

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1502
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF ENTRY OF JUDGMENT

Please print or type required information Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV LLC			
	DEFENDANT(S) INVOLVED IN JUDGMENT CVS Pharmacy			
CASE INFO	COURT DOCKET NUMBER JCCP004765		COURT NAME Alameda Superior Court	
	SHORT CASE NAME Proposition 65 Cocamise DEA Cases			
REPORT INFO	INJUNCTIVE RELIEF Reformultion			
	PAYMENT: CIVIL PENALTY \$5,000.00	PAYMENT: ATTORNEYS FEES \$20,000.00	PAYMENT: OTHER \$0.00	
	DATE SUBMITTED TO COURT 9 / 30 / 2015	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 9 / 30 / 2015	
	COPY OF JUDGMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum, Esq.			
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7689	
	CITY Van Nuys	STATE ZIP CA 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com	

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the judgment to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

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
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5 Facsimile: (424) 243-7689
6 Email: dgreenbaum@greenbaumlawfirm.com

7 Attorney for Plaintiff SHEFA LMV, LLC

8 REED SMITH LLP
John E. Dittoe, Esq.
9 101 Second Street
Suite 1800
10 San Francisco, CA 94015
Telephone: (415) 659-4771
11 Facsimile: (415) 391-8269
Email: jditoe@reedsmith.com

12 Attorney for Defendant
13 CVS PHARMACY, INC.

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

16 Coordination Proceeding
Special Title (Rule 3.350)
17
18 PROPOSITION 65 COCAMIDE DEA
and/or DEA CASES
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) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO: 4765
)
)
) [*Shefa LMV, LLC v. CVS Pharmacy, Inc., et al.*,
) Los Angeles County Superior Court No.
) BC520411 & *Shefa LMV, LLC v. Big Lots*
) *Stores, Inc., et al.*, Los Angeles County
) Superior Court No. BC566941]
)
) [PROPOSED] CONSENT JUDGMENT AS
) TO CVS PHARMACY, INC.
)
) Judge: Hon. George C. Hernandez, Jr.
)
) Actions filed: September 4, 2013 and
) December 26, 2014

ENDORSED
FILED
ALAMEDA COUNTY

OCT 28 2015

CLERK OF THE SUPERIOR COURT
By I. GUERRERO
Deputy

1 1. **INTRODUCTION**

2 1.1 **Shefa LMV, LLC and CVS Pharmacy, Inc.**: The parties to this proposed
3 Consent Judgment are Plaintiff Shefa LMV, LLC (“Shefa”) and Defendant CVS Pharmacy, Inc.
4 (which includes its wholly owned subsidiary Advanced Healthcare Distributors, LLC) (“the Settling
5 Defendant”). Shefa and the Settling Defendant are each a “Party” and are referred to collectively as
6 the “Parties.”

7 1.2 Shefa alleges that the Settling Defendant employs ten (10) or more persons
8 and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
9 Enforcement Act of 1986, California Health & Safety Code Section 25249.6, et. seq. (“Proposition
10 65”).

11 1.3 **General Allegations:** Coconut oil diethanolamine condensate (“Cocamide
12 DEA”) and diethanolamine (“DEA”) are listed under Proposition 65 as chemicals known to cause
13 cancer. Shefa alleges that the Settling Defendant has manufactured, distributed and/or sold the
14 products identified on Exhibit A (“Covered Products”); that such Covered Products have contained
15 Cocamide DEA and/or DEA; and that such Covered Products were sold to California consumers
16 without satisfactory Proposition 65 warnings.

17 1.4 **60 Day Notices of Proposition 65 Violations:** Shefa served 60-Day Notices
18 of Proposition 65 Violations (“Notices”) on the Settling Defendant, the California Attorney
19 General’s Office, the District Attorneys of every county in the State of California, and the City
20 Attorneys for every city in the State of California with a population greater than 750,000, with those
21 Notices dated: (1) June 22, 2013; (2) July 11, 2013; (3) July 31, 2013; (4) August 14, 2013; (5)
22 November 22, 2013 and (6) July 15, 2014. Those Notices alleged that the Settling Defendant
23 violated Proposition 65 by failing to warn consumers that certain Covered Products contained
24 Cocamide DEA and/or DEA. More than sixty (60) days have passed since service of those Notices
25 and no designated public enforcer has prosecuted the allegations set forth in the Notices or expressed
26 a desire to do so.

27 1.5 **Complaints:** On September 4, 2013, Shefa filed suit in Los Angeles Superior
28 Court in a matter entitled *Shefa LMV, LLC v. CVS Pharmacy, Inc.* et. al; Action No. BC520411,
alleging that the Settling Defendant had violated Proposition 65 in manufacturing, distributing

1 and/or selling Covered Products to California consumers that contained Cocamide DEA and that
2 lacked “clear and reasonable warnings”, within the meaning of Proposition 65. That lawsuit was
3 subsequently transferred to the Alameda County Superior Court and added to the coordinated
4 proceedings entitled Proposition 65 Cocamide DEA Cases, JCCP 4675.

5 On December 16, 2014, Shefa filed suit in Los Angeles Superior Court in a matter
6 entitled *Shefa LMV, LLC v. Big Lots, Inc.* et. al; Action No. BC566941, alleging that the defendants
7 had violated Proposition 65 in manufacturing, distributing and/or selling Covered Products to
8 California consumers that contained DEA and that lacked “clear and reasonable warnings”, within
9 the meaning of Proposition 65. That lawsuit was subsequently transferred to the Alameda County
10 Superior Court and added to the coordinated proceedings entitled Proposition 65 Cocamide DEA
11 Cases, JCCP 4675. On May 29, 2015, Shefa amended the complaint in that action pursuant to Code
12 of Civil Procedure Section 474, substituting the Settling Defendant for Doe 5.

13 1.6 All of the products identified in the Notices had been supplied to the Settling
14 Defendants from others (the “Suppliers”). Except for the Covered Products identified in Exhibit A,
15 the products identified in the Notices will or have already been the subject of settlement agreements
16 and/or Consent Judgments involving the Suppliers.

17 1.7 **Consent to Jurisdiction**: For purposes of this proposed Consent Judgment only,
18 the Parties stipulate that: (i) this Court has jurisdiction over the allegations of violations contained in
19 the Complaints identified in Section 1.5 applicable to the Settling Defendant and personal
20 jurisdiction over the Settling Defendant as to the acts alleged in those Complaints; (ii) venue is
21 proper in the County of Alameda; (iii) this Court has jurisdiction to enter this proposed Consent
22 Judgment and (iv) this Court shall retain jurisdiction to implement or modify the proposed Consent
23 Judgment.

24 1.8 **No Admissions**: The Settling Defendant denies the material legal and factual
25 allegations set forth in Shefa’s Notices and complaints identified in the foregoing paragraphs and
26 denies the alleged inadequacy of any warnings under Proposition 65. The Settling Defendant
27 maintains that all of the products that it has sold to California consumers have at all times complied
28 with all applicable laws, including Proposition 65. The Parties have entered into this proposed
Consent Judgment in order to settle, compromise and resolve disputed claims and avoid prolonged

1 and costly litigation. Nothing in this proposed Consent Judgment is or shall be construed as an
2 admission by the Parties (including their officers, directors, shareholders, employees, parent
3 companies, subsidiaries and affiliates) of any fact, conclusion of law, issue of law, or violation of
4 law, nor shall compliance with the terms of the proposed Consent Judgment constitute or be
5 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of
6 law. Nothing in this proposed Consent Judgment shall prejudice, waive, or impair any right,
7 remedy, argument, or defense the Parties may have in any other legal proceeding. This proposed
8 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties for
9 purposes of settling, compromising, and resolving issues disputed in this action. This proposed
10 Consent Judgment shall not be offered or admitted into evidence in any administrative or judicial
11 proceeding or litigation in any court, agency, or forum, except with respect to an action to enforce
12 the terms of this proposed Consent Judgment.

13 2. **DEFINITIONS**

14 2.1 “Covered Products” means the products identified on Exhibit A. “Effective
15 Date” means the date on which this proposed Consent Judgment is entered by the Court.

16 3. **INJUNCTIVE RELIEF**

17 3.1 **Warning or Reformulation of Covered Products.** After the Effective Date,
18 the Settling Defendant shall not sell in California or offer for sale in California any Covered Product
19 that contains Cocamide DEA and/or DEA unless a Proposition 65 compliant warning is affixed to
20 the packaging, labeling, or directly on each Covered Product. For purposes of this proposed Consent
21 Judgment, a Covered Product “contains Cocamide DEA and/or DEA” if Cocamide DEA and/or
22 DEA is an intentionally added ingredient in the Covered Product and/or intentionally added part of
23 the product formulation. Each Proposition 65 warning shall be prominently placed with such
24 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
25 to be read and understood by an ordinary individual under customary conditions before purchase or
26 use.

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4. ENFORCEMENT

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

4.2 If, in response to the Notice of Violation referenced in Section 4.1, the Settling Defendant demonstrates that it has relied on submitted evidence from its supplier that the Covered Products(s) identified in the Notice of Violation did not contain Cocamide DEA or DEA, or were manufactured and delivered for retail sale in California before the Effective Date, then the Settling Defendant shall not be deemed in violation of the requirements of Section 3.

5. PAYMENTS

5.1 Payments by Settling Defendant. In full satisfaction of all potential civil penalties, payments in lieu of civil penalties, attorney’s fees and costs, the Settling Defendant shall, within ten (10) business days of the Effective Date, pay the settlement payment identified for it on Exhibit A. The total settlement amount for the Settling Defendant shall be paid pursuant to the instructions outlined in Exhibit A. The funds paid by the Settling Defendant shall be allocated, as identified in Exhibit A, between the following categories:

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

5.1.2 A reimbursement of a portion of Shefa’s reasonable attorneys’ fees and costs.

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6. MODIFICATION

6.1 Written Consent. This proposed 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 proposed Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the proposed Consent Judgment.

7. CLAIMS COVERED AND RELEASED

7.1 This proposed Consent Judgment is a full, final, and binding resolution between (i) Shefa on behalf of itself and the public interest; and (ii) the 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, the 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 alleged violation of Proposition 65 that was or could have been asserted against the Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on the failure to warn about Cocamide DEA and/or DEA in the Covered Products that were sold by the Settling Defendant prior to the Effective Date.

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

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

1 7.4 Shefa, acting on its behalf and in the public interest, releases and discharges
2 the Settling Defendant, Defendant Releasees and Downstream Defendant Releasees from any and all
3 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, attorney's fees,
4 costs and expenses that were asserted or could have been asserted as to any alleged violation of
5 Proposition 65 arising from or related to the failure to provide Proposition 65 warnings or
6 satisfactory Proposition 65 warnings for the Covered Products.

7 7.5 Shefa, on behalf of itself only, releases and discharges the Settling Defendant,
8 Defendant Releasees and Downstream Defendant Releasees from any and all known and unknown
9 claims for alleged violations of Proposition 65 or for any other statutory or common law claims,
10 arising from or relating to alleged exposures to Cocamide DEA or DEA in the Covered Products or
11 the failure to warn about Cocamide DEA and/or DEA in the Covered Products. It is possible that
12 other claims not known to the Parties arising out of the facts alleged in the Notices or complaints and
13 relating to the Covered Products will be discovered. Shefa acknowledges that this proposed Consent
14 Judgment is expressly intended to cover and include all such claims, including all rights of action
15 therefor. Shefa has full knowledge of the contents of California Civil Code Section 1542 and
16 acknowledges that the claims released above may include unknown claims and nevertheless waives
17 California Civil Code Section 1542 as to any such unknown claims. Shefa understands that Section
18 1542 reads as follows:

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

24 Shefa acknowledges and understands the significance and consequences of this specific waiver of
25 California Civil Code Section 1542.

26
27 **8. NOTICE**

28 8.1 When Shefa is entitled to receive any notice under this proposed Consent
Judgment, the notice shall be sent by first class and electronic mail to:

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

1 8.2 When the Settling Defendant is entitled to receive any notice under this
2 proposed Consent Judgment, the notice shall be sent by first class and electronic mail to the person
3 identified on the Exhibit A for the Settling Defendant.

4 8.3 Any Party may modify the person and address to whom the notice is to be sent
5 by sending the other Party notice by first class and electronic mail.

6 9. **COURT APPROVAL**

7 9.1 This proposed Consent Judgment shall become effective upon its entry by the
8 Court. Shefa shall prepare and file a Motion for Approval of this proposed Consent Judgment and
9 the Settling Defendant shall support entry of this proposed Consent Judgment.

10 9.2 If this proposed Consent Judgment is not approved and entered by the Court
11 within one year after it has been fully executed by the Parties, it shall be of no force or effect and
12 shall never be introduced into evidence or otherwise used in any proceeding for any purpose other
13 than to allow the Court to determine if there was a material breach of Section 9.1.

14 10. **ATTORNEYS' FEES**

15 Should either Party prevail on any motion, application for an order to show
16 cause, or other proceeding to enforce this proposed Consent Judgment, that prevailing Party shall be
17 entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application.
18 Nothing in this Section 10 shall preclude a Party from seeking an award of sanctions pursuant to law.

19 11. **OTHER TERMS**

20 11.1 **GOVERNING LAW**: The terms of this proposed Consent Judgment shall be
21 governed by the laws of the State of California and the obligations of the Settling Defendant
22 hereunder as to the Covered Products apply only within the state of California..

23 11.2 This proposed Consent Judgment shall apply to and be binding upon and
24 benefit the Parties and their successors or assigns.

25 11.3 **ENTIRE AGREEMENT**: This proposed Consent Judgment contains the sole
26 and entire agreement and understanding of the Parties with respect to the entire subject matter
27 hereof, and any and all prior discussions, negotiations, commitments, or understandings related
28 thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or
other agreements between the Parties except as expressly set forth herein. No representations, oral

1 or otherwise, express or implied, other than those specifically referred to in this proposed Consent
2 Judgment have been made by any Party hereto. No other agreements not specifically contained or
3 referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No
4 supplementation, modification, waiver, or termination of this proposed Consent Judgment shall be
5 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
6 provisions of this proposed Consent Judgment shall be deemed or shall constitute a waiver of any of
7 the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
8 waiver.

9 11.4 **COUNTERPARTS: FACSIMILE/PDF SIGNATURES:** The stipulations to
10 this proposed Consent Judgment may be executed in counterparts and by means of facsimile or
11 portable document format (pdf), which taken together shall be deemed to constitute one document.

12 11.5 **AUTHORIZATION:** Each signatory to this proposed Consent Judgment
13 certifies that he or she is fully authorized by the Party he or she represents to stipulate to this
14 proposed Consent Judgment and to enter into and execute the proposed Consent Judgment on behalf
15 of the Party represented and legally to bind that Party.

16 11.6 **INTERPRETATION:** The Parties, including their counsel, have participated
17 in the preparation of this proposed Consent Judgment and this proposed Consent Judgment is the
18 result of the joint efforts of the Parties. This proposed Consent Judgment was subject to revision and
19 modification by the Parties and has been accepted and approved as to its final form by all Parties and
20 their counsel. Accordingly, any uncertainty or ambiguity existing in this proposed Consent
21 Judgment shall not be interpreted against any Party as a result of the manner of the preparation of
22 this proposed Consent Judgment. Each Party to this proposed Consent Judgment agrees that any
23 statute or rule of construction providing that ambiguities are to be resolved against the drafting Party
24 should not be employed in the interpretation of this proposed Consent Judgment and, in this regard,
25 the Parties hereby waive California Civil Code § 1654.

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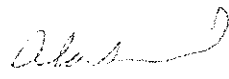
11.7 COMPLIANCE WITH HEALTH & SAFETY CODE SECTION

25249.7(f): Shefa and its attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code Section 25249.7(f) and Title II of the California Code of Regulations, Section 3003.

AGREED TO:

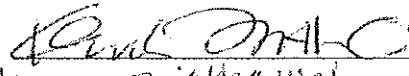
Dated: 6/8/2015

SHEFA LMV, LLC

By: 
Alisa Fried
Managing Member

Dated: 6/9/2015

CVS PHARMACY, INC.

By: 
Karen Feisthauer
Assistant Secretary

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ORDER AND JUDGMENT

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

Dated: OCT 28 2015

GEORGE C. HERNANDEZ, JR.
Judge of the Superior Court

EXHIBIT A

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1. Name of Settling Defendant: CVS Pharmacy, Inc.
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.2):
General Counsel for CVS Pharmacy, Inc.

As well as:

John E. Dittoe
REED SMITH LLP
101 Second Street
Suite 1800
San Francisco, CA 94105
Telephone: (415) 659-4771
Facsimile: (415) 391-8269
4. Dates of 60-Day Notices of Proposition 65 Violations (Pursuant to Section 1.4): June 22, 2013; July 11, 2013; July 31, 2013; August 14, 2013; November 22, 2013 and July 15, 2014.
5. Complaints Naming Settling Defendant (Pursuant to Section 1.5): *Shefa LMV, LLC v. CVS Pharmacy, Inc., et al.*, Los Angeles County Superior Court No. BC520411 & *Shefa LMV, LLC v. Big Lots, Inc., et al.*, Los Angeles County Superior Court No. BC566941
 - a. Dates Complaints Filed: September 4, 2013 & December 16, 2014
6. Covered Products Applicable to Settling Defendant (Pursuant to Sections 1.3, 1.4, 1.5, 2.1, 7.1, 7.2, 7.4 and 7.5):
 Shampoos
 Hand Soaps
 Body Washes
7. Settling Defendant's Covered Product(s) (Pursuant to Sections 1.6 and 3.1):
Pet Shampoo - Oatmeal shampoo for cats and dogs; UPC: 050428135204
Shampoo - Therapeutic Shampoo; UPC: 050428077597
Hand Soap - Lavender & Chamomile; UPC: 050428540442
Hand Soap - Clean Anti bacterial hand soap; UPC: 050428288214
8. Settling Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$ 25,000.00
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): \$20,000.00

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.