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
Vedco, Inc.

CASE INFO

COURT DOCKET NUMBER
JCCP004765

COURT NAME
Alameda Superior Court

SHORT CASE NAME
Proposition 65 Cocamide DEA Cases

REPORT INFO

INJUNCTIVE RELIEF
Reformulation and/or warning label

PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER
$1,000.00	$9,750.00	$0.00

DATE SUBMITTED TO COURT	IS JUDGMENT PURSUANT TO SETTLEMENT?	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL
06 / 08 / 2015	(●) Yes ( ) No	06 / 02 / 2015

COPY OF JUDGMENT MUST BE ATTACHED

For Internal Use Only

FILER INFO

NAME OF CONTACT
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ORGANIZATION
Law Office of Daniel Greenbaum

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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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900 W. 48th Place, Suite 900
Kansas City, MO 64112
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Attorneys for Defendant Vedco, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

Coordination Proceeding Special Title: PROPOSITION 65 COCAMIDE DEA CASES	Judicial Council Coordination Proceeding Case No. 4765 ~~[PROPOSED]~~ **CONSENT JUDGMENT AS TO VEDCO, INC.** Judge: Hon. George C. Hernandez, Jr.
This Document Relates To: *Shefa LMV, LLC v. New World Imports, Inc., et al.*, Los Angeles County Superior Court No. BC561056	

1. INTRODUCTION

1.1 The parties to this Consent Judgment ("Parties") are Shefa LMV, LLC ("Shefa") and Vedco, Inc. ("Settling Defendant"). Shefa and Settling Defendant are referred to collectively as the "Parties."

1.2 Shefa alleges that the Settling Defendant in the past has manufactured, distributed, and/or sold types of products identified on Exhibit A that contain Cocamide diethanolamine ("Cocamide DEA") in the State of California.

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,

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conclusion of law, issue of law, or violation of any statutory, regulatory, or common 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 and compromise and is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in this action.

1.7 Nothing in the Consent Judgment, or compliance with the terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Vedco, its officers, directors, managers, employees, parents, subsidiaries, or affiliates, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

2. DEFINITIONS

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

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

3. INJUNCTIVE RELIEF

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

3.2 Specification to Suppliers. No more than thirty (30) days after the Effective Date, Settling Defendant shall issue specifications to its supplier(s) of Covered Products requiring that Covered Products not contain any Cocamide DEA, and shall instruct each supplier to use

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reasonable efforts to eliminate Covered Products containing Cocamide DEA on a nationwide basis.

3.3 Action Regarding Specific Products.

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

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

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

4. ENFORCEMENT

4.1 Shefa may, by motion or application for an order to show cause before the Superior Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase and a copy of any test results which purportedly support the Notice of Violation. The Parties shall

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then meet and confer regarding the basis for the anticipated motion or application in an attempt to resolve it informally, including providing Settling Defendant(s) with a reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail, Shefa may file an enforcement motion or application. This Consent Judgment may only be enforced by the Parties.

5. PAYMENTS

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

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

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

6. MODIFICATION

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

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

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7. CLAIMS COVERED AND RELEASED

7.1 This Consent Judgment is a full, final, and binding resolution and release between (i) Shefa on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its former affiliates ("affiliate" means a person or entity who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, Settling Defendant), and their current and past directors, officers, managers, employees and attorneys ("Defendant Releasees"), and each entity to whom any of them directly or indirectly distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees"); of any violation of Proposition 65 that was or could have been asserted in the Complaint and all claims for damages, penalties, costs, fees, attorneys' fees, and any other legal, equitable, statutory, or regulatory relief against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged exposure to Cocamide DEA contained in Covered Products that were sold by Settling Defendant prior to the Effective Date.

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

7.3 Nothing in this Section 7 affects Shefa's right to commence or prosecute an action under Proposition 65 against any person other than Settling Defendant, Defendant 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

8.2 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.

8.3 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

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

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

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

11. OTHER TERMS

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

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

11.3 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. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. 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. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall

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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.

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

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

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

11.7 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 to bind that Party.

11.8 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. 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. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. 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.

11.9 Defendant Releasees shall not be liable or responsible for the payment or obligation of taxes, fees, or other duties, if any, with respect to the payments herein.

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11.10 Except as agreed herein, Shefa and Defendant Releasees will be responsible for their own attorneys' fees, costs, investigative fees, testing fees, and all other expenses incurred.

AGREED TO:

Dated: 6/2/2015

SHEFA LMV, LLC

By: _____

Dated: June 2, 2015

VEDCO, INC.

By: _____

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816.753.1000

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Vedco, Inc., 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

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EXHIBIT A

1. Name of Settling Defendant: Vedco, Inc.

2. Name of Plaintiff: Shefa LMV, LLC

3. Person(s) to Receive Notices (Pursuant to Section 8.2):

Polsinelli PC
Mark Olthoff, Esq.
900 West 48th Place,
Suite 900
Kansas City, Missouri, 64112-1895
Telephone: 816-395-0620
Facsimile: 816-817-0247
Email: molthoff@polsinelli.com

4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): August 25, 2014

5. Complaint Naming Settling Defendant (Pursuant to Section 1.4): *Shefa LMV, LLC v. New World Imports, Inc., et al.*, Los Angeles County Superior Court No. BC561056

   a. Date Complaint Filed: October 17, 2014

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
x Soaps

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

Vedco Antibacterial Moisterizing soap; UPC: 350989919290

8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: $10,750.00
Civil Penalty (payable to Shefa LMV, LLC): $1,000.00
Payment in Lieu of Civil Penalty (payable to Shefa): $ N/A
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): $9,750.00

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.