

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

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 JUDGMENT Mario Badescu Skin Care, Inc.			
CASE INFO	COURT DOCKET NUMBER JCCP004765		COURT NAME Alameda Superior Court	
	SHORT CASE NAME Proposition 65 Cocamide DEA Cases			
REPORT INFO	INJUNCTIVE RELIEF Reformultion and/or warning label			
	PAYMENT: CIVIL PENALTY \$9,000.00	PAYMENT: ATTORNEYS FEES \$28,500.00	PAYMENT: OTHER \$0.00	For Internal Use Only
	DATE SUBMITTED TO COURT 06 / 08 / 2015	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 06 / 02 / 2015	
	COPY OF JUDGMENT MUST BE ATTACHED			
NAME OF CONTACT Daniel N. Greenbaum, Esq.				
FILER INFO	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
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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 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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13 Attorneys for Defendant MARIO BADESCU SKIN CARE, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF ALAMEDA

17 Coordination Proceeding
18 Special Title (Rule 3.350)

19
20 PROPOSITION 65 COCAMIDE DEA
21 CASES

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO: 4765
)
)
) [*Shefa LMV, LLC v. CVS Pharmacy, Inc., et*
) *al.*, Los Angeles County Superior Court No.
) BC520411]
)
) ~~PROPOSED~~ CONSENT JUDGMENT AS
) TO MARIO BADESCU SKIN CARE, INC.
)
) Judge: Hon. George C. Hernandez, Jr.
)
) Action filed: September 4, 2013
)
)
)

ENDORSED
FILED
ALAMEDA COUNTY

JUL 21 2015

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

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1. INTRODUCTION

1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC (“Shefa”) and Mario Badescu Skin Care, Inc. (“Settling Defendant”). Shefa and Settling Defendant are referred to collectively as the “Parties.”

1.2 The Settling Defendant manufactures, distributes, and/or sells types of products identified on Exhibit A that contain Cocamide diethanolamine (“Cocamide DEA”) in the State of California or has done so in the past.

1.3 On the date identified on Exhibit A, Shefa served a 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, et seq.) (“Notices”) to Settling Defendant, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000. The Notices allege violations of Proposition 65 with respect to the presence of Cocamide DEA in the types of products identified in Exhibit A.

1.4 On the date(s) identified on Exhibit A, Shefa filed the Complaint applicable to the Settling Defendant (“Complaint”) for the Proposition 65 Action identified in Exhibit A.

1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this Court has jurisdiction over the allegations of violations contained in the operative Complaint applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent Judgment.

1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any other legal proceeding. This Consent Judgment is the product of negotiation

1 and compromise and is accepted by the Parties for purposes of settling, compromising, and
2 resolving issues disputed in this action.

3 **2. DEFINITIONS**

4 2.1 "Covered Products" means the types of products identified on the Exhibit
5 A for each Settling Defendant.

6 2.2 "Effective Date" means the date on which this Consent Judgment is
7 entered by the Court.

8 **3. INJUNCTIVE RELIEF**

9 3.1 Reformulation of Covered Products. As of the Effective Date, Settling
10 Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product that
11 contains Cocamide DEA and that will be sold or offered for sale to California consumers. For
12 purposes of this Consent Judgment, a product "contains Cocamide DEA" if Cocamide DEA is an
13 intentionally added ingredient in the product and/or intentionally added part of the product
14 formulation.

15 3.2 Specification to Suppliers. No more than thirty (30) days after the
16 Effective Date, Settling Defendant shall issue specifications to its supplier(s) of Covered
17 Products requiring that Covered Products not contain any Cocamide DEA, and shall instruct
18 each supplier to use reasonable efforts to eliminate Covered Products containing Cocamide DEA
19 on a nationwide basis.

20 3.3 Action Regarding Specific Products.

21 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the
22 specific products (if any) identified as Section 3.3 Products on the Exhibit A for such Settling
23 Defendant ("Section 3.3 Products") in California unless such products have been reformulated
24 such that they do not contain Cocamide DEA. On or before the Effective Date, Settling
25 Defendant shall also: (i) cease shipping the Section 3.3 Products to any of its stores and/or
26 customers that resell the Section 3.3 Products in California; and (ii) send instructions to its stores
27 and/or customers that resell the Section 3.3 Products in California instructing them either to: (a)
28 return all the Section 3.3 Products to Settling Defendant for destruction, or (b) directly destroy

1 the Section 3.3 Products. The requirements of this Section apply only to those Section 3.3
2 Products that contain Cocamide DEA.

3 3.3.2 Any destruction of Section 3.3 Products shall be in compliance with all
4 applicable laws.

5 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall
6 provide Shefa with written certification from Settling Defendant confirming compliance with the
7 requirements of this Section 3.3.

8 3.4 Current Inventory. To the extent it has not already suspended the sale of
9 Covered Products in California, on or before ninety (90) days after the Effective Date Settling
10 Defendant shall not sell or otherwise distributed any Covered Product in California or to a
11 California consumer.

12 3.5 Preservation of Competitiveness. The intent of this Section is to protect
13 the competitive interests of Settling Defendant arising from the Shefa's claims and to ensure that
14 by settling the allegations in the Notice of Violation and the Complaint, Settling Defendant is not
15 disadvantaged with respect to its competitors. Specifically, the parties agree that should any
16 agreement or consent judgment be entered into by Shefa, The California Office of
17 Environmental Health Hazard Assessment, or the California Attorney General's Office
18 concerning personal care products similar to the Covered Product that contains provisions that
19 would materially impact the terms of this Agreement, such benefits shall be deemed to accrue to
20 Settling Defendant and this Agreement shall be amended by a stipulation and proposed order, a
21 copy of which shall be provided to the Attorney General's office five (5) business days prior to
22 submission to the Court, to provide Settling Defendant the benefit thereof. Further, should there
23 be a court decision involving any other person or entity that received a Proposition 65 60-Day
24 Notice of Violation alleging that Cocamide DEA in personal care products similar to the
25 Covered Products and such decision is in whole or in part favorable to the Settling Defendant(s)
26 in such action, then that decision shall be incorporated into this Agreement by a stipulation and
27 proposed order, a copy of which shall be provided to the Attorney General's Office five (5)
28 business days prior to submission to the Court. Nothing herein shall prohibit Settling Defendant

1 from selling or distributing or manufacturing for sale of distribution in California Covered
2 Products that bear the Required California Proposition 65 Health Warning.

3 **4. ENFORCEMENT**

4 4.1 Shefa may, by motion or application for an order to show cause before the
5 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
6 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
7 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
8 and a copy of any test results which purportedly support the Notice of Violation. The Parties
9 shall then meet and confer regarding the basis for the anticipated motion or application in an
10 attempt to resolve it informally, including providing Settling Defendant(s) with a reasonable
11 opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at
12 informal resolution fail, Shefa may file an enforcement motion or application. This Consent
13 Judgment may only be enforced by the Parties.

14 **5. PAYMENTS**

15 5.1 Payments by Settling Defendant. Within ten (10) business days of the
16 Effective Date, Settling Defendant shall pay the settlement payment identified for it on Exhibit
17 A. The total settlement amount for Settling Defendant shall be paid pursuant to the instructions
18 outlined in Exhibit A. The funds paid by Settling Defendant shall be allocated, as identified in
19 Exhibit A, between the following categories:

20 5.1.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b), with such
21 money to be apportioned by Shefa as identified on the Exhibit A for the Settling Defendant in
22 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
23 California's Office of Environmental Health Hazard Assessment).

24 5.1.2 A reimbursement of a portion of Shefa's reasonable attorneys' fees and
25 costs.

26 **6. MODIFICATION**

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1 6.1 Written Consent. This Consent Judgment may be modified from time to
2 time by express written agreement of the Parties with the approval of the Court, or by an order of
3 this Court upon motion and in accordance with law.

4 6.2 Meet and Confer. Any Party seeking to modify this Consent Judgment
5 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
6 modify the Consent Judgment.

7 **7. CLAIMS COVERED AND RELEASED**

8 7.1 This Consent Judgment is a full, final, and binding resolution between (i)
9 Shefa on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its
10 former affiliates (“affiliate” means a person or entity who directly or indirectly owns or controls,
11 is owned or controlled by, or is under common ownership or control with, Settling Defendant),
12 and their current and past directors, officers, employees and attorneys (“Defendant Releasees”),
13 and each entity to whom any of them directly or indirectly distribute or sell Covered Products,
14 including but not limited to distributors, wholesalers, customers, retailers, franchisees,
15 cooperative members, licensors, and licensees including but not limited to: Amazon.com, Inc.,
16 Nordstrom, Inc., Ron Robinson, Inc., and Ulta Beauty (“Downstream Defendant Releasees”); of
17 any violation of Proposition 65 that was or could have been asserted in the Complaint against
18 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on
19 failure to warn about alleged exposure to Cocamide DEA contained in Covered Products that
20 were sold by Settling Defendant prior to the Effective Date.

21 7.2 Compliance with the terms of this Consent Judgment by Settling
22 Defendant and Defendant Releasees shall constitute compliance with Proposition 65 by Settling
23 Defendant, Defendant Releasees, and Downstream Defendant Releasees with respect to any
24 alleged failure to warn about Cocamide DEA in Covered Products manufactured, distributed, or
25 sold by Settling Defendants after the Effective Date.

26 7.3 Nothing in this Section 7 affects Shefa’s right to commence or prosecute
27 an action under Proposition 65 against any person other than Settling Defendant, Defendant
28 Releasees, or Downstream Defendant Releasees.

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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

8.3 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.

8.4 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.

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, that 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 prosecution of the motion or application lacked substantial justification. For purposes of

1 this Consent Judgment, the term substantial justification shall carry the same meaning as used in
2 the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

3 10.2 Except as otherwise provided in this Consent Judgment, each Party shall
4 bear its own attorneys' fees and costs.

5 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
6 sanctions pursuant to law.

7 **11. OTHER TERMS**

8 11.1 The terms of this Consent Judgment shall be governed by the laws of the
9 State of California.

10 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling
11 Defendant, its affiliates, and successors or assigns of any of them.

12 11.3 This Consent Judgment contains the sole and entire agreement and
13 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
14 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
15 merged herein and therein. There are no warranties, representations, or other agreements
16 between the Parties except as expressly set forth herein. No representations, oral or otherwise,
17 express or implied, other than those specifically referred to in this Consent Judgment have been
18 made by any Party hereto. No other agreements not specifically contained or referenced herein,
19 oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No
20 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
21 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
22 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
23 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

24 11.4 Nothing in this Consent Judgment shall release, or in any way affect any
25 rights Settling Defendant might have against any other party, whether or not that party is a
26 Settling Defendant.

27 11.5 This Court shall retain jurisdiction of this matter to implement or modify
28 the Consent Judgment.

1 11.6 The stipulations to this Consent Judgment may be executed in
2 counterparts and by means of facsimile or portable document format (pdf), which taken together
3 shall be deemed to constitute one document.

4 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
6 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
7 that Party.

8 11.8 The Parties, including their counsel, have participated in the preparation
9 of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the
10 Parties. This Consent Judgment was subject to revision and modification by the Parties and has
11 been accepted and approved as to its final form by all Parties and their counsel. Accordingly,
12 any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against
13 any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to
14 this Consent Judgment agrees that any statute or rule of construction providing that ambiguities
15 are to be resolved against the drafting Party should not be employed in the interpretation of this
16 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

17 AGREED TO:

18 Dated: 6/2/2015

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20 By: 

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23 Dated: 6/2/2015

24 MARIO BADESCU SKIN CARE, INC.

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26 By: 

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ORDER AND JUDGMENT

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

JUL 21 2015

Dated: _____

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court

EXHIBIT A

1. Name of Settling Defendant: Mario Badescu Skin Care, Inc.
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.3):

TUCKER ELLIS LLP
Ronie Schmelz, Esq.
515 S. Flower Street
42nd Floor
Los Angeles CA 90071
Telephone: (213) 430-3375
Facsimile: (213) 430-3409
Email: Ronie.Schmelz@tuckerellis.com
4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): January 16, 2014
5. Complaint Naming Settling Defendant (Pursuant to Section 1.4): *Shefa LMV, LLC v. CVS Pharmacy, Inc., et al.*, Los Angeles County Superior Court No. BC520411
 - a. Date Complaint Filed: September 4, 2013
6. Covered Products Applicable to Defendant (Pursuant to Sections 1.2, 1.3, 2.1, 3.1, 3.2, 7.1, and 7.2):

 Shampoos
 Soaps
7. Defendant's Section 3.3 Product(s) (Pursuant to Sections 3.3.1, 3.3.2, and 3.3.3):

Mario Badescu Glycolic Foaming Cleanser, UPC 785364010291
8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$37,500.00
Civil Penalty (payable to Shefa LMV, LLC): \$9,000.00
Payment in Lieu of Civil Penalty (payable to Shefa): \$ N/A
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$28,500.00

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.