

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 Swanson Health Products | | | |
| CASE INFO | COURT DOCKET NUMBER JCCO004765 | | COURT NAME Alameda County Courthouse | |
| | SHORT CASE NAME Proposition 65 Cocamide DEA Cases | | | |
| REPORT INFO | INJUNCTIVE RELIEF Reformulation | | | |
| | PAYMENT: CIVIL PENALTY \$2,000 | PAYMENT: ATTORNEYS FEES \$8,000 | 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 01 / 16 / 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 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 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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9 Attorney for Plaintiff SHEFA LMV, LLC

10 PEG CAREW TOLEDO, LAW CORPORATION
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12 3001 Douglas Blvd., Suite 340
13 Roseville, CA 95661
14 Telephone: (916) 462-8950
15 Facsimile: (916) 791-0175
16 Email: peg@toledolawcorp.com

17 Attorneys for Doe Defendant No. 17
18 SWANSON HEALTH PRODUCTS, 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)
29) [Shefa LMV, LLC v. Target, Inc., et al., Los
30) Angeles County Superior Court No.
31) BC520410]

32) [PROPOSED] CONSENT JUDGMENT AS
33) TO SWANSON HEALTH PRODUCTS,
34) INC.

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

36) Action filed: September 4, 2013

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1. INTRODUCTION

1.1 The parties to this Consent Judgment ("Parties") are Shefa LMV, LLC ("Shefa") and Swanson Health Products, Inc. ("Settling Defendant"). Shefa and Settling Defendant are referred to collectively as the "Parties."

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

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 is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.

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

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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 2. DEFINITIONS

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

7 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
8 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 Cocamide DEA and that will be sold or offered for sale to California consumers. For
13 purposes of this Consent Judgment, a product “contains Cocamide DEA” if Cocamide 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 Effective
17 Date, Settling Defendant shall issue specifications to its supplier(s) of Covered Products
18 requiring that Covered Products do not contain any Cocamide DEA, and shall instruct each
19 supplier to use reasonable efforts to eliminate Covered Products containing Cocamide DEA on a
20 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 Cocamide DEA.

25 3.4 On or before the Effective Date, Settling Defendant shall also: (i) cease shipping
26 the Section 3.3 Products to any of its California stores and/or California customers that resell the
27 Section 3.3 Products in California; and (ii) send instructions to its California stores and/or
28 California customers that resell the Section 3.3 Products in California instructing them either to:

1 (a) return all the Section 3.3 Products to Settling Defendant for destruction, or (b) directly
2 destroy the Section 3.3 Products.

3 3.5 The requirements of this Section apply only to those Section 3.3 Products that
4 contain Cocamide DEA.

5 3.6 Any destruction of Section 3.3 Products shall be in compliance with all applicable
6 laws.

7 4. ENFORCEMENT

8 4.1 Shefa may, by motion or application for an order to show cause before the
9 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
10 Judgment.

11 4.2 Prior to bringing any motion or application to enforce the requirements of Section
12 3 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
13 and a copy of any test results which purportedly support the Notice of Violation.

14 4.3 The Parties shall then meet and confer regarding the basis for the anticipated
15 motion or application in an attempt to resolve it informally, including providing Settling
16 Defendant(s) with a reasonable opportunity of at least thirty (30) days to cure any alleged
17 violation.

18 4.4 Should such attempts at informal resolution fail, Shefa may file an enforcement
19 motion or application.

20 4.5 This Consent Judgment may only be enforced by the Parties.

21 5. PAYMENTS

22 5.1 Within ten (10) business days of the Effective Date, Settling Defendant shall pay
23 the settlement payment identified for it on Exhibit A.

24 5.2 The total settlement amount for Settling Defendant shall be paid pursuant to the
25 instructions outlined in Exhibit A.

26 5.3 The funds paid by Settling Defendant shall be allocated, as identified in Exhibit
27 A, between the following categories:

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1 5.4 **Civil Penalty.** A civil penalty pursuant to Health & Safety Code § 25249.7(b),
2 with such money to be apportioned by Shefa as identified on the Exhibit A for the Settling
3 Defendant in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the
4 State of California's Office of Environmental Health Hazard Assessment).

5 5.5 **Attorney's Fees and Costs.** A reimbursement of a portion of Shefa's reasonable
6 attorney's fees and costs.

7 6. **MODIFICATION**

8 6.1 **Written Consent.** This Consent Judgment may be modified from time to time by
9 express written agreement of the Parties with the approval of the Court, or by an order of this
10 Court upon motion and in accordance with law.

11 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
12 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
13 modify the Consent Judgment.

14 7. **CLAIMS COVERED AND RELEASED**

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

27 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant and
28 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,

1 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure
2 to warn about Cocamide DEA in Covered Products manufactured, distributed, or sold by Settling
3 Defendants after the Effective Date.

4 7.3 Shefa, acting on its behalf and in the public interest, releases and discharges
5 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees from any and
6 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs
7 and expenses asserted, or that could have been asserted, as to any alleged violation of
8 Proposition 65 arising from the alleged failure to warn about alleged exposure to Cocamide DEA
9 in the Covered Products.

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

21 California Civil Code section 1542 reads as follows:

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

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

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1 7.5 Nothing in this Section 7 affects Shefa's right to commence or prosecute an
2 action under Proposition 65 against any person other than Settling Defendant, Defendant
3 Releasees, or Downstream Defendant Releasees.

4 **8. NOTICE**

5 8.1 When Shefa is entitled to receive any notice under this Consent Judgment, the
6 notice shall be sent by first class and electronic mail to:

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

13 8.2 When Settling Defendant is entitled to receive any notice under this Consent
14 Judgment, the notice shall be sent by first class and electronic mail to the person identified on
15 the Exhibit A for Settling Defendant.

16 8.3 Any Party may modify the person and address to whom the notice is to be sent by
17 sending the other Party notice by first class and electronic mail.

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon entry by the Court.

20 9.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
21 Settling Defendant shall support entry of this Consent Judgment.

22 9.3 If this Consent Judgment is not entered by the Court, it shall be of no force or
23 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
24 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

25 **10. ATTORNEYS' FEES**

26 10.1 Should Shefa prevail on any motion, application for an order to show cause, or
27 other proceeding to enforce a violation of this Consent Judgment, Shefa shall be entitled to its
28 reasonable attorneys' fees and costs incurred as a result of such motion or application.

29 10.2 Should Settling Defendant prevail on any motion application for an order to show
30 cause or other proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees

1 and costs against Shefa as a result of such motion or application upon a finding by the Court that
2 Shefa's prosecution of the motion or application lacked substantial justification.

3 10.3 For purposes of this Consent Judgment, the term substantial justification shall
4 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§
5 2016, et seq.

6 10.4 Except as otherwise provided in this Consent Judgment, each Party shall bear its
7 own attorneys' fees and costs.

8 **11. OTHER TERMS**

9 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 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 understanding
14 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
15 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
16 and therein.

17 11.4 There are no warranties, representations, or other agreements between the Parties
18 except as expressly set forth herein.

19 11.5 No representations, oral or otherwise, express or implied, other than those
20 specifically referred to in this Consent Judgment have been made by any Party hereto.

21 11.6 No other agreements not specifically contained or referenced herein, oral or
22 otherwise, shall be deemed to exist or to bind any of the Parties hereto.

23 11.7 No supplementation, modification, waiver, or termination of this Consent
24 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

25 11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or
26 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
27 such waiver constitute a continuing waiver.

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1 11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights
2 Settling Defendant might have against any other party, whether or not that party is a Settling
3 Defendant.

4 11.10 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

6 11.11 The stipulations to this Consent Judgment may be executed in counterparts and
7 by means of facsimile or portable document format (pdf), which taken together shall be deemed
8 to constitute one document.

9 11.12 Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
11 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
12 that Party.

13 11.13 The Parties, including their counsel, have participated in the preparation of this
14 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

15 11.14 This Consent Judgment was subject to revision and modification by the Parties
16 and has been accepted and approved as to its final form by all Parties and their counsel.

17 11.15 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment
18 shall not be interpreted against any Party as a result of the manner of the preparation of this
19 Consent Judgment.

20 11.16 Each Party to this Consent Judgment agrees that any statute or rule of
21 construction providing that ambiguities are to be resolved against the drafting Party should not
22 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
23 waive California Civil Code § 1654.

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AGREED TO:

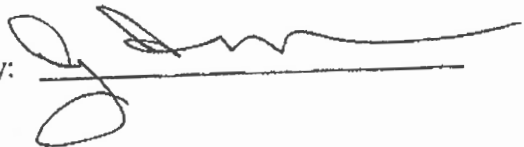
Dated: 1/16/2016

SHEFA LMV, LLC

By: 

Dated: 1-15-16

SWANSON HEALTH PRODUCTS, INC.

By: 

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ORDER AND JUDGMENT

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

Dated: _____

Judge of the Superior Court

EXHIBIT A

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

Peg Carew Toledo
PEG CAREW TOLEDO, LAW CORPORATION
3001 Douglas Blvd., Suite 340
Roseville, CA 95661
Email: peg@toledolawcorp.com
4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): August 6, 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: October 17, 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):

 Shampoos
 Soaps
7. Defendant's Section 3.3 Product(s):

Sister Sky Soothing Body Wash
Imbue Natural Shampoo (Saba Botanical of USA)
Umbria Olli Olivella Hair Olive Shampoo
8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$10,000.00
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): \$8,000.00

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.