

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 Person & Covey, 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 \$10,000.00	PAYMENT: ATTORNEYS FEES \$38,500.00	PAYMENT: OTHER \$0.00	
	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			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum, Esq.			
	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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12 Attorney for Defendant PERSON & COVEY, INC.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF ALAMEDA

16
17 Coordination Proceeding
Special Title (Rule 3.350)
18
19 PROPOSITION 65 COCAMIDE DEA
20 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 PERSON & COVEY, 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

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1. INTRODUCTION

1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC (“Shefa”) and Person & Covey, 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, specifically Solbar Zinc Broad Spectrum SPF 38, UPC 300960688042.

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 Warning or Reformulation of Covered Products. As of the Effective Date,
10 Settling Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product
11 that contains DEA and that will be sold or offered for sale to California consumers unless
12 Proposition 65 warnings are affixed to the Covered Products, or Settling Defendant reformulates
13 the Covered Products.

14 Should Settling Defendant choose to apply a Proposition 65 warning, the
15 Warning Label shall be affixed to the Covered Products sold or distributed for sale in California
16 with the following language:

17 "WARNING: This product contains diethanolamine, a chemical
18 known to the State of California to cause cancer.

19 The word "WARNING" shall be in bold. Such warnings shall be prominently
20 affixed to or printed on each product's label or package. The font of the warning shall be at least
21 the same size as the font of other safety warnings, if any, on the product container.

22 For purposes of this Consent Judgment, a product "contains DEA" if DEA is an
23 intentionally added ingredient in the product and/or intentionally added part of the product
24 formulation.

25 3.2 Specification to Suppliers. No more than thirty (30) days after the
26 Effective Date, Settling Defendant shall issue specifications to its supplier(s) of Covered
27 Products requiring that Covered Products not contain any DEA, and shall instruct each supplier
28

1 to use reasonable efforts to eliminate Covered Products containing DEA to be produced for sale
2 in California.

3 3.3 Specification to Customers. No more than thirty (30) days after the
4 Effective Date, Settling Defendant shall also send instructions to its stores and/or customers that
5 resell the Covered Products in California instructing them either to: (a) return all the Covered
6 Products to Settling Defendant for destruction or warning labeling, or (b) directly destroy the
7 Covered Products. The requirements of this Section apply only to those Covered Products that
8 contain DEA.

9 3.3.1 Any destruction of the Covered Products shall be in compliance with all
10 applicable laws.

11 3.3.2 Within sixty (60) days of the Effective Date, Settling Defendant shall
12 provide Shefa with written certification from Settling Defendant confirming compliance with the
13 requirements of this Section 3.3.

14 **4. ENFORCEMENT**

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

25 **5. PAYMENTS**

26 5.1 Payments by Settling Defendant. Within ten (10) business days of the
27 Effective Date, Settling Defendant shall pay the settlement payment identified for it on Exhibit
28 A. The total settlement amount for Settling Defendant shall be paid pursuant to the instructions

1 outlined in Exhibit A. The funds paid by Settling Defendant shall be allocated, as identified in
2 Exhibit A, between the following categories:

3 5.1.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b), with such
4 money to be apportioned by Shefa as identified on the Exhibit A for the Settling Defendant in
5 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
6 California’s Office of Environmental Health Hazard Assessment).

7 5.1.2 A reimbursement of a portion of Shefa’s reasonable attorneys’ fees and
8 costs.

9 **6. MODIFICATION**

10 6.1 Written Consent. This Consent Judgment may be modified from time to
11 time by express written agreement of the Parties with the approval of the Court, or by an order of
12 this Court upon motion and in accordance with law.

13 6.2 Meet and Confer. Any Party seeking to modify this Consent Judgment
14 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
15 modify the Consent Judgment.

16 **7. CLAIMS COVERED AND RELEASED**

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

1 7.2 Compliance with the terms of this Consent Judgment by Settling
2 Defendant and Defendant Releasees shall constitute compliance with Proposition 65 by Settling
3 Defendant, Defendant Releasees, and Downstream Defendant Releasees with respect to any
4 alleged failure to warn about DEA in Covered Products manufactured, distributed, or sold by
5 Settling Defendants after the Effective Date.

6 7.3 Nothing in this Section 7 affects Shefa's right to commence or prosecute
7 an action under Proposition 65 against any person other than Settling Defendant, Defendant
8 Releasees, or Downstream Defendant Releasees.

9 **8. NOTICE**

10 8.1 When Shefa is entitled to receive any notice under this Consent Judgment,
11 the notice shall be sent by first class and electronic mail to:

12 Daniel N. Greenbaum
13 Law Office of Daniel N. Greenbaum
14 7120 Hayvenhurst Ave., Suite 320
15 Van Nuys CA 91406
 dgreenbaum@greenbaumlawfirm.com

16 8.3 When Settling Defendant is entitled to receive any notice under this
17 Consent Judgment, the notice shall be sent by first class and electronic mail to the person
18 identified on the Exhibit A for Settling Defendant.

19 8.4 Any Party may modify the person and address to whom the notice is to be
20 sent by sending the other Party notice by first class and electronic mail.

21 **9. COURT APPROVAL**

22 9.1 This Consent Judgment shall become effective upon entry by the Court.
23 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and Settling
24 Defendant shall support entry of this Consent Judgment.

25 9.2 If this Consent Judgment is not entered by the Court, it shall be of no
26 force or effect and shall never be introduced into evidence or otherwise used in any proceeding
27 for any purpose other than to allow the Court to determine if there was a material breach of
28 Section 9.1.

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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.

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

1 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
2 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
3 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

4 11.4 Nothing in this Consent Judgment shall release, or in any way affect any
5 rights Settling Defendant might have against any other party, whether or not that party is a
6 Settling Defendant.

7 11.5 This Court shall retain jurisdiction of this matter to implement or modify
8 the Consent Judgment.

9 11.6 The stipulations to this Consent Judgment may be executed in
10 counterparts and by means of facsimile or portable document format (pdf), which taken together
11 shall be deemed to constitute one document.

12 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
13 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
14 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
15 that Party.

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

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AGREED TO:

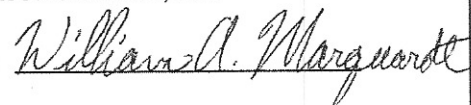
Dated: 5/29/2015

SHEFA LMV, LLC

By: 

Dated: 6/11/2015

PERSON & COVEY, INC.

By: 

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Person & Covey, 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

EXHIBIT A

1. Name of Settling Defendant: Person & Covey, Inc.
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.3):
Radmacher, Brenda K.
WOOD, SMITH, HENNING & BERMAN LLP
505 N. Brand Boulevard, Suite 1100
Glendale, CA 91203
Telephone: (818) 551-6004
Facsimile: (213) 840-0039
Email: bradmacher@wshblaw.com
4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): February 24, 2015
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):
 - Shampoos
 - Soaps
 - Sunscreen
7. Defendant's Section 3.3 Product(s) (Pursuant to Sections 3.3.1 and 3.3.2):
Solbar Zinc Broad Spectrum SPF 38, UPC 300960688042
8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):
Total Settlement Payment: \$ 48,500.00
Civil Penalty (payable to Shefa LMV, LLC): \$ 10,000.00
Payment in Lieu of Civil Penalty (payable to Shefa): \$ N/A
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$38,500.00

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.