

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 Inc.			
	DEFENDANT(S) INVOLVED IN JUDGMENT Southern Telecom, Inc.			
CASE INFO	COURT DOCKET NUMBER BC664842		COURT NAME Los Angeles County Superior Court	
	SHORT CASE NAME Shefa v. Southern Telecom			
REPORT INFO	INJUNCTIVE RELIEF Reformulation or warning labels			
	PAYMENT: CIVIL PENALTY \$6,000.00	PAYMENT: ATTORNEYS FEES \$27,750.00	PAYMENT: OTHER 0	For Internal Use Only
	DATE SUBMITTED TO COURT 08 / 04 / 2017	IS JUDGMENT PURSUANT TO SETTLEMENT? ☒ Yes ☐ No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 08 / 04 / 2017	
	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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	CITY Van Nuys	STATE CA	ZIP 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 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.

COPY

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Attorneys for Defendant SOUTHERN TELECOM, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

SOUTHERN TELECOM, INC.; and DOES 1
through 100, Inclusive,

Defendants.

) Case No. BC 664842
) Dept. 12
) Hon. Barbara A. Meiers

) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO SOUTHERN TELECOM, INC.**

By Fax

) Action Filed: June 12, 2017
)
)

[PROPOSED] CONSENT JUDGMENT

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 19 2017

Sherri R. Carter, Executive Officer/Clerk
By: Jontae M. Marquez, Deputy

1. INTRODUCTION

1.1 Parties

This consent judgment ("**Consent Judgment**") is entered into by and between plaintiff Shefa LMV, Inc. ("**Shefa**" or "**Plaintiff**") and Southern Telecom, Inc. ("**Defendant**," with Shefa and Defendant individually referred to as a "**Party**" and collectively as the "**Parties.**")

1.2 Plaintiff

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

1.3 Settling Defendant

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

1.4 Products Covered

The products covered by this Consent Judgment are headphones, including but not limited to Art & Sound Bluetooth Wireless Headphones AR500-BK, with a product identifier of UPC: 680079350024, and "Limited Too™ Glitterbomb Headphones with Mic" with a product identifier of UPC: 680079065003, and Emerson Ultra Bass Headphones with a product identifier of UPC: 680079805203; that are manufactured, sold, or distributed for sale in California by Defendant that contain Di-[2-Ethylhexyl] Phthalate ("**DEHP**") (collectively, the "**Covered Products**") without first providing a clear and reasonable warning as required by Proposition 65.

1.5 General Allegations

Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state of California, headphones that contain DEHP without first providing a clear and reasonable warning required by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer or reproductive toxicity as Proposition 65 defines that term. 27 CCR §25000. Defendant denies these allegations.

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the
3 Consent Judgment is approved and entered by the Court.

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

5 **2.1 Reformulation Standards.** As of the Effective Date, Defendant shall
6 manufacture, distribute, or sell Compliant Products in California. “Compliant Products” are defined
7 as those Products containing DEHP in concentrations less than or equal to 1000 parts per million
8 (“ppm”) (0.1%) when analyzed pursuant to a scientifically reliable application of U.S.
9 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
10 scientifically reliable methodology for determining DEHP content in a substance of the form of the
11 Covered Products herein.

12 **2.2 Warning Standards.** Defendant agrees, promises, and represents that, as of
13 ninety (90) days after the Effective Date, to the extent it ships or sells Products for sale to California
14 customers from its Existing Inventory that does not comply with Section 2.1, it will provide
15 warnings as set forth in Section 2.3 on such Products and that such warnings will comply with
16 Proposition 65. “Existing Inventory” excludes products shipped, sold, and/or otherwise distributed
17 on or prior to the Effective Date, even if sold or distributed by Downstream Releasees (as described
18 in Paragraph 4.1 below) after the Effective Date.

19 **2.3 Warning Language.** The warnings shall be provided in such a conspicuously
20 and prominent manner that will assure the message is made available and likely to be read, seen, or
21 heard by the consumer prior to or at the time of the sale or purchase. The Parties agree that product
22 labeling stating one of the following shall constitute compliance with Proposition 65 with respect to
23 any Covered Products not reformulated:

24 “**WARNING:** This product contains a chemical known to the State of California to
25 cause cancer, birth defects, or other reproductive harm.”

26 Or

27 “ **WARNING:** This product can expose you to chemicals including Di-[2-

Ethylhexyl] Phthalate (DEHP) which are known to the State of California to cause cancer, birth defects, or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

3. MONETARY SETTLEMENT TERMS

3.1 Payment from Defendant. Defendant shall make the Total Settlement Payment of \$33,750.00 according to Section 3.2 on the payment schedule as defined in Section 3.3.

3.2 Allocation of Payments. The Total Settlement Payment shall be paid and allocated as follows:

3.2.1 Civil Penalty. Defendant shall pay \$6,000.00 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned 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 (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty payment in the amount of \$4,500.00 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

The Shefa portion of the civil penalty payment in the amount of \$1,500.00 shall be made payable to Shefa LMV, Inc. and associated with taxpayer identification

number 81-0907002. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3.2.2 Attorney's Fees and Costs. A reimbursement of Shefa's attorney's fees and costs in the amount of \$27,750.00 payable to the "Law Office of Daniel N. Greenbaum," and associated with taxpayer identification number 46-4580172. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3.3 Timing of Payments. Within ten (10) business days of the Effective Date, Defendant shall make the first of four (4) Settlement payments of \$8,437.50 with three (3) subsequent \$8,437.00 payments to be due on or before thirty (30) days after of the proceeding payment thereafter until the full \$33,750.00 has been paid.

3.3.1 The first batch of Settlement checks should be made as follows: 1) \$4,500.00 made payable to OEHHA per 3.2.1 above; 2) \$1,500.00 made payable to Shefa LMV, Inc. per 3.2.1 above; and 3) \$2,437.50 made payable to the Law Office of Daniel Greenbaum per Section 3.2.2 above.

3.3.2 The subsequent three (3) Settlement payments of \$8,437.50 should be made payable to Law Office of Daniel Greenbaum per Section 3.2.2 above.

4. CLAIMS COVERED AND RELEASED

4.1 Shefa's Public Release of Defendant and its Downstream Releasees

This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7, against Defendant, its parents, subsidiaries, affiliated entities under common ownership, manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of each of them ("Releasees"), and each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered Products, including, without limitation, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees,

1 including but not limited to PLR IP Holdings, LLC, and Polaroid Corp., (including any parent
2 corporations, subsidiaries and affiliates) Burlington Stores Inc., (including any parent
3 corporations, subsidiaries and affiliates), J. C. Penney Company, Inc., (including any parent
4 corporations, subsidiaries and affiliates), Family Dollar, Inc. (including any parent corporations,
5 subsidiaries and affiliates), 99 Cents Only Stores, Inc., (including any parent corporations,
6 subsidiaries and affiliates) and AIT, Inc. (including any parent corporations, subsidiaries and
7 affiliates) ("Downstream **Releasees**"), based on failure to warn of alleged exposures to DEHP from
8 Covered Products manufactured, sold, exported or distributed for sale in California by Defendant
9 prior to the Effective Date. The release in this Section 4.1 applies to all Covered Products that
10 Defendant manufactured, exported, distributed, or sold prior to the Effective Date, regardless of the
11 date any other Releasee distributes or sells the Covered Products.

12 Upon entry of this Consent Judgment by the Court, going forward, Defendant's compliance
13 with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition
14 65 by Defendant or any other Releasee with respect to DEHP in Covered Products manufactured,
15 sold, or distributed for sale in California by Defendant on and after the Effective Date.

16 **4.2 Shefa's Individual Release of Claims**

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

1 **4.3 Defendant's Release of Shefa**

2 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
4 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
5 by Shefa and its attorneys and other representatives, whether in the course of investigating claims,
6 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered
7 Products.

8 **4.4 Release of Unknown Claims**

9 It is possible that other claims not known to the Parties arising out of the facts contained in
10 the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
11 discovered or developed. Shefa, on behalf of itself only, on the one hand, and Defendant, on the
12 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all
13 such claims through and including the Effective Date, including all rights of action therefor. Shefa
14 and Defendant acknowledge that the claims released in Section 4 may include unknown claims, and
15 nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542,
16 which reads as follows:

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

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

27 **5. COURT APPROVAL**

28 This Consent Judgment is not effective until it is approved and entered by the Court and
shall be null and void if, for any reason, it is not approved and entered by the Court within ninety

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

9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

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

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Plaintiff agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. POST EXECUTION ACTIVITIES

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

12. MODIFICATION

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

13. DISPUTE RESOLUTION

If Shefa determines at a future date that a violation of this Consent Judgment has occurred, Shefa shall provide notice to Defendant. Prior to bringing any action to enforce any requirement of this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the other party with written notice of the grounds for such allegation together with all supporting information as well as a complete demand for the relief sought. The Parties shall then meet and confer regarding the basis for the allegation in an attempt to resolve the matter informally, including providing the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail, the party

alleging a violation may file its lawsuit seeking the proposed relief.

14. AUTHORIZATION

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

AGREED TO:

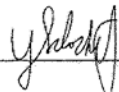
AGREED TO:

Date: 8/3/2017

Date:

8/3/17

By:



SHEFA LMV, INC.

By:



C.O.O

SOUTHERN TELECOM, INC.

[PROPOSED] JUDGMENT

Please note that on 9/19, 2017 at 1000 am Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Southern Telecom, Inc. came for hearing before this Court in Department 12, the Honorable Barbara A. Meiers presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

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

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

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

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

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

SEP 19 2017

Date



Judge of the Superior Court