

**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) <b>Shefa LMV LLC</b>				
	DEFENDANT(S) INVOLVED IN JUDGMENT <b>Dr. Dennis Gross Skincare™ LLC</b>				
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>JCCP004765</b>		COURT NAME <b>Alameda Superior Court</b>		
	SHORT CASE NAME <b>Proposition 65 Cocamide DEA Cases</b>				
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformulation and/or warning label</b>				
	PAYMENT: CIVIL PENALTY <b>\$10,000.00</b>		PAYMENT: ATTORNEYS FEES <b>\$27,500.00</b>		PAYMENT: OTHER <b>\$0.00</b>
	DATE SUBMITTED TO COURT <b>06 / 08 / 2015</b>		IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL <b>06 / 08 / 2015</b>
	COPY OF JUDGMENT MUST BE ATTACHED				
	For Internal Use Only				
<b>FILER INFO</b>	NAME OF CONTACT <b>Daniel N. Greenbaum, Esq.</b>				
	ORGANIZATION <b>Law Office of Daniel Greenbaum</b>			TELEPHONE NUMBER ( <b>818</b> ) <b>809-2199</b>	
	ADDRESS <b>7120 Hayvenhurst Ave., Suite 320</b>			FAX NUMBER ( <b>424</b> ) <b>243-7689</b>	
	CITY <b>Van Nuys</b>	STATE <b>CA</b>	ZIP <b>91406</b>	E-MAIL ADDRESS <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.

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10 Attorney for Plaintiff SHEFA LMV, LLC

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19 Attorney for Defendant Dr. Dennis Gross Skincare LLC

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 FOR THE COUNTY OF ALAMEDA

22 Coordination Proceeding  
23 Special Title (Rule 3.350)

24 PROPOSITION 65 COCAMIDE DEA  
25 CASES

26 ) JUDICIAL COUNCIL COORDINATION  
27 ) PROCEEDING NO: 4765

28 )  
29 )  
30 ) [Shefa LMV, LLC v. Big Lots Stores, Inc., et  
31 ) al., Los Angeles County Superior Court No.  
32 ) BC566941]

33 ) **[PROPOSED] CONSENT JUDGMENT AS**  
34 ) **TO DR. DENNIS GROSS SKINCARE LLC**

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

36 ) Action filed: December 16, 2014

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 21 2015

CLERK OF THE SUPERIOR COURT  
By YOLANDA ESTRADA Deputy

1                   **1. INTRODUCTION**

2                   1.1     The parties to this Consent Judgment ("Parties") are Shefa LMV, LLC  
3 ("Shefa") and Dr. Dennis Gross Skincare™ LLC ("Settling Defendant"). Shefa and Settling  
4 Defendant are referred to collectively as the "Parties."

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

8                   1.3     On the date identified on Exhibit A, Shefa served a 60-Day Notice of  
9 Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986,  
10 California Health & Safety Code §§ 25249.5, et seq.) ("Notices") to Settling Defendant, the  
11 California Attorney General, the District Attorneys of every County in the State of California,  
12 and the City Attorneys for every City in the State of California with a population greater than  
13 750,000. The Notices allege violations of Proposition 65 with respect to the presence of DEA in  
14 the types of products identified in Exhibit A.

15                  1.4     On the date(s) identified on Exhibit A, Shefa filed the Complaint  
16 applicable to the Settling Defendant ("Complaint") for the Proposition 65 Action identified in  
17 Exhibit A.

18                  1.5     For purposes of this Consent Judgment only, the Parties stipulate that: (i)  
19 this Court has jurisdiction over the allegations of violations contained in the operative Complaint  
20 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts  
21 alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this Court has  
22 jurisdiction to enter this Consent Judgment.

23                  1.6     Nothing in this Consent Judgment is or shall be construed as an admission  
24 by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall  
25 compliance with the Consent Judgment constitute or be construed as an admission by the Parties  
26 of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent  
27 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties  
28 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                   3.4 Current Inventory. To the extent it has not already suspended the sale of  
7 Covered Products in California, on or before ninety (90) days after the Effective Date Settling  
8 Defendant shall not sell or otherwise distributed any Covered Product in California or to a  
9 California consumer.

10                  3.5 Preservation of Competitiveness. The intent of this Section is to protect the  
11 competitive interests of Settling Defendant arising from the Shefa's claims and to ensure that by  
12 settling the allegations in the Notice of Violation and the Complaint, Settling Defendant is not  
13 disadvantaged with respect to its competitors. Specifically, the parties agree that should any  
14 agreement or consent judgment be entered into by Shefa, The California Office of Environmental  
15 Health Hazard Assessment, or the California Attorney General's Office concerning personal care  
16 products similar to the Covered Product that contains provisions that would materially impact the  
17 terms of this Agreement, such benefits shall be deemed to accrue to Settling Defendant and this  
18 Agreement shall be amended by a stipulation and proposed order, a copy of which shall be  
19 provided to the Attorney General's office five (5) business days prior to submission to the Court,  
20 to provide Settling Defendant the benefit thereof. Further, should there be a court decision  
21 involving any other person or entity that received a Proposition 65 60-Day Notice of Violation  
22 alleging that DEA in personal care products similar to the Covered Products and such decision is  
23 in whole or in part favorable to the Settling Defendant(s) in such action, then that decision shall  
24 be incorporated into this Agreement by a stipulation and proposed order, a copy of which shall be  
25 provided to the Attorney General's Office five (5) business days prior to submission to the  
26 Court. Nothing herein shall prohibit Settling Defendant from selling or distributing or  
27 manufacturing for sale of distribution in California Covered Products that bear the Required  
28 California Proposition 65 Health Warning.



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**4. ENFORCEMENT**

4.1 Shefa may, by motion or application for an order to show cause before the Superior Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3 above, Shefa shall provide 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 Settling Defendant(s) 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 Consent Judgment may only be enforced by the Parties.

**5. PAYMENTS**

5.1 **Payments by Settling Defendant.** Within ten (10) days of the Effective Date, Settling Defendant shall pay the settlement payment identified in Exhibit A. The total settlement amount for Settling Defendant shall be paid pursuant to the instructions outlined in Exhibit A. The funds paid by 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 the 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.

**6. MODIFICATION**

1                   6.1     Written Consent. This Consent Judgment may be modified from time to  
2 time by express written agreement of the Parties with the approval of the Court, or by an order of  
3 this Court upon motion and in accordance with law.

4                   6.2     Meet and Confer. Any Party seeking to modify this Consent Judgment  
5 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
6 modify the Consent Judgment.

7                   **7.     CLAIMS COVERED AND RELEASED**

8                   7.1     This Consent Judgment is a full, final, and binding resolution between (i)  
9 Shefa on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its  
10 former affiliates ("affiliate" means a person or entity who directly or indirectly owns or controls,  
11 is owned or controlled by, or is under common ownership or control with, Settling Defendant),  
12 and their current and past directors, officers, employees and attorneys ("Defendant Releasees"),  
13 and each entity to whom any of them directly or indirectly distribute or sell Covered Products,  
14 including but not limited to distributors, wholesalers, customers, retailers, franchisees,  
15 cooperative members, licensors, and licensees, including but not limited to Walgreen Co. and its  
16 subsidiaries and affiliates, including Beauty.com and Drugstore.com ("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  
22 Defendant and Defendant Releasees shall constitute compliance with Proposition 65 by Settling  
23 Defendant, Defendant Releasees, and Downstream Defendant Releasees with respect to any  
24 alleged failure to warn about DEA in Covered Products manufactured, distributed, or sold by  
25 Settling Defendants after the Effective Date.

26                   7.3     Nothing in this Section 7 affects Shefa's right to commence or prosecute  
27 an action under Proposition 65 against any person other than Settling Defendant, Defendant  
28 Releasees, or Downstream Defendant Releasees.

1  
2                   **8. NOTICE**

3                   8.1     When Shefa is entitled to receive any notice under this Consent Judgment,  
4 the notice shall be sent by first class and electronic mail to:

5  
6                   Daniel N. Greenbaum  
7                   Law Office of Daniel N. Greenbaum  
8                   7120 Hayvenhurst Ave., Suite 320  
9                   Van Nuys CA 91406  
10                  dgreenbaum@greenbaumlawfirm.com

11                  8.3     When Settling Defendant is entitled to receive any notice under this  
12 Consent Judgment, the notice shall be sent by first class and electronic mail to the person  
13 identified on the Exhibit A for Settling Defendant.

14                  8.4     Any Party may modify the person and address to whom the notice is to be  
15 sent by sending the other Party notice by first class and electronic mail.

16                   **9. COURT APPROVAL**

17                  9.1     This Consent Judgment shall become effective upon entry by the Court.  
18 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and Settling  
19 Defendant shall support entry of this Consent Judgment.

20                  9.2     If this Consent Judgment is not entered by the Court, it shall be of no  
21 force or effect and shall never be introduced into evidence or otherwise used in any proceeding  
22 for any purpose other than to allow the Court to determine if there was a material breach of  
23 Section 9.1.

24                   **10. ATTORNEYS' FEES**

25                  10.1    Should Shefa prevail on any motion, application for an order to show  
26 cause, or other proceeding to enforce a violation of this Consent Judgment, Shefa shall be  
27 entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or  
28 application. Should Settling Defendant prevail on any motion application for an order to show  
cause or other proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees  
and costs against Shefa as a result of such motion or application upon a finding by the Court that



1 Shefa's prosecution of the motion or application lacked substantial justification. For purposes of  
2 this Consent Judgment, the term substantial justification shall carry the same meaning as used in  
3 the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

4 10.2 Except as otherwise provided in this Consent Judgment, each Party shall  
5 bear its own attorneys' fees and costs.

6 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of  
7 sanctions pursuant to law.

8 **11. OTHER TERMS**

9 11.1 The terms of this Consent Judgment shall be governed by the laws of the  
10 State of California.

11 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling  
12 Defendant, its affiliates, and successors or assigns of any of them.

13 11.3 This Consent Judgment contains the sole and entire agreement and  
14 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
15 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
16 merged herein and therein. There are no warranties, representations, or other agreements  
17 between the Parties except as expressly set forth herein. No representations, oral or otherwise,  
18 express or implied, other than those specifically referred to in this Consent Judgment have been  
19 made by any Party hereto. No other agreements not specifically contained or referenced herein,  
20 oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No  
21 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
22 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
23 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
24 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

25 11.4 Nothing in this Consent Judgment shall release, or in any way affect any  
26 rights Settling Defendant might have against any other party, whether or not that party is a  
27 Settling Defendant.

1           11.5 This Court shall retain jurisdiction of this matter to implement or modify  
2 the Consent Judgment.

3           11.6 The stipulations to this Consent Judgment may be executed in  
4 counterparts and by means of facsimile or portable document format (pdf), which taken together  
5 shall be deemed to constitute one document.

6           11.7 Each signatory to this Consent Judgment certifies that he or she is fully  
7 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter  
8 into and execute the Consent Judgment on behalf of the Party represented and legally to bind  
9 that Party.

10           11.8 The Parties, including their counsel, have participated in the preparation  
11 of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the  
12 Parties. This Consent Judgment was subject to revision and modification by the Parties and has  
13 been accepted and approved as to its final form by all Parties and their counsel. Accordingly,  
14 any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against  
15 any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to  
16 this Consent Judgment agrees that any statute or rule of construction providing that ambiguities  
17 are to be resolved against the drafting Party should not be employed in the interpretation of this  
18 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

19  
20 AGREED TO:

21 Dated: 6/4/2015

SHEFA LMV, LLC

22  
23 By: 

24  
25 Dated: 

DR. DENNIS GROSS SKINCARE™ LLC

26  
27 By: 

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Dr. Dennis Gross Skincare™ LLC, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: JUL 21 2015

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

**EXHIBIT A**

1. **Name of Settling Defendant:** Dr. Dennis Gross Skincare™ LLC
2. **Name of Plaintiff:** Shefa LMV, LLC
3. **Person(s) to Receive Notices (Pursuant to Section 8.3):**  
  
Ronie M. Schmelz  
Tucker Ellis LLP  
515 South Flower Street, Forty-Second Floor  
Los Angeles, CA 90071
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. 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):**  
  
x Creams (including anti-fungal creams)
7. **Defendant's Section 3.3 Product(s) (Pursuant to Sections 3.3.1, 3.3.2, and 3.3.3):**  
  
Dr. Dennis Gross Skincare™ CC Cream, UPC #'s: 695866523215, 695866523116, 695866523314, 695866523413
8. **Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):**  
  
Total Settlement Payment: \$ 37,500.00  
Civil Penalty (payable to Shefa): \$ 10,000.00  
Payment in Lieu of Civil Penalty (payable to Shefa): \$ N/A  
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$27,500.00  
  
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.
9. **Defendant's Payment Schedule:**
  - a. First Payment: The civil penalty portion of \$10,000 shall be paid within ten (10) days of the Effective Date.
  - b. Second payment: A payment of \$13,750 (representing 50% of the attorney's fees and costs due pursuant to Section 5.1) shall be due thirty (30) after the effective date.

- c. Third Payment: A payment of \$13,750 (representing 50% of the attorney's fees and costs due pursuant to Section 5.1) shall be due sixty (60) after the effective date.