

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

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S) <b>Shefa LMV LLC</b>			
	DEFENDANT(S) INVOLVED IN JUDGMENT <b>MSD Consumer Care, Inc.</b>			
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>JCCP004765</b>		COURT NAME <b>Alameda Superior Court</b>	
	SHORT CASE NAME <b>Proposition 65 Cocamide DEA Cases</b>			
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformultion and/or warning label</b>			
	PAYMENT: CIVIL PENALTY <b>\$9,750.00</b>	PAYMENT: ATTORNEYS FEES <b>\$27,750.00</b>	PAYMENT: OTHER <b>\$0.00</b>	
	DATE SUBMITTED TO COURT <b>06 / 08 / 2015</b>	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL <b>06 / 02 / 2015</b>	
	<b>COPY OF JUDGMENT MUST BE ATTACHED</b>			
<b>FILER INFO</b>	NAME OF CONTACT <b>Daniel N. Greenbaum, Esq.</b>			
	ORGANIZATION <b>Law Office of Daniel Greenbaum</b>		TELEPHONE NUMBER <b>( 818 ) 809-2199</b>	
	ADDRESS <b>7120 Hayvenhurst Ave., Suite 320</b>		FAX NUMBER <b>( 424 ) 243-7689</b>	
	CITY <b>Van Nuys</b>	STATE    ZIP <b>CA 91406</b>	E-MAIL ADDRESS <b>dgreenbaum@greenbaumlawfirm.com</b>	

For Internal Use Only

**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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
31  
32

LAW OFFICE OF DANIEL N. GREENBAUM  
Daniel N. Greenbaum, Esq. (SBN 268104)  
The Hathaway Building  
7120 Hayvenhurst Avenue  
Suite 320  
Van Nuys, CA 91406  
Telephone: (818) 809-2199  
Facsimile: (424) 243-7689  
Email: dgreenbaum@greenbaumlawfirm.com

Attorney for Plaintiff SHEFA LMV, LLC

Wendy Feng, Esq. (SBN 200813)  
Covington & Burling LLP  
One Front Street  
San Francisco, CA 94111  
Telephone: (415) 591-7075  
Fax: (415) 591-6091  
Email: wfeng@cov.com

Attorney for Defendant MSD CONSUMER CARE, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE 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. Big Lots Stores, Inc., et*  
) *al.*, Los Angeles County Superior Court No.  
) BC566941]  
) ~~PROPOSED~~ CONSENT JUDGMENT AS  
) TO MSD CONSUMER CARE, INC.  
)  
) Judge: Hon. George C. Hernandez, Jr.  
)  
) Action filed: December 16, 2014  
)  
)  
)

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 21 2015

CLERK OF THE SUPERIOR COURT  
By YOLANDA ESTRADA Deputy

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
31  
32

**1. INTRODUCTION**

1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC (“Shefa”) and MSD Consumer 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 diethanolamine (“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 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 DEA and that will be sold or offered for sale to California consumers. For purposes of  
12 this Consent Judgment, a product "contains DEA" if DEA is an intentionally added ingredient in  
13 the product and/or intentionally added part of the product formulation.

14 3.2 Specification to Suppliers. No more than thirty (30) days after the  
15 Effective Date, Settling Defendant shall issue specifications to its supplier(s) of Covered  
16 Products requiring that Covered Products not contain any DEA, and shall instruct each supplier  
17 to use reasonable efforts to eliminate Covered Products containing DEA on a nationwide basis.

18 3.3 Action Regarding Specific Products.

19 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling the  
20 specific products (if any) identified as Section 3.3 Products on the Exhibit A for such Settling  
21 Defendant ("Section 3.3 Products") in California unless such products have been reformulated  
22 such that they do not contain DEA. On or before the Effective Date, Settling Defendant shall  
23 also: (i) cease shipping the Section 3.3 Products to any of its stores and/or customers that resell  
24 the Section 3.3 Products in California; and (ii) send instructions to its stores and/or customers  
25 that resell the Section 3.3 Products in California instructing them either to: (a) return all the  
26 Section 3.3 Products to Settling Defendant for destruction, or (b) directly destroy the Section 3.3  
27 Products. The requirements of this Section apply only to those Section 3.3 Products that contain  
28 DEA.  
31  
32

1                   3.3.2 Any destruction of Section 3.3 Products shall be in compliance with all  
2 applicable laws.

3                   3.3.3 Within sixty (60) days of the Effective Date, Settling Defendant shall  
4 provide Shefa with written certification from Settling Defendant confirming compliance with the  
5 requirements of this Section 3.3.

6                   **4. ENFORCEMENT**

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

17                   **5. PAYMENTS**

18                   5.1 Payments by Settling Defendant. Within thirty (30) business days of the  
19 Effective Date, Settling Defendant shall pay the settlement payment identified for it on Exhibit  
20 A. The total settlement amount for Settling Defendant shall be paid pursuant to the instructions  
21 outlined in Exhibit A. The funds paid by Settling Defendant shall be allocated, as identified in  
22 Exhibit A, between the following categories:

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

27                   5.1.2 A reimbursement of a portion of Shefa's reasonable attorneys' fees and  
28 costs.  
31  
32

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
31  
32

**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.

**7. CLAIMS COVERED AND RELEASED**

7.1 This Consent Judgment is a full, final, and binding resolution 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, 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 against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn about alleged exposure to 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 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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
31  
32

**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](mailto: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 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.

1                   10.2 Except as otherwise provided in this Consent Judgment, each Party shall  
2 bear its own attorneys' fees and costs.

3                   10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of  
4 sanctions pursuant to law.

5                   **11. OTHER TERMS**

6                   11.1 The terms of this Consent Judgment shall be governed by the laws of the  
7 State of California.

8                   11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling  
9 Defendant, its affiliates, and successors or assigns of any of them.

10                   11.3 This Consent Judgment contains the sole and entire agreement and  
11 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
12 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
13 merged herein and therein. There are no warranties, representations, or other agreements  
14 between the Parties except as expressly set forth herein. No representations, oral or otherwise,  
15 express or implied, other than those specifically referred to in this Consent Judgment have been  
16 made by any Party hereto. No other agreements not specifically contained or referenced herein,  
17 oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No  
18 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
19 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
20 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
21 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

22                   11.4 Nothing in this Consent Judgment shall release, or in any way affect any  
23 rights Settling Defendant might have against any other party, whether or not that party is a  
24 Settling Defendant.

25                   11.5 This Court shall retain jurisdiction of this matter to implement or modify  
26 the Consent Judgment.

27                   11.6 The stipulations to this Consent Judgment may be executed in  
28 counterparts and by means of facsimile or portable document format (pdf), which taken together  
31 shall be deemed to constitute one document.  
32





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
31  
32

**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and MSD Consumer Care, 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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
31  
32

**EXHIBIT A**

1. Name of Settling Defendant: MSD Consumer Care, Inc.
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.3):
  - General Counsel  
Bayer Consumer Care, Inc.  
100 BAYER BLVD  
WHIPPANY NJ 07981-1544
  - Steven Rosenbaum  
Covington & Burling LLP  
One CityCenter, 850 Tenth Street, N.W.  
Washington, D.C. 20001  
srosenbaum@cov.com
4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): November 5, 2014
5. Complaint Naming Settling Defendant (Pursuant to Section 1.4): *Shefa LMV, LLC v. Big Lots Stores, Inc., et al.*, Los Angeles County Superior Court No. BC566941
  - a. Date Complaint Filed: December 16, 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):
  - Creams (including anti-fungal creams)
  - Sprays (including anti-fungal sprays)
7. Defendant's Section 3.3 Product(s) (Pursuant to Sections 3.3.1, 3.3.2, and 3.3.3):

Lotrimin Ultra Cream, UPC 311017235324
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): \$ 9,750.00  
Payment in Lieu of Civil Penalty (payable to Shefa): \$ N/A  
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$27,750.00

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.