

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

4 Attorneys for Plaintiff Shefa LMV LLC

5
6 Attorney for Plaintiff
GARY A. PETERS
7 HOWARD & HOWARD
450 West Fourth Street
8 Royal Oak MI 48067
Telephone: (248) 723-0490
9 Facsimile: (248) 645-1568
gpeters@HowardandHoward.com;

10 Attorneys for Defendant CLT International, Inc.
11
12

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

15 Coordination Proceeding
16 Special Title (Rule 3.350)

17 PROPOSITION 65 COCAMIDE DEA
18 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 CLT INTERNATIONAL, INC.**

) Judge: Hon. George C. Hernandez, Jr.

) Action filed: October 11, 2013
22
23
24
25
26
27
28
31
32

1 **1. INTRODUCTION**

2 **1.1 Parties.** This Consent Judgment is entered into by and between plaintiff Shefa
3 LMV, LLC ("Shefa LMV") and CLT International, Inc. ("CLT") with Shefa LMV and CLT
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 CLT
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 CLT 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 CLT for sale in the State of
18 California.

19 **1.4 Notice of Violation.** On June 22, 2013, Shefa LMV served CLT and various public
20 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that
21 provided recipients with notice of Shefa LMV's allegation that CLT was in violation of
22 Proposition 65 for failing to warn consumers and customers that the Products exposed users in
23 California to Cocamide DEA. No public enforcer has diligently prosecuted the allegations set
24 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 CLT International, Inc. and other
27 entities, *Shefa LMV, LLC v. Ross Stores, Inc.*, Case No. BC521400, alleging violations of
28 Proposition 65, based on the alleged exposures to Cocamide DEA contained in certain products
31 sold by CLT ("Complaint"). On or about, October 17, 2013, Shefa LMV filed a First Amended

32

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

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

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

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

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

22 **2. INJUNCTIVE RELIEF: REFORMULATION**

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

28

31

32

1 2.2 Suppliers. No more than 30 days after the Effective Date, CLT shall issue
2 specifications to its suppliers of Covered Products requiring that Covered Products not contain
3 any Cocamide DEA, and shall instruct each supplier to use reasonable efforts to eliminate
4 Covered Products containing Cocamide DEA on a nationwide basis.
5

6 2.3 Sell Through Period. CLT's Products that were manufactured and distributed for
7 retail sale prior to the Effective Date shall be subject to the release of liability pursuant to
8 Section 5 of this Consent Judgment, without regard to when such Products were, or are in the
9 future, sold to consumers. As a result, the obligations of CLT as set forth in this Consent
10 Judgment, including but not limited Section 2.1, do not apply to these products.
11

12 3. ENFORCEMENT

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

24 4. MONETARY PAYMENTS

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

27 4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)

28 CLT shall pay a total civil penalty payment of \$4,000.00 within ten (10) days of the
31 Effective Date, as follows: the civil penalty shall be apportioned in accordance with California
32

1 Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of
2 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
3 25% of the penalty remitted to Shefa LMV, both pursuant to the procedures set forth in Section
4 3.3.

5 **4.2 Reimbursement of Shefa LMV's Fees and Costs**

6 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
8 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
9 CLT expressed a desire to resolve the fee and cost issue after the other settlement terms had been
10 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to
11 Shefa LMV and its counsel under general contract principles and the private attorney general
12 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in this
13 matter, except fees that may be incurred on appeal. Under these legal principles, CLT shall pay
14 the amount of \$11,000.00 for fees and costs incurred investigating, litigating and enforcing this
15 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
16 obtaining the Court's approval of this Consent Judgment in the public interest.

17 **4.3 Payment Procedures**

18 All payments required by Sections 3.1 and 3.2 shall be within ten (10) days of the
19 Effective Date, in three checks made payable as follows:

- 20 (a) one check to "OEHHA" in the amount of \$3,000.00;
- 21 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV,
22 LLC" in the amount of \$1,000.00;
- 23 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$11,000.00;

24 **4.4 Issuance of 1099 Forms**

25 After the settlement funds have been transmitted to Shefa LMV's counsel, CLT shall
26 issue separate 1099 forms, as follows:

- 27 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
28 68-0284486) in the amount of \$3,000.00;

31
32

1 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$1,000.00, whose
2 address and tax identification number shall be furnished upon request;

3 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
4 amount of \$11,000.00;

5 **4.5 Issuance of Payments.**

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

7 Daniel N. Greenbaum, Esq.
8 Law Office of Daniel N. Greenbaum
9 14752 Otsego Street
Sherman Oaks, CA 91403

10 **5. CLAIMS COVERED AND RELEASED**

11 **5.1 Full and Binding Resolution of Proposition 65 Allegations.** This Consent
12 Judgment is a full, final and binding resolution of the Action as set forth in this Section 4. Shefa,
13 on behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the public
14 interest and in its representative capacity, waives all rights to participate in any action and
15 releases and discharges with regard to: (a) CLT, its parents, shareholders, divisions,
16 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and
17 assigns (collectively, the "Defendant Releasees"), and (b) finished product or ingredient
18 manufacturers, distributors, and suppliers, and all entities to whom any Defendant Releasee
19 directly or indirectly distributed or sold any Covered Products, including but not limited to
20 distributors, wholesalers, customers, retailers (including but not limited to Ross Stores, Inc. or
21 99⁺ Only Stores, franchisees, cooperative members, licensors, and licensees), franchisees,
22 cooperative members, and Defendant Releasees' licensors and licensees (collectively,
23 "Additional Releasees"), with respect to all claims, including, without limitation, causes of
24 action (in law or in equity), suits, liabilities, demands, obligations, damages, costs, fines,
25 penalties, expenses (including, but not limited to, investigation fees, expert fees and attorneys'
26 fees) or losses (collectively "Claims") regarding any violation of Proposition 65 based on failure
27 to warn about alleged exposures to cocamide DEA in any Covered Products shipped, distributed
28 or sold by CLT prior to the Effective Date.

1 **5.2 Individual Release.** Shefa, on behalf of itself, its past and current agents,
2 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,
3 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a
4 bar to all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other
5 statutory or common law, that are or may be asserted against Defendant Releasees and
6 Additional Releasees, whether known or unknown, suspected or unsuspected, arising out of
7 alleged exposures to, and/or failure to warn of alleged exposures to, cocamide DEA or
8 diethanolamine in the Covered Products shipped, distributed or sold by CLT prior to the
9 Effective Date.

10 **5.3 Compliance.** Compliance with the terms of this Consent Judgment by CLT shall be
11 deemed to constitute compliance by any Defendant Releasee or Additional Releasee with
12 Proposition 65 regarding alleged exposures to cocamide DEA in the Covered Products.

13 **5.4 CLT's Release.** On behalf of itself and Defendant Releasees, CLT waives all rights
14 to institute any form of action against Shefa or Shefa's attorneys, consultants and representatives
15 for all actions taken or statements made in the course of this Action prior to the date of the
16 execution of this Consent Judgment.

17

18

19

20

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.

31

32

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 CLT 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 CLT 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 CLT:
25 Gary A. Peters
26 Howard & Howard
27 450 West Fourth Street
28 Royal Oak MI 48067

28 To Shefa LMV:
31 Daniel N. Greenbaum, Esq.

32

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 11.1, 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 11 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 on 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 CLT 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 CLT shall not oppose.

8 13.3 If any third party objection to the noticed motion is filed, Shefa LMV and CLT
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 CLT.

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.

31

32

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

3 16.1 This Consent Judgment came before this Court upon the request of the Parties.


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

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

14 AGREED TO:
15 Dated:

SHEFA LMV, LLC

16 By: _____
17 [name]

18 Approved as to form:
19 
20 _____

21 Daniel Greenbaum, Esq.
22 Attorney for Shefa LMV, LLC
23
24

25
26
27
28
31
32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
31
32

Dated:

CLT INTERNATIONAL, INC.

By:

[name]

Approved as to form:

Gary Peters, Esq.

Howard & Howard

Attorney for CLT International, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
31
32

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and CLT International, 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