

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 Zotos International, Inc.				
CASE INFO	COURT DOCKET NUMBER JCCP004765		COURT NAME Alameda Superior Court		
	SHORT CASE NAME Proposition 65 Cocamise DEA Cases				
REPORT INFO	INJUNCTIVE RELIEF Reformulation				
	PAYMENT: CIVIL PENALTY \$3,000.00		PAYMENT: ATTORNEYS FEES \$14,500.00		PAYMENT: OTHER \$0.00
	DATE SUBMITTED TO COURT 11 / 25 / 2015		IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 11 / 25 / 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 CA	ZIP 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.

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COPY



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

9 Attorney for Plaintiff SHEFA LMV, LLC

10 ORRICK, HERRINGTON & SUTCLIFFE LLP
11 Kathryn Edwards, Esq.
12 The Orrick Building
13 405 Howard Street
14 San Francisco, CA 94105-2669
15 Telephone: (415) 773-5962
16 Facsimile: (415) 773-5759
17 Email: kedwards@orrick.com

18 Attorneys for Defendant ZOTOS INTERNATIONAL, INC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 FOR THE COUNTY OF ALAMEDA.

21 Coordination Proceeding
22 Special Title (Rule 3.350)

23 PROPOSITION 65 COCAMIDE DEA
24 CASES

25) JUDICIAL COUNCIL COORDINATION
26) PROCEEDING NO: 4765

27)
28) [Shefa LMV, LLC v. Farouk, Inc., et al., Los
Angeles County Superior Court No.
BC579191]

29) ~~PROPOSED~~ CONSENT JUDGMENT AS
30) TO ZOTOS INTERNATIONAL, INC.

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

32) Action filed: April 17, 2015

33 BY FAX

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment ("Parties") are Shefa LMV, LLC ("Shefa")
3 and Zotos Internatinal, Inc. ("Settling Defendant"), Shefa and Settling Defendant are referred to
4 collectively as the "Parties."

5 1.2 Shefa alleges that the Settling Defendant manufactures, distributes, and/or sells
6 types of products identified on Exhibit A that contain diethanolamine ("DEA") in the State of
7 California or has done so in the past.

8 1.3 On the date identified on Exhibit A, Shefa served a 60-Day Notice of Violation
9 under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California
10 Health & Safety Code §§ 25249.5, et seq.) ("Notices") to Settling Defendant, the California
11 Attorney General, the District Attorneys of every County in the State of California, and the City
12 Attorneys for every City in the State of California with a population greater than 750,000.

13 1.4 The Notices allege violations of Proposition 65 with respect to the presence of
14 DEA in the types of products identified in Exhibit A.

15 1.5 On the date(s) identified on Exhibit A, Shefa filed the Complaint applicable to the
16 Settling Defendant ("Complaint") for the Proposition 65 Action identified in Exhibit A.

17 1.6 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
18 Court has jurisdiction over the allegations of violations contained in the operative Complaint
19 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts
20 alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this Court has
21 jurisdiction to enter this Consent Judgment.

22 1.7 Nothing in this Consent Judgment is or shall be construed as an admission by the
23 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
24 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
25 conclusion of law, issue of law, or violation of law.

26 1.8 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
27 remedy, argument, or defense the Parties may have in any other legal proceeding.
28

1 1.9 This Consent Judgment is the product of negotiation and compromise and is
2 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
3 this action.

4 1.10 This Consent Judgment amends and supersedes any prior Consent Judgment
5 which the Parties executed.

6 2. DEFINITIONS

7 2.1 "Covered Products" means the types of products identified on Exhibit A for each
8 Settling Defendant.

9 2.2 "Effective Date" means the date on which this Consent Judgment is entered by
10 the Court.

11 3. INJUNCTIVE RELIEF

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

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

21 3.3 **Action Regarding Specific Products.** On or before the Effective Date, Settling
22 Defendant shall cease selling the specific products (if any) identified as Section 3.3 Products on
23 the Exhibit A for such Settling Defendant ("Section 3.3 Products") in California unless such
24 products have been reformulated such that they do not contain DEA.

25 3.4 On or before the Effective Date, Settling Defendant shall also cease shipping the
26 Section 3.3 Products to any of its California stores and/or California customers that resell the
27 Section 3.3 Products in California.

28 3.5 The requirements of this Section apply only to those Section 3.3 Products that
 contain DEA.

1 3.6 Any destruction of Section 3.3 Products shall be in compliance with all applicable
2 laws.

3 **4. ENFORCEMENT**

4 4.1 Shefa may, by motion or application for an order to show cause before the
5 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
6 Judgment.

7 4.2 Prior to bringing any motion or application to enforce the requirements of Section
8 3 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
9 and a copy of any test results which purportedly support the Notice of Violation.

10 4.3 The Parties shall then meet and confer regarding the basis for the anticipated
11 motion or application in an attempt to resolve it informally, including providing Settling
12 Defendant(s) with a reasonable opportunity of at least thirty (30) days to cure any alleged
13 violation.

14 4.4 Should such attempts at informal resolution fail, Shefa may file an enforcement
15 motion or application.

16 4.5 This Consent Judgment may only be enforced by the Parties.

17 **5. PAYMENTS**

18 5.1 Within ten (10) business days of the Effective Date, Settling Defendant shall pay
19 the settlement payment identified for it on Exhibit A.

20 5.2 The total settlement amount for Settling Defendant shall be paid pursuant to the
21 instructions outlined in Exhibit A.

22 5.3 The funds paid by Settling Defendant shall be allocated, as identified in Exhibit
23 A, between the following categories:

24 5.4 **Civil Penalty.** A civil penalty pursuant to Health & Safety Code § 25249.7(b),
25 with such money to be apportioned by Shefa as identified on Exhibit A for the Settling
26 Defendant in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the
27 State of California's Office of Environmental Health Hazard Assessment).

28 5.5 **Attorney's Fees and Costs.** A reimbursement of a portion of Shefa's reasonable
attorney's fees and costs.

1 **6. MODIFICATION**

2 6.1 **Written Consent.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties with the approval of the Court, or by an order of this
4 Court upon motion and in accordance with law,

5 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
6 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
7 modify the Consent Judgment.

8 **7. CLAIMS COVERED AND RELEASED**

9 7.1 This Consent Judgment is a full, final, and binding resolution between (i) Shefa
10 on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its former
11 affiliates ("affiliate" means a person or entity who directly or indirectly owns or controls, is
12 owned or controlled by, or is under common ownership or control with, Settling Defendant), and
13 their current and past directors, officers, employees and attorneys ("Defendant Releasees"), and
14 each entity to whom any of them directly or indirectly distribute or sell Covered Products,
15 including but not limited to distributors, wholesalers, contractors, customers, retailers,
16 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant
17 Releasees"); of any violation of Proposition 65 that was or could have been asserted in the
18 Complaint against Settling Defendant, Defendant Releasees, and Downstream Defendant
19 Releasees, based on failure to warn about alleged exposure to DEA contained in Covered
20 Products that were sold by Settling Defendant prior to the Effective Date.

21 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant and
22 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
23 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure
24 to warn about DEA in Covered Products manufactured, distributed, or sold by Settling
25 Defendant after the Effective Date.

26 7.3 Shefa, acting on its behalf and in the public interest, releases and discharges
27 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees from any and
28 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs
and expenses asserted, or that could have been asserted, as to any alleged violation of

1 Proposition 65 arising from the alleged failure to warn about alleged exposure to DEA in the
2 Covered Products.

3 7.4 Shefa, acting on its behalf only, releases and discharges Settling Defendant,
4 Defendant Releasees, and Downstream Defendant Releasees from any and all known and
5 unknown claims for alleged violations of Proposition 65 or for any other statutory or common
6 law claims, arising from or relating to alleged exposures to DEA in the Covered Products. It is
7 possible that other claims not known to the parties arising out of the facts alleged in the Notices
8 or the Complaint and relating to the Covered Products will develop or be discovered. Shefa, on
9 behalf of itself only, acknowledges that this Consent Judgment is expressly intended to cover
10 and include all such claims including all rights of action thereof. Shefa has full knowledge of
11 the contents of California Civil Code section 1542. Shefa, on behalf of itself only,
12 acknowledges that the claims released above may include unknown claims, and nevertheless
13 waives California Civil Code section 1542 as to any such unknown claims. California Civil Code
14 section 1542 reads as follows:

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

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

22 7.5 Nothing in this Section 7 affects Shefa's right to commence or prosecute an
23 action under Proposition 65 against any person other than Settling Defendant, Defendant
24 Releasees, or Downstream Defendant Releasees.

25 8. NOTICE

26 8.1 When Shefa is entitled to receive any notice under this Consent Judgment, the
27 notice shall be sent by first class and electronic mail to:

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

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

6 **9. COURT APPROVAL**

7 9.1 This Consent Judgment shall become effective upon entry by the Court.

8 9.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
9 Settling Defendant shall support entry of this Consent Judgment.

10 9.3 If this Consent Judgment is not entered by the Court, it shall be of no force or
11 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
12 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

13 **10. ATTORNEYS' FEES**

14 10.1 Should Shefa prevail on any motion, application for an order to show cause, or
15 other proceeding to enforce a violation of this Consent Judgment, Shefa shall be entitled to its
16 reasonable attorneys' fees and costs incurred as a result of such motion or application.

17 10.2 Should Settling Defendant prevail on any motion, application for an order to
18 show cause or other proceeding, that Settling Defendant may be awarded its reasonable
19 attorneys' fees and costs against Shefa as a result of such motion or application upon a finding
20 by the Court that Shefa's prosecution of the motion or application lacked substantial
21 justification.

22 10.3 For purposes of this Consent Judgment, the term substantial justification shall
23 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§
24 2016, et seq.

25 10.4 Except as otherwise provided in this Consent Judgment, each Party shall bear its
26 own attorneys' fees and costs.

27 10.5 Nothing in this Section 10 shall preclude a Party from seeking an award of
28 sanctions pursuant to law.

1 11. OTHER TERMS

2 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling
5 Defendant, its affiliates, and successors or assigns of any of them.

6 11.3 This Consent Judgment contains the sole and entire agreement and understanding
7 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
9 and therein.

10 11.4 There are no warranties, representations, or other agreements between the Parties
11 except as expressly set forth herein.

12 11.5 No representations, oral or otherwise, express or implied, other than those
13 specifically referred to in this Consent Judgment have been made by any Party hereto.

14 11.6 No other agreements not specifically contained or referenced herein, oral or
15 otherwise, shall be deemed to exist or to bind any of the Parties hereto.

16 11.7 No supplementation, modification, waiver, or termination of this Consent
17 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

18 11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or
19 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
20 such waiver constitute a continuing waiver.

21 11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights
22 Settling Defendant might have against any other party, whether or not that party is a Settling
23 Defendant.

24 11.10 This Court shall retain jurisdiction of this matter to implement or modify the
25 Consent Judgment.

26 11.11 The stipulations to this Consent Judgment may be executed in counterparts and
27 by means of facsimile or portable document format (pdf), which taken together shall be deemed
28 to constitute one document.

1 11.12 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
3 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
4 that Party.

5 11.13 The Parties, including their counsel, have participated in the preparation of this
6 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

7 11.14 This Consent Judgment was subject to revision and modification by the Parties
8 and has been accepted and approved as to its final form by all Parties and their counsel.

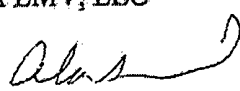
9 11.15 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment
10 shall not be interpreted against any Party as a result of the manner of the preparation of this
11 Consent Judgment.

12 11.16 Each Party to this Consent Judgment agrees that any statute or rule of
13 construction providing that ambiguities are to be resolved against the drafting Party should not
14 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
15 waive California Civil Code § 1654.

16 AGREED TO:


17 Dated: 11/18/2015

SHEFA LMV, LLC

18
19 By: 
20 Managing Member

21
22
23 Dated: 11/18/2015

ZOTOS INTERNATIONAL, INC.

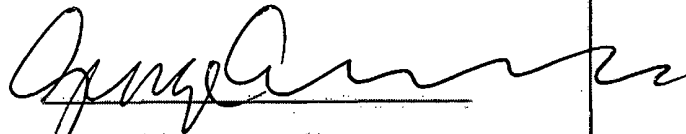
24 By: 
25 SVP & General Counsel
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ORDER AND JUDGMENT

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

Dated: 1/27/2016



Judge of the Superior Court

GEORGE C. HERNANDEZ, JR.

EXHIBIT A

1. Name of Settling Defendant: Zotos International, Inc.
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.2):

Kathryn Edwards
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Email: kedwards@orrick.com
4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): October 16, 2014
5. Complaint Naming Settling Defendant (Pursuant to Section 1.4): *Shefa LMV, LLC v. Farouk Systems, Inc., et al.*, Los Angeles County Superior Court No. BC579191
 - a. Date Complaint Filed: April 17, 2015
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
☐ Soaps
7. Settling Defendant's Section 3.3 Product(s):

Pro Beaute Aura Rosemary Mint
8. Settling Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$17,500.00
Civil Penalty (payable to Shefa LMV, LLC): \$3,000.00
Payment in Lieu of Civil Penalty (PILP): \$ N/A
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$14,500.00

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.