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
Tec Laboratories, Inc.

CASE INFO

COURT DOCKET NUMBER
JCCP0004765

COURT NAME
Alameda Superior Court

SHORT CASE NAME
Proposition 65 Cocamide DEA Cases

REPORT INFO

INJUNCTIVE RELIEF
Reformultion and/or warning

PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER
$4,500.00	$13,000.00	$0.00

DATE SUBMITTED TO COURT	IS JUDGMENT PURSUANT TO SETTLEMENT?	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL
03 /26 /2015	☒ Yes ☐ No	09 /10 / 2014

COPY OF JUDGMENT MUST BE ATTACHED

For Internal Use Only

FILER INFO

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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.

BY FAX

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TEC LABORATORIES, INC.

ENDORSED
FILED
ALAMEDA COUNTY
MAR 25 2015
CLERK OF THE SUPERIOR COURT
By S. McMullen Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

Coordination Proceeding Special Title (Rule 3.350) PROPOSITION 65 COCAMIDE DEA 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 TEC LABORATORIES, INC.** Judge: Hon. George C. Hernandez, Jr. Action filed: October 11, 2013

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between Plaintiff Shefa LMV, LLC ("Shefa") and Defendant Tec Laboratories, Inc. ("Tec"). Shefa and Tec are collectively referred to as the "Parties" and individually as a "Party."

1.2 Shefa is a limited liability company in California that is acting as a private enforcer pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq*. ("Proposition 65"), and is enforcing Proposition 65.

1.3 Tec is an Oregon Corporation that employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

1.4 The products covered by this Consent Judgment is First Aid Gel manufactured, distributed and/or sold by Tec that contain coconut oil diethanolamine condensate (cocamide diethanolamine) (referred to herein as "cocamide DEA"), including but not limited to First Aid Gel ("Covered Products").

1.5 On or about June 13, 2014, Shefa served Tec and various public enforcement agencies with documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code § 25249.7(d) (the "Notices"), alleging that Tec was in violation of Proposition 65.

1.6 Shefa's Notices alleges that the Covered Products expose consumers to cocamide DEA without the requisite Proposition 65 warnings.

1.7 Cocamide DEA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

1.8 Shefa filed a Complaint in the above-captioned action ("Action"), alleging Proposition 65 violations as to the Covered Products and asserting causes of action against Tec under Proposition 65 and Cal. Bus. & Prof. Code §§ 17200 *et seq*.

1.9 Tec denies the claims of alleged violations asserted against it in the Action and denies that it has any liability under Proposition 65 or Cal. Bus. & Prof. Code §§ 17200 *et seq*.

1.10 The Parties enter into this Consent Judgment to resolve all Proposition 65 claims concerning the Covered Products set forth in the Notices and the Action.

1.11 Nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact, finding, conclusion of law, issue of law or violation of law, nor shall compliance with this 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.

1.12 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

1.13 The term "Effective Date" means the date on which this Consent Judgment is approved and entered by the Court.

2. INJUNCTIVE RELIEF - Warning Obligation For Cocamide DEA – Containing Products

2.1 As of the Effective Date, Tec shall sell, distribute or otherwise deliver, or cause to be sold, distributed or otherwise delivered into California, only Products reformulated to contain no Cocamide DEA, unless such Products are sold or shipped with a clear and reasonable warning as required by Proposition 65.

2.2 Each warning required by Section 2.1 shall be prominently placed upon a product's label or other labeling or displayed at the retail outlet with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion. As of the Effective Date all Product that is shipped that is not already labelledwith the existing Prop 65 labels shall contain Proposition 65 warnings on the products as follows:

WARNING: This product contains Cocamide DEA, a chemical known to the State of California to cause cancer.

The word "WARNING" shall be in bold. Tec may elect to include the words "Wash hands after handling" on the warning but it is not required to do so. Defendant shall provide such warnings with the unit package of the products. Such warnings shall be prominently affixed to or printed on each

product's label or package. The font of the warning shall be at least the same size as the font of other safety warnings, if any, on the product container.

2.3 For purposes of this Consent Judgment, a Covered Product "contains cocamide DEA" if cocamide DEA is an intentionally added ingredient in the Covered Product.

2.4 Covered Products sold, distributed or otherwise put into the stream of commerce by Tec prior to the Effective Date are nonetheless subject to the release of claims in Section 4.

3. MONETARY PAYMENTS

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

Tec shall pay a total civil penalty payment of $4,500.00 within ten (10) days of Court entry of this Consent Judgment, as follows: the civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Plaintiff, both pursuant to the procedures set forth in Section 3.3.

3.2 Reimbursement of Plaintiff's Fees and Costs

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

3.3 Payment Procedures

All payments required by Sections 3.1 and 3.2 shall be within ten (10) days after the Court

entry of this Consent Judgment, in three checks made payable as follows:

(a) one check to "OEHHA" in the amount of $3,375.00;

(b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in the amount of $1,125.00;

(c) one check to "Law Office of Daniel N. Greenbaum" in the amount of $13,000.00.

3.4 Issuance of 1099 Forms

After the settlement funds have been transmitted to Plaintiff's counsel, Tec shall issue separate 1099 forms, as follows:

(a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the amount of $3,375.00;

(b) a second 1099 form to "Shefa LMV, LLC" in the amount of $1,125.00, whose address and tax identification number shall be furnished upon request;

(c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 46-4580172) in the amount of $13,000.00;

3.5 Issuance of Payments.

3.5.1 All payments owed to Plaintiff, pursuant to Section 3.1, shall be delivered to the following payment address:

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

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

Office of Environmental Health Hazard Assessment
Attn.: 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 in 3.5.1, as proof of payment to OEHHA.

4. CLAIMS COVERED AND RELEASED

4.1 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 4. Shefa, on behalf of itself, its attorneys, agents, representatives, successors and assigns, and in the public interest, waives all rights to participate in any action and releases and discharges (a) Tec, 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 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 limited to, investigation fees, expert fees and attorneys' fees) or losses (collectively "Claims") regarding any violation of Proposition 65 based on failure to warn about alleged exposures to cocamide DEA in any Covered Products shipped, distributed or sold by Tec prior to the Effective Date.

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

4.3 General Release: It is possible that other Claims not known to the Parties arising out of the facts alleged in the Notices or the Action will develop or be discovered. Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assigns, and not in its representative capacity, acknowledges that this Consent Judgment is expressly intended to cover and include all such Claims, including all rights of action therefor. Shefa has full knowledge of the contents of California Civil Code § 1542. Shefa acknowledges that the Claims released in Sections 4.1 and 4.2 include unknown Claims, and Shefa nevertheless waives California Civil Code § 1542 as to any such unknown Claims. California Civil Code § 1542 reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assignees, and not in its representative capacity, acknowledges and understands the significance and consequences of this specific waiver of California Civil Code § 1542.

4.4 Compliance with the terms of this Consent Judgment by Tec shall be deemed to constitute compliance by any Defendant Releasee or Additional Releasee with Proposition 65 regarding alleged exposures to cocamide DEA in the Covered Products.

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

5. ENFORCEMENT

5.1 Any Party may file suit to enforce the terms and conditions contained in this Consent Judgment, as provided in this Section 5.1. A Party may enforce any of the terms and conditions of this Consent Judgment only after that Party first provides 30 days' written notice to the Party

allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good faith manner.

6. COURT APPROVAL

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

7. SOLE AGREEMENT

7.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments or understandings related thereto, if any, are hereby merged herein and therein.

7.2 No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

7.3 No supplementation, modification, waiver or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

7.4 No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

8. MODIFICATION

8.1 This Consent Judgment may be modified from time to time by (i) a written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application of any Party and the entry of a modified consent judgment by the Court.

9. GOVERNING LAW AND APPLICATION

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

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

9.3 This Consent Judgment shall apply to and be binding upon Shefa and Tec and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

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

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

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

10. PROVISION OF NOTICE

All notices required pursuant to this Consent Judgment and correspondence shall be sent to the following:

For Shefa: Daniel Greenbaum, Esq.,
Law Office of Daniel N. Greenbaum
7120 Hayvenhurst Ave., Suite 320
Van Nuys, CA 91406

For Tec: Lee N. Smith, Esq.
Weintraub Tobin
400 Capital Mall, 11th Floor
Sacramento CA 95814

11. ATTORNEYS' FEES

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

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

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

12. EXECUTION AND COUNTERPARTS

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

13. COURT APPROVAL

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

13.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and Luxo shall make no objections to entry of this Consent Judgment.

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

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

14. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)

14.1 Shefa agrees to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

15. AUTHORIZATION

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

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

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

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

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.

AGREED TO:

Dated: 9/10/14

SHEFA LMV, LLC

By: _____

Alisa Fried

Dated: 9-10-2014

TEC LABORATORIES, INC.

By: _____

Steven D. Smith, CEO

ORDER AND JUDGMENT

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

Dated: MAR 25 2015

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court