

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 Philosophy, Inc.				
CASE INFO	COURT DOCKET NUMBER CIV 1503341			COURT NAME Marin County Superior Court	
	SHORT CASE NAME Shefa Concept II Cosmetics				
REPORT INFO	INJUNCTIVE RELIEF Reformulation				
	PAYMENT: CIVIL PENALTY \$3,000		PAYMENT: ATTORNEYS FEES \$12,000		PAYMENT: OTHER 0.00
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="radio"/> Yes <input type="radio"/> No		IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		For Internal Use Only
			DATE SETTLEMENT SIGNED 3 / 13 / 2017		
	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.

LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
The Hathaway Building
7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
Telephone: (818) 809-2199
Facsimile: (424) 243-7689
Email: dgreenbaum@greenbaumlawfirm.com

Attorney for Plaintiff SHEFA LMV, LLC

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. Richard Ravid, Inc., et al.*,
) Los Angeles County Superior Court No.
) BC579212]
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO PHILOSOPHY, INC.**
)
) Judge: Hon. George C. Hernandez, Jr.
)
) Action filed: April 17, 2015
)
)
)

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC (“Shefa”)
3 and Coty US LLC, as successor to Philosophy, Inc., which is now a division of Coty US LLC
4 (“Settling Defendant”). Shefa and Settling Defendant are referred to collectively as the
5 “Parties.”

6 1.2 Shefa alleges that Settling Defendant manufactures, distributes, and/or sells types
7 of products identified on Exhibit A that contain Diethanolamine (“DEA”) in the State of
8 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, California
11 Health & Safety Code §§ 25249.5, et seq.) (“Notices”) to Settling Defendant, the California
12 Attorney General, the District Attorneys of every County in the State of California, and the City
13 Attorneys for every City in the State of California with a population greater than 750,000.

14 1.4 The Notices allege violations of Proposition 65 with respect to the presence of
15 DEA in the types of products identified in Exhibit A.

16 1.5 On the date(s) identified on Exhibit A, Shefa filed the Complaint applicable to the
17 Settling Defendant (“Complaint”) for the Proposition 65 Action identified in Exhibit A.

18 1.6 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
19 Court has jurisdiction over the allegations of violations contained in the operative Complaint
20 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts
21 alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this Court has
22 jurisdiction to enter this Consent Judgment.

23 1.7 Nothing in this Consent Judgment is or shall be construed as an admission by the
24 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
25 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
26 conclusion of law, issue of law, or violation of law.

27 1.8 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
28 remedy, argument, or defense the Parties may have in any other legal proceeding.

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 Exhibit A.

6 2.2 "Effective Date" means the date on which the Court enters this Consent
7 Judgment.

8 3. **INJUNCTIVE RELIEF**

9 3.1 **Prohibition Against Sale of Covered Products.** As of the Effective Date,
10 Settling Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product
11 that contains DEA and that will be sold or offered for sale to California consumers. For
12 purposes of this Consent Judgment, a product "contains DEA" only if DEA is an intentionally
13 added ingredient in the product.

14 4. **ENFORCEMENT**

15 4.1 Shefa may, by motion or application for an order to show cause before the
16 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
17 Judgment.

18 4.2 Prior to bringing any motion or application to enforce the requirements of Section
19 3 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
20 and a copy of any test results which purportedly support the Notice of Violation.

21 4.3 The Parties shall then meet and confer regarding the basis for the anticipated
22 motion or application to resolve it informally, including providing Settling Defendant(s) with a
23 reasonable opportunity of at least thirty (30) days to cure any alleged violation.

24 4.4 Should such attempt at informal resolution fail, Shefa may file an enforcement
25 motion or application.

26 4.5 This Consent Judgment may only be enforced by the Parties.

27 5. **PAYMENTS**

28 5.1 Within twenty (20) business days of the Effective Date, Settling Defendant shall
pay the settlement payment identified for it on Exhibit A.

1 5.2 The total settlement amount for Settling Defendant shall be paid pursuant to the
2 instructions outlined in Exhibit A.

3 5.3 The funds paid by Settling Defendant shall be allocated, as identified in Exhibit
4 A, between the following categories:

5 5.4 **Civil Penalty.** A civil penalty pursuant to Health & Safety Code § 25249.7(b),
6 with such money to be apportioned by Shefa as identified on the Exhibit A for the Settling
7 Defendant in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the
8 State of California's Office of Environmental Health Hazard Assessment).

9 5.5 **Attorney's Fees and Costs.** A reimbursement of a portion of Shefa's reasonable
10 attorney's fees and costs.

11 6. **MODIFICATION**

12 6.1 **Written Consent.** This Consent Judgment may be modified from time to time by
13 express written agreement of the Parties with the approval of the Court, or by an order of this
14 Court upon motion and in accordance with law.

15 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
16 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
17 modify the Consent Judgment.

18 7. **CLAIMS COVERED AND RELEASED**

19 7.1 This Consent Judgment is a full, final, and binding resolution between (i) Shefa
20 on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its former
21 affiliates ("affiliate" means a person or entity who directly or indirectly owns or controls, is
22 owned or controlled by, or is under common ownership or control with, Settling Defendant), and
23 their current and past directors, officers, employees and attorneys ("Defendant Releasees"), and
24 each entity to whom any of them directly or indirectly distribute or sell Covered Products,
25 including but not limited to distributors, wholesalers, contractors, customers, retailers,
26 franchisees, cooperative members, licensors, and licensees ("Downstream Defendant
27 Releasees"); relating to all claims of violations of Proposition 65 that have been or could have
28 been asserted against Settling Defendant, Defendant Releasees, and Downstream Defendant

1 Releasees up through the Effective Date, provided that such claims are based on or related to the
2 facts alleged in the operative complaint in this action.

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

6 7.3 Shefa, acting on its behalf only, releases and discharges Settling Defendant,
7 Defendant Releasees, and Downstream Defendant Releasees from any and all known and
8 unknown claims for alleged violations of Proposition 65 or for any other statutory or common
9 law claims, arising from or relating to alleged exposures to DEA in the Covered Products.

10 7.4 It is possible that other claims not known to the parties arising out of the facts
11 alleged in the Notices or the Complaint and relating to the Covered Products will develop or be
12 discovered.

13 7.5 Shefa, on behalf of itself only, acknowledges that this Consent Judgment is
14 expressly intended to cover and include all such claims including all rights of action thereof.

15 7.6 Shefa has full knowledge of the contents of California Civil Code section 1542.

16 7.7 Shefa, on behalf itself only, acknowledges that the claims released above may
17 include unknown claims, and nevertheless waives California Civil Code section 1542 as to any
18 such unknown claims. California Civil Code section 1542 reads as follows:

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

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

26 7.8 Nothing in this Section 7 affects Shefa's right to commence or prosecute an
27 action under Proposition 65 against any person other than Settling Defendant, Defendant
28 Releasees, or Downstream Defendant Releasees.

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8. NOTICE

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

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

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

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

9. COURT APPROVAL

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

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

9.3 If the Court does not enter this Consent Judgment, 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.

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

1 AGREED TO:

2
3 Dated: 3/13/2017

SHEFA LMV, LLC

4 By: 

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6
7
8 Dated:

9 *March 9, 2017*

COTY US LLC, SUCCESSOR TO
PHILOSOPHY, INC.

10 By: 

11 *Vice President and*
12 *Assistant Secretary*
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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Coty US LLC, successor to Philosophy, 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: Philosophy, Inc.
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.2):

Navi Dhillon, Esq.
MORRISON & FOERSTER LLP
425 Market St. | San Francisco, CA 94105
Phone: 415-268-6769
Email: NDillon@mofo.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. Richard Ravid, Inc., et al.*, Los Angeles County Superior Court No. BC579212
 - a. Date Complaint Filed: April 17, 2015
6. Covered Products Applicable to Defendant (Pursuant to Sections 1.2, 1.3, 2.1, 3.1, 7.1, 7.2, 7.3 and 7.4):

<u> X </u>	Shampoos
<u> X </u>	Soaps
<u> X </u>	Skincare Products
7. Defendant's Section 3.3 Product(s) (Pursuant to Section 3.1):

When hope is not enough
8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$15,000.00
Civil Penalty (payable to Shefa LMV, LLC): \$3,000.00
Payment in Lieu of Civil Penalty (PILP): \$ N/A
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$12,000.00

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.