

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 Betty Dain Creations LLC			
CASE INFO	COURT DOCKET NUMBER RG18920287		COURT NAME SUPERIOR COURT OF CA, Alameda Co	
	SHORT CASE NAME Shefa LMV, Inc. v. Betty Dain Creations LLC			
REPORT INFO	INJUNCTIVE RELIEF COMPLIANT PRODUCTS AND WARNINGS			
	PAYMENT: CIVIL PENALTY \$2,000	PAYMENT: ATTORNEYS FEES \$13,000	PAYMENT: OTHER 0	For Internal Use Only
	DATE SUBMITTED TO COURT 12 / 24 / 2019	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 12 / 24 / 2019	
	COPY OF JUDGMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum, Esq.			
	ORGANIZATION Law Office of Daniel N. Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698	
	CITY Van Nuys	STATE CA	ZIP 91406-0000	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.

3.2.20

ENDORSED
FILED
ALAMEDA COUNTY

FEB 25 2020

CLERK OF THE SUPERIOR COURT
By PAM GREENE Deputy

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, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SHEFA LMV, INC.,

Plaintiff,

vs.

BETTY DAIN CREATIONS LLC; and
DOES 1 through 100, Inclusive,

Defendants.

) Case No. RG18920287

) ~~PROPOSED~~ CONSENT JUDGMENT
) AS TO BETTY DAIN CREATIONS LLC

) Action Filed: September 12, 2018

DEC 24 2019
Received

Filed by fax

~~PROPOSED~~ CONSENT JUDGMENT AS TO DEFENDANT
BETTY DAIN CREATIONS LLC

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 Betty Dain Creations LLC ("**Defendant**," with Shefa
5 and **Defendant** 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 Defendant employs ten (10) or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code §25249.6 *et seq.* ("**Proposition 65**").

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are plastic makeup bag products, including,
16 but not limited to, Black & White Makeup Bag, Artist's Choice; #: 29601 – 155
17 UPC:013534112460, that are manufactured, sold, or distributed for sale in California by Defendant
18 that contain Diisononyl Phthalate ("**DINP**") (collectively, the "**Covered Products**").

19 **1.5 General Allegations**

20 Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state
21 of California, the Covered Products without first providing a clear and reasonable warning required
22 by Proposition 65. DINP (CAS # 28553-12-0) is a chemical listed under Proposition 65 as a
23 chemical known to the state to cause cancer.

24 **1.6 Notice of Violation**

25 On October 4, 2017, Shefa served Defendant and the requisite public enforcement agencies
26 with a Sixty Day Notice of Violation (the "**Notice**") alleging that Defendant violated Proposition 65
27 when it failed to warn its customers and consumers in California that the Covered Products expose
28

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

3 **1.7 Complaint**

4 On September 12, 2018, Shefa filed the instant complaint in the Superior Court in and for
5 the County of Alameda against Defendant and DOES 1-100, alleging violations of California
6 Health & Safety Code § 25249.6, based on exposures to DINP contained in the Covered Products
7 sold in the State of California (the "**Complaint**").

8 **1.8 No Admission**

9 Defendant 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 Defendant 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 Defendant of any fact, finding, conclusion
15 of law, issue of law, or violation of law, the same being specifically denied by Defendant. This
16 section shall not, however, diminish or otherwise affect Defendant's obligations, responsibilities,
17 and duties 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 Alameda, the Defendant agrees that they employs or have 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.
27
28

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 DINP 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 DINP in the Covered Products.

8 **2.2 Warning Standards**

9 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent they
10 ship or sell 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 (a) the text, **"WARNING: This product can expose you to chemicals,**
17 **including DINP, which is known to the State of California to cause Cancer. For**
18 **more information go to www.P65Warnings.ca.gov.**" accompanied by and placed
19 to the right of a symbol consisting of a black exclamation point in a yellow
20 equilateral triangle with a bold black outline sized to be no smaller than the word,
21 "WARNING" as provided by regulations adopted on or about August 30, 2016; or
22 (b) the text, **"WARNING: Cancer - www.P65Warnings.ca.gov.**" accompanied
23 by and placed to the right of a symbol consisting of a black exclamation point in a
24 yellow equilateral triangle with a bold black outline sized to be no smaller than the
25 word, "WARNING" as provided by regulations adopted on or about August 30,
26 2016.

27 The triangular warning symbol specified in Section 2.2(a) and 2.2(b) shall be in yellow with
28 a black exclamation mark; *provided however*, the symbol may be printed in black and white if the

1 Covered Product label is not printed against a yellow background.

2 **2.3 Covered Products in the Stream of Commerce.**

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

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
7 Defendant shall make the Total Settlement Payment of **\$15,000.00**.

8 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
9 separate checks made payable and allocated as follows:

10 **3.2.1 Civil Penalty.** Defendant shall pay \$2,000.00 as a civil penalty
11 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
12 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
13 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
14 OEHHA portion of the civil penalty payment in the amount of \$1,500.00 shall be made payable to
15 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
16 delivered as follows:

17 For United States Postal Service Delivery:

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

23 For Non-United States Postal Service Delivery:

24 Attn: Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 1001 I Street, MS #19B
28 Sacramento, CA 95814

29 The Shefa portion of the civil penalty payment in the amount of \$500.00 shall be made
30 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
31 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst

1 Ave, Suite 320, Van Nuys, CA 91406.

2 **3.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's
3 fees and costs in the amount of \$13,000.00 payable to the "Law Office of Daniel N. Greenbaum,"
4 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
5 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Public Release**

8 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant
9 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
10 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
11 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,
12 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and
13 each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered
14 Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees,
15 cooperative members, and licensees, including but not limited to Ultra Beauty Supply & Salon
16 ("Releasees"), based on failure to warn of alleged exposures to DINP from Covered Products
17 manufactured, sold, or distributed for sale in California by Defendant prior to the Effective Date.
18 The release in this Section 4.1 applies to all Covered Products that Defendant manufactured,
19 distributed, or sold prior to the Effective Date, regardless of the date any other Releasee distributes
20 or sells the Covered Products.

21 Compliance with the terms of this Consent Judgment shall constitute compliance with
22 Proposition 65 by Defendant and the Releasees with respect to DINP in Covered Products
23 manufactured, sold, or distributed on and after the Effective Date.

24 **4.2 Shefa's Individual Release of Claims**

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

8 4.3 Defendant's Release of Shefa

9 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
10 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
11 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
12 by Shefa and its attorneys and other representatives in the course of investigating the claims set
13 forth in the Complaint or otherwise seeking to enforce Proposition 65 against it in this matter.

14 4.4 Release of Unknown Claims

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

22 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
23 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST**
24 **IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**
25 **IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR**
26 **HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

27 Shefa understands and acknowledges that the significance and consequence of this waiver of
28 California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting
from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not

1 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
2 Shefa will not be able to make any claim for those damages against Defendant or any of the
3 Releasees.

4 **5. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court.

6 **6. GOVERNING LAW**

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

15 **7. NOTICE**

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

20 **To Defendant:**

21 Felicia L. Nowels, Esq.
22 AKERMAN LLP
23 106 East College Avenue, 12th Floor
Tallahassee, FL 32301

To Shefa:

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

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

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

27 This Consent Judgment may be executed in counterparts, and by facsimile or portable
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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.

9. 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).

10. 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.

11. 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.

12. 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 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 attempt at informal resolution fail, the party alleging a violation may file its lawsuit seeking the proposed relief.

13. 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

1 Consent Judgment.

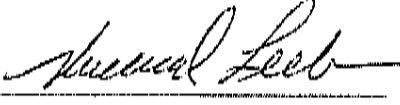
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3 AGREED TO:

AGREED TO:

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5 Date: 12/10/2019

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7 Date: 12/10/19

8 By: 
9 SHEFA LMV, INC.

10 By: 
11 BETTY DAIN CREATIONS LLC
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[PROPOSED] JUDGMENT

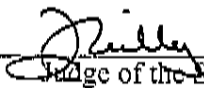
Please note that on February 14, 2020 at 8:30am, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Betty Dain Creations, LLC came for hearing before this Court in Department 25, the Honorable ^{James} ~~Ronni~~ Reilly ~~MacLaren~~ 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.

IT IS SO ORDERED, ADJUDGED AND DECREED

2/25/20
Date


Judge of the Superior Court

CLERK'S CERTIFICATE OF SERVICE BY MAIL
CCP 1013a(3)

CASE NAME: SHEFA LMV, Inc. vs Betty Dain Creations LLC
ACTION NO.: RG18920287

I certify that, I am not a party to the within action. I served the foregoing **CONSENT JUDGMENT** by depositing a true copy thereof in the United States mail in Oakland, California in a sealed envelope with postage fully prepaid thereon addressed to:

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

Akerman LLP
Attn: Weiss, Michael
601 West 5th St., #300
Los Angeles, CA 90071

I declare under penalty of perjury that the following is true and correct

Executed on February 26, 2020 at Oakland, California.

Chad Finke,
Executive Officer/Clerk

by Pamela Greene
Deputy Clerk