

**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 Inc.</b>				
	DEFENDANT(S) INVOLVED IN JUDGMENT <b>Janssen Pharmaceuticals, Inc.</b>				
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>JCCP004765</b>		COURT NAME <b>Alameda County Superior Court</b>		
	SHORT CASE NAME <b>Proposition 65 Cocamide DEA Cases</b>				
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformulation</b>				
	PAYMENT: CIVIL PENALTY <b>\$12,000.00</b>	PAYMENT: ATTORNEYS FEES <b>\$38,000.00</b>	PAYMENT: OTHER <b>0</b>	For Internal Use Only	
	DATE SUBMITTED TO COURT <b>06 / 12 / 2017</b>	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="radio"/> Yes <input type="radio"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL <b>06 / 12 / 2017</b>		
	COPY OF JUDGMENT MUST BE ATTACHED				
<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 ) 809-2199</b>	
	ADDRESS <b>7120 Hayvenhurst Ave., Suite 320</b>			FAX NUMBER <b>( 424 ) 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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LAW OFFICE OF DANIEL N. GREENBAUM  
Daniel N. Greenbaum, Esq. (SBN 268104)  
The Hathaway Building  
7120 Hayvenhurst Avenue, Suite 320  
Van Nuys, CA 91406  
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Facsimile: (424) 243-7689  
Email: dgreenbaum@greenbaumlawfirm.com

**FILED**  
ALAMEDA COUNTY

AUG 23 2017

CLERK OF THE SUPERIOR COURT

By Yestrada Deputy

Attorney for Plaintiff SHEFA LMV, LLC

TATRO TEKOSKY SADWICK LLP  
David B. Sadwick, Esq.  
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Attorneys for Defendant JANSSEN PHARMACEUTICALS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

Coordination Proceeding  
Special Title (Rule 3.350)

PROPOSITION 65 COCAMIDE DEA  
CASES

) JUDICIAL COUNCIL COORDINATION  
) PROCEEDING NO: 4765  
)  
) [Shefa LMV, LLC v. Target Corp., et al., Los  
) Angeles County Superior Court No.  
) BC520410]  
)  
) **[PROPOSED] CONSENT JUDGMENT AS**  
) **TO JANSSEN PHARMACEUTICALS,**  
) **INC.**  
)  
) Judge: Hon. George C. Hernandez, Jr.  
) Action filed: September 4, 2013  
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1 to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this  
2 Court has jurisdiction to enter this Consent Judgment. The Parties recognize that the Covered  
3 Products are prescription-only products and, as such, are governed by specific regulatory  
4 requirements imposed by the United States Food, Drug, and Cosmetics Act, 21 United States Code  
5 Section 301 et seq. Additionally, the Covered Products are governed by additional regulatory  
6 requirements, including without limitation regulations issued by the European Union. By agreeing  
7 to the jurisdiction of the Court in this action, Settling Defendant does not: (a) concede that the  
8 application of Proposition 65 to the Covered Products is not preempted by federal law or (b)  
9 consent to the application of Proposition 65 or any other law to any other product.

10 1.6 **No Admissions.** Nothing in this Consent Judgment is or shall be construed as an  
11 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall  
12 compliance with the Consent Judgment constitute or be construed as an admission by the Parties  
13 of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment  
14 shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
15 any other legal proceeding. This Consent Judgment is the product of negotiation and compromise,  
16 and is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed  
17 in this action.

## 18 2. DEFINITIONS

19 2.1 "Covered Products" means the products identified in Section 6 of Exhibit A for  
20 Settling Defendant.

21 2.2 "Effective Date" means the date on which this Consent Judgment is entered by the  
22 Court.

## 23 3. INJUNCTIVE RELIEF

### 24 3.1 Reformulation of the Covered Products.

25 3.1.1. The ingredients of the Covered Products include both active and inactive  
26 ingredients subject to review and approval by the federal Food and Drug Administration (the  
27 "FDA") and other regulatory agencies, including without limitation regulatory agencies in the

1 European Union (the "E.U."). Settling Defendant has chosen to take the necessary steps to remove  
2 Cocamide DEA from the Covered Products pursuant to the process for reformulating products  
3 under the aforementioned regulatory regimes.

4 3.1.2. Settling Defendant will begin the reformulation process for the Covered Products  
5 by the Effective Date and, barring any unanticipated delays, will have the reformulation completed  
6 December 31, 2020. All Covered Products manufactured after January 1, 2021 will be  
7 reformulated to exclude Cocamide DEA as an ingredient, unless there are unanticipated regulatory  
8 delays in such reformulation, in which case such reformulation will occur at the earliest  
9 commercially reasonable and practicable date after January 1, 2021.

10 3.2. **Meet and Confer.** If the reformulation set forth in Section 3.1 of this Consent  
11 Judgment does not occur by December 31, 2020, Settling Defendant will either discontinue  
12 distribution of the Covered Products in California or the Parties will meet and confer regarding a  
13 possible modification to this Consent Judgment to address compliance by the Covered Products  
14 with Proposition 65, taking into consideration any factors the Parties consider relevant. If the  
15 Parties determine that this Consent Judgment must be amended, they will follow the procedures  
16 set forth in Section 3.4.

17 3.3. **Preservation of Competitiveness.** The intent of this Section is to protect the  
18 competitive interests of Settling Defendant arising from the Shefa's claims and to ensure that by  
19 settling the allegations in the Notice of Violation and the Complaint, Settling Defendant is not  
20 disadvantaged with respect to its competitors. Specifically, the Parties agree that should any  
21 agreement or consent judgment be entered into by Shefa, The California Office of Environmental  
22 Health Hazard Assessment, or the California Attorney General's Office concerning products  
23 similar to the Covered Products that contains provisions that would materially impact the terms of  
24 this Consent Judgment, such benefits shall be deemed to accrue to Settling Defendant. If the  
25 Parties determine that this Consent Judgment must be amended, they will follow the procedures  
26 set forth in Section 3.4.

**3.4 Procedure for Amending this Consent Judgment.** If this Consent Judgment must be amended, the Parties will follow the following procedure: First, this Consent Judgment shall be amended by a stipulation. Then, a new [proposed] order shall be submitted to the Court for approval, a copy of which shall be provided to the Attorney General's office five (5) business days prior to submission to the Court, to provide Settling Defendant the benefit thereof. Further, should there be a court decision involving any other person or entity that received a Proposition 65 60-Day Notice of Violation alleging that Cocamide DEA in products similar to the Covered Products and such decision is in whole or in part favorable to the defendant(s) in such action, then that decision shall be incorporated into this Consent Judgment by a stipulation and a new [proposed] order that shall be submitted to the Court for approval, a copy of which shall be provided to the Attorney General's Office five (5) business days prior to submission to the Court.

**3.5 Governing Law.** The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California.

**3.6 Potential Repeal of Proposition 65.** In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, including without limitation the delisting of Cocamide DEA, then Settling Defendant may provide written notice to Plaintiff of any asserted change in the law, and with the exception of Section 5.1 below, have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered Products are so affected. None of the terms of this Consent Judgment shall have any application to Covered Products sold outside of the State of California.

#### 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.

4.2 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.

4.3 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 with a reasonable opportunity of at least thirty (30) days to cure any alleged violation. This Consent Judgment may only be enforced by the Parties.

## 5. PAYMENTS

**5.1 Payments by Settling Defendant.** Within ten (10) business days of the Effective Date, Settling Defendant shall initiate the settlement payment (per the terms in ¶ 7) identified on Exhibit A. The total settlement amount for Settling Defendant shall be paid pursuant to the instructions outlined in Exhibit A (hereinafter “Total Settlement”). The funds paid by Settling Defendant shall be allocated, as identified in Exhibit A, between the following categories:

5.1.1 **Civil Penalty.** A civil penalty pursuant to Health & Safety Code § 25249.7(b) in the amount identified in Section 7 of Exhibit A, with such money to be apportioned by Shefa 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 Attorney's Fees and Costs.** The Parties acknowledge that Shefa and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Settling Defendant expressed a desire to resolve Shefa's fees and costs. Settling Defendant agrees to pay Shefa and its counsel under the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed through the mutual execution and the Court's entry of this Consent Judgment, including without limitation the fees and costs incurred as a result of investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement, and seeking court approval of the same. The amount of such fees and costs which shall be paid by Settling Defendant is set forth in Exhibit A. Payment shall be delivered to Daniel N. Greenbaum, Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

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1 alleged exposure to Cocamide DEA contained in Covered Products that were manufactured,  
2 distributed, or sold by Settling Defendant, Defendant Releasees, Downstream Releasees,  
3 Upstream Releasees, or Manufacturers prior to the Effective Date.

4       **7.2 Compliance.** Compliance with the terms of this Consent Judgment by Settling  
5 Defendant shall constitute compliance with Proposition 65 by Settling Defendant, Defendant  
6 Releasees, Downstream Releasees, Upstream Releasees, and Manufacturers, with respect to any  
7 alleged failure to warn about Cocamide DEA in Covered Products manufactured, distributed, or  
8 sold by Settling Defendant on or after the Effective Date.

9       **7.3 Unauthorized Distribution or Sale.** Distribution and/or sale (including without  
10 limitation, importation, internet sale, direct sale, and/or resale) of non-reformulated Covered  
11 Products in California by a person or entity which is not affiliated with and/or authorized by  
12 Settling Defendant to distribute and/or sell Covered Products in California shall not constitute non-  
13 compliance with Proposition 65 and/or non-compliance with this Consent Judgment by Settling  
14 Defendant, Defendant Releasees, Downstream Releasees, Upstream Releasees, and/or  
15 Manufacturers.

16       **7.4 Meet and Confer Regarding Non-Compliance.** Should Plaintiff become aware  
17 of the sale of non-reformulated Covered Products, then Plaintiff's counsel shall contact Settling  
18 Defendant's counsel and counsel for Plaintiff and Settling Defendant shall meet and confer  
19 regarding any alleged non-compliance with this Consent Judgment and/or any alleged violation of  
20 Proposition 65.

21       **7.5 Plaintiff Individual Waiver.** Plaintiff, in its individual capacity only and *not* in  
22 its representative capacity, also provides a release to Settling Defendant, Defendant Releasees,  
23 Downstream Releasees, Upstream Releasees, and Manufacturers, which release shall be effective  
24 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,  
25 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Plaintiff of  
26 any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out  
27

1 of alleged or actual exposures to Cocamide DEA in Settling Defendant's Covered Products prior  
2 to the Effective Date.

3       **7.6 Defendant Waiver.** Settling Defendant, on behalf of itself, its past and current  
4 agents, representatives, attorneys, successors and assignees, hereby waives any and all claims  
5 against Shefa and its attorneys and other representatives, for any and all actions taken or statements  
6 made by Shefa and its attorneys and other representatives, whether in the course of investigating  
7 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the  
8 Covered Products up through the Effective Date.

9       **8. NOTICE**

10       8.1 When Shefa is entitled to receive any notice under this Consent Judgment, the  
11 notice shall be sent by first class and electronic mail to:

12                   Daniel N. Greenbaum  
13                   Law Office of Daniel N. Greenbaum  
14                   7120 Hayvenhurst Ave., Suite 320  
15                   Van Nuys CA 91406  
                    dgreenbaum@greenbaumlawfirm.com

16       8.2 When Settling Defendant is entitled to receive any notice under this Consent  
17 Judgment, the notice shall be sent by first class and electronic mail to the person identified in  
18 Section 3 of Exhibit A for Settling Defendant.

19       8.3 Any Party may modify the person and address to whom the notice is to be sent by  
20 sending the other Party notice by first class and electronic mail.

21       8.4 Shefa shall comply with all California Attorney General reporting requirements.

22       **9. COURT APPROVAL**

23       9.1 This Consent Judgment shall become effective upon entry by the Court. Shefa shall  
24 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall  
25 support entry of this Consent Judgment.

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

## 10. ATTORNEYS' FEES

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

## 11. OTHER TERMS

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

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

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

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

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

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

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

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

1           11.9 The stipulations to this Consent Judgment may be executed in counterparts and by  
2 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
3 constitute one document.

4           11.10 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
5 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute  
6 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

7           11.11 The Parties, including their counsel, have participated in the preparation of this  
8 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

9           11.12 This Consent Judgment was subject to revision and modification by the Parties and  
10 has been accepted and approved as to its final form by all Parties and their counsel.

11           11.13 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall  
12 not be interpreted against any Party as a result of the manner of the preparation of this Consent  
13 Judgment.

14           11.14 Each Party to this Consent Judgment agrees that any statute or rule of construction  
15 providing that ambiguities are to be resolved against the drafting Party should not be employed in  
16 the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California  
17 Civil Code § 1654.

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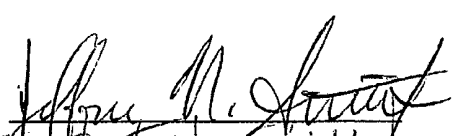
Dated: 4/20/2017

SHEFA LMV, LLC

By: 

Dated:

JANSSEN PHARMACEUTICALS, INC.

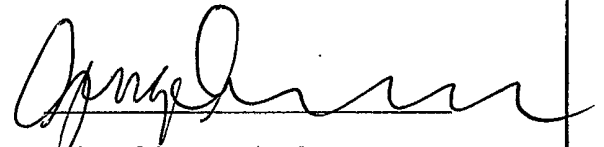
By:   
Jeffrey N. Smith  
Vice President

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Janssen Pharmaceuticals, Inc., the Parties' Consent Judgment is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: August 3 2017

  
Judge of the Superior Court

GEORGE C. HERNANDEZ, JR.

# **EXHIBIT A**

## EXHIBIT A

1. **Name of Settling Defendant:** Janssen Pharmaceuticals, Inc.
2. **Name of Plaintiff:** Shefa LMV, LLC
3. **Person(s) to Receive Notices (Pursuant to Section 8.3):**

TATRO TEKOSKY SADWICK LLP  
David B. Sadwick, Esq.  
333 S. Grand Avenue, Suite 4270  
Los Angeles, CA 90071  
Telephone: (213) 225-7171  
Facsimile: (213) 225-7151  
E-mail: dsadwick@ttsmlaw.com

4. **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

5. **Types of Covered Products:**

X Shampoos (as more specifically described in Section 6 of this Exhibit A)  
- Soaps

6. **Settling Defendant's Covered Products:**

Ketoconazole; UPC: 1014707504 and all other prescription ketoconazole shampoos sold in California, manufactured for distribution in California, and/or distributed in California by Settling Defendant(s). Defendant Releasees, Downstream Releasees, Upstream Releasees, or Manufacturers

7. **Settling Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):**

Total Settlement Payment: \$50,000  
Civil Penalty (payable to Shefa LMV, LLC): \$12,000  
Payment in Lieu of Civil Penalty (payable to Shefa): \$ N/A  
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$38,000

**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.**