

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

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

PARTIES TO THE ACTION	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN JUDGMENT				
CASE INFO	COURT DOCKET NUMBER		COURT NAME		
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER	
	DATE SUBMITTED TO COURT / /	IS JUDGMENT PURSUANT TO SETTLEMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL / /		For Internal Use Only
	COPY OF JUDGMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER ()	
	ADDRESS			FAX NUMBER ()	
	CITY	STATE	ZIP	E-MAIL ADDRESS	

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 LAW OFFICE OF DANIEL N. GREENBAUM
2 Daniel N. Greenbaum, Esq. (SBN 268104)
3 The Hathaway Building
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5 Van Nuys, CA 91406
6 Telephone: (818) 809-2199
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Received
JAN 18 2018

FILED
Superior Court of California
County of Los Angeles

FEB 07 2018

Sherril B. Carter, Executive Officer/Clerk
By Anita Williams Deputy

Attorney for Plaintiff SHEFA LMV, INC.

7 Peg Carew Toledo
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Attorneys for Defendant BERWICK OFFRAY LLC

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES

17 SHEFA LMV, INC.,

18 Plaintiff,

19 vs.

20 BERWICK OFFRAY LLC and DOES 1
21 through 100, Inclusive,

22 Defendants.

) Case No. BC 666417

) Dept. 68

) Hon. Mark Mooney

) [PROPOSED] CONSENT JUDGMENT

) AS TO BERWICK OFFRAY LLC

) Action Filed: June 26, 2017

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff
4 Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”) and Berwick Offray LLC (“**Berwick**” or “**Defendant,**”
5 with Shefa and Berwick individually referred to as a “**Party**” and collectively as the “**Parties.**”)

6 **1.2 Plaintiff**

7 Shefa is a public benefit non-profit corporation that seeks to promote awareness of
8 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Settling Defendant**

11 Berwick employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 §25249.6 *et seq.* (“**Proposition 65**”).

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are plastic handled tools, including but not
16 limited to Favorite Findings™ Button Shank Remover, with a product identifier of
17 UPC:075160732962 that are manufactured, sold, or distributed for sale in California by Berwick
18 that contain Di-[2-Ethylhexyl] Phthalate (“**DEHP**”) (collectively, the “**Covered Products**”).

19 **1.5 General Allegations**

20 Shefa alleges that Berwick manufactures, imports, sells, or distributes, for sale in the state of
21 California, plastic handled tools that contain DEHP without first providing a clear and reasonable
22 warning required by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical listed under
23 Proposition 65 as a chemical known to the state to cause cancer or reproductive toxicity.

24 **1.6 Notice of Violation**

25 On February 10, 2017, Shefa served Defendant and the requisite public enforcement
26 agencies with a 60-Day Notice of Violation (the “**Notice**”) alleging that Defendant violated
27 Proposition 65 when it failed to warn its customers and consumers in California that the Covered
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02/14/2018

1 Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has
2 commenced and is diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On June 26, 2017, Shefa filed the instant complaint in the Superior Court in and for the
5 County of Los Angeles against Berwick and DOES 1-100, alleging violations of California
6 Health & Safety Code § 25249.6, based on exposures to DEHP contained in the Covered Products
7 sold in the State of California (the "Complaint").

8 **1.8 No Admission**

9 Berwick denies the material, factual, and legal allegations contained in the Notice and
10 Complaint and maintains that all the products it has manufactured, sold, or distributed for sale in
11 California, including the Covered Products, have been, and are, in compliance with all laws.
12 Nothing in this Consent Judgment shall be construed as an admission by Berwick of any fact,
13 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
14 Judgment constitute or be construed as an admission by Berwick of any fact, finding, conclusion of
15 law, issue of law, or violation of law, the same being specifically denied by Berwick. This section
16 shall not, however, diminish or otherwise affect Berwick's obligations, responsibilities, and duties
17 under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
21 County of Los Angeles, the Defendant agrees that it employs or has employed ten or more persons
22 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
23 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
26 Consent Judgment is approved and entered by the Court.

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02/14/2018


1 **2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS**

2 **2.1 Reformulation Standards**

3 As of the Effective Date, Defendant shall not manufacture for sale in California any Covered
4 Products unless such Covered Products contain DEHP in concentrations less than or equal to 1000
5 parts per million (“ppm”) when analyzed pursuant to U.S. Environmental Protection Agency testing
6 methodologies 3580A and 8270C or any other scientifically reliable methodology for determining
7 the concentration of DEHP in the Covered Products.

8 **2.2 Warning Standards**

9 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent it
10 ships or sells Covered Products that do not meet the reformulation standards set forth above in
11 Section 2.1, Defendant will provide warnings on such Covered Products that comply with
12 Proposition 65. The warnings shall be provided in a conspicuous and prominent manner such that
13 they will be likely to be read or seen by the consumer prior to or at the time of the sale or purchase.
14 The Parties agree that the warning set forth below shall constitute compliance with Proposition 65
15 with respect to any Covered Products that are not reformulated:

16 “ **WARNING:** This product can expose you to chemicals, including Di-[2-
17 Ethylhexyl] Phthalate (DEHP), which are known to the State of California to cause birth
18 defects or other reproductive harm. For more information go to
19 www.P65Warnings.ca.gov.”

20 **2.3 Covered Products in the Stream of Commerce.**

21 Any Covered Products that have been distributed, shipped, or sold by Defendant prior to the
22 Effective Date, shall not be subject to the requirements of Section 2.1.

23 **3. MONETARY SETTLEMENT TERMS**

24 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
25 Defendant shall make the Total Settlement Payment of \$18,500.00.

26 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
27 separate checks made payable and allocated as follows:
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02/14/2018

1 **3.2.1 Civil Penalty.** Defendant shall pay \$2,000.00 as a civil penalty
2 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
3 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
4 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the
5 OEHHA portion of the civil penalty payment in the amount of \$1,500.00 shall be made payable to
6 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
7 delivered as follows:

8 For United States Postal Service Delivery:

9 Attn: Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010, MS #19B
13 Sacramento, CA 95812-4010

14 For Non-United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street, MS #19B
19 Sacramento, CA 95814

20 The Shefa portion of the civil penalty payment in the amount of \$500.00 shall be made
21 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
22 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
23 Ave, Suite 320, Van Nuys, CA 91406.

24 **3.2.2 Attorney’s Fees and Costs.** A reimbursement of Shefa’s attorney’s
25 fees and costs in the amount of \$16,500.00 payable to the “Law Office of Daniel N. Greenbaum,”
26 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
27 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

28 **4. CLAIMS COVERED AND RELEASED**

4.1 Public Release

 This Consent Judgment is a full, final, and binding resolution between Shefa and Berwick of
any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of

02/14/2018

1 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
2 against Berwick, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,
3 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and
4 each entity to whom Berwick directly or indirectly exports, distributes or sells the Covered
5 Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees,
6 cooperative members, and licensees, including but not limited to Levcor International, Inc. and Jo-
7 Ann Stores LLC (“Releasees”), based on failure to warn of alleged exposures to DEHP from
8 Covered Products manufactured, sold, or distributed for sale in California by Berwick prior to the
9 Effective Date. The release in this Section 4.1 applies to all Covered Products that Berwick
10 manufactured, distributed, or sold prior to the Effective Date, regardless of the date any other
11 Releasee distributes or sells the Covered Products.

12 Compliance with the terms of this Consent Judgment shall constitute compliance with
13 Proposition 65 by Berwick and the Releasees with respect to DEHP in Covered Products
14 manufactured, sold, or distributed on and after the Effective Date.

15 **4.2 Shefa’s Individual Release of Claims**

16 In further consideration of the promises and agreements herein contained, Shefa, on its own
17 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
18 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
19 legal action, and releases all claims that it may have against Berwick and Releasees, including,
20 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
21 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
22 fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP from
23 Covered Products manufactured, sold, or distributed for sale by Berwick prior to the Effective Date.
24 The releases in Section 4.2 are provided in Shefa’s individual capacity and are not releases on
25 behalf of the public.

26 **4.3 Berwick’s Release of Shefa**

27 Berwick, on its own behalf and on behalf of its past and current agents, representatives,
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02/14/2018

1 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
2 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
3 by Shefa and its attorneys and other representatives in the course of investigating the claims set
4 forth in the Complaint or otherwise seeking to enforce Proposition 65 against it in this matter.

5 **4.4 Release of Unknown Claims**

6 It is possible that other claims not known to the Parties arising out of the facts contained in
7 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
8 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment
9 is expressly intended to cover and include all such claims through and including the Effective Date,
10 including all rights of action therefor. Shefa acknowledges that the claims released in Sections 4.1
11 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in
12 doing so waives California Civil Code § 1542, which reads as follows:

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

18 Shefa understands and acknowledges that the significance and consequence of this waiver of
19 California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting
20 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not
21 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
22 Shefa will not be able to make any claim for those damages against Berwick or any of the
23 Releasees.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and
26 shall be null and void if, for any reason, it is not approved and entered by the Court within ninety
27 (90) days after it has been fully executed by the Parties, or by such additional time as the Parties
28 may agree in writing.

1 **6. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
4 rendered inapplicable by reason of law generally, or as to the Covered Products, then Berwick may
5 provide written notice to Shefa of any asserted change in the law, and with the exception of
6 Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with
7 respect to, and to the extent that, the Covered Products are so affected. None of the terms of this
8 Consent Judgment shall have any application to Covered Products sold outside of the State of
9 California.

10 **7. NOTICE**

11 Unless specified herein, all correspondence and notices required to be provided pursuant to
12 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
13 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any
14 Party by the other at the following addresses:

15 To Berwick:

16 Peg Carew Toledo
17 **PEG CAREW TOLEDO, LAW**
18 **CORPORATION**
19 3001 Douglas Blvd., Suite 340
20 Roseville, CA 95661

 To Shefa:

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

21 Any Party may, from time to time, specify in writing to the other Party a change of address to which
22 all notices and other communications shall be sent.

23 **8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

24 This Consent Judgment may be executed in counterparts, and by facsimile or portable
25 document format (PDF) signature, each of which shall be deemed an original, and all of which,
26 when taken together, shall constitute one and the same document.

27 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

28 Plaintiff agrees to comply with the reporting form requirements referenced in California

1 Health & Safety Code § 25249.7(f).

2 **10. POST EXECUTION ACTIVITIES**

3 10.1 The Parties acknowledge that, pursuant to California Health & Safety Code
4 § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent
5 Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to
6 submit this Consent Judgment to the Court with a motion seeking Court approval.

7 **11. MODIFICATION**

8 11.1 In the event that any future settlement agreement or court approved consent
9 judgment entered into by Shefa involving another party, any future court-approved consent
10 judgment entered into by any enforcer of Proposition 65 involving another party, or the State of
11 California adopts or sets out a reformulation or compliance standard that is less stringent than that
12 in Section 2.1 above for DEHP in plastic handled tools, then upon written notice to Shefa, Berwick
13 is entitled to a corresponding modification to the reformulation standard set forth in section 2.1 of
14 this Consent Judgment, with regard to the Covered Products.

15 11.2 This Consent Judgment may only be modified by a written instrument executed by
16 the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion.
17 Any motion to modify shall be served on all Parties and the Office of the Attorney General.

18 **12. DISPUTE RESOLUTION**

19 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
20 Shefa shall provide notice to Berwick. Prior to bringing any action to enforce any requirement of
21 this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the
22 other party with written notice of the grounds for such allegation together with all supporting
23 information as well as a complete demand for the relief sought. The Parties shall then meet and
24 confer regarding the basis for the allegation to resolve the matter informally, including providing
25 the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure
26 any alleged violation. Should such attempt at informal resolution fail, the party alleging a violation
27 may file its lawsuit seeking the proposed relief.
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1 **13. AUTHORIZATION**

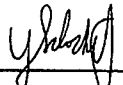
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

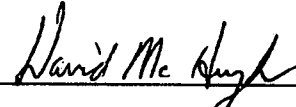
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6 **AGREED TO:**

AGREED TO:

7
8 Date: 10/14/2017

Date: October 12, 2017

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11 By: 
12 SHEFA LMV, INC.

By: 
BERWICK OFFRAY LLC

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1 **[PROPOSED] JUDGMENT**

2 Please note that on November 30, 2017 at 8:30am, Plaintiff Shefa LMV Inc.'s ("Plaintiff")
3 Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant
4 Berwick Offray LLC came for hearing before this Court in Department 68, the Honorable Mark
5 Mooney presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

6 After full consideration of the points and authorities and related pleadings submitted, the Court
7 GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code
8 §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following
9 findings pursuant to Health & Safety Code § 25249.7(f)(4):

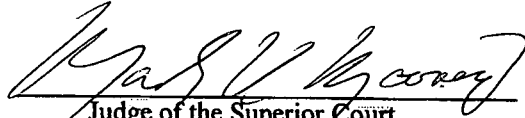
10 a. The injunctive relief required by the Settlement Agreement complies with Health &
11 Safety Code § 25249.7;

12 b. The reimbursement of fees and costs to be paid pursuant to the Settlement
13 Agreement is reasonable under California law; and

14 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.
15

16 The Settlement Agreement is hereby approved, and the clerk is directed to ENTER
17 JUDGMENT in accordance with the terms of the Settlement Agreement above.

18 Feb. 7 2018
19 Date

20 
21 Judge of the Superior Court
22 **MARK V. MOONEY**

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