

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.

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12 Attorneys for Defendant
13 The Emerson Group, Inc.

OCT - 7 2013
YOLANDA ESTRADA

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

16 Coordination Proceeding) JUDICIAL COUNCIL COORDINATION
17 Special Title (Rule 3.350)) PROCEEDING NO: 4765
18)
19 PROPOSITION 65 COCAMIDE DEA) [Shefa LMV, LLC v. Ross Stores, et al.,
CASES) Los Angeles County Superior Court
20) No. BC521400]
21) ~~PROPOSED~~ CONSENT JUDGMENT AS
22) TO THE EMERSON GROUP, INC.
23) Judge: Hon. George C. Hernandez, Jr.
24) Action filed: October 13, 2013

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and The S. Emerson Group, Inc.**

3 This Consent Judgment is entered into by and between plaintiff, Shefa LMV, LLC, acting
4 on its own behalf and in the public interest (“Shefa LMV”) and S. Emerson Group, Inc.
5 (“DEFENDANT”), with Shefa LMV and DEFENDANT collectively referred to as the “parties,”
6 and individually as a “party.” Shefa LMV is an entity organized in the State of California, which
7 has asserted that it seeks to promote awareness of exposure to toxic chemicals and to improve
8 human health by reducing or eliminating hazardous substances contained in consumer and
9 commercial products. Shefa LMV alleges that DEFENDANT employs ten or more persons and
10 is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
11 Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.* (“Proposition
12 65”).

13 **1.2. General Allegations**

14 Shefa LMV alleges that DEFENDANT has distributed shampoo products that contain
15 Cocamide Diethanolamine (“Cocamide DEA”) and/or other products containing any of the listed
16 chemicals identified in that certain 60-Day Notice of Violation (the “Notice of Violation”)
17 naming DEFENDANT dated November 22, 2013 (the “Listed Chemicals”) without the requisite
18 Proposition 65 warnings. The Listed Chemicals are on the Proposition 65 list as known to cause
19 birth defects and other reproductive harm.

20 **1.3. Product Description**

21 As used in this Consent Judgment, “Products” shall mean products containing any of the
22 Listed Chemicals including, but not limited to, “Prell Shampoo” that are manufactured,
23 imported, distributed and/or sold by DEFENDANT for sale in the State of California.

24 **1.4. Notice of Violation**

25 On November 22, 2013, Shefa LMV served DEFENDANT and various public
26 enforcement agencies with the Notice of Violation that provided recipients with notice alleging
27 that DEFENDANT was in violation of Proposition 65 for failing to warn consumers and
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1 customers that the Products exposed users in California to the Listed Chemicals. No public
2 enforcer has diligently prosecuted the allegations set forth in the Notice.

3 **1.5. No Admission**

4 DEFENDANT denies the material, factual and legal allegations contained in the Notice
5 of Violation and maintains that it has at all times been in compliance with all laws and all
6 products that it has sold, manufactured, imported and/or distributed in California, including the
7 Products. Nothing in this Consent Judgment shall be construed as an admission by
8 DEFENDANT of any fact, finding, issue of law or violation of law, nor shall compliance with
9 this Consent Judgment constitute or be construed as an admission by DEFENDANT of any fact,
10 finding, conclusion, issue of law or violation of law. However, this Section shall not diminish or
11 otherwise affect DEFENDANT's obligations, responsibilities and duties under this Consent
12 Judgment.

13 **1.6. Consent to Jurisdiction**

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

18 **1.7. Execution Date**

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

21 **1.8. Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
23 Court enters Judgment pursuant to the terms of this Consent Judgment.

24 **2. INJUNCTIVE RELIEF: WARNING OR REFORMULATION**

25 **2.1. Warning Obligation For Cocamide DEA-Containing Products**

26 Commencing on July 1, 2014, DEFENDANT shall sell, distribute or otherwise deliver, or
27 cause to be sold, distributed or otherwise delivered into California, only Products reformulated to
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1 contain no Cocamide DEA, unless such Products are sold or shipped with one of the clear and
2 reasonable warnings set forth in Section 2.2.

3 **2.2. Mandatory Warning Procedures**

4 To the extent required by Proposition 65, each warning required by Section 2.1 shall be
5 prominently placed upon a product's label or other labeling or displayed at the retail outlet with
6 such conspicuousness, as compared with other words, statements, designs, or devices in the
7 label, labeling or display as to render it likely to be read and understood by an ordinary
8 individual under customary conditions of purchase or use and each warning shall be provided in
9 a manner such that the consumer or user understands to which specific Product the warning
10 applies, so as to minimize the risk of consumer confusion. If required by the terms of
11 Proposition 65, DEFENDANT shall provide Proposition 65 warnings on the products as follows:

12 **WARNING:** This product contains a chemical known to
13 the State of California to cause cancer.

14 The word "WARNING" shall be in bold. DEFENDANT shall provide such warnings with the
15 unit package of the products. Such warnings shall be prominently affixed to or printed on each
16 product's label or package. The font of the warning shall be at least the same size as the font of
17 other safety warnings, if any, on the product container.

18 **3. MONETARY PAYMENTS**

19 **3.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

20 DEFENDANT shall pay a total civil penalty payment of \$5,500.00 on the later to occur
21 of ten (10) days of the Execution Date or ten (10) days following the date this Consent
22 Judgment is entered by the Court and becomes a final judgment, as follows: the civil penalty
23 shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c) and
24 (d), with 75% of these funds remitted to the State of California's Office of Environmental
25 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Shefa
26 LMV, both pursuant to the procedures set forth in Section 3.3.

27 **3.2. Reimbursement of Shefa LMV's Fees and Costs**

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

13 3.3. Payment Procedures

14 All payments required by Sections 3.1 and 3.2 shall be paid within the timeframes
15 outlined in section 3.1 above, in three checks made payable as follows:

- 16 (a) one check to "OEHHA" in the amount of \$4,125.00;
- 17 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC"
18 in the amount of \$1,375.00;
- 19 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$12,000.00.

20 3.4. Issuance of 1099 Forms

21 After the settlement funds have been transmitted to Shefa LMV's counsel, DEFENDANT
22 shall issue separate 1099 forms, as follows:

- 23 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
24 68-0284486) in the amount of \$4,125.00;
- 25 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$1,375.00, whose
26 address and tax identification number shall be furnished upon request;
- 27 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the
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1 amount of \$12,000.00;

2 **3.5. Issuance of Payments.**

3 3.5.1. All payments owed to Shefa LMV, pursuant to Section 3.1, shall
4 be delivered to the following payment address:

5
6 Daniel N. Greenbaum, Esq.
7 Law Office of Daniel N. Greenbaum
8 14752 Otsego Street
9 Sherman Oaks, CA 91403

10 3.5.2. All payments owed to OEHHA (EIN: 68-0284486), pursuant to
11 Section 3.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties")
12 at the following addresses:

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

18 With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum
19 at the address set forth above in 3.5.1, as proof of payment to OEHHA.

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1. Shefa LMV's Release of DEFENDANT**

22 Shefa LMV, acting on its own behalf and in the public interest, releases DEFENDANT,
23 its parents, subsidiaries, affiliated entities (together, the "Related Entities"), directors, officers,
24 employees, attorneys, and each entity to whom DEFENDANT (or the Related Entities) directly
25 or indirectly distributes or sells or purchases Products, including downstream distributors,
26 wholesalers, customers, retailers, including specifically, but not limited to, Walgreen Co. and
27 Ultimarks Products, LLC and companies related to these entities, franchisees, cooperative
28 members, licensors, and licensees (all of the above, collectively referred to as the "Releasees"),
from all claims for violations of Proposition 65 up through the date on which this Consent
Judgment is signed by both parties based on exposure to the Listed Chemicals from the Products

1 as set forth in the Notice of Violation. Compliance with the terms of this Consent Judgment
2 constitutes compliance with Proposition 65 with respect to exposure to the Listed Chemicals
3 from the Products as set forth in the Notice of Violation.

4 Shefa LMV, also, in its individual capacity only and *not* in its representative capacity,
5 provides a release herein which shall be effective as a full and final accord and satisfaction in
6 relation to the Releasees, as a bar to all actions, causes of action, obligations, costs, expenses,
7 attorneys' fees, damages, losses, claims, liabilities and demands of Shefa LMV of any nature,
8 character or kind, whether known or unknown, suspected or unsuspected, limited to and arising
9 out of alleged or actual exposures to the Listed Chemicals in the Products manufactured,
10 distributed or sold by any or all of the Releasees.

11 **4.2. DEFENDANT's Release of Shefa LMV**

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

18 **5. COURT APPROVAL**

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

22 **6. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and the obligations of DEFENDANT hereunder as to the Products apply only within
25 the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise
26 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
27 Judgment are rendered inapplicable or no longer required as a result of any such repeal or
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1 preemption or rendered inapplicable by reason of law generally as to the Products, including,
2 without limitation, the removal of the Listed Chemicals from OEHHA's list of Proposition 65
3 chemicals, then DEFENDANT shall notify Shefa LMV and its counsel and may have no further
4 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
5 Products are so affected.

6 **7. NOTICES**

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

11
12 To DEFENDANT:

13 The Emerson Group, Inc.
14 215 Bullens Lane
15 Woodlyn PA 19094

16 With a copy to:

17 Sam Anderson, Esq.
18 Bernstein Shur
19 100 Middle Street
20 PO Box 9729
21 Portland, ME 04104-5029

To Shefa LMV:

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

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

24 **8. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

1 Shefa LMV and its attorneys agree to comply with the reporting form requirements
2 referenced in California Health & Safety Code § 25249.7(f) and hereby represents and warrants
3 that any notices required to be provided by Proposition 65, including those under section
4 25249.7(d) have been provided in accordance with Proposition 65.

5 **10. ADDITIONAL POST EXECUTION ACTIVITIES**

6 Shefa LMV and DEFENDANT agree to mutually employ their, and their counsel's, best
7 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
8 Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to
9 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial
10 approval of this Consent Judgment, which Shefa LMV shall draft and file (after review and
11 approval of the same by Defendant), and DEFENDANT shall not oppose. If any third party
12 objection to the noticed motion is filed, Shefa LMV and DEFENDANT shall work together to
13 file a joint reply or separate replies if the parties so desire and appear at any hearing before the
14 Court. This provision is a material component of the Consent Judgment and shall be treated as
15 such in the event of a breach. Each party agrees to bare its own costs and expenses in relation to
16 the matters set forth in this section.

17 **11. 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 **12. ENFORCEMENT**

22 Shefa LMV may, by motion or application for an order to show cause before the
23 Alameda County Superior Court, or, if the case is transferred back to the Los Angeles County
24 Superior Court at the conclusion of the Coordination Action, the Los Angeles Superior Court,
25 enforce the terms and conditions contained in this Consent Judgment. Prior to bringing any
26 motion or application to enforce the requirements of Section 2 above, Shefa LMV shall provide
27 the DEFENDANT with Notice of Violation and a copy of any test results which purportedly
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1 support Shefa LMV's Notice of Violation. The Parties shall then meet and confer regarding the
2 basis for Shefa LMV's anticipated motion or application in an attempt to resolve the matter
3 informally, including providing DEFENDANT a reasonable opportunity of at least thirty (30)
4 days to cure any alleged violation. Should such attempts at informal resolution fail, Shefa LMV
5 may file its enforcement motion or application. The prevailing Party on any motion to enforce
6 this Consent Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a
7 result of such motion or application.

8 **13. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment and have read,
10 understood, and agree to all of the terms and conditions of this Consent Judgment.

11 **14. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
12 **CONSENT JUDGMENT**

13 14.1 This Consent Judgment came before this Court upon the request of the Parties.

14 14.2 The Parties request the Court to review this Consent Judgment and to make the
15 following findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

21 AGREED TO:

AGREED TO:

22
23 Date: 7/14/2014

Date: 7-14-2014

24
25 By: 

By: 

26 Print: Alisa Fried

Patrick J. Gibbons
VP OPERATIONS

27 Its: Managing Member

Defendant, The Emerson Group, Inc.

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and The Emerson Group, 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