

1 LEXINGTON LAW GROUP
Mark N. Todzo, State Bar No. 168389
2 Howard Hirsch, State Bar No. 213209
Abigail Blodgett, State Bar No. 278813
3 503 Divisadero Street
4 San Francisco, CA 94117
Telephone: (415) 913-7800
5 Facsimile: (415) 759-4112
mtodzo@lexlawgroup.com
6 hhirsch@lexlawgroup.com
ablodgett@lexlawgroup.com

7 Counsel for Plaintiff
8 CENTER FOR ENVIRONMENTAL HEALTH

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12
13 Coordination Proceeding Special Title:) Judicial Council Coordination
14 PROPOSITION 65 COCAMIDE DEA CASES) Proceeding
15) Case No. 4765

16)
17 This Document Relates To:) **[PROPOSED] CONSENT**
18) **JUDGMENT AS TO MARSHALLS**
Center for Environmental Health v. Alberto-) **OF CA, LLC, MARSHALLS OF MA,**
19 *Culver USA, Inc., et al., A.C.S.C. Case No. RG*) **INC., AND THE TJX COMPANIES,**
20 *13-697455*) **INC.**
Shefa LMV, LLC v. Ross Stores, Inc., et al.,)
21 *L.A.C.S.C. Case No. BC-521400*)

22
23 **1. INTRODUCTION**

24 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
25 Environmental Health (“CEH”), Shefa LMV, LLC (“Shefa”), and defendants Marshalls of CA,
26 LLC, Marshalls of MA, Inc., and the TJX Companies, Inc. (“Settling Defendants”). CEH, Shefa,
27 and Settling Defendants are referred to collectively as the “Parties.” CEH and Shefa are referred
28 to collectively as “Plaintiffs.”

1 1.2 Settling Defendants are corporations that employ ten (10) or more persons and
2 that manufacture, distribute, and/or sell shampoo and liquid soaps that contain coconut oil
3 diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the
4 State of California or have done so in the past.

5 1.3 On July 1, 2013 and March 18, 2015, Shefa and CEH served 60-Day Notices
6 of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,
7 California Health & Safety Code § 25249.5, *et seq.*) (the “Notices”) to Settling Defendants, the
8 California Attorney General, the District Attorneys of every County in the State of California, and
9 the City Attorneys for every City in the State of California with a population greater than
10 750,000. The Notices allege violations of Proposition 65 with respect to the presence of
11 cocamide DEA in shampoo and liquid soaps that are manufactured, distributed, and/or sold by
12 Settling Defendants.

13 1.4 On September 16, 2013, Shefa filed the action entitled *Shefa LMV, LLC v.*
14 *Ross Stores, Inc., et al.*, Case No. BC-521400, in the Superior Court of California for Los Angeles
15 County, naming Settling Defendant the TJX Companies, Inc. as a party to that action. On
16 September 30, 2013, CEH filed the action entitled *CEH v. Alberto-Culver USA, Inc., et al.*, Case
17 No. RG 13-697455, in the Superior Court of California for Alameda County. On June 16, 2015,
18 CEH named Settling Defendants Marshalls of CA, LLC and Marshalls of MA, Inc. as defendants
19 in that action pursuant to California Code of Civil Procedure § 474. Both actions have been
20 coordinated with several other related Proposition 65 actions in the Proposition 65 Cocamide
21 DEA Cases, Case No. JCCP 4765, which is currently pending before this Court.

22 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
23 Court has jurisdiction over the allegations of violations contained in the operative Complaints
24 applicable to Settling Defendants (“Complaints”) and personal jurisdiction over Settling
25 Defendants as to the acts alleged in the Complaints; (ii) venue is proper in the County of
26 Alameda; and (iii) this Court has jurisdiction to enter this Consent Judgment.

27 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
28 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance

1 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
2 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
3 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
4 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
5 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
6 this action.

7 **2. DEFINITIONS**

8 2.1 “Covered Products” means soap and shampoo products manufactured,
9 distributed, and/or sold by Cape Town Toiletry, Pacifica, Vanilla Sugar dba Doggone Gorgeous,
10 and Empirical Products.

11 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
12 the Court.

13 **3. INJUNCTIVE RELIEF**

14 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
15 Defendants shall not manufacture, distribute, sell, or offer for sale any Covered Product that
16 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
17 purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
18 intentionally added ingredient in the product and/or part of the product formulation.

19 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
20 Date, Settling Defendants shall issue specifications to their suppliers of Covered Products
21 requiring that Covered Products not contain any cocamide DEA, and shall instruct each supplier
22 to use reasonable efforts to eliminate Covered Products containing cocamide DEA on a
23 nationwide basis.

24 3.3 **Action Regarding Specific Products.**

25 3.3.1 On or before the Effective Date, Settling Defendants shall cease shipping
26 and selling the following products to any of their stores and/or customers in California: (i) the
27 Empire Australia Luxe Body Wash with Vanilla Bean & Rich Avocado, Marshalls SKU No. 12
28 73-044169950-00699; (ii) the Cape Town Toiletry Co. Lily of the Valley Hand Soap; (iii) the

1 Pacifica Juicy Orange Body Wash; and (iv) the Doggone Gorgeous Express Spa 2-in-1 Shampoo
2 & Conditioner (the “Section 3.3 Products”). On or before the Effective Date, Settling Defendants
3 shall also send instructions to their stores in California instructing them to dispose of any
4 remaining Section 3.3 Products.

5 3.3.2 Any disposal of the Section 3.3 Products shall be in compliance with all
6 applicable laws.

7 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendants shall
8 provide CEH with written certification from Settling Defendants confirming compliance with the
9 requirements of this Section 3.3.

10 **4. ENFORCEMENT**

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

21 **5. PAYMENTS**

22 5.1 **Payments by Settling Defendants.** Within ten (10) business days of the
23 Effective Date, Settling Defendants shall pay the total sum of \$17,500 as a settlement payment.
24 The settlement payment from Settling Defendants shall be paid via two (2) separate checks
25 delivered to counsel for Shefa at the address set forth in Section 8.2 below (for the civil penalty
26 and Shefa’s attorneys’ fees), and one (1) check delivered to counsel for CEH at the address set
27 forth in Section 8.1 below (for CEH’s attorneys’ fees). The funds paid by Settling Defendants
28 shall be allocated between the following categories:

1 5.1.1 \$4,550 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
2 such money to be apportioned by Shefa in accordance with Health & Safety Code § 25249.12
3 (25% to Shefa and 75% to the State of California’s Office of Environmental Health Hazard
4 Assessment (“OEHHA”). Shefa’s counsel shall be responsible for remitting Settling
5 Defendants’ penalty payment under this Consent Judgment to OEHHA.

6 5.1.2 \$12,950 as reimbursement of a portion of Shefa and CEH’s reasonable
7 attorneys’ fees and costs. A check for \$10,360 shall be made payable to the Law Office of Daniel
8 N. Greenbaum, and a check for \$2,590 shall be made payable to the Lexington Law Group.

9 **6. MODIFICATION**

10 6.1 **Written Consent.** This Consent Judgment may be modified from time to
11 time by express written agreement of the Parties with the approval of the Court, or by an order of
12 this Court upon motion and in accordance with law.

13 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
14 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
15 modify the Consent Judgment.

16 **7. CLAIMS COVERED AND RELEASED**

17 7.1 This Consent Judgment is a full, final, and binding resolution between (i) CEH
18 on behalf of itself and the public interest; (ii) Shefa on behalf of itself and the public interest; and
19 (iii) Settling Defendants, and their parents, subsidiaries, affiliated entities that are under common
20 ownership, directors, officers, employees, and attorneys (“Defendant Releasees”), of any
21 violation of Proposition 65 that was or could have been asserted in the Complaints against
22 Settling Defendants and Defendant Releasees based on failure to warn about alleged exposure to
23 cocamide DEA contained in Covered Products that were sold by Settling Defendants prior to the
24 Effective Date.

25 7.2 Compliance with the terms of this Consent Judgment by Settling Defendants
26 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendants
27 and their Defendant Releasees with respect to any alleged failure to warn about cocamide DEA in
28

1 Covered Products manufactured, distributed, or sold by Settling Defendants after the Effective
2 Date.

3 7.3 Nothing in this Section 7 affects CEH or Shefa's right to commence or
4 prosecute an action under Proposition 65 against any person other than Settling Defendants and
5 Defendant Releasees.

6 **8. NOTICE**

7 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
8 notice shall be sent by first class and electronic mail to:

9 Mark Todzo
10 Lexington Law Group
11 503 Divisadero Street
12 San Francisco, CA 94117
13 mtodzo@lexlawgroup.com

14 8.2 When Shefa is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by first class and electronic mail to:

16 Daniel N. Greenbaum
17 Law Office of Daniel N. Greenbaum
18 14752 Otsego Street
19 Sherman Oaks, CA 91403
20 danielgreenbaumesq@gmail.com

21 8.3 When Settling Defendants is entitled to receive any notice under this Consent
22 Judgment, the notice shall be sent by first class and electronic mail to:

23 Will Troutman
24 Norton Rose Fulbright US LLP
25 555 South Flower Street, 41st Floor
26 Los Angeles, CA 90071
27 william.troutman@nortonrosefulbright.com

28 and by first class mail to:

General Counsel
The TJX Companies, Inc.
770 Cochituate Road
Framingham, MA 01701

8.4 Any Party may modify the person and address to whom the notice is to be sent

1 by sending the other Party notice by first class and electronic mail.

2 **9. COURT APPROVAL**

3 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
4 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
5 shall support entry of this Consent Judgment.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
7 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
8 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

9 **10. ATTORNEYS' FEES**

10 10.1 Should CEH or Shefa prevail on any motion, application for an order to show
11 cause, or other proceeding to enforce a violation of this Consent Judgment, CEH or Shefa shall be
12 entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or
13 application. Should Settling Defendants prevail on any motion application for an order to show
14 cause or other proceeding, Settling Defendants may be awarded its reasonable attorneys' fees and
15 costs as a result of such motion or application upon a finding by the Court that CEH or Shefa's
16 prosecution of the motion or application lacked substantial justification. For purposes of this
17 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
18 Civil Discovery Act of 1986, Code of Civil Procedure § 2016, *et seq.*

19 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
20 its own attorneys' fees and costs.

21 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
22 sanctions pursuant to law.

23 **11. OTHER TERMS**

24 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
25 of California.

26 11.2 This Consent Judgment shall apply to and be binding upon CEH, Shefa, and
27 Settling Defendants, and their respective divisions, subdivisions, and subsidiaries, and the
28 successors or assigns of any of them.

1 11.3 This Consent Judgment contains the sole and entire agreement and
2 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
3 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
4 merged herein and therein. There are no warranties, representations, or other agreements between
5 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
6 implied, other than those specifically referred to in this Consent Judgment have been made by any
7 Party hereto. No other agreements not specifically contained or referenced herein, oral or
8 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
9 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
10 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
11 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
12 whether or not similar, nor shall such waiver constitute a continuing waiver.

13 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
14 that Settling Defendants might have against any other party, whether or not that party is a settling
15 defendant.

16 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
17 Consent Judgment.

18 11.6 The stipulations to this Consent Judgment may be executed in counterparts
19 and by means of facsimile or portable document format (pdf), which taken together shall be
20 deemed to constitute one document.

21 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
22 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
23 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
24 Party.

25 11.8 The Parties, including their counsel, have participated in the preparation of
26 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
27 This Consent Judgment was subject to revision and modification by the Parties and has been
28 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any

1 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
2 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
3 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
4 be resolved against the drafting Party should not be employed in the interpretation of this Consent
5 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

SHEFA LMV, LLC

Alisa Fried
Managing Member

1 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
2 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
3 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
4 be resolved against the drafting Party should not be employed in the interpretation of this Consent
5 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro
Associate Director

SHEFA LMV, LLC



Alisa Fried
Managing Member

1 **MARSHALLS OF CA, LLC**

2

3 
4 Signature

5 Colleen Henschke
6 Printed Name

7
8 VP, legal - TJX (ultimate parent of Marshalls of CA, LLC)
9 Title

10 **MARSHALLS OF MA, INC.**

11

12 
13 Signature

14
15 Colleen Henschke
16 Printed Name

17 VP, legal - TJX (ultimate parent of Marshalls of MA Inc.)
18 Title

19
20 **THE TJX COMPANIES, INC.**

21 
22 Signature

23
24 Colleen Henschke
25 Printed Name

26
27 VP, legal - TJX
28 Title

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED:

Dated: _____, 2015

Judge of the Superior Court