

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 Paula's Choice				
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 \$4,000.00		PAYMENT: ATTORNEYS FEES \$17,500.00		PAYMENT: OTHER 0
	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 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.

1 1. INTRODUCTION

2 1.1 The parties to this Consent Judgment ("Parties") are Shefa LMV, LLC
3 ("Shefa") and Paula's Choice ("Settling Defendant"). Shefa and Settling Defendant are referred
4 to collectively as the "Parties."

5 1.2 The Settling Defendant manufactures, distributes, and/or sells types of
6 product identified on Exhibit A, which contains DEA-Oleth-10 Phosphate, in the State of
7 California or has done so in the past. Diethanolamine ("DEA") is a constituent of DEA-Oleth-
8 10 Phosphate.

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

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

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

24 1.6 Nothing in this Consent Judgment is or shall be construed as an admission
25 by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
26 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
27 of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
28 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties

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

4 2. DEFINITIONS

5 2.1 "Covered Products" means the types of products identified on the Exhibit
6 A for each Settling Defendant.

7 2.2 "Effective Date" means the date on which this Consent Judgment is
8 entered by the Court.

9 3. INJUNCTIVE RELIEF

10 3.1 Reformulation of Covered Products. As of the Effective Date, Settling
11 Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product that
12 contains DEA and that will be sold or offered for sale to California consumers. For purposes of
13 this Consent Judgment, a product "contains DEA" if DEA or a chemical that contains DEA is an
14 intentionally added ingredient in the product and/or intentionally added part of the product
15 formulation.

16 3.2 Specification to Suppliers. No more than thirty (30) days after the
17 Effective Date, Settling Defendant shall issue specifications to its supplier(s) of Covered
18 Products requiring that Covered Products not contain any DEA, and shall instruct each supplier
19 to use reasonable efforts to eliminate Covered Products containing DEA on a nationwide basis.

20 3.3 Action Regarding Specific Products.

21 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the
22 specific products (if any) identified as Section 3.3 Products on the Exhibit A for such Settling
23 Defendant ("Section 3.3 Products") in California unless such products have been reformulated
24 such that they do not contain DEA. On or before the Effective Date, Settling Defendant shall
25 also cease shipping the Section 3.3 Products to any of its stores and/or customers that resell the
26 Section 3.3 Products in California. The requirements of this Section apply only to those Section
27 3.3 Products that contain DEA.

28

1 3.3.2 Within sixty (60) days of the Effective Date, Settling Defendant shall
2 provide Shefa with written certification from Settling Defendant confirming compliance with the
3 requirements of this Section 3.3.

4 **4. ENFORCEMENT**

5 4.1 Shefa may, by motion or application for an order to show cause before the
6 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
7 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
8 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. The Parties
10 shall then meet and confer regarding the basis for the anticipated motion or application in an
11 attempt to resolve it informally, including providing Settling Defendant(s) with a reasonable
12 opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at
13 informal resolution fail, Shefa may file an enforcement motion or application. This Consent
14 Judgment may only be enforced by the Parties.

15 **5. PAYMENTS**

16 5.1 Payments by Settling Defendant. Within ten (10) business days of the
17 Effective Date, Settling Defendant shall pay the settlement payment identified for it on Exhibit
18 A. The total settlement amount for Settling Defendant shall be paid pursuant to the instructions
19 outlined in Exhibit A. The funds paid by Settling Defendant shall be allocated, as identified in
20 Exhibit A, between the following categories:

21 5.1.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b), with such
22 money to be apportioned by Shefa as identified on the Exhibit A for the Settling Defendant in
23 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
24 California's Office of Environmental Health Hazard Assessment).

25 5.1.2 A reimbursement of a portion of Shefa's reasonable attorneys' fees and
26 costs.

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

20 7.2 Compliance with the terms of this Consent Judgment by Settling
21 Defendant and Defendant Releasees shall constitute compliance with Proposition 65 by Settling
22 Defendant, Defendant Releasees, and Downstream Defendant Releasees with respect to any
23 alleged failure to warn about DEA in Covered Products manufactured, distributed, or sold by
24 Settling Defendants after the Effective Date.

25 7.3 Nothing in this Section 7 affects Shefa's right to commence or prosecute
26 an action under Proposition 65 against any person other than Settling Defendant, Defendant
27 Releasees, or Downstream Defendant Releasees.

28 **8. NOTICE**

1 8.1 When Shefa is entitled to receive any notice under this Consent Judgment,
2 the notice shall be sent by first class and electronic mail to:

3 Daniel N. Greenbaum
4 Law Office of Daniel N. Greenbaum
5 7120 Hayvenhurst Ave., Suite 320
6 Van Nuys CA 91406
 dgreenbaum@greenbaumlawfirm.com

7 8.3 When Settling Defendant is entitled to receive any notice under this
8 Consent Judgment, the notice shall be sent by first class and electronic mail to the persons
9 identified on the Exhibit A for Settling Defendant.

10 8.4 Any Party may modify the person and address to whom the notice is to be
11 sent by sending the other Party notice by first class and electronic mail.

12 **9. COURT APPROVAL**

13 9.1 This Consent Judgment shall become effective upon entry by the Court.
14 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and Settling
15 Defendant shall support entry of this Consent Judgment.

16 9.2 If this Consent Judgment is not entered by the Court, it shall be of no
17 force or effect and shall never be introduced into evidence or otherwise used in any proceeding
18 for any purpose other than to allow the Court to determine if there was a material breach of
19 Section 9.1.

20 **10. ATTORNEYS' FEES**

21 10.1 Should Shefa prevail on any motion, application for an order to show
22 cause, or other proceeding to enforce a violation of this Consent Judgment, Shefa shall be
23 entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or
24 application. Should Settling Defendant prevail on any motion application for an order to show
25 cause or other proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees
26 and costs against Shefa as a result of such motion or application upon a finding by the Court that
27 Shefa's prosecution of the motion or application lacked substantial justification. For purposes of
28

1 this Consent Judgment, the term substantial justification shall carry the same meaning as used in
2 the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

3 10.2 Except as otherwise provided in this Consent Judgment, each Party shall
4 bear its own attorneys' fees and costs.

5 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
6 sanctions pursuant to law.

7 **11. OTHER TERMS**

8 11.1 The terms of this Consent Judgment shall be governed by the laws of the
9 State of California.

10 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling
11 Defendant, its affiliates, and successors or assigns of any of them.

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

24 11.4 Nothing in this Consent Judgment shall release, or in any way affect any
25 rights Settling Defendant might have against any other party, whether or not that party is a
26 Settling Defendant.

27 11.5 This Court shall retain jurisdiction of this matter to implement or modify
28 the Consent Judgment.

1 11.6 The stipulations to this Consent Judgment may be executed in
2 counterparts and by means of facsimile or portable document format (pdf), which taken together
3 shall be deemed to constitute one document.

4 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
6 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
7 that Party.

8 11.8 The Parties, including their counsel, have participated in the preparation
9 of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the
10 Parties. This Consent Judgment was subject to revision and modification by the Parties and has
11 been accepted and approved as to its final form by all Parties and their counsel. Accordingly,
12 any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against
13 any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to
14 this Consent Judgment agrees that any statute or rule of construction providing that ambiguities
15 are to be resolved against the drafting Party should not be employed in the interpretation of this
16 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

17 AGREED TO:

18 Dated: 6/30/2015

SHEFA LMV, LLC

21 By: 
22 _____

23 Dated: 6-29-15

PAULA'S CHOICE

26 By: 
27 Kate Mee
28 _____

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Paula's Choice, 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

1. Name of Settling Defendant: Paula's Choice
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.3):

PERKINS COIE LLP
Breena Roos, Esq.
1201 Third Avenue Suite 4900
Seattle, WA 98101-3099
Telephone: 206-359-6225
Fax: 206-359-7225
Email: BRoos@perkinscoie.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. 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):

 - Shampoos
 - Soaps
 - ☒ Skin Care
 - Sunscreen
7. Defendant's Section 3.3 Product(s) (Pursuant to Sections 3.3.1 and 3.3.2):

Paula's Choice Skin Balancing; UPC: 0655439013505
8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$21,500.00
Civil Penalty (payable to Shefa LMV, LLC): \$4,000.00
Payment in Lieu of Civil Penalty (payable to Shefa): \$ N/A
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$17,500.00

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.