

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 1502
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF ENTRY OF JUDGMENT

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

PARTIES TO THE ACTION	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN JUDGMENT				
CASE INFO	COURT DOCKET NUMBER		COURT NAME		
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER	
	DATE SUBMITTED TO COURT / /	IS JUDGMENT PURSUANT TO SETTLEMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL / /		For Internal Use Only
	COPY OF JUDGMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT				
	ORGANIZATION		TELEPHONE NUMBER ()		
	ADDRESS		FAX NUMBER ()		
	CITY	STATE	ZIP	E-MAIL ADDRESS	

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 judgment 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 DANIEL N. GREENBAUM - 268104
2 LAW OFFICE OF DANIEL N. GREENBAUM
3 14752 Otsego Street
4 Telephone: (310) 200-2631
5 Facsimile: (424) 243-7689
6 Email: danielgreenbaumesq@gmail.com

7 Attorney for Plaintiff

8 GENE LIVINGSTON - SBN 44280
9 ANTHONY CORTEZ - SBN 251743
10 GREENBERG TRAUIG, LLP
11 1201 K Street, Suite 1100
12 Sacramento, CA 95814-3938
13 Telephone: (916) 442-1111
14 Facsimile: (916) 448-1709
15 mattesichj@gtlaw.com;
16 cortezan@gtlaw.com

17 Attorneys for Defendant

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF ALAMEDA

20 Coordination Proceeding
21 Special Title (Rule 3.350)
22 PROPOSITION 65 COCAMIDE DEA
23 CASES

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO: 4765

[Shefa LMV, LLC v. Ross Stores, et al.,
Los Angeles County Superior Court
No. BC521400

~~[PROPOSED]~~ CONSENT JUDGMENT
AS TO RECKITT BENCKISER LLC

Judge: Hon. George C. Hernandez, Jr.

Action filed: October 11, 2013

OCT - 7 2013

YOLANDA ESTRADA

1 **INTRODUCTION**

2 **1.1 Parties.** This Consent Judgment is entered into by and between plaintiff Shefa
3 LMV, LLC (“Shefa LMV”) and Reckitt Benckiser LLC (“Reckitt”) with Shefa LMV and
4 Reckitt collectively referred to as the “Parties,” and individually as “Party.” Shefa LMV is an
5 entity organized in the State of California, which has asserted that it seeks to promote awareness
6 of exposure to toxic chemicals and to improve human health by reducing or eliminating
7 hazardous substances contained in consumer and commercial products. Shefa LMV alleges that
8 Reckitt employs ten or more persons and is a person in the course of doing business for purposes
9 of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
10 Code § 25249.6, et seq. (“Proposition 65”).

11 **1.2 General Allegations.** Shefa LMV alleges that Reckitt has manufactured, imported,
12 distributed and/or sold soap products that contain Cocamide Diethanolamine (“Cocamide DEA”)
13 without the requisite Proposition 65 warnings. Cocamide DEA is on the Proposition 65 list as a
14 chemical known to the State of California to cause cancer.

15 **1.3 Product Description.** As used in this Consent Judgment, “Products” shall mean
16 soap products containing Cocamide DEA, including, but not limited to, anti-bacterial hand soap,
17 that are manufactured, imported, distributed and/or sold by Reckitt for sale in the State of
18 California.

19 **1.4 Notice of Violation.** On June 22, 2013, Shefa LMV served Reckitt and various
20 public enforcement agencies with a document entitled “60-Day Notice of Violation” (the
21 “Notice”) that provided recipients with notice of Shefa LMV’s allegation that Reckitt was in
22 violation of Proposition 65 for failing to warn consumers and customers that the Products
23 exposed users in California to Cocamide DEA. No public enforcer has diligently prosecuted the
24 allegations set forth in the Notice.

25 **1.5 Complaint.** On or about September 16, 2013, Shefa LMV filed a complaint in the
26 Superior Court in and for the County of Los Angeles against Reckitt Benckiser LLC and other

1 Defendant with Notice of Violation and a copy of any test results which purportedly support
2 Shefa's Notice of Violation. The Parties shall then meet and confer regarding the basis for
3 Shefa's anticipated motion or application in an attempt to resolve the matter informally,
4 including providing Settling Defendant a reasonable opportunity of at least thirty (30) days to
5 cure any alleged violation. Should such attempts at informal resolution fail, Shefa may file its
6 enforcement motion or application. The prevailing party on any motion to enforce this Consent
7 Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result of such
8 motion or application.

9 **4. MONETARY PAYMENTS**

10 Reckitt agrees to a total settlement payment of Fifteen Thousand Dollars (\$15,000.00) to
11 be paid as set forth below.

12 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

13 Reckitt shall pay a total civil penalty payment of \$2,000.00 within ten (10) days of the
14 Effective Date, as follows: the civil penalty shall be apportioned in accordance with California
15 Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of
16 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
17 25% of the penalty remitted to Shefa LMV, both pursuant to the procedures set forth in Section
18 4.3.

19 **4.2 Reimbursement of Shefa LMV's Fees and Costs**

20 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
22 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
23 Reckitt expressed a desire to resolve the fee and cost issue after the other settlement terms had
24 been agreed. The Parties then attempted to (and did) reach an accord on the compensation due
25 to Shefa LMV and its counsel under general contract principles and the private attorney general
26 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in this

1 matter, except fees that may be incurred on appeal. Under these legal principles, Reckitt shall
2 pay the amount of \$13,000.00 for fees and costs incurred investigating, litigating and enforcing
3 this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting,
4 and obtaining the Court's approval of this Consent Judgment in the public interest.

5 **4.3 Payment Procedures**

6 All payments required by Sections 4.1 and 4.2 shall be within ten (10) days of the
7 Effective Date, in three checks made payable as follows:

8 (a) one check to "OEHHA" in the amount of \$1,500.00;

9 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV,
10 LLC" in the amount of \$500.00; and

11 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$13,000.00.

12 **4.4 Issuance of 1099 Forms**

13 After the settlement funds have been transmitted to Shefa LMV's counsel, Reckitt shall
14 issue separate 1099 forms, as follows:

15 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
16 68-0284486) in the amount of \$1,500.00;

17 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$500.00, whose
18 address and tax identification number shall be furnished upon request; and

19 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
20 amount of \$13,000.00.

21 **4.5 Issuance of Payments.**

22 All payments owed shall be delivered to the following payment address:

23 Daniel N. Greenbaum, Esq.
24 Law Office of Daniel N. Greenbaum
25 14752 Otsego Street
26 Sherman Oaks, CA 91403

26 ///

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Shefa LMV's Release of Reckitt**

3 Plaintiff, acting on its own behalf and in the public interest, releases Reckitt, its parents,
4 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
5 attorneys, and each entity to whom Reckitt directly or indirectly distributes or sells Products,
6 including, but not limited to, downstream distributors, wholesalers, customers, retailers,
7 including specifically, but not limited to Walgreen Co., franchisees, cooperative members,
8 licensors, and licensees ("Releasees"), from all claims for violations of Proposition 65 up
9 through the date on which this Consent Judgment is signed by both parties based on exposure to
10 Cocamide DEA from the Products as set forth in the Notice. Compliance with the terms of this
11 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
12 Cocamide DEA from the Products as set forth in the Notice.

13 **5.2 Reckitt's Release of Shefa LMV**

14 Reckitt on behalf of itself, its past and current agents, representatives, attorneys,
15 successors, and/or assignees, hereby waives any and all claims against Shefa LMV, its attorneys
16 and other representatives, for any and all actions taken or statements made by Shefa LMV and its
17 attorneys and other representatives, whether in the course of investigating claims or otherwise
18 seeking to enforce Proposition 65 against it in this matter with respect to the Products.

19 **6. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one
22 year after it has been fully executed by all parties.

23 **7. SEVERABILITY**

24 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
25 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
26 provisions remaining shall not be adversely affected.

1 **8. GOVERNING LAW**

2 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and shall apply only to Covered Products that are sold or offered for sale in the State
4 of California.

5 8.2 In the event that Proposition 65 is repealed, preempted or otherwise rendered
6 inapplicable by reason of law generally, or as to the Covered Products, then Reckitt shall have
7 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
8 any Covered Products that are so affected.

9 8.3 This Consent Judgment shall apply to and be binding upon Shefa and Reckitt and
10 their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

11 8.4 The Parties, including their counsel, have participated in the preparation of this
12 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

13 8.5 This Consent Judgment was subject to revision and modification by the Parties and
14 has been accepted and approved as to its final form by all Parties and their counsel.

15 8.6 Each Party to this Consent Judgment agrees that any statute or rule of construction
16 providing that ambiguities are to be resolved against the drafting Party shall not be employed in
17 the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive
18 California Civil Code § 1654.

19 **9. NOTICES**

20 Unless specified herein, all correspondence and notices required to be provided pursuant
21 to this Consent Judgment shall be in writing and (i) personally delivered, (ii) sent by first-class,
22 (registered or certified mail) return receipt requested, or (iii) sent by overnight courier to one
23 party from the other party at the following addresses:

24 To Reckitt:
25 Gene Livingston
26 Greenberg Traurig, LLP
27 1201 K Street
Suite 1100
Sacramento, CA 95814

1 To Shefa LMV:
2 Daniel N. Greenbaum, Esq.
3 Law Office of Daniel N. Greenbaum
4 14752 Otsego Street
5 Sherman Oaks, CA 91403

6 Any party, from time to time, may specify in writing to the other party a change of
7 address to which all notices and other communications shall be sent.

8 **10. ATTORNEYS' FEES**

9 **10.1** A Party who unsuccessfully brings or contests an action arising out of this Consent
10 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

11 **10.2** For purposes of this Section 10.1, the prevailing Party refers to the Party that was
12 successful in obtaining relief more favorable to it than the relief that the other Party was
13 amenable to providing during the Parties' good faith attempt to resolve the dispute under Section
14 5.1.

15 **10.3** Nothing in this Section 10 shall preclude a Party from seeking an award of
16 sanctions pursuant to law.

17 **11. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

18 This Consent Judgment may be executed in counterparts and by facsimile or pdf
19 signature, each of which shall be deemed an original, and all of which, when taken together,
20 shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the
21 original.

22 **12. COURT APPROVAL**

23 **12.1** This Consent Judgment shall not be effective until the Effective Date.

24 **12.2** Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
25 Harbor shall make no objections to entry of this Consent Judgment.

26 **12.3** If this Consent Judgment is not entered by the Court, it shall be of no force or
27 effect.

1 15.2 The undersigned have read, understand and agree to all of the terms and conditions
2 of this Consent Judgment.

3 15.3 Except as explicitly provided herein, each Party is to bear its own fees and costs.

4 **16. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
5 **CONSENT JUDGMENT**

6 16.1 This Consent Judgment came before this Court upon the request of the Parties.

7 16.2 The Parties request the Court to review this Consent Judgment and to make the
8 following findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

- 9 1. The injunctive relief required by the Consent Judgment complies with Cal. Health
10 & Safety Code § 25249.7;
- 11 2. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment
12 is reasonable under California law; and
- 13 3. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.

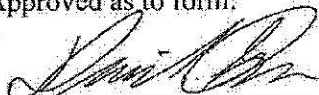
14 AGREED TO:

15 Dated: 6/18/14

SHEFA LMV, LLC

16 By: 
17 _____
18 [name]

19 Approved as to form:

20 
21 _____
22 Daniel Greenbaum, Esq.
23 Attorney for Shefa LMV, LLC

24 [SIGNATURES ON FOLLOWING PAGE]

1 Dated: June 9, 2014

RECKITT BENCKISER LLC

2 By: 
3 [name]

4 Approved as to form:

5 
6

7 Anthony Cortez, Esq.
8 Greenberg Traurig LLP
9 Attorney for Reckitt Benckiser LLC
10
11
12
13
14
15
16
17
18

19 **ORDER AND JUDGMENT**

20 Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Reckitt
21 Benckiser LLC, the settlement is approved and the clerk is directed to enter judgment in
22 accordance with the terms herein.

23
24 Dated: **OCT - 7 2014**

25
26 **GEORGE C. HERNANDEZ, JR.**
27 Judge of the Superior Court

28 Page 12 of 13

[PROPOSED] CONSENT JUDGMENT AS TO RECKITT BENCKISER LLC
JCCP No. 4765