

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 Inc.			
	DEFENDANT(S) INVOLVED IN SETTLEMENT The Dial Corporation			
CASE INFO	COURT DOCKET NUMBER JCCP004765		COURT NAME Alameda County Superior Court	
	SHORT CASE NAME California Proposition 65 Cocamide DEA Cases			
REPORT INFO	INJUNCTIVE RELIEF Reformulation or Warning label			
	PAYMENT: CIVIL PENALTY \$2,000	PAYMENT: ATTORNEYS FEES \$24,000	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 6 / 8 / 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 CA	ZIP 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com

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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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7120 Hayvenhurst Avenue, Suite 320
3 Van Nuys, CA 91406
Telephone: (818) 809-2199
4 Facsimile: (424) 243-7689
5 Email: dgreenbaum@greenbaumlawfirm.com

6 Attorney for Plaintiff SHEFA LMV, LLC

7 MORRISON & FOERSTER LLP
William F. Tarantino (SBN 215343)
8 425 Market Street, Suite 3300
9 San Francisco CA 94105
Telephone: (415) 268-7000
10 Facsimile: (415) 268-7522
11 Email: WTarantino@mofo.com

12 Attorneys for Defendant
THE DIAL CORPORATION

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF ALAMEDA

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, Inc., et al.*, Los
) Angeles County Superior Court No.
) BC579191]
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO THE DIAL CORPORATION**
)
) 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 The Dial Corporation, (“Settling Defendant”). Shefa and Settling Defendant are referred to collectively as the “Parties.”

1.2 Shefa alleges that 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 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 or distribute any Covered Product that contains DEA
11 and that will be sold or offered for sale to California consumers. For purposes of this Consent
12 Judgment, a product “contains DEA” only if DEA is an intentionally-added ingredient in the
13 Covered 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**

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1 5.1 Within twenty (20) business days of the Effective Date, Settling Defendant shall
2 pay the settlement payment identified for it on 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 each of their current and past directors, officers, employees and attorneys (“Defendant
26 Releasees”), and each entity to whom any of them directly or indirectly distribute or sell
27 Covered Products, past or present, including but not limited to distributors, wholesalers,
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1 contractors, customers, retailers, franchisees, cooperative members, licensors, and licensees
2 (“Downstream Defendant Releasees”); relating to all claims of violations of Proposition 65 that
3 have been or could have been asserted against Settling Defendant, Defendant Releasees, and
4 Downstream Defendant Releasees up through the Effective Date, provided that such claims are
5 based on or related to the facts alleged in the operative complaint in this action.

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

10 7.3 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 DEA in the Covered Products.

14 7.4 It is possible that other claims not known to the parties arising out of the facts
15 alleged in the Notices or the Complaint and relating to the Covered Products will develop or be
16 discovered.

17 7.5 Shefa, on behalf of itself only, acknowledges that this Consent Judgment is
18 expressly intended to cover and include all such claims including all rights of action thereof.

19 7.6 Shefa has full knowledge of the contents of California Civil Code section 1542.

20 7.7 Shefa, on behalf itself only, acknowledges that the claims released above may
21 include unknown claims, and nevertheless waives California Civil Code section 1542 as to any
22 such unknown claims. California Civil Code section 1542 reads as follows:

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

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

1 7.8 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 Daniel N. Greenbaum
8 Law Office of Daniel N. Greenbaum
9 7120 Hayvenhurst Ave., Suite 320
10 Van Nuys CA 91406
11 dgreenbaum@greenbaumlawfirm.com

12 8.2 When Settling Defendant is entitled to receive any notice under this Consent
13 Judgment, the notice shall be sent by first class and electronic mail to the person identified on
14 the Exhibit A for Settling Defendant.

15 8.3 Any Party may modify the person and address to whom the notice is to be sent by
16 sending the other Party notice by first class and electronic mail.

17 **9. COURT APPROVAL**

18 9.1 This Consent Judgment shall become effective upon entry by the Court.

19 9.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
20 Settling Defendant shall support entry of this Consent Judgment.

21 9.3 If the Court does not enter this Consent Judgment, it shall be of no force or effect
22 and shall never be introduced into evidence or otherwise used in any proceeding for any purpose
23 other than to allow the Court to determine if there was a material breach of Section 9.1.

24 9.4 This Court shall retain jurisdiction of this matter to implement or modify the
25 Consent Judgment.
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AGREED TO:


Dated: 6/8/17

SHEFA LMV, LLC

By:  _____

Dated: *June 8, 2017*

THE DIAL CORPORATION

By:  _____
Christopher J. Signorello
Vice President, Associate General Counsel

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and The Dial Corporation, 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: The Dial Corporation
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.2):

Christopher J. Signorello
Vice President, Associate General Counsel
Henkel Corporation
One Henkel Way
Rocky Hill, CT 06067

E-mail: Christopher.signorello@henkel.com
Phone: 860-571-5211

With a copy to:

William F. Tarantino
MORRISON & FOERSTER LLP
425 Market Street, Suite 3300
San Francisco, CA 94105
Email: wtarantino@mof.com
Phone: 415-268-6358

4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): November 21, 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, 7.1, 7.2, 7.3 and 7.4):

 X All Soaps (commercial and consumer)
Shampoos

7. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$26,000.00

Civil Penalty (payable to Shefa LMV, LLC): \$2,000.00

Payment in Lieu of Civil Penalty (PILP): \$ N/A

Shefa's Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$24,000.00

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.