

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 Ecolab, Inc.			
CASE INFO	COURT DOCKET NUMBER JCCP004765		COURT NAME Alameda County Superior Court	
	SHORT CASE NAME Proposition 65 Cocamide DEA Cases			
REPORT INFO	INJUNCTIVE RELIEF Reformulation and/or warning			
	PAYMENT: CIVIL PENALTY \$6,000	PAYMENT: ATTORNEYS FEES \$27,000	PAYMENT: OTHER 0.00	For Internal Use Only
	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 08 / 28 / 2015	
	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.

1 LAW OFFICE OF DANIEL N. GREENBAUM

2 Daniel N. Greenbaum, Esq. (SBN 268104)
3 The Hathaway Building
4 7120 Hayvenhurst Avenue
5 Suite 320
6 Van Nuys, CA 91406
7 Telephone: (818) 809-2199
8 Facsimile: (424) 243-7689
9 Email: dgreenbaum@greenbaumlawfirm.com

10 Attorney for Plaintiff SHEFA LMV, LLC

11 MCKENNA LONG & ALDRIDGE LLP

12 Rebecca L. Woodson, Esq.
13 One Market Plaza
14 Spear Tower, 24th Floor
15 San Francisco, CA 94105
16 Telephone: (415) 267-4137
17 Facsimile: (415) 267-4198
18 Email: rwoodson@mckennalong.com

19 Attorneys for Defendant ECOLAB INC.

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

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO: 4765
)
)
) [*Shefa LMV, LLC v. CVS Pharmacy, Inc., et*
) *al.*, Los Angeles County Superior Court No.
) BC520411]
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO ECOLAB INC.**
)
) Judge: Hon. George C. Hernandez, Jr.
)
) Action filed: October 17, 2014
)
)
)

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC (“Shefa”)
3 and defendant Ecolab Inc. (“Settling Defendant”). Shefa and Settling Defendant are referred to
4 collectively as the “Parties.”

5 1.2 The Settling Defendant is a corporation that employs ten (10) or more persons and
6 that manufactures, distributes, and/or sells types of products identified on **Exhibit A** that contain
7 the chemical coconut oil diethanolamine condensate (cocamide diethanolamine) (hereinafter,
8 “Cocamide DEA”) in the State of California, or has done so in the past.

9 1.3 On the date identified on Exhibit A, Shefa served a 60-Day Notice of Violation
10 under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
11 California Health & Safety Code §§ 25249.5, *et seq.*) (the “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 Notice alleges violations of Proposition 65 with respect to the presence of
15 Cocamide DEA in the types of products manufactured, distributed and/or sold by Settling
16 Defendant in California, as identified in Exhibit A.

17 1.4 On the date(s) identified on Exhibit A, Shefa filed the Complaint applicable to the
18 Settling Defendant (“Complaint”) for the above-entitled Proposition 65 Action (also identified in
19 Exhibit A) in the Superior Court of California for Alameda County.

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

25 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
26 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
27 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,

1 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
3 other legal proceeding. This Consent Judgment is the product of negotiation and compromise,
4 and is accepted by the Parties for purposes of settling, compromising, and resolving issues
5 disputed in this action.

6 2. DEFINITIONS

7 2.1 “Covered Products” means the types of products containing Cocamide DEA, as
8 identified on the Exhibit A for the 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, subject to
13 Sections 3.2 and 3.3 below, Settling Defendant shall not manufacture, distribute, sell, or offer for
14 sale any Covered Product that contains Cocamide DEA and that will be sold or offered for sale
15 to California consumers. For purposes of this Consent Judgment, a product “contains Cocamide
16 DEA” if Cocamide DEA is an intentionally added ingredient in the product and/or intentionally
17 added part of the product formulation.

18 3.2 **Action Regarding Specific Products.**

19 3.2.1 On or before the Effective Date, Settling Defendant shall cease selling
20 “Scrub Stat 2%; UPC: 025469627513” (“Section 3.2 Product”) in California unless such product
21 includes a Proposition 65 warning, as specified in Section 3.3 below. Further, on or before the
22 Effective Date, Settling Defendant shall also: (i) cease shipping the Section 3.2 Product to any of
23 its customers that resell the Section 3.2 Product in California unless such product includes a
24 Proposition 65 warning, as specified in Section 3.3 below; and (ii) send instructions to its
25 customers that resell the Section 3.2 Product in California instructing them either to: (a) return all
26 the Section 3.2 Products that do not include a Proposition 65 warning, as specified in Section 3.3
27 below to Settling Defendant for destruction, or (b) directly destroy the Section 3.2 Products that

1 do not include a Proposition 65 warning, as specified in Section 3.3 below. The requirements of
2 this Section apply only to those Section 3.2 Products that contain Cocamide DEA.

3 3.2.2 Any destruction of Section 3.2 Products shall be in compliance with all
4 applicable laws.

5 3.2.3 Within sixty (60) days of the Effective Date, Settling Defendant shall
6 provide Shefa with written certification from Settling Defendant confirming compliance with the
7 requirements of this Section 3.2.

8 3.3 **Warning for Covered Products.**

9 3.3.1 **Warning Option.** A Covered Product purchased, imported or
10 manufactured by Settling Defendant may, as an alternative to meeting the reformulation
11 requirements of Section 3.1, be sold or offered for retail sale in California with a Clear and
12 Reasonable Warning that complies with the provision of Section 3.3.2.

13 3.3.2 **Proposition 65 Warning.** A Clear and Reasonable Warning under this
14 Consent Judgment shall state:

15 WARNING! This product contains a chemical known in the State of California to
16 cause cancer.

17 A Clear and Reasonable Warning may only be provided for a Covered Product if
18 such Covered Product contains Cocamide DEA. This statement shall be prominently displayed
19 on the label or the packaging of the Covered Product in such a manner that it is likely to be read
20 and understood by an ordinary individual prior to use. If applicable, for internet sales, the
21 warning statement shall: (a) be displayed before a California consumer commits to purchasing
22 the Covered Product and without the need for the California consumer to follow any additional
23 hyperlinks beyond those required as part of the ordinary purchasing process; (b) be set out in a
24 text, box on a separate line or in a separate paragraph; (c) be displayed in a font size in which the
25 smallest character is no less than the equivalent of the height of the equivalent characters in 12
26 point Arial font; and (d) be displayed with such conspicuousness, as compared with other words,
27 statements, or designs as to render it likely to be read and understood by an ordinary individual.

1 The warning statement shall not be preceded, followed, or surrounded by words, symbols, or
2 other matter that reduces its conspicuousness to an ordinary individual, or that qualifies or
3 interprets the required text, such as “legal notice required by law.”

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 Effective
17 Date, Settling Defendant shall pay the settlement payment identified for it on Exhibit A. The
18 total settlement amount for Settling Defendant shall be paid pursuant to the instructions outlined
19 in Exhibit A. The funds paid by Settling Defendant shall be allocated, as identified in Exhibit A,
20 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 **8. NOTICE**

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

4
5 Daniel N. Greenbaum, Esq.
6 Law Office of Daniel N. Greenbaum
7 7120 Hayvenhurst Ave., Suite 320
8 Van Nuys CA 91406
dgreenbaum@greenbaumlawfirm.com

9 8.2 When Settling Defendant is entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to the person identified on the
11 Exhibit A for Settling Defendant.

12 8.3 Any Party may modify the person and address to whom the notice is to be sent by
13 sending the other Party notice by first class and electronic mail.

14 **9. COURT APPROVAL**

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

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

21 **10. ATTORNEYS' FEES**

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

1 prosecution of the motion or application lacked substantial justification. For purposes of this
2 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
3 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 bear its
5 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 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. There are no warranties, representations, or other agreements between the Parties
17 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
18 other than those specifically referred to in this Consent Judgment have been made by any Party
19 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
20 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,
21 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by
22 the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment
23 shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not
24 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 rights
26 Settling Defendant might have against any other party, whether or not that party is a Settling
27 Defendant.

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

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

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

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

18 AGREED TO:

19 Dated: 8/28/2015

SHEFA LMV, LLC

20
21
22 By:  _____

Dated: August 28, 2015

ECOLAB INC.

By:  _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **ORDER AND JUDGMENT**

2 Based upon the stipulated Consent Judgment between Shefa LMV, LLC and defendant
3 Ecolab Inc., the settlement is hereby approved, and the Clerk of Court is directed to enter
4 judgment in accordance with the terms herein.

5
6 Dated: _____

7
8 _____
9 Judge of the Superior Court

EXHIBIT A

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

MCKENNA LONG & ALDRIDGE LLP
Stanley W. Landfair, Esq.
Rebecca L. Woodson, Esq.
One Market Plaza
Spear Tower, 24th Floor
San Francisco, CA 94105
Telephone: (415) 267-4137
Facsimile: (415) 267-4198
Email: slandfair@mckennalong.com; rwoodson@mckennalong.com
4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): August 25, 2014
5. Complaint Naming Settling Defendant (Pursuant to Section 1.4): *Second C.C.P. §474 Amendment to Complaint - Shefa LMV, LLC v. CVS Pharmacy, Inc., et al.*, Los Angeles County Superior Court No. BC 520411, filed in and for the Superior Court of the State of California, in and for the County of Alameda in *Judicial Coordination Proceeding No. 4765 [Coordination Proceeding Special Title "PROPOSITION 65 COCAMIDE DEA CASES"]* dated April 8, 2015
 - a. Date Original Complaint Filed in LACSC: September 04, 2013
6. Covered Products Applicable to Defendant (Pursuant to §§ 1.2, 1.3, 2.1, 3.1, 3.2, 7.1, and 7.2):

<input type="checkbox"/>	Shampoos
<input checked="" type="checkbox"/>	Soaps
7. Defendant's Section 3.2 Product(s) (Pursuant to Sections 3.2.1, 3.2.2, and 3.2.3):

Scrub Stat 2%; UPC: 025469627513
8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment:	\$33,000.00
Civil Penalty (payable to Shefa LMV, LLC):	\$6,000.00
Payment in Lieu of Civil Penalty (payable to Shefa):	\$ N/A
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum):	\$27,000.00

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.