

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

|   |  |  |  |                              |
|---|--|--|--|------------------------------|
| <b>PARTIES TO THE ACTION</b>                        | PLAINTIFF(S)<br><b>Shefa LMV LLC</b>                                   |  |  |                              |
|   | DEFENDANT(S) INVOLVED IN JUDGMENT<br><b>Summers Laboratories, Inc.</b> |  |  |                              |
| <b>CASE INFO</b>                                    | COURT DOCKET NUMBER<br><b>JCCP004765</b>                               |  | COURT NAME<br><b>Alameda County Superior Court</b>                               |                              |
|   | SHORT CASE NAME<br><b>Proposition 65 Cocamide DEA Cases</b>            |  |  |                              |
| <b>REPORT INFO</b>                                  | INJUNCTIVE RELIEF<br><b>Reformulation</b>                              |  |  |                              |
|   | PAYMENT: CIVIL PENALTY<br><b>\$2,000.00</b>                            | PAYMENT: ATTORNEYS FEES<br><b>\$8,000.00</b>   | PAYMENT: OTHER<br><b>0</b>   | <i>For Internal Use Only</i> |
|   | DATE SUBMITTED TO COURT<br><b>9 / 20 / 2016</b>                        | IS JUDGMENT PURSUANT TO SETTLEMENT?<br><input checked="" type="radio"/> Yes <input type="radio"/> No | IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL<br><b>9 / 20 / 2016</b> |                              |
|   | COPY OF JUDGMENT MUST BE ATTACHED                                      |  |  |                              |
| NAME OF CONTACT<br><b>Daniel N. Greenbaum, Esq.</b> |  |  |  |                              |
| <b>FILER INFO</b>                                   | ORGANIZATION<br><b>Law Office of Daniel Greenbaum</b>                  |  | TELEPHONE NUMBER<br><b>( 818 ) 809-2199</b>                                      |                              |
|   | ADDRESS<br><b>7120 Hayvenhurst Ave., Suite 320</b>                     |  | FAX NUMBER<br><b>( 424 ) 243-7689</b>  |                              |
|   | CITY<br><b>Van Nuys</b>  | STATE ZIP<br><b>CA 91406</b>   | E-MAIL ADDRESS<br><b>dgreenbaum@greenbaumlawfirm.com</b>                         |                              |

**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.

COPY



\*14861191\*

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 Daniel N. Greenbaum, Esq. (SBN 268104)  
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**FILED**  
 ALAMEDA COUNTY

NOV 15 2016

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

6 Attorney for Plaintiff SHEFA LMV, LLC

7 POWELL TRACHTMAN  
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 8 475 Allendale Road  
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11 Attorneys for Defendant SUMMERS LABORATORIES, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF ALAMEDA

16 Coordination Proceeding  
 17 Special Title (Rule 3.350)

) JUDICIAL COUNCIL COORDINATION  
 ) PROCEEDING NO: 4765

19 PROPOSITION 65 COCAMIDE DEA  
 20 CASES

) [Shefa LMV, LLC v. Petco, Inc., et al., Los  
 ) Angeles County Superior Court No.  
 ) BC520413]

) ~~PROPOSED~~ CONSENT JUDGMENT AS  
 ) TO SUMMERS LABORATORIES, INC.

) Judge: Hon. George C. Hernandez, Jr.

) Action filed: September 4, 2013

**BY FAX**

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**1. INTRODUCTION**

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

1.2 It is alleged that the Settling Defendant has manufactured, distributed, and/or sold types of products identified on Exhibit A that contain Cocamide diethanolamine (“Cocamide DEA”) in the State of California without proper labeling.

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.

1.4 The Notices allege violations of Proposition 65 with respect to the presence of Cocamide DEA in the types of products identified in Exhibit A.

1.5 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.

1.6 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; (ii) venue is proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent Judgment.

1.7 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.

1.8 Specifically, it is stipulated by the Parties that nothing in this Consent Judgment shall constitute an agreement to or admission of the general or specific jurisdiction of the courts of California over Summers Laboratories, Inc. and that Summers Laboratories, Inc. retains all rights to challenge any and all prospective claims of general or specific jurisdiction, including in

1 any enforcement action of this stipulation, in respect to any claim by any person or entity that  
2 Summers Laboratories has had contacts with the State of California sufficient to sustain any  
3 claim of specific or general jurisdiction over it.”

4 1.9 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,  
5 remedy, argument, or defense the Parties may have in any other legal proceeding.

6 1.10 This Consent Judgment is the product of negotiation and compromise and is  
7 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
8 this action.

## 9 10 2. DEFINITIONS

11 2.1 “Covered Products” means the types of products identified on the Exhibit A for  
12 each Settling Defendant.

13 2.2 “Effective Date” means the date on which this Consent Judgment is entered by  
14 the Court.

## 15 3. INJUNCTIVE RELIEF

16 3.1 **Labeling of Covered Products.** As of the Effective Date, Settling Defendant  
17 shall comply with the labeling requirements of Proposition 65 with respect to Covered Products  
18 sold in California by Settling Defendant.

19 3.2 **Warning for Covered Products.** A Covered Product purchased, imported or  
20 manufactured by Settling Defendant may, be sold or offered for retail sale in California with a  
21 Clear and Reasonable Warning that complies with the provision of Proposition 65.

22 3.3 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this Consent  
23 Judgment shall state: “WARNING: This product contains Cocamide DEA, a chemical known in  
24 the State of California to cause cancer.”

25 3.4 A Clear and Reasonable Warning may only be provided for a Covered Product if  
26 such Covered Product contains Cocamide DEA. This statement shall be prominently displayed  
27 on the label or the packaging of the Covered Product in such a manner that it is likely to be read  
28 and understood by an ordinary individual prior to use. For direct internet sales by the Settling

1 Defendant only, the warning statement shall: (a) be displayed before a California consumer  
2 commits to purchasing the Covered Product and without the need for the California consumer to  
3 follow any additional hyperlinks beyond those required as part of the ordinary purchasing  
4 process; (b) be set out in a text, box on a separate line or in a separate paragraph; (c) be  
5 displayed in a font size in which the smallest character is no less than the equivalent of the  
6 height of the equivalent characters in 12 point Arial font; and (d) be displayed with such  
7 conspicuousness, as compared with other words, statements, or designs as to render it likely to  
8 be read and understood by an ordinary individual. The warning statement shall not be preceded,  
9 followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness to  
10 an ordinary individual, or that qualifies or interprets the required text, such as "legal notice  
11 required by law.

12 3.5 The Settling Defendant shall have no responsibilities or liability for the actions of  
13 internet sales providers, including, but not limited to Amazon.com sellers and no responsibility  
14 for those entities whom buy and resell the Settling Defendant's products. Notwithstanding the  
15 above, Settling Defendant shall provide notice within ten (10) days of the Effective Date to its  
16 online retailers to provide a warning to purchasers at time of sale in compliance with sections 3.3  
17 and 3.4 above.

#### 18 4. ENFORCEMENT

19 4.1 Shefa may, by motion or application for an order to show cause before the  
20 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent  
21 Judgment.

22 4.2 Prior to bringing any motion or application to enforce the requirements of Section  
23 3 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase  
24 and a copy of any test results which purportedly support the Notice of Violation.

25 4.3 The Parties shall then meet and confer regarding the basis for the anticipated  
26 motion or application in an attempt to resolve it informally, including providing Settling  
27 Defendant(s) with a reasonable opportunity of at least thirty (30) days to cure any alleged  
28 violation.

1           4.4     Should such attempts at informal resolution fail, Shefa may file an enforcement  
2 motion or application.

3           4.5     This Consent Judgment may only be enforced by the Parties.

4                   **5.     PAYMENTS**

5           5.1     Within ten (10) business days of the Effective Date, Settling Defendant shall pay  
6 the settlement payment identified for it on Exhibit A.

7           5.2     The total settlement amount for Settling Defendant shall be paid pursuant to the  
8 instructions outlined in Exhibit A.

9           5.3     The funds paid by Settling Defendant shall be allocated, as identified in Exhibit  
10 A, between the following categories:

11           5.4     **Civil Penalty.** A civil penalty pursuant to Health & Safety Code § 25249.7(b),  
12 with such money to be apportioned by Shefa as identified on the Exhibit A for the Settling  
13 Defendant in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the  
14 State of California's Office of Environmental Health Hazard Assessment).

15           5.5     **Attorney's Fees and Costs.** A reimbursement of a portion of Shefa's reasonable  
16 attorney's fees and costs.

17                   **6.     MODIFICATION**

18           6.1     **Written Consent.** This Consent Judgment may be modified from time to time by  
19 express written agreement of the Parties with the approval of the Court, or by an order of this  
20 Court upon motion and in accordance with law.

21           6.2     **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
22 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
23 modify the Consent Judgment.

24                   **7.     CLAIMS COVERED AND RELEASED**

25           7.1     This Consent Judgment is a full, final, and binding resolution between (i) Shefa  
26 on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its former  
27 affiliates ("affiliate" means a person or entity who directly or indirectly owns or controls, is  
28 owned or controlled by, or is under common ownership or control with, Settling Defendant), and

1 their current and past directors, officers, employees and attorneys (“Defendant Releasees”), and  
2 each entity to whom any of them directly or indirectly distribute or sell Covered Products,  
3 including but not limited to distributors, wholesalers, contractors, customers, retailers,  
4 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant  
5 Releasees”); of any violation of Proposition 65 that was or could have been asserted in the  
6 Complaint against Settling Defendant, Defendant Releasees, and Downstream Defendant  
7 Releasees, based on failure to warn about alleged exposure to Cocamide DEA contained in  
8 Covered Products that were sold by Settling Defendant prior to the Effective Date.

9       7.2 Compliance with the terms of this Consent Judgment by Settling Defendant and  
10 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,  
11 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure  
12 to warn about Cocamide DEA in Covered Products manufactured, distributed, or sold by Settling  
13 Defendants before and after the Effective Date.

14       7.3 Shefa, acting on its behalf and in the public interest, releases and discharges  
15 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees from any and  
16 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs  
17 and expenses asserted, or that could have been asserted, as to any alleged violation of  
18 Proposition 65 arising from the alleged failure to warn about alleged exposure to Cocamide DEA  
19 in the Covered Products.

20       7.4 Shefa, acting on its behalf only, releases and discharges Settling Defendant,  
21 Defendant Releasees, and Downstream Defendant Releasees from any and all known and  
22 unknown claims for alleged violations of Proposition 65 or for any other statutory or common  
23 law claims, arising from or relating to alleged exposures to Cocamide DEA in the Covered  
24 Products. It is possible that other claims not known to the parties arising out of the facts alleged  
25 in the Notices or the Complaint and relating to the Covered Products will develop or be  
26 discovered. Shefa, on behalf of itself only, acknowledges that this Consent Judgment is  
27 expressly intended to cover and include all such claims including all rights of action thereof.  
28 Shefa has full knowledge of the contents of California Civil Code section 1542. Shefa, on behalf

1 itself only, acknowledges that the claims released above may include unknown claims, and  
2 nevertheless waives California Civil Code section 1542 as to any such unknown claims.

3 California Civil Code section 1542 reads as follows:

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

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

11 7.5 Nothing in this Section 7 affects Shefa's right to commence or prosecute an  
12 action under Proposition 65 against any person other than Settling Defendant, Defendant  
13 Releasees, or Downstream Defendant Releasees.

#### 14 8. NOTICE

15 8.1 When Shefa is entitled to receive any notice under this Consent Judgment, the  
16 notice shall be sent by first class and electronic mail to:

17 Daniel N. Greenbaum  
18 Law Office of Daniel N. Greenbaum  
19 7120 Hayvenhurst Ave., Suite 320  
20 Van Nuys CA 91406  
21 dgreenbaum@greenbaumlawfirm.com

22 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
23 Judgment, the notice shall be sent by first class and electronic mail to the person identified on  
24 the Exhibit A for Settling Defendant.

25 8.3 Any Party may modify the person and address to whom the notice is to be sent by  
26 sending the other Party notice by first class and electronic mail.

#### 27 9. COURT APPROVAL

28 9.1 This Consent Judgment shall become effective upon entry by the Court.

9.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and  
Settling Defendant shall support entry of this Consent Judgment.



1           9.3     If this Consent Judgment is not entered by the Court, it shall be of no force or  
2 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
3 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

4                   **10.     ATTORNEYS' FEES**

5           10.1     Except as otherwise provided in this Consent Judgment, each Party shall bear its  
6 own attorneys' fees and costs.

7           10.2     Nothing in this Section 10 shall preclude a Party from seeking an award of  
8 sanctions pursuant to law.

9                   **11.     OTHER TERMS**

10          11.1     The terms of this Consent Judgment shall be governed by the laws of the State of  
11 California.

12          11.2     This Consent Judgment shall apply to and be binding upon Shefa, Settling  
13 Defendant, its affiliates, and successors or assigns of any of them.

14          11.3     This Consent Judgment contains the sole and entire agreement and understanding  
15 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
16 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
17 and therein.

18          11.4     There are no warranties, representations, or other agreements between the Parties  
19 except as expressly set forth herein.

20          11.5     No representations, oral or otherwise, express or implied, other than those  
21 specifically referred to in this Consent Judgment have been made by any Party hereto.

22          11.6     No other agreements not specifically contained or referenced herein, oral or  
23 otherwise, shall be deemed to exist or to bind any of the Parties hereto.

24          11.7     No supplementation, modification, waiver, or termination of this Consent  
25 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

26          11.8     No waiver of any of the provisions of this Consent Judgment shall be deemed or  
27 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
28 such waiver constitute a continuing waiver.

1           11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights  
2 Settling Defendant might have against any other party, whether or not that party is a Settling  
3 Defendant.

4           11.10 This Court shall retain jurisdiction of this matter to implement or modify the  
5 Consent Judgment.

6           11.11 The stipulations to this Consent Judgment may be executed in counterparts and  
7 by means of facsimile or portable document format (pdf), which taken together shall be deemed  
8 to constitute one document.

9           11.12 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           11.13 The Parties, including their counsel, have participated in the preparation of this  
14 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

15           11.14 This Consent Judgment was subject to revision and modification by the Parties  
16 and has been accepted and approved as to its final form by all Parties and their counsel.

17           11.15 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment  
18 shall not be interpreted against any Party as a result of the manner of the preparation of this  
19 Consent Judgment.

20           11.16 Each Party to this Consent Judgment agrees that any statute or rule of  
21 construction providing that ambiguities are to be resolved against the drafting Party should not  
22 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby  
23 waive California Civil Code § 1654.

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AGREED TO:

Dated: 9/6/16

SHEFA LMV, LLC

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

Dated: 9/6/16

SUMMERS LABORATORIES, INC.

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

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Summers Laboratories, 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: Summers Laboratories, Inc.
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.2):  
  
POWELL TRACHTMAN LOGAN CARRLE & LOMBARDO, PC  
Paul A. Logan, Esq.  
475 Allendale Road  
King of Prussia PA 19406  
Email: plogan@powelltrachtman.com
4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): July 11, 2014
5. Complaint Naming Settling Defendant (Pursuant to Section 1.4): *Shefa LMV, LLC v. Petco, Inc., et al.*, Los Angeles County Superior Court No. BC520413
  - a. Date Complaint Filed: September 4, 2013
6. Covered Products Applicable to Defendant (Pursuant to Sections 1.2, 1.3, 2.1, 3.1, 3.2, 7.1, 7.2, 7.3 and 7.4):  
  
   **Shampoos**
7. Defendant's Section 3.3 Product(s) (Pursuant to Sections 3.3.1, 3.3.2, and 3.3.3):  
  
**Tarsum Shampoo Gel; UPC: 794731011021**
8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):  
  
**Total Settlement Payment: \$10,000.00**  
**Civil Penalty (payable to Shefa LMV, LLC): \$2,000.00**  
**Payment in Lieu of Civil Penalty (PILP): \$ N/A**  
**Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$8,000.00**  
  
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.