

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

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S) <b>Shefa LMV LLC</b>			
	DEFENDANT(S) INVOLVED IN SETTLEMENT <b>Farouk Systems, Inc.</b>			
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>JCCO004765</b>		COURT NAME <b>Alameda County Courthouse</b>	
	SHORT CASE NAME <b>Proposition 65 Cocamide DEA Cases</b>			
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformulation</b>			
	PAYMENT: CIVIL PENALTY <b>\$3,000</b>	PAYMENT: ATTORNEYS FEES <b>\$12,000</b>	PAYMENT: OTHER <b>0.00</b>	
	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 <b>9 / 30 / 2015</b>	
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>			
<b>FILER INFO</b>	NAME OF CONTACT <b>Daniel N. Greenbaum</b>			
	ORGANIZATION <b>Law Office of Daniel Greenbaum</b>		TELEPHONE NUMBER ( <b>818</b> ) <b>809-2199</b>	
	ADDRESS <b>7120 Hayvenhurst Ave., Suite 320</b>		FAX NUMBER ( <b>424</b> ) <b>243-7698</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 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 ROGERS JOSEPH O'DONNELL  
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11 Attorneys for Defendant FAROUK SYSTEM, INC.  
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF ALAMEDA  
15

16 Coordination Proceeding  
17 Special Title (Rule 3.350)

18  
19 PROPOSITION 65 COCAMIDE DEA  
20 CASES

) JUDICIAL COUNCIL COORDINATION  
) PROCEEDING NO: 4765  
)  
)  
) [*Shefa LMV, LLC v. Farouk Systems, Inc., et*  
) *al.*, Los Angeles County Superior Court No.  
) BC579191]  
)  
) **[PROPOSED] CONSENT JUDGMENT AS**  
) **TO FAROUK SYSTEMS, INC.**  
)  
) Judge: Hon. George C. Hernandez, Jr.  
)  
) Action filed: April 17, 2015  
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**1. INTRODUCTION**

1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC (“Shefa”) and Farouk Systems, 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 Diethanolamine (“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.) (“Notices”) 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 Notices allege violations of Proposition 65 with respect to the presence of 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.

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 DEA and that will be sold or offered for sale to California consumers. For purposes of  
13 this Consent Judgment, a product “contains DEA” if DEA is an intentionally added ingredient in  
14 the product and/or intentionally added part of the product formulation.

15          3.2     **Specification to Suppliers.** No more than thirty (30) days after the Effective  
16 Date, Settling Defendant shall issue specifications to its supplier(s) of Covered Products  
17 requiring that Covered Products not contain any DEA, and shall instruct each supplier to use  
18 reasonable efforts to eliminate Covered Products containing DEA on a nationwide basis.

19          3.3     **Action Regarding Specific Products.** On or before the Effective Date, Settling  
20 Defendant shall cease selling the specific products (if any) identified as Section 3.3 Products on  
21 the Exhibit A for such Settling Defendant (“Section 3.3 Products”) in California unless such  
22 products have been reformulated such that they do not contain DEA.

23          3.4     On or before the Effective Date, Settling Defendant shall also: (i) cease shipping  
24 the Section 3.3 Products to any of its California stores and/or California customers that resell the  
25 Section 3.3 Products in California; and (ii) send instructions to its California stores and/or  
26 California customers that resell the Section 3.3 Products in California instructing them either to:  
27 (a) return all the Section 3.3 Products to Settling Defendant for destruction, or (b) directly  
28 destroy the Section 3.3 Products.

1           3.5     The requirements of this Section apply only to those Section 3.3 Products that  
2 contain DEA.

3           3.6     Any destruction of Section 3.3 Products shall be in compliance with all applicable  
4 laws.

#### 5                           4.     **ENFORCEMENT**

6           4.1     Shefa may, by motion or application for an order to show cause before the  
7 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent  
8 Judgment.

9           4.2     Prior to bringing any motion or application to enforce the requirements of Section  
10 3 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase  
11 and a copy of any test results which purportedly support the Notice of Violation.

12          4.3     The Parties shall then meet and confer regarding the basis for the anticipated  
13 motion or application in an attempt to resolve it informally, including providing Settling  
14 Defendant(s) with a reasonable opportunity of at least thirty (30) days to cure any alleged  
15 violation.

16          4.4     Should such attempts at informal resolution fail, Shefa may file an enforcement  
17 motion or application.

18          4.5     This Consent Judgment may only be enforced by the Parties.

#### 19                           5.     **PAYMENTS**

20          5.1     Within ten (10) business days of the Effective Date, Settling Defendant shall pay  
21 the settlement payment identified for it on Exhibit A.

22          5.2     The total settlement amount for Settling Defendant shall be paid pursuant to the  
23 instructions outlined in Exhibit A.

24          5.3     The funds paid by Settling Defendant shall be allocated, as identified in  
25 Exhibit A, between the following categories:

26          5.4     **Civil Penalty.** A civil penalty pursuant to Health & Safety Code § 25249.7(b),  
27 with such money to be apportioned by Shefa as identified on the Exhibit A for the Settling  
28 Defendant 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).

1           5.5     **Attorney’s Fees and Costs.** A reimbursement of a portion of Shefa’s reasonable  
2 attorney’s fees and costs.

3                     **6.       MODIFICATION**

4           6.1     **Written Consent.** This Consent Judgment may be modified from time to time by  
5 express written agreement of the Parties with the approval of the Court, or by an order of this  
6 Court upon motion and in accordance with law.

7           6.2     **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
8 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
9 modify the Consent Judgment.

10                    **7.       CLAIMS COVERED AND RELEASED**

11           7.1     This Consent Judgment is a full, final, and binding resolution between (i) Shefa  
12 on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its former  
13 affiliates (“affiliate” means a person or entity who directly or indirectly owns or controls, is  
14 owned or controlled by, or is under common ownership or control with, Settling Defendant), and  
15 their current and past directors, officers, employees and attorneys (“Defendant Releasees”), and  
16 each entity to whom any of them directly or indirectly distribute or sell Covered Products,  
17 including but not limited to distributors, wholesalers, contractors, customers, retailers,  
18 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant  
19 Releasees”); of any violation of Proposition 65 that was or could have been asserted in the  
20 Complaint against Settling Defendant, Defendant Releasees, and Downstream Defendant  
21 Releasees, based on failure to warn about alleged exposure to DEA contained in Covered  
22 Products that were sold by Settling Defendant prior to the Effective Date.

23           7.2     Compliance with the terms of this Consent Judgment by Settling Defendant and  
24 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,  
25 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure  
26 to warn about DEA in Covered Products manufactured, distributed, or sold by Settling  
27 Defendants after the Effective Date.

28           7.3     Shefa, acting on its behalf only, releases and discharges Settling Defendant,  
Defendant Releasees, and Downstream Defendant Releasees from any and all known and

1 unknown claims for alleged violations of Proposition 65 or for any other statutory or common  
2 law claims, arising from or relating to alleged exposures to DEA in the Covered Products. It is  
3 possible that other claims not known to the parties arising out of the facts alleged in the Notices  
4 or the Complaint and relating to the Covered Products will develop or be discovered. Shefa, on  
5 behalf of itself only, acknowledges that this Consent Judgment is expressly intended to cover  
6 and include all such claims including all rights of action thereof. Shefa has full knowledge of  
7 the contents of California Civil Code section 1542. Shefa, on behalf itself only, acknowledges  
8 that the claims released above may include unknown claims, and nevertheless waives California  
9 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542  
10 reads as follows:

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

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

17 7.4 Nothing in this Section 7 affects Shefa's right to commence or prosecute an  
18 action under Proposition 65 against any person other than Settling Defendant, Defendant  
19 Releasees, or Downstream Defendant Releasees.

## 20 8. NOTICE

21 8.1 When Shefa is entitled to receive any notice under this Consent Judgment, the  
22 notice shall be sent by first class and electronic mail to:

23 Daniel N. Greenbaum  
24 Law Office of Daniel N. Greenbaum  
25 7120 Hayvenhurst Ave., Suite 320  
26 Van Nuys CA 91406  
27 dgreenbaum@greenbaumlawfirm.com

28 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.

1           8.3     Any Party may modify the person and address to whom the notice is to be sent by  
2 sending the other Party notice by first class and electronic mail.

3                   **9.     COURT APPROVAL**

4           9.1     This Consent Judgment shall become effective upon entry by the Court.

5           9.2     Shefa shall prepare and file a Motion for Approval of this Consent Judgment and  
6 Settling Defendant shall support entry of this Consent Judgment.

7           9.3     If this Consent Judgment is not entered by the Court, it shall be of no force or  
8 effect and shall never be introduced into evidence or otherwise used in any proceeding for any  
9 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

10                   **10.    ATTORNEYS' FEES**

11           10.1    Should Shefa prevail on any motion, application for an order to show cause, or  
12 other proceeding to enforce a violation of this Consent Judgment, Shefa shall be entitled to its  
13 reasonable attorneys' fees and costs incurred as a result of such motion or application.

14           10.2    Should Settling Defendant prevail on any motion application for an order to show  
15 cause or other proceeding, that Settling Defendant may be awarded its reasonable attorneys' fees  
16 and costs against Shefa as a result of such motion or application upon a finding by the Court that  
17 Shefa's prosecution of the motion or application lacked substantial justification.

18           10.3    For purposes of this Consent Judgment, the term substantial justification shall  
19 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§  
20 2016, et seq.

21           10.4    Except as otherwise provided in this Consent Judgment, each Party shall bear its  
22 own attorneys' fees and costs.

23           10.5    Nothing in this Section 10 shall preclude a Party from seeking an award of  
24 sanctions pursuant to law.

25                   **11.    OTHER TERMS**

26           11.1    The terms of this Consent Judgment shall be governed by the laws of the State of  
27 California.

28           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.



1           11.3 This Consent Judgment contains the sole and entire agreement and understanding  
2 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
3 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
4 and therein.

5           11.4 There are no warranties, representations, or other agreements between the Parties  
6 except as expressly set forth herein.

7           11.5 No representations, oral or otherwise, express or implied, other than those  
8 specifically referred to in this Consent Judgment have been made by any Party hereto.

9           11.6 No other agreements not specifically contained or referenced herein, oral or  
10 otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11           11.7 No supplementation, modification, waiver, or termination of this Consent  
12 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

13           11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or  
14 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
15 such waiver constitute a continuing waiver.

16           11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights  
17 Settling Defendant might have against any other party, whether or not that party is a Settling  
18 Defendant.

19           11.10 This Court shall retain jurisdiction of this matter to implement or modify the  
20 Consent Judgment.

21           11.11 The stipulations to this Consent Judgment may be executed in counterparts and  
22 by means of facsimile or portable document format (pdf), which taken together shall be deemed  
23 to constitute one document.

24           11.12 Each signatory to this Consent Judgment certifies that he or she is fully  
25 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter  
26 into and execute the Consent Judgment on behalf of the Party represented and legally to bind  
27 that Party.

28           11.13 The Parties, including their counsel, have participated in the preparation of this  
Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

1 11.14 This Consent Judgment was subject to revision and modification by the Parties  
2 and has been accepted and approved as to its final form by all Parties and their counsel.

3 11.15 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment  
4 shall not be interpreted against any Party as a result of the manner of the preparation of this  
5 Consent Judgment.

6 11.16 Each Party to this Consent Judgment agrees that any statute or rule of  
7 construction providing that ambiguities are to be resolved against the drafting Party should not  
8 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby  
9 waive California Civil Code § 1654.

10  
11 AGREED TO:

12 Dated: 9/30/2015

SHEFA LMV, LLC

13 By:   
14 \_\_\_\_\_

15  
16  
17 Dated: 9-30-2015

FAROUK SYSTEMS, INC.

18 By:   
19 \_\_\_\_\_  
20 Basim Shami  
21 CEO  
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1 **ORDER AND JUDGMENT**

2 Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Farouk  
3 Systems, Inc., the settlement is approved and the clerk is directed to enter judgment in  
4 accordance with the terms herein.

5  
6 Dated: \_\_\_\_\_

7  
8 \_\_\_\_\_  
9 Judge of the Superior Court

EXHIBIT A

1. Name of Settling Defendant: Farouk Systems, Inc.

2. Name of Plaintiff: Shefa LMV, LLC

3. Person(s) to Receive Notices (Pursuant to Section 8.2):

Jason Rumsey, Esq.  
FAROUK SYSTEMS, INC.  
880 E Richey Road  
Houston, TX 77073  
Email: jrumsey@farouk.com

With copies to:

ROGERS JOSEPH O'DONNELL  
Renee D. Wasserman, Esq.  
311 California Street, 10th Fl.  
San Francisco, CA 94104  
Email: rwasserman@rjo.com

4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): November 5, 2014

5. 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

a. Date Complaint Filed: April 17, 2015

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):

**Farouk Systems, Inc. Shampoos**  
**Farouk Systems, Inc. Soaps**  
**Farouk Systems, Inc. Hair Crème/Hair Care Products**

7. Defendant's Section 3.3 Product(s) (Pursuant to Sections 3.1 through 3.6):

**CHI Pliable polish; UPC: 633911630655**

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.