

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 Pettenon Cosmetics SpA			
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 \$4,000.00	PAYMENT: ATTORNEYS FEES \$13,500.00	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 04 / 03 / 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	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7689	
	CITY Van Nuys	STATE ZIP CA 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com	

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 7120 Hayvenurst Ave., Suite 320
4 Van Nuys CA 91406
5 Telephone: (818) 809-2199
6 Facsimile: (424) 243-7689
7 Email: dgreenbaum@greenbaumlawfirm.com

8 Attorney for Plaintiff

9 LINDA FRIDEGOTTO, ESQ.
10 HAVKINS ROSENFELD RITZERT & VARRIALE LLP
11 1065 Avenue of Americas, Suite 800
12 New York NY 10018
13 Telephone: (646) 747-5114
14 Facsimile: (212) 564-0203
15 Linda.fridegotto@hrrvlaw.com

16 Attorneys for Defendant

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

19 Coordination Proceeding
20 Special Title (Rule 3.350)

21 PROPOSITION 65 COCAMIDE DEA
22 CASES

23) JUDICIAL COUNCIL COORDINATION
24) PROCEEDING NO: 4765

25) [*Shefa LMV, LLC v. New World Imports, et*
26) *al.*, Los Angeles County Superior Court
27) No. BC561056]

28) ~~PROPOSED~~ CONSENT JUDGMENT
29) AS TO PETTENON COSMETICS SpA

30) Judge: Hon. George C. Hernandez, Jr.
31)
32)

ENDORSED
FILED
ALAMEDA COUNTY

JUL 21 2015

CLERK OF THE SUPERIOR COURT
~~YOLANDA ESTRADA~~ Deputy

1 **INTRODUCTION**

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

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

15 **1.3 Product Description.** As used in this Consent Judgment, "Product(s)" shall
16 mean soap and shampoo products containing Cocamide DEA, including, but not limited to,
17 Alter Ego Shampoo Semi de Lino, UPC #: 8008277018195, that are distributed and/or sold
18 by Pettenon for sale in the State of California.

19 **1.4 Notice of Violation.** On January 16, 2014, Shefa LMV served Pettenon and
20 various public enforcement agencies with a document entitled "60-Day Notice of Violation"
21 (the "Notice") that provided recipients with notice of Shefa LMV's allegation that Pettenon
22 was in violation of Proposition 65 for failing to warn consumers and customers that the
23 Product(s) exposed users in California to Cocamide DEA.

24 No public enforcer has prosecuted the allegations set forth in the Notice.

25 **1.5 Complaint.** On or about October 17, 2014, Shefa LMV filed a complaint in the
26 Superior Court in and for the County of Los Angeles against other entities, *Shefa LMV, LLC*
27 *v. New World Imports, et al.*, Case No. BC561056, alleging violations of Proposition 65,
28 based on the alleged exposures to Cocamide DEA contained in certain products sold by
31 Defendants ("Complaint"). After this case was coordinated with other Cocamide DEA cases
32 in the Superior Court in and for the County of Alameda, *Proposition 65 Cocamide DEA*
Cases, Case No. JCCP 4765, Shefa LMV filed a DOE amendment related to the Complaint.

1 adding Pettenon as a DOE on March 5, 2015. No other complaints have been filed with
2 respect to any other Notice of Violation.

3 **1.6 No Admission.** Pettenon denies the material, factual and legal allegations
4 contained in Shefa LMV's Notice and Complaint and maintains that it has at all times been in
5 compliance with all laws and all products that it has sold, manufactured, imported and/or
6 distributed in California, including the Products. Nothing in this Consent Judgment shall be
7 construed as an admission by Pettenon of any fact, finding, issue of law or violation of law,
8 nor shall compliance with this Consent Judgment constitute or be construed as an admission
9 by Pettenon of any fact, finding, conclusion, issue of law or violation of law. However, this
10 Section shall not diminish or otherwise affect Pettenon's obligations, responsibilities and
11 duties under this Consent Judgment.

12 **1.7 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the
13 parties stipulate that this Court has jurisdiction over Pettenon as to the allegations contained
14 in the Complaint, that venue is proper in Alameda County Superior Court, and that this Court
15 or, if the case is transferred back to the Los Angeles County Superior Court at the conclusion
16 of the Coordination Action, the Los Angeles Superior Court has jurisdiction to enter and
17 enforce the provisions of this Consent Judgment.

18 **1.8 Execution Date.** For purposes of this Consent Judgment, the term "Execution
19 Date" 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
21 Date" shall mean the date the Court enters Judgment pursuant to the terms of this Consent
22 Judgment.

23 **2. INJUNCTIVE RELIEF**

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

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

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

3 **2.3 Specific Product Actions.** As of the Effective Date, Pettenon shall cease selling
4 the Product(s) in California if it contains Cocamide DEA. As of the Effective Date, Pettenon
5 shall also: a) cease shipping the Product(s) to any of its stores and/or customers that resell the
6 Product(s) in California if the Product(s) contains Cocamide DEA; b) send instructions to its
7 stores and/or customers that resell the Product(s) in California to 1) return all of the
8 Product(s) to Pettenon for destruction if it is labeled as containing Cocamide DEA, or 2)
9 directly destroy the Product(s) if it is labeled as containing Cocamide DEA. Any destruction
10 of the Product(s) shall be in compliance with all applicable laws.

11 Within sixty (60) days of the Effective Date, Pettenon shall provide Shefa with
12 certification confirming compliance with the requirements of this section 2.3.

13 **3. ENFORCEMENT**

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

27 **4. MONETARY PAYMENTS**

28 Pettenon agrees to a total settlement payment of Seventeen Thousand Five Hundred
31 Dollars (\$17,500.00) to be paid as set forth below.

32 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

1 Pettenon shall pay a total civil penalty payment of \$4,000.00 within thirty (30) days
2 of the Effective Date, as follows: the civil penalty shall be apportioned in accordance with
3 California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to
4 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")
5 and the remaining 25% of the penalty remitted to Shefa LMV, both pursuant to the
6 procedures set forth in Section 4.3.

7 **4.2 Reimbursement of Shefa LMV's Fees and Costs**

8 The parties acknowledge that Shefa LMV and its counsel offered to resolve this
9 dispute without reaching terms on the amount of fees and costs to be reimbursed to them,
10 thereby leaving this fee issue to be resolved after the material terms of the agreement had
11 been settled. Pettenon expressed a desire to resolve the fee and cost issue after the other
12 settlement terms had been agreed. The Parties then attempted to (and did) reach an accord on
13 the compensation due to Shefa LMV and its counsel under general contract principles and the
14 private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for
15 all work performed in this matter, except fees that may be incurred on appeal. Under these
16 legal principles, Pettenon shall pay the amount of \$13,500.00 for fees and costs incurred
17 investigating, litigating and enforcing this matter, including the fees and costs incurred (and
18 yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
19 Judgment in the public interest.

20 **4.3 Payment Procedures**

21 All payments required by Sections 3.1 and 3.2 shall be within thirty (30) days of the
22 Effective Date, in three checks made payable as follows:

- 23 (a) one check to "OEHHA" in the amount of \$3,000.00;
24 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV,
25 LLC" in the amount of \$1,000.00;
26 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of
27 \$13,500.00;

28 **4.4 Issuance of 1099 Forms**

31 After the settlement funds have been transmitted to Shefa LMV's counsel, Pettenon
32 or its agents shall issue separate 1099 forms, as follows:

- 1 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment"
2 (EIN:
3 68-0284486) in the amount of \$3,000.00;
4 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$1,000.00, whose
5 address and tax identification number shall be furnished upon request;
6 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in
7 the amount of \$13,500.00;

8 **4.5 Issuance of Payments.**

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

10 Daniel N. Greenbaum, Esq.
11 Law Office of Daniel N. Greenbaum
12 7120 Hayvenhurst Avenue, Suite 320
13 Van Nuys, CA 91406

14 **5. CLAIMS COVERED AND RELEASED**

15 **5.1 Shefa LMV's Release of Pettenon**

16 Plaintiff, acting on its own behalf and in the public interest, releases Pettenon, its
17 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,
18 employees, attorneys, and each entity to whom Pettenon directly or indirectly distributes or
19 sells Products, including, but not limited to, downstream distributors, wholesalers, customers,
20 retailers, including specifically, but not limited to Target Corporation, Rite Aid Corporation,
21 Amazon.com, Inc. and CVS Pharmacy, Inc., franchisees, cooperative members, licensors,
22 and licensees ("Releasees"), from all claims for violations of Proposition 65 up through the
23 date on which this Consent Judgment is signed by both parties based on exposure to
24 Cocamide DEA from the Products as set forth in the Notice. Compliance with the terms of
25 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures
26 to Cocamide DEA from the Products as set forth in the Notice.

27 **5.2 Pettenon's Release of Shefa LMV**

28 Pettenon on behalf of itself, its past and current agents, representatives, attorneys,
29 successors, and/or assignees, hereby waives any and all claims against Shefa LMV, its
30 attorneys and other representatives, for any and all actions taken or statements made by Shefa
31 LMV and its attorneys and other representatives, whether in the course of investigating
32

1 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to
2 the Products.

3 **6. COURT APPROVAL**

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

7 **7. SEVERABILITY**

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

11 **8. GOVERNING LAW**

12 **8.1** The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and shall apply only to Covered Products that are sold or offered for sale in the
14 State of California.

15 **8.2** In the event that Proposition 65 is repealed, preempted or otherwise rendered
16 inapplicable by reason of law generally, or as to the Covered Products, then Pettenon shall
17 have no further obligations pursuant to this Consent Judgment with respect to, and to the
18 extent that, any Covered Products that are so affected.

19 **8.3** This Consent Judgment shall apply to and be binding upon Shefa and Pettenon
20 and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

21 **8.4** The Parties, including their counsel, have participated in the preparation of this
22 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

23 **8.5** This Consent Judgment was subject to revision and modification by the Parties
24 and has been accepted and approved as to its final form by all Parties and their counsel.

25 **8.6** Each Party to this Consent Judgment agrees that any statute or rule of
26 construction providing that ambiguities are to be resolved against the drafting Party shall not
27 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties
28 hereby waive California Civil Code § 1654.

31 **9. NOTICES**

32 Unless specified herein, all correspondence and notices required to be provided
pursuant to this Consent Judgment shall be in writing and (i) personally delivered, (ii) sent by

1 first-class, (registered or certified mail) return receipt requested, or (iii) sent by overnight
2 courier to one party from the other party at the following addresses:

3
4 To Pettenon Cosmetics SpA:

5 Linda Fridegotto, Esq., Havkins Rosenfeld Ritzert & Varriale LLP, 1065 Avenue of
6 Americas, Suite 800, New York, NY 10018

7
8 To Shefa LMV:

9 Daniel N. Greenbaum, Esq., Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
10 Avenue, Suite 320, Van Nuys, CA 91406

11
12 Any party, from time to time, may specify in writing to the other party a change of
13 address to which all notices and other communications shall be sent.

14 **10. ATTORNEYS' FEES**

15 10.1 A Party who unsuccessfully brings or contests an action arising out of this
16 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees
17 and costs.

18 10.2 For purposes of this Section 11.1, the prevailing Party refers to the Party that
19 was successful in obtaining relief more favorable to it than the relief that the other Party was
20 amenable to providing during the Parties' good faith attempt to resolve the dispute under
21 Section 5.1.

22 10.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
23 sanctions pursuant to law.

24 **11. 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,
27 shall constitute on and the same document. A facsimile or pdf signature shall be as valid as
28 the original.

31 **12. COURT APPROVAL**

32 12.1 This Consent Judgment shall not be effective until the Effective Date.

12.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment

1 and Pettenon shall make no objections to entry of this Consent Judgment.

2 12.3 If this Consent Judgment is not entered by the Court, it shall be of no force or
3 effect.

4 12.4 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

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

7 13.1 Shefa LMV and Pettenon agree to mutually employ their, and their counsel's,
8 best efforts to support the entry of the agreement as a Consent Judgment and obtain approval
9 of the Consent Judgment by the Court in a timely manner.

10 13.2 The parties acknowledge that, pursuant to California Health & Safety Code §
11 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
12 which Shefa LMV shall draft and file, and Pettenon shall not oppose.

13 13.3 If any third party objection to the noticed motion is filed, Shefa LMV and
14 Pettenon shall work together to file a joint reply or separate replies if the parties so desire and
15 appear at any hearing before the Court.

16 13.4 This provision is a material component of the Consent Judgment and shall be
17 treated as such in the event of a breach.

18 13.5 If the Court does not grant the motion to approve this Consent Judgment, and
19 if the parties choose not to pursue a modified Consent Judgment within sixty (60) days after
20 the Court's denial of the motion to approve, then, upon remittitur, any and all payments made
21 pursuant to Section 3 of this Consent Judgment will be returned to Pettenon.

22 **14. MODIFICATION**

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

26 **15. AUTHORIZATION**

27 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
31 into and execute the Consent Judgment on behalf of the Party represented and legally bind
32 that Party.

15.2 The undersigned have read, understand and agree to all of the terms and

1 conditions of this Consent Judgment.

2 15.3 Except as explicitly provided herein, each Party is to bear its own fees and
3 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
8 the 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.
10 Health & Safety Code § 25249.7;
- 11 2. The reimbursement of fees and costs to be paid pursuant to the Consent
12 Judgment is reasonable under California law; and
- 13 3. The civil penalty amount to be paid pursuant to Consent Judgment is
14 reasonable.

15
16 AGREED TO:


17
18 Dated: 04/13/2015

SHEFA LMV, LLC

By: 

19
20
21
22
23 Dated:

PETTENON COSMETICS SpA

By: 
PETTENON
COSMETICS
Via Via Bigli 7/8
35018 SAN MARTINO BELLERIO (PD)
Tel. +39 04992888 - Fax +39 049958809

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Pettenon
Cosmetics SpA, the settlement is approved and the clerk is directed to enter judgment in
accordance with the terms herein.

Dated: JUL 21 2015

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court