

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 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

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 SETTLEMENT Virbac Corporation			
CASE INFO	COURT DOCKET NUMBER JCCP004765		COURT NAME Alameda County Superior Court	
	SHORT CASE NAME Proposition 65 Cocamide DEA Cases			
REPORT INFO	INJUNCTIVE RELIEF Reformulation			
	PAYMENT: CIVIL PENALTY \$1,000	PAYMENT: ATTORNEYS FEES \$9,000	PAYMENT: OTHER 0.00	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 08 / 26 / 2015	
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum			
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698	
	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 settlement 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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4 7120 Hayvenhurst Avenue
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6 Van Nuys, CA 91406
7 Telephone: (818) 809-2199
8 Facsimile: (424) 243-7689
9 Email: dgreenbaum@greenbaumlawfirm.com

10 Attorney for Plaintiff SHEFA LMV, LLC

11 SHEPPARD MULLIN
12 Meredith Jones-McKeown
13 Four Embarcadero Center, 17th Floor
14 San Francisco CA 94111
15 Telephone: (415) 434-9100
16 Facsimile: (415) 434-3947
17 Email: mjonesmckeown@sheppardmullin.com

18 Attorneys for Defendant VIRBAC CORP.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 FOR THE COUNTY OF ALAMEDA

21 Coordination Proceeding
22 Special Title (Rule 3.350)

23 PROPOSITION 65 COCAMIDE DEA
24 CASES

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO: 4765
)
)
) [*Shefa LMV, LLC v. Richard Ravid, Inc., et al.*,
) Los Angeles County Superior Court No.
) BC579212]
)
) **[PROPOSED] CONSENT JUDGMENT AS
) TO VIRBAC CORPORATION**
)
) Judge: Hon. George C. Hernandez, Jr.
)
) Action filed: October 17, 2014
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1. INTRODUCTION

1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC (“Shefa”) and Virbac Corporation (“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 are alleged to 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.

1.4 The Notices allege violations of Proposition 65 with respect to the presence of DEA in the types of products identified in Exhibit A.

1.5 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.

1.6 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.

1.7 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.

1.8 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.

1 1.9 This Consent Judgment is the product of negotiation and compromise and is
2 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
3 this action.

4 **2. DEFINITIONS**

5 2.1 “Covered Products” means the types of products identified on paragraph 6 of
6 Exhibit A for each Settling Defendant.

7 2.2 “Section 3.3 Products” means the products identified on paragraph 7 of Exhibit A
8 for each Settling Defendant.

9 2.3 “Effective Date” means the date on which this Consent Judgment is entered by
10 the Court.

11 **3. INJUNCTIVE RELIEF**

12 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
13 Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product that
14 contains DEA to California consumers without labeling the product in accordance with Section
15 3.4. For purposes of this Consent Judgment, a product “contains DEA” if the product contains
16 detectable limits of DEA.

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

21 3.3 **Action Regarding Specific Products.** On or before the Effective Date, Settling
22 Defendant shall cease selling the specific products (if any) identified as Section 3.3 Products on
23 the Exhibit A for such Settling Defendant (“Section 3.3 Products”) in California unless such
24 products have been reformulated such that they do not contain DEA or have been labeled with
25 the warning shown in Section 3.4.

26 3.4 On or before the Effective Date, Settling Defendant shall also: (i) send
27 instructions to its stores and/or customers that it reasonably believes may resell or have in the
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1 5.2 The total settlement amount, inclusive of all penalties, fees, and costs, for Settling
2 Defendant shall be paid pursuant to the instructions outlined in Exhibit A.

3 5.3 The funds paid by Settling Defendant shall be allocated, as identified in Exhibit
4 A, between the following categories:

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

11 2. **Attorney’s Fees and Costs.** A reimbursement of a portion of
12 Shefa’s reasonable attorney’s fees and costs.

13 **6. MODIFICATION**

14 6.1 **Written Consent.** This Consent Judgment may be modified from time to time by
15 express written agreement of the Parties with the approval of the Court, or by an order of this
16 Court upon motion and in accordance with law.

17 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
18 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
19 modify the Consent Judgment.

20 **7. CLAIMS COVERED AND RELEASED**

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

6 7.2 In furtherance of the foregoing, as to the Covered Products, Shefa and its counsel
7 hereby waive any and all rights and benefits which Shefa now has, or in the future may have,
8 with respect to the Claims by virtue of the provisions of section 1542 of the California Civil
9 Code, which provides as follows:

10
11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
12 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
13 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
14 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

15 Shefa and its counsel understand and acknowledge the significance and consequence of this
16 waiver of California Civil Code section 1542 is that even if Shefa or its counsel suffer future
17 damages arising out of or resulting from, or related directly or indirectly to, in whole or in part,
18 the Covered Products, they will not be able to make any claim for those damages against
19 Settling Defendant, Defendant Releasees, or the Downstream Releasees.

20 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant and
21 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
22 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure
23 to warn about DEA in Covered Products manufactured, distributed, or sold by Settling
24 Defendants after the Effective Date.

25 7.4 Nothing in this Section 7 affects Shefa’s right to commence or prosecute an
26 action under Proposition 65 against any person other than Settling Defendant, Defendant
27 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.

9.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this Consent Judgment.

9.3 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 either party prevail on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment, that party shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application.

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1 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
2 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 State of
7 California.

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

10 11.3 This Consent Judgment contains the sole and entire agreement and understanding
11 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
12 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
13 and therein.

14 11.4 There are no warranties, representations, or other agreements between the Parties
15 except as expressly set forth herein.

16 11.5 No representations, oral or otherwise, express or implied, other than those
17 specifically referred to in this Consent Judgment have been made by any Party hereto.

18 11.6 No other agreements not specifically contained or referenced herein, oral or
19 otherwise, shall be deemed to exist or to bind any of the Parties hereto.

20 11.7 No supplementation, modification, waiver, or termination of this Consent
21 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

22 11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or
23 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
24 such waiver constitute a continuing waiver.

25 11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights
26 Settling Defendant might have against any other party, whether or not that party is a Settling
27 Defendant.

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

11.11 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.

11.12 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.

11.13 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.

11.14 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.

11.15 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.

11.16 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.

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AGREED TO:

Dated: 8/26/2015

SHEFA LMV, LLC

By: 

Dated: 8/26/2015

VIRBAC CORP.

By: 

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ORDER AND JUDGMENT

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

Dated: _____

Judge of the Superior Court

EXHIBIT A

1. Name of Settling Defendant: VIRBAC CORP.
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.3):

SHEPPARD MULLIN
Meredith Jones-McKeown
Four Embarcadero Center, 17th Floor
San Francisco CA 94111
Email: mjonesmckeown@sheppardmullin.com
4. Date of 60-Day Notice of Violation (Pursuant to Section 1.3): November 21, 2014
5. Complaint Naming Settling Defendant (Pursuant to Section 1.4): *Shefa LMV, LLC v. Richard Ravid, Inc., et al.*, Los Angeles County Superior Court No. BC579212
 - 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
 Soaps
7. Defendant's Section 3.3 Product(s) (Pursuant to Sections 3.3.1, 3.3.2, and 3.3.3):

Virbac Epi-Soothe Shampoo
Virbac Allergroom Shampoo
Virbac Allermyl Shampoo
Virbac Sebolux Medicated Shampoo
Virbac Etiderm Shampoo
8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$10,000.00
Civil Penalty (payable to Shefa LMV, LLC): \$1,000.00¹

¹ Shefa LMV, LLC shall make arrangements to remit 25% of this amount to the State of California's Office of Environmental Health Hazard Assessment in accordance with paragraph 5.3.1 of the Consent Judgment.

Payment in Lieu of Civil Penalty (PILP): \$ N/A

Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$9,000.00

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.