

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

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN JUDGMENT				
<b>CASE INFO</b>	COURT DOCKET NUMBER		COURT NAME		
	SHORT CASE NAME				
<b>REPORT INFO</b>	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
	<b>COPY OF JUDGMENT MUST BE ATTACHED</b>				
<b>FILER INFO</b>	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.

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17 Personal Care Products, Inc.

OCT -7 2013  
YOLANDA ESTRADA

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF ALAMEDA

15 Coordination Proceeding ) JUDICIAL COUNCIL COORDINATION  
16 Special Title (Rule 3.350) ) PROCEEDING NO: 4765  
17 PROPOSITION 65 COCAMIDE DEA ) [Shefa LMV, LLC v. Ross Stores, et al.,  
18 CASES ) Los Angeles County Superior Court  
19 ) No. BC521400  
20 ) ~~PROPOSED~~ CONSENT JUDGMENT  
21 ) AS TO PERSONAL CARE PRODUCTS,  
22 ) INC.  
23 ) Judge: Hon. George C. Hernandez, Jr.  
24 )  
25 ) Action filed: October 11, 2013  
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1 **1. INTRODUCTION**

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

11 **1.2 General Allegations.** Shefa LMV alleges that PC 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 PC for sale in the State of California.

18 **1.4 Notice of Violation.** On June 22, 2013, Shefa LMV served PC and various public  
19 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that  
20 provided recipients with notice of Shefa LMV's allegation that PC was in violation of  
21 Proposition 65 for failing to warn consumers and customers that the Products exposed users in  
22 California to Cocamide DEA. No public enforcer has diligently prosecuted the allegations set  
23 forth in the Notice.

24 **1.5 Complaint.** On or about September 16, 2013, Shefa LMV filed a complaint in the  
25 Superior Court in and for the County of Los Angeles against Personal Care Products, Inc. and  
26 other entities, *Shefa LMV, LLC v. Ross Stores, Inc.*, Case No. BC521400, alleging violations of  
27 Proposition 65, based on the alleged exposures to Cocamide DEA contained in certain products  
28 sold by PC ("Complaint"). On or about, October 17, 2013, Shefa LMV filed a First Amended  
31 Complaint alleging violations of Proposition 65 and Business and Professions code section

1 17200. On or about December 4, 2013, the Hon. George C. Hernandez issued an order  
2 coordinating the *Shefa LMV LLC v. Ross, et al.* action with other Cocamide DEA cases in the  
3 Superior Court in and for the County of Alameda, *Proposition 65 Cocamide DEA Cases*, Case  
4 No. JCCP No. 4765.

5 **1.6 No Admission.** PC denies the material, factual and legal allegations contained in  
6 Shefa LMV's Notice and Complaint and maintains that it has at all times been in compliance  
7 with all laws and all products that it has sold, manufactured, imported and/or distributed in  
8 California, including the Products. Nothing in this Consent Judgment shall be construed as an  
9 admission by PC of any fact, finding, issue of law or violation of law, nor shall compliance with  
10 this Consent Judgment constitute or be construed as an admission by PC of any fact, finding,  
11 conclusion, issue of law or violation of law. However, this Section shall not diminish or  
12 otherwise affect PC's obligations, responsibilities and duties under this Consent Judgment.

13 **1.7 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the parties  
14 stipulate that this Court has jurisdiction over PC as to the allegations contained in the Complaint,  
15 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and  
16 enforce the provisions of this Consent Judgment.

17 **1.8 Execution Date.** For purposes of this Consent Judgment, the term "Execution Date"  
18 shall mean the date this Consent Judgment is signed by both parties.

19 **1.9 Effective Date.** For purposes of this Consent Judgment, the term "Effective Date"  
20 shall mean the date the Court enters Judgment pursuant to the terms of this Consent Judgment.

21 **2. INJUNCTIVE RELIEF: REFORMULATION**

22 **2.1 Reformulation of Covered Products.** As of the Effective Date, PC shall not  
23 manufacture, distribute, sell or offer for sale any Covered Product that contains Cocamide DEA  
24 and that will be sold or offered for sale to California consumers. For purposes of this Consent  
25 Judgment, a product "contains Cocamide DEA" if Cocamide DEA is an intentionally added  
26 ingredient in the product and/or part of the product formulation.

27 **2.2 Suppliers.** No more than 30 days after the Effective Date, PC shall issue  
28 specifications to its suppliers of Covered Products requiring that Covered Products not contain  
31

1 any Cocamide DEA, and shall instruct each supplier to use reasonable efforts to eliminate  
2 Covered Products containing Cocamide DEA on a nationwide basis.

3 **2.3 Sell Through Period.** PC's Products that were manufactured and distributed for  
4 retail sale prior to the Effective Date shall be subject to the release of liability pursuant to  
5 Section 5 of this Consent Judgment, without regard to when such Products were, or are in the  
6 future, sold to consumers. As a result, the obligations of PC as set forth in this Consent  
7 Judgment, including but not limited Section 2.1, do not apply to these products.

### 8 **3. ENFORCEMENT**

9 Shefa may, by motion or application for an order to show cause before the Superior  
10 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.  
11 Prior to bringing any motion or application to enforce the requirements of Section 3 above,  
12 Shefa shall provide the Defendant with Notice of Violation and a copy of any test results which  
13 purportedly support Shefa's Notice of Violation. The Parties shall then meet and confer  
14 regarding the basis for Shefa's anticipated motion or application in an attempt to resolve the  
15 matter informally, including providing Settling Defendant a reasonable opportunity of at least  
16 thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail,  
17 Shefa may file its enforcement motion or application. The prevailing party on any motion to  
18 enforce this Consent Judgment shall be entitled to its reasonable attorney's fees and costs  
19 incurred as a result of such motion or application.

### 20 **4. MONETARY PAYMENTS**

21 PC agrees to a total settlement payment of Nine Thousand Nine Hundred and 50/100  
22 Dollars (\$9,950.00) to be paid as set forth below.

#### 23 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

24 PC shall pay a total civil penalty payment of \$2,950.00 within ten (10) days of the  
25 Effective Date, as follows: the civil penalty shall be apportioned in accordance with California  
26 Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of  
27 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining  
28 25% of the penalty remitted to Shefa LMV, both pursuant to the procedures set forth in Section  
31 4.3.



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

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

All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum at the address set forth above, as proof of payment to OEHHA.

**5. CLAIMS COVERED AND RELEASED**

**5.1 Full and Binding Resolution of Proposition 65 Allegations.** This Consent Judgment is a full, final and binding resolution of the Action as set forth in this Section 5. Shefa, on behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the public interest and in its representative capacity, waives all rights to participate in any action and releases and discharges with regard to: (a) PC, its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and assigns (collectively, the "Defendant Releasees"), and (b) finished product or ingredient manufacturers, distributors, and suppliers, and all entities to whom any Defendant Releasee directly or indirectly distributed or sold any Covered Products, including but not limited to distributors, wholesalers, customers, retailers (including but not limited to Ross Stores, Inc. or 99¢ Only Stores, franchisees, cooperative members, licensors, and licensees), franchisees, cooperative members, and Defendant Releasees' licensors and licensees (collectively, "Additional Releasees"), with respect to all claims, including, without limitation, causes of action (in law or in equity), suits, liabilities, demands, obligations, damages, costs, fines, penalties, expenses (including, but not

1 limited to, investigation fees, expert fees and attorneys' fees) or losses (collectively "Claims")  
2 regarding any violation of Proposition 65 based on failure to warn about alleged exposures to  
3 cocamide DEA in any Covered Products shipped, distributed or sold by PC prior to the Effective  
4 Date.

5 **5.2 Individual Release.** Shefa, on behalf of itself, its past and current agents,  
6 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,  
7 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a  
8 bar to all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other  
9 statutory or common law, that are or may be asserted against Defendant Releasees and  
10 Additional Releasees, whether known or unknown, suspected or unsuspected, arising out of  
11 alleged exposures to, and/or failure to warn of alleged exposures to, cocamide DEA or  
12 diethanolamine in the Covered Products shipped, distributed or sold by PC prior to the Effective  
13 Date.

14 **5.3 Compliance.** Compliance with the terms of this Consent Judgment by PC shall be  
15 deemed to constitute compliance by any Defendant Releasee or Additional Releasee with  
16 Proposition 65 regarding alleged exposures to cocamide DEA in the Covered Products.

17 **5.4 PC's Release.** On behalf of itself and Defendant Releasees, PC waives all rights to  
18 institute any form of action against Shefa or Shefa's attorneys, consultants and representatives  
19 for all actions taken or statements made in the course of this Action prior to the date of the  
20 execution of this Consent Judgment.

21 **6. COURT APPROVAL**

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

25 **7. SEVERABILITY**

26 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
27 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
28 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 PC shall have no  
7 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, any  
8 Covered Products that are so affected.

9 8.3 This Consent Judgment shall apply to and be binding upon Shefa and PC 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  
14 and 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  
16 construction providing that ambiguities are to be resolved against the drafting Party shall not be  
17 employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby  
18 waive 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 PC:  
25 Gary A. Peters  
26 Howard & Howard  
27 450 West Fourth Street  
28 Royal Oak MI 48067

29 To Shefa LMV:  
30 Daniel N. Greenbaum, Esq.  
31

1 Law Office of Daniel N. Greenbaum  
2 14752 Otsego Street  
3 Sherman Oaks, CA 91403

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

6 **10. ATTORNEYS' FEES**

7 10.1 A Party who unsuccessfully brings or contests an action arising out of this  
8 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and  
9 costs.

10 10.2 For purposes of this Section 10.1, the prevailing Party refers to the Party that was  
11 successful in obtaining relief more favorable to it than the relief that the other Party was  
12 amenable to providing during the Parties' good faith attempt to resolve the dispute under Section  
13 5.1.

14 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of  
15 sanctions pursuant to law.

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

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

21 **12. COURT APPROVAL**

22 12.1 This Consent Judgment shall not be effective until the Effective Date.

23 12.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and  
24 Harbor shall make no objections to entry of this Consent Judgment.

25 12.3 If this Consent Judgment is not entered by the Court, it shall be of no force or  
26 effect.

27 12.4 This Court shall retain jurisdiction of this matter to implement or modify the  
28 Consent Judgment.

1 **13. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

2 13.1 Shefa LMV and PC agree to mutually employ their, and their counsel's, best  
3 efforts to support the entry of the agreement as a Consent Judgment and obtain approval of the  
4 Consent Judgment by the Court in a timely manner.

5 13.2 The parties acknowledge that, pursuant to California Health & Safety Code §  
6 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,  
7 which Shefa LMV shall draft and file, and PC shall not oppose.

8 13.3 If any third party objection to the noticed motion is filed, Shefa LMV and PC  
9 shall work together to file a joint reply or separate replies if the parties so desire and appear at  
10 any hearing before the Court.

11 13.4 This provision is a material component of the Consent Judgment and shall be  
12 treated as such in the event of a breach.

13 13.5 If the Court does not grant the motion to approve this Consent Judgment, and if  
14 the parties choose not to pursue a modified Consent Judgment within 30 days after the Court's  
15 denial of the motion to approve, then, upon remittitur, any and all payments made pursuant to  
16 Section 3 of this Consent Judgment will be returned to PC.

17 **14. MODIFICATION**

18 This Consent Judgment may be modified only: (1) by written agreement of the parties  
19 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful  
20 motion of any party and entry of a modified Consent Judgment by the Court.

21 **15. AUTHORIZATION**

22 15.1 Each signatory to this Consent Judgment certifies that he or she is fully  
23 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter  
24 into and execute the Consent Judgment on behalf of the Party represented and legally bind that  
25 Party.

26 15.2 The undersigned have read, understand and agree to all of the terms and  
27 conditions of this Consent Judgment.

28 15.3 Except as explicitly provided herein, each Party is to bear its own fees and costs.

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

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

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

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

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AGREED TO:

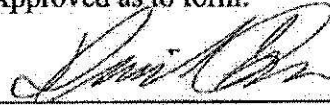
Dated: 6/30/14

SHEFA LMV, LLC

By: 

[name]

Approved as to form:



Daniel Greenbaum, Esq.  
Attorney for Shefa LMV, LLC

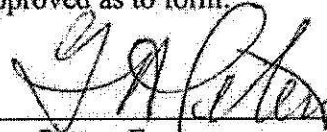
Dated:

PERSONAL CARE PRODUCTS, INC.

By: 

Philip Goldsmith

Approved as to form:



Gary Peters, Esq.  
Howard & Howard  
Attorney for Personal Care Products, Inc.

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Personal Care Products, Inc., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated:                     OCT - 7 2014                    

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