

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 Johnson & Johnson Consumer Inc. (for Neutrogena Corp.)			
CASE INFO	COURT DOCKET NUMBER JCCP004765		COURT NAME Alameda County Superior Court	
	SHORT CASE NAME Proposition 65 Cocmide DEA Cases			
REPORT INFO	INJUNCTIVE RELIEF Reformulation or Warning label			
	PAYMENT: CIVIL PENALTY \$29,000	PAYMENT: ATTORNEYS FEES \$70,000	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 7 / 27 / 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.

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

9 Attorney for Plaintiff SHEFA LMV, LLC

10 TATRO TEKOSKY SADWICK LLP
11 David B. Sadwick, Esq.
12 333 S. Grand Avenue, Suite 4270
13 Los Angeles, CA 90071
14 Telephone: (213) 225-7171
15 Facsimile: (213) 225-7151
16 E-mail: dsadwick@ttsmlaw.com

17 Attorneys for Defendant JOHNSON & JOHNSON CONSUMER INC. (formerly known as, and
18 sued as, Neutrogena Corporation)

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF ALAMEDA

21 Coordination Proceeding)	JUDICIAL COUNCIL COORDINATION
22 Special Title (Rule 3.350))	PROCEEDING NO: 4765
)	
)	
23 PROPOSITION 65 COCAMIDE DEA)	[Shefa LMV, LLC v. Farouk Systems, Inc.,
24 CASES)	et al., Los Angeles County Superior Court
)	No. BC579191]
)	
)	[PROPOSED] CONSENT JUDGMENT
)	AS TO JOHNSON & JOHNSON
)	CONSUMER INC.
)	
)	Judge: Hon. George C. Hernandez, Jr.
)	Action filed: April 17, 2015

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1 **1. INTRODUCTION**

2 1.1 **Parties.** The parties to this consent judgment (“Consent Judgment”) are Shefa
3 LMV, LLC (“Shefa” or “Plaintiff”) and Johnson & Johnson Consumer Inc. (“Settling
4 Defendant”). Shefa and Settling Defendant are referred to collectively as the “Parties” or,
5 singularly, as a “Party.”

6 1.2 **Products.** The Settling Defendant manufactures, distributes, and/or sells types of
7 products identified on Exhibit A (the “Covered Products”). Plaintiff alleges that the Covered
8 Products sold by Settling Defendant in the State of California, or sold in the past by Settling
9 Defendant in the State of California, contain or contained diethanolamine (“DEA”) at levels
10 requiring a warning under California’s Safe Drinking Water and Toxic Enforcement Act of
11 1986, California Health & Safety Code §§ 25249.5, et seq. (“Proposition 65”). Settling
12 Defendant denies Plaintiff’s allegations.

13 1.3 **Notice of Violation.** On February 24, 2015, Shefa served 60-Day Notices
14 (“Notices”) of Violation under Proposition 65 to Settling Defendant, the California Attorney
15 General, the District Attorneys of every County in the State of California, and the City Attorneys
16 for every City in the State of California with a population greater than 750,000. The Notices
17 allege violations of Proposition 65 with respect to the presence of DEA in the types of products
18 identified in Exhibit A. If one or more additional Notices would be necessary for all the
19 Covered Products to be included in this Consent Judgment, Plaintiff shall timely issues such
20 Notices sufficiently in advance of any motion to approve this Consent Judgment so that the
21 sixty-day notice period, plus any additional time period for service of such Notices, shall have
22 elapsed prior to the initial date set for the Court’s hearing such motion to approve this Consent
23 Judgment.

24 1.4 **Complaint.** On April 17, 2015, Shefa filed the Complaint applicable to the
25 Settling Defendant (“Complaint”) for the Proposition 65 Action identified in Exhibit A.

26 1.5 **Jurisdiction.** For purposes of this Consent Judgment only, the Parties stipulate
27 that: (i) this Court has jurisdiction over the allegations of violations contained in the operative

1 Complaint applicable to Settling Defendant and personal jurisdiction over Settling Defendant as
2 to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this
3 Court has jurisdiction to enter this Consent Judgment.

4 1.6 **No Admissions.** Nothing in this Consent Judgment is or shall be construed as an
5 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor
6 shall compliance with the Consent Judgment constitute or be construed as an admission by the
7 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
8 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties
9 may have in any other legal proceeding. This Consent Judgment is the product of negotiation
10 and compromise, and is accepted by the Parties for purposes of settling, compromising, and
11 resolving issues disputed in this action.

12 2. DEFINITIONS

13 2.1 “Covered Products” means the types of products identified on the Exhibit A for
14 Settling Defendant.

15 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
16 the Court.

17 2.3 “Compliance Date” is 180 days after the Effective date.

18 3. INJUNCTIVE RELIEF

19 3.1 **Reformulation of Covered Products.** As of the date of execution of this
20 Consent Judgment, Settling Defendant confirms that it has actively engaged its suppliers of raw
21 materials to comply with its reformulation efforts. As of the Compliance Date, Settling
22 Defendant shall take commercially reasonable efforts to not manufacture any Covered Products
23 (a) that contain DEA as an ingredient in its formula and (b) that Settling Defendant intends to
24 sell or offer for sale to California consumers. For purposes of this Consent Judgment, Covered
25 Products “contain DEA” if DEA is an intentionally added ingredient of the Covered Products or
26 if the DEA concentration in the Covered Products exceeds the level(s) for the relevant time
27 frame(s) set forth in Section 3.2 of this Consent Judgment.

1 3.2 **Reformulation.** “Reformulated Covered Products” shall be deemed to comply
2 with Proposition 65 without a consumer warning. “Reformulated Covered Products” are defined
3 as those Covered Products with DEA concentrations of less than or equal to six-tenths of one
4 percent (0.6%) in the triethanolamine (“TEA”) ingredient in the Covered Products, based on a
5 certificate of analysis or analytical testing results provided by the TEA supplier for each lot of
6 TEA used to manufacture Covered Products. If a supplier fails to provide a certificate of
7 analysis or analytical testing results, Settling Defendant may obtain a certificate of analysis or
8 analytical testing results for such lot of TEA. Settling Defendant may, absent reasonable
9 grounds to question the accuracy of the certificate of analysis or analytical testing results,
10 establish compliance with such DEA concentration standard for Covered Products to be deemed
11 Reformulated Covered Products by relying in good faith on such certificate of analysis or
12 analytical testing results, or on comparable quantitative DEA content information. Settling
13 Defendant shall retain certificates of analysis or analytical testing results for three years after
14 delivery of the TEA lot to which such documentation applies and compliance documentation
15 shall be made available within 30 days of a written request by Plaintiff, who may make no more
16 than two such requests annually.

17 3.3 **Preservation of Competitiveness.** The intent of this Section is to protect the
18 competitive interests of Settling Defendant arising from the Shefa’s claims and to ensure that by
19 settling the allegations in the Notice of Violation and the Complaint, Settling Defendant is not
20 disadvantaged with respect to its competitors. Specifically, the Parties agree that, should any
21 agreement or consent judgment be entered into by Shefa, The California Office of
22 Environmental Health Hazard Assessment, or the California Attorney General’s Office
23 concerning products substantially similar to the Covered Products that contains provisions that
24 would materially impact the terms of this Consent Judgment in a manner which would materially
25 benefit Settling Defendant if such provisions were incorporated into this Consent Judgment, such
26 benefits shall be deemed to accrue to Settling Defendant, this Consent Judgment shall be
27 amended by a stipulation, and a new [proposed] order shall be submitted the Court for approval,
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1 a copy of which shall be provided to the Attorney General's office no later than five (5) business
2 days prior to submission to the Court, to provide Settling Defendant the benefit thereof. Further,
3 should there be a court decision involving any other person or entity that received a Proposition
4 65 60-Day Notice of Violation alleging that DEA in products substantially similar to the
5 Covered Products and such decision is in whole or in part materially favorable to the defendants
6 in such action in a manner which would materially benefit Settling Defendant if such materially
7 favorable aspects of such decision were incorporated into this Consent Judgment, then that
8 decision shall be incorporated into this Consent Judgment by a stipulation and a new [proposed]
9 order that shall be submitted to the Court for approval, a copy of which shall be provided to the
10 Attorney General's Office not later than five (5) business days prior to submission to the Court.

11 **4. ENFORCEMENT**

12 4.1 Shefa may, by motion or application for an order to show cause before the
13 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
14 Judgment.

15 4.2 Prior to bringing any motion or application to enforce the requirements of Section
16 3 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
17 and a copy of any test results, which purportedly support the Notice of Violation.

18 4.3 The Parties shall then meet and confer regarding the basis for the anticipated
19 motion or application in an attempt to resolve it informally, including providing Settling
20 Defendant(s) with a reasonable opportunity of at least thirty (30) days to cure any alleged
21 violation.

22 **5. PAYMENTS**

23 5.1 **Payments by Settling Defendant.** Within ten (10) business days of the Effective
24 Date, Settling Defendant shall initiate the settlement payment (per the terms in Section 7 of this
25 Consent Judgment) identified on Exhibit A. The total settlement amount, which amount
26 includes both the initial civil penalty and Plaintiff's attorney's fees, to be paid by Settling
27 Defendant shall in the amount set forth in, and shall be paid pursuant to the instructions outlined

1 Defendant's attention, negotiating a settlement, and seeking court approval of the same.
2 Payment shall be delivered to Daniel N. Greenbaum, Law Office of Daniel N.
3 Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

4 **6. MODIFICATION**

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

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

11 **7. CLAIMS COVERED AND RELEASED**

12 7.1 This Consent Judgment is a full, final, and binding resolution between (a) on the
13 one hand, Shefa on behalf of itself and the public interest; and (b) on the other hand, (i) Settling
14 Defendant; (ii) Settling Defendant's current, future, and former affiliates ("affiliate" means a
15 person who, or entity which, directly or indirectly, fully or partially, owns or controls, is owned
16 or controlled by, or is under common ownership or control with, Settling Defendant); (iii)
17 current, future, and past directors, officers, employees, and attorneys of Settling Defendant and
18 Settling Defendant's current, future, and former affiliates (collectively, the persons and entities
19 identified in Section 7.1(b)(i), (ii), and (iii) shall be referred to as the "Defendant Releasees");
20 (iv) each person to whom, or entity to which, any of the Defendant Releasees directly or
21 indirectly distribute or sell Covered Products, including but not limited to distributors,
22 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
23 ("Downstream Releasees"); (v) each person who, or entity which, directly or indirectly
24 distributes or sells Covered Products, to any of the Defendant Releasees or Downstream
25 Releasees, including but not limited to distributors, wholesalers, customers, retailers,
26 franchisees, cooperative members, licensors, and licensees ("Upstream Releasees"); and (vi)
27 each person who, or entity which, manufactures or packages (collectively "Manufacturers") the

1 Cover Products, of any violation of Proposition 65 that was or could have been asserted in the
2 Complaint against Settling Defendant, Defendant Releasees, Downstream Releasees,, Upstream
3 Releasees, or Manufacturers based on failure to warn about alleged exposure to DEA contained
4 in Covered Products that were manufactured prior to the Compliance Date.

5 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant shall
6 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees,
7 Downstream Releasees, Upstream Releasees, and Manufacturers with respect to any alleged
8 failure to warn about DEA in Covered Products manufactured after the Compliance Date.

9 7.3 Nothing in this Section 7 affects Shefa's right to commence or prosecute an
10 action under Proposition 65 against any person other than Settling Defendant, Defendant
11 Releasees, Downstream Releasees, Upstream Releasees, and Manufacturers with respect to any
12 alleged violations relating to any products other than the Covered Products.

13 7.4 Plaintiff, in its individual capacity only and *not* in its representative capacity, also
14 provides a release to Settling Defendant, Defendant Releasees, Downstream Releasees, ,
15 Upstream Releases, and Manufacturers which release shall be effective as a full and final accord
16 and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'
17 fees, damages, losses, claims, liabilities and demands of Plaintiff of any nature, character or
18 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
19 exposures to DEA in Covered Products prior to the Compliance Date.

20 7.5 Settling Defendant, on behalf of itself, its past and current agents, representatives,
21 attorneys, successors and assignees, hereby waives any and all claims against Shefa and its
22 attorneys and other representatives, for any and all actions taken or statements made by Shefa
23 and its attorneys and other representatives, whether in the course of investigating claims,
24 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
25 Covered Products up through the Compliance Date.

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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.

8.4 Shefa to comply with all California Attorney General reporting requirements.

9. COURT APPROVAL

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

9.2 If this Consent Judgment is not entered by the Court, 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.

10. ATTORNEYS' FEES

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

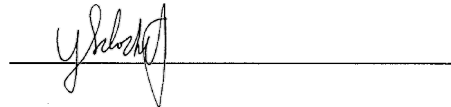
25 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
26 Settling Defendant might have against any other party, whether or not that party is a Settling
27 Defendant.


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
4 by means of facsimile or portable document format (pdf), which taken together shall be deemed
5 to constitute one document.

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

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

19 AGREED TO:
20 Dated: 7/27/2017 SHEFA LMV, LLC
21 By: 
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23 Dated: July 27, 2017 JOHNSON & JOHNSON CONSUMER INC.
24 By: 
25 Rosa Son
26 Assistant General Counsel
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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Johnson & Johnson Consumer Inc., the parties' consent judgment 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: Johnson & Johnson Consumer Inc.

2. Name of Plaintiff: Shefa LMV, LLC

3. Person(s) to Receive Notices (Pursuant to Section 8.3):

TATRO TEKOSKY SADWICK LLP

David B, Sadwick, Esq.

333 S. Grand Avenue, Suite 4270

Los Angeles, CA 90071

Telephone: (213) 225-7171

Facsimile: (213) 225-7151

E-mail: dsadwick@ttsmlaw.com

4. 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

5. Types of Products Covered

Soaps

6. Settling Defendant's Covered Products:

Neutrogena transparent facial bar; UPC: 070501013304 and all other Neutrogena transparent facial bar products sold, manufactured, and/or distributed by Settling Defendant, Defendant Releasees, Downstream Releasees, Upstream Releasees, or Manufacturers, including without limitation Neutrogena Facial Cleansing Bar - Original Formula, Neutrogena Facial Cleansing Bar for Acne Prone Skin, Neutrogena Naturals Face & Body Bar, and Neutrogena Transparent Facial Cleansing Bar-Fragrance Free Formula.

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

- Total Settlement Payment: \$99,000, inclusive of the Initial Civil Penalty and all Fees and Costs
- Initial Civil Penalty (payable to Shefa LMV, LLC): \$29,000
- Final Civil Penalty (payable to Shefa LMV, LLC if required to be paid pursuant to the terms of this consent judgment): \$29,000
- Payment in Lieu of Civil Penalty (payable to Shefa): \$ N/A
- Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$70,000.00

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.