

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 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

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 SETTLEMENT Miles Kimball d/b/a Silver Star Brands			
CASE INFO	COURT DOCKET NUMBER JCCP004765		COURT NAME Alameda County Superior Court	
	SHORT CASE NAME Propositon 65 Cocamide DEA Cases			
REPORT INFO	INJUNCTIVE RELIEF Reformulation			
	PAYMENT: CIVIL PENALTY \$2,000	PAYMENT: ATTORNEYS FEES \$17,000	PAYMENT: OTHER 0.00	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 7 / 26 / 2016	
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum			
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698	
	CITY Van Nuys	STATE ZIP CA 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 settlement 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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6 Attorney for Plaintiff SHEFA LMV, LLC

7 AMIN TALATI & UPADHYE, LLC
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9 Telephone: (312) 327-3382
10 Facsimile: (312) 466-1033
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11 Attorneys for Doe Defendant No. 2
12 MILES KIMBALL d/b/a SILVER STAR BRANDS

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF ALAMEDA

17	Coordination Proceeding)	JUDICIAL COUNCIL COORDINATION
18	Special Title (Rule 3.350))	PROCEEDING NO: 4765
19)	
20	PROPOSITION 65 COCAMIDE DEA)	[<i>Shefa LMV, LLC v. Target, Inc., et al.</i> , Los
21	CASES)	Angeles County Superior Court No.
22)	BC520410]
23)	[PROPOSED] CONSENT JUDGMENT AS
24)	TO MILES KIMBALL d/b/a SILVER
25)	STAR BRANDS.
26)	Judge: Hon. George C. Hernandez, Jr.
27)	Action filed: September 4, 2013
28)	

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1. INTRODUCTION

1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC (“Shefa”) and Miles Kimball d/b/a Silver Star Brands (“Settling Defendant”). Shefa and Settling Defendant are referred to collectively as the “Parties.”

1.2 Shefa alleges that the Settling Defendant manufactured, distributed, and/or sold types of products identified on Exhibit A that contain a level of Cocamide diethanolamine (“Cocamide DEA”) requiring a Proposition 65 warning in the State of California.

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.) (“Notice”) 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 Notice alleges 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 and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (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 shall constitute or be construed as an admission by any of the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers.

Except for the representations made above, nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an admission by the Parties of any fact, issue of law, or violation of law, at any time, for any purpose.

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1 1.8 Nothing in this in this Consent Judgment shall prejudice, waive, or impair any
2 right, remedy, argument, or defense the Parties may have in any other legal proceeding.

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

6 **2. DEFINITIONS**

7 2.1 "Covered Products" means the types of products identified in 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 Cocamide DEA and that will be sold or offered for sale to California consumers unless
15 it meets the warning requirements of Section 3.2. For purposes of this Consent Judgment, a
16 product "contains Cocamide DEA" if Cocamide DEA is an intentionally added ingredient in the
17 product and/or intentionally added part of the product formulation.

18 3.2 Settling Defendant is required to provide a warning pursuant to Section 3.1, the
19 following warning must be utilized:

20 **WARNING:** This product contains [a] chemical[s] known to the State of
21 California to cause cancer.

22 The warning shall be securely affixed to or printed upon the container or label of each Covered
23 Product.

24 3.3 **Specification to Suppliers.** No more than thirty (30) days after the Effective
25 Date, Settling Defendant shall contact its supplier(s) of Covered Products to request that all
26 reasonable efforts be made to eliminate Cocamide DEA from the Covered Products should
27 Settling Defendant decide to continue sale of the Covered Products in the state of California.

28 3.4 **Action Regarding Specific Products.** On or before the Effective Date, Settling

1 Defendant shall cease selling the specific products (if any) identified as Section 3.3 Products in
2 Exhibit A for such Settling Defendant (“Section 3.3 Products”) in California unless such
3 products have been reformulated such that they do not contain Cocamide DEA.

4 3.5 On or before the Effective Date, Settling Defendant shall also: (i) cease
5 shipping the Section 3.3 Products to any of its California stores and/or California customers
6 that resell the Section 3.3 Products in California; and (ii) send instructions to its California
7 stores and/or California customers that resell the Section 3.3 Products in California instructing
8 them either to: (a) return all the Section 3.3 Products to Settling Defendant for destruction, or
9 (b) directly destroy the Section 3.3 Products if any stock of Covered Product remains in
10 inventory.

11 3.6 The requirements of this Section apply only to those Section 3.3 Products that
12 contain Cocamide DEA.

13 3.7 Any destruction of Section 3.3 Products shall be in compliance with all
14 applicable laws.

15 **4. ENFORCEMENT**

16 4.1 Shefa may, by motion or application for an order to show cause before the
17 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
18 Judgment.

19 4.2 Prior to bringing any motion or application to enforce the requirements of Section
20 3 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
21 and a copy of any test results which purportedly support the Notice of Violation.

22 4.3 The Parties shall then meet and confer regarding the basis for the anticipated
23 motion or application in an attempt to resolve it informally, including providing Settling
24 Defendant(s) with a reasonable opportunity of at least thirty (30) days to cure any alleged
25 violation.

26 4.4 Should such attempts at informal resolution fail, Shefa may file an enforcement
27 motion or application.

28 4.5 This Consent Judgment may only be enforced by the Parties.

5. SETTLEMENT PAYMENTS

1 5.1 Within ten (10) business days of the Effective Date, Settling Defendant shall pay
2 the settlement payment identified for it in Exhibit A.

3 5.2 The total settlement amount for Settling Defendant shall be paid pursuant to the
4 instructions outlined in Exhibit A.

5 5.3 The funds paid by Settling Defendant shall be allocated, as identified in Exhibit
6 A, between the following categories:

7 5.4 **Civil Penalty.** A civil penalty pursuant to Health & Safety Code § 25249.7(b),
8 with such money to be apportioned by Shefa as identified on the Exhibit A for the Settling
9 Defendant in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the
10 State of California’s Office of Environmental Health Hazard Assessment).

11 5.5 **Attorney’s Fees and Costs.** A reimbursement of a portion of Shefa’s reasonable
12 attorney’s fees and costs.

13 6. **MODIFICATION**

14 6.1 **Written Consent.** This Consent Judgment may be modified from time to time by
15 express written agreement of the Parties with the approval of the Court, or by an order of this
16 Court upon motion and in accordance with law.

17 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
18 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
19 modify the Consent Judgment.

20 7. **CLAIMS COVERED AND RELEASED**

21 7.1 This Consent Judgment is a full, final, and binding resolution between (i) Shefa
22 on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its former
23 affiliates (“affiliate” means a person or entity who directly or indirectly owns or controls, is
24 owned or controlled by, or is under common ownership or control with, Settling Defendant), and
25 their current and past directors, officers, employees and attorneys, and each entity to whom any
26 of them directly or indirectly distribute or sell Covered Products, including but not limited to
27 suppliers, distributors, wholesalers, contractors, customers, retailers, franchisees, cooperative
28 members, licensors, and licensees (“Defendant Releasees”); of any violation of Proposition 65
that was or could have been asserted in the Complaint against Settling Defendant and Defendant

1 Releasees, based on failure to warn about alleged exposure to Cocamide DEA contained in
2 Covered Products that were sold by Settling Defendant prior to the Effective Date.

3 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant and
4 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant and
5 Defendant Releasees with respect to any alleged failure to warn about Cocamide DEA in
6 Covered Products manufactured, distributed, or sold by Settling Defendants after the Effective
7 Date.

8 7.3 Shefa, acting on its behalf and in the public interest, releases and discharges
9 Settling Defendant and Defendant Releasees from any and all claims, actions, causes of action,
10 suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could
11 have been asserted, as to any alleged violation of Proposition 65 arising from the alleged failure
12 to warn about alleged exposure to Cocamide DEA in the Covered Products.

13 7.4 Shefa on its own behalf only, on one hand, and Settling Defendant on its own
14 behalf only, on the other, further waive and release any and all claims they may have against
15 each other and against the Released Parties for all actions or statements of any nature up through
16 and including the Effective Date, provided, however, that nothing in Section 8 shall affect or
17 limit any Party's right to seek to enforce the terms of this Consent Judgment.

18 7.5 Shefa, acting on its behalf only, releases and discharges Settling Defendant and
19 Defendant Releasees from any and all known and unknown claims for alleged violations of
20 Proposition 65 or for any other statutory or common law claims, arising from or relating to
21 alleged exposures to Cocamide DEA in the Covered Products. It is possible that other claims not
22 known to the parties arising out of the facts alleged in the Notice or the Complaint and relating
23 to the Covered Products will develop or be discovered. Shefa, on behalf of itself only,
24 acknowledges that this Consent Judgment is expressly intended to cover and include all such
25 claims including all rights of action thereof. Shefa has full knowledge of the contents of
26 California Civil Code section 1542. Shefa, on behalf itself only, acknowledges that the claims
27 released above may include unknown claims, and nevertheless waives California Civil Code
28 section 1542 as to any such unknown claims. California Civil Code section 1542 reads as
follows:

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

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

7 7.6 Nothing in this Section 7 affects Shefa's right to commence or prosecute an
8 action under Proposition 65 against any person other than Settling Defendant or Defendant
9 Releasees.

10 8. NOTICE

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

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

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

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

22 9. COURT APPROVAL

23 9.1 This Consent Judgment shall become effective upon entry by the Court.

24 9.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
25 Settling Defendant shall support entry of this Consent Judgment.

26 9.3 If this Consent Judgment is not entered by the Court, it shall be of no force or
27 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
28 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

10. ATTORNEYS' FEES

1 10.1 Should Shefa prevail on any motion, application for an order to show cause, or
2 other proceeding to enforce a violation of this Consent Judgment, Shefa shall be entitled to its
3 reasonable attorneys' fees and costs incurred as a result of such motion or application.

4 10.2 Should Settling Defendant prevail on any motion application for an order to show
5 cause or other proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees
6 and costs against Shefa as a result of such motion or application upon a finding by the Court that
7 Shefa's prosecution of the motion or application lacked substantial justification.

8 10.3 For purposes of this Consent Judgment, the term substantial justification shall
9 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§
10 2016, et seq.

11 10.4 Except as otherwise provided in this Consent Judgment, each Party shall bear its
12 own attorneys' fees and costs.

13 **11. OTHER TERMS**

14 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
15 California.

16 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling
17 Defendant, its affiliates, and successors or assigns of any of them.

18 11.3 This Consent Judgment contains the sole and entire agreement and understanding
19 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
20 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
21 and therein.

22 11.4 There are no warranties, representations, or other agreements between the Parties
23 except as expressly set forth herein.

24 11.5 No representations, oral or otherwise, express or implied, other than those
25 specifically referred to in this Consent Judgment have been made by any Party hereto.

26 11.6 No other agreements not specifically contained or referenced herein, oral or
27 otherwise, shall be deemed to exist or to bind any of the Parties hereto.

28 11.7 No supplementation, modification, waiver, or termination of this Consent
Judgment shall be binding unless executed in writing by the Party to be bound thereby.

1 11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or
2 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
3 such waiver constitute a continuing waiver.

4 11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights
5 Settling Defendant might have against any other party, whether or not that party is a Settling
6 Defendant.

7 11.10 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 11.11 The stipulations to this Consent Judgment may be executed in counterparts and
10 by means of facsimile or portable document format (pdf), which taken together shall be deemed
11 to constitute one document.

12 11.12 Each signatory to this Consent Judgment certifies that he or she is fully
13 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
14 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
15 that Party.

16 11.13 The Parties, including their counsel, have participated in the preparation of this
17 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

18 11.14 This Consent Judgment was subject to revision and modification by the Parties
19 and has been accepted and approved as to its final form by all Parties and their counsel.

20 11.15 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment
21 shall not be interpreted against any Party as a result of the manner of the preparation of this
22 Consent Judgment.

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


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AGREED TO:

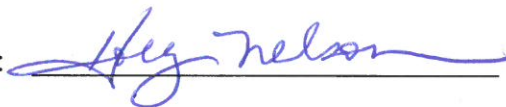
Dated: 7/26/16

SHEFA LMV, LLC

By:  _____

Dated: *June 16, 2016*

SILVER STAR BRANDS

By:  _____

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Miles Kimball d/b/a Silver Star Brands, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: _____

Judge of the Superior Court

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EXHIBIT A

1. Name of Settling Defendant: MILES KIMBALL d/b/a SILVER STAR BRANDS
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.2):

AMIN TALATI & UPADHYE, LLC
Rakesh Amin, ESQ.
100 S. Wacker Drive, □ Suite 2000 □
Chicago, IL 60606
Email: rakesh@amintalati.com
4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): February 27, 2014
5. Complaint Naming Settling Defendant (Pursuant to Section 1.4): *Shefa LMV, LLC v. Target, Inc., et al.*, Los Angeles County Superior Court No. BC520410
 - a. Date Complaint Filed: June 27, 2014 (Doe Amendment)
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):

<u>x</u>	Shampoos
-	Soaps
7. Defendant's Section 3.3 Product(s):

Botanical Shampoo (341795)
8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$19,000.00
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): \$17,000.00

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.

