not contain DEA. On or before the Effective Date, Settling Defendant shall
23 also: (i) cease shipping the Section 3.3 Products to any of its stores and/or customers that resell
24 the Section 3.3 Products in California; and (ii) send instructions to its stores and/or customers
25 that resell the Section 3.3 Products in California instructing them either to: (a) return all the
26 Section 3.3 Products to Settling Defendant for destruction, or (b) directly destroy the Section 3.3
27 Products. The requirements of this Section apply only to those Section 3.3 Products that contain
28 DEA.

1 3.3.2 Any destruction of Section 3.3 Products shall be in compliance with all
2 applicable laws.

3 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall
4 provide Shefa with written certification from Settling Defendant confirming compliance with the
5 requirements of this Section 3.3.

6 **4. ENFORCEMENT**

7 4.1 Shefa may, by motion or application for an order to show cause before the
8 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
9 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
10 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
11 and a copy of any test results which purportedly support the Notice of Violation. The Parties
12 shall then meet and confer regarding the basis for the anticipated motion or application in an
13 attempt to resolve it informally, including providing Settling Defendant(s) with a reasonable
14 opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at
15 informal resolution fail, Shefa may file an enforcement motion or application. This Consent
16 Judgment may only be enforced by the Parties.

17 **5. PAYMENTS**

18 5.1 Payments by Settling Defendant. Within ten (10) business days of the
19 Effective Date, Settling Defendant shall pay the settlement payment identified for it on Exhibit
20 A. The total settlement amount for Settling Defendant shall be paid pursuant to the instructions
21 outlined in Exhibit A. The funds paid by Settling Defendant shall be allocated, as identified in
22 Exhibit A, between the following categories:

23 5.1.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b), with such
24 money to be apportioned by Shefa as identified on the Exhibit A for the Settling Defendant in
25 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
26 California's Office of Environmental Health Hazard Assessment).

27 5.1.2 A reimbursement of a portion of Shefa's reasonable attorneys' fees and
28 costs.

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6. MODIFICATION

6.1 Written Consent. This Consent Judgment may be modified from time to time by express written agreement of the Parties with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

6.2 Meet and Confer. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

7. CLAIMS COVERED AND RELEASED

7.1 This Consent Judgment is a full, final, and binding resolution between (i) Shefa on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its former affiliates (“affiliate” means a person or entity who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, Settling Defendant), and their current and past directors, officers, employees and attorneys (“Defendant Releasees”), and each entity to whom any of them directly or indirectly distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”); of any violation of Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged exposure to DEA contained in Covered Products that were sold by Settling Defendant prior to the Effective Date.

7.2 Compliance with the terms of this Consent Judgment by Settling Defendant and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to warn about DEA in Covered Products manufactured, distributed, or sold by Settling Defendants after the Effective Date.

1 7.3 Nothing in this Section 7 affects Shefa's right to commence or prosecute
2 an action under Proposition 65 against any person other than Settling Defendant, Defendant
3 Releasees, or Downstream Defendant Releasees.

4 **8. NOTICE**

5 8.1 When Shefa is entitled to receive any notice under this Consent Judgment,
6 the notice shall be sent by first class and electronic mail to:

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8 Daniel N. Greenbaum
9 Law Office of Daniel N. Greenbaum
10 7120 Hayvenhurst Ave., Suite 320
11 Van Nuys CA 91406
12 dgreenbaum@greenbaumlawfirm.com

13 8.3 When Settling Defendant is entitled to receive any notice under this
14 Consent Judgment, the notice shall be sent by first class and electronic mail to the person
15 identified on the Exhibit A for Settling Defendant.

16 8.4 Any Party may modify the person and address to whom the notice is to be
17 sent by sending the other Party notice by first class and electronic mail.

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon entry by the Court.
20 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and Settling
21 Defendant shall support entry of this Consent Judgment.

22 9.2 If this Consent Judgment is not entered by the Court, it shall be of no
23 force or effect and shall never be introduced into evidence or otherwise used in any proceeding
24 for any purpose other than to allow the Court to determine if there was a material breach of
25 Section 9.1.

26 **10. ATTORNEYS' FEES**

27 10.1 Should Shefa prevail on any motion, application for an order to show
28 cause, or other proceeding to enforce a violation of this Consent Judgment, Shefa shall be
entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or
application. Should Settling Defendant prevail on any motion application for an order to show

1 cause or other proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees
2 and costs against Shefa as a result of such motion or application upon a finding by the Court that
3 Shefa's prosecution of the motion or application lacked substantial justification. For purposes of
4 this Consent Judgment, the term substantial justification shall carry the same meaning as used in
5 the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

6 10.2 Except as otherwise provided in this Consent Judgment, each Party shall
7 bear its own attorneys' fees and costs.

8 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
9 sanctions pursuant to law.

10 **11. OTHER TERMS**

11 11.1 The terms of this Consent Judgment shall be governed by the laws of the
12 State of California.

13 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling
14 Defendant, its affiliates, and successors or assigns of any of them.

15 11.3 This Consent Judgment contains the sole and entire agreement and
16 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
17 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
18 merged herein and therein. There are no warranties, representations, or other agreements
19 between the Parties except as expressly set forth herein. No representations, oral or otherwise,
20 express or implied, other than those specifically referred to in this Consent Judgment have been
21 made by any Party hereto. No other agreements not specifically contained or referenced herein,
22 oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No
23 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
24 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
25 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
26 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

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1 11.4 Nothing in this Consent Judgment shall release, or in any way affect any
2 rights Settling Defendant might have against any other party, whether or not that party is a
3 Settling Defendant.

4 11.5 This Court shall retain jurisdiction of this matter to implement or modify
5 the Consent Judgment.

6 11.6 The stipulations to this Consent Judgment may be executed in
7 counterparts and by means of facsimile or portable document format (pdf), which taken together
8 shall be deemed to constitute one document.

9 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
11 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
12 that Party.

13 11.8 The Parties, including their counsel, have participated in the preparation
14 of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the
15 Parties. This Consent Judgment was subject to revision and modification by the Parties and has
16 been accepted and approved as to its final form by all Parties and their counsel. Accordingly,
17 any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against
18 any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to
19 this Consent Judgment agrees that any statute or rule of construction providing that ambiguities
20 are to be resolved against the drafting Party should not be employed in the interpretation of this
21 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.


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AGREED TO:

Dated: 5/21/15

SHEFA LMV, LLC

By: 

Dated: 5/21/15

DERMALOGICA, INC.

By: 

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Dermalogica, 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

EXHIBIT A

1. Name of Settling Defendant: Dermalogica, Inc.
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.3):

Robert Sorensen
Dermalogica, Inc.
1535 Beachey Place
Carson, CA 90746
Telephone: (310)900-4000
Facsimile: (310)900-4011
Email: RSorensen@dermalogica.com

4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): August 28, 2014
5. Complaint Naming Settling Defendant (Pursuant to Section 1.4): *Shefa LMV, LLC v. Big Lots Stores, Inc., et al.*, Los Angeles County Superior Court No. BC566941

a. Date Complaint Filed: December 16, 2014

6. Covered Products Applicable to Defendant (Pursuant to Sections 1.2, 1.3, 2.1, 3.1, 3.2, 7.1, and 7.2):

Shampoos
 Soaps

7. Defendant's Section 3.3 Product(s) (Pursuant to Sections 3.3.1, 3.3.2, and 3.3.3):

Dermalogica Shampoo, UPC 666151140011

8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$ 30,000.00
Civil Penalty (payable to Shefa LMV, LLC): \$ 5,000.00
Payment in Lieu of Civil Penalty (payable to Shefa): \$ N/A
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$25,000.00

Checks payable to "Shefa LMV, LLC" or the "Law Office of Daniel N. Greenbaum" shall be delivered to counsel for Shefa as set forth in Section 8.1.