

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 Olivia Garden, Inc.			
CASE INFO	COURT DOCKET NUMBER 18STCV04992		COURT NAME SUPERIOR COURT OF CA, Los Angeles Co	
	SHORT CASE NAME Shefa LMV, Inc. v. Olivia Garden, Inc.			
REPORT INFO	INJUNCTIVE RELIEF COMPLIANT PRODUCTS AND WARNINGS			
	PAYMENT: CIVIL PENALTY \$3,0000	PAYMENT: ATTORNEYS FEES \$18,000	PAYMENT: OTHER 0	For Internal Use Only
	DATE SUBMITTED TO COURT 1 / 28 / 2020	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 1 / 28 / 2020	
	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 ZIP CA 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.

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
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Attorney for Plaintiff SHEFA LMV, INC.

FILED
 Superior Court of California
 County of Los Angeles

08/28/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: S. Bousfield Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

OLIVIA GARDEN, INC.,

Defendant.

) Case No.: 18STCV04992

) **~~PROPOSED~~ CONSENT JUDGMENT**
) **AS TO OLIVIA GARDEN, INC.**

) Action Filed: November 13, 2018

~~PROPOSED~~ CONSENT JUDGMENT AS TO DEFENDANT
OLIVIA GARDEN, INC.

1.1 Parties

Defendant is settling on behalf of Sally Beauty Holdings, Inc. who exclusively distributed and sold Defendant's Covered Products, as defined below.

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.

Defendant employs ten (10) 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**”).

For the purposes of this Consent Judgment, covered products are plastic case products, including, but not limited to, “Anti Bacterial Protection”; “Made in Belgium” Multi-Colored Rollers in Zipper Case; UPC: 752110171070, that are manufactured, sold, or distributed for sale by Sally Beauty Holdings, Inc. in California by Defendant that contain Di-[2-Ethylhexyl] Phthalate (“DEHP”) and/or other regulated phthalates (collectively, the “**Covered Products**”).

Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state of California, the Covered Products without first providing a clear and reasonable warning required by Proposition 65. DEHP is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer and reproductive harm.

1 **1.6 Notice of Violation**

2 On October 4, 2017, Shefa served Defendant and the requisite public enforcement agencies
3 with a Sixty Day Notice of Violation (the “**Notice**”) alleging that Sally Beauty Holdings, Inc. sold
4 Defendant’s Covered Products and violated Proposition 65 when it failed to warn its customers and
5 consumers in California that the Covered Products expose users to DEHP. On March 22, 2018,
6 Defendant notified Plaintiff that it manufactured and controlled the Covered Products. To the best
7 of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
8 allegations set forth in the Notice.

9 **1.7 Complaint**

10 On November 13, 2018, Shefa filed the instant complaint in the Superior Court in and for
11 the County of Los Angeles against Defendant and DOES 1-100, alleging violations of California
12 Health & Safety Code § 25249.6, based on exposures to DEHP contained in the Covered Products
13 sold in the State of California (the “**Complaint**”).

14 **1.8 No Admission**

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

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
27 County of Los Angeles, the Defendant agrees that they employs or have employed ten or more
28

persons during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

1.10 Effective Date

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


2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

2.1 Reformulation Standards

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

2.2 Warning Standards

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

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

2.3 Covered Products in the Stream of Commerce.

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

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
3 Defendant shall make the Total Settlement Payment of \$21,000.00.

4 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
5 separate checks made payable and allocated as follows:

6 **3.2.1 Civil Penalty.** Defendant shall pay \$3,000.00 as a civil penalty
7 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
8 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
9 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
10 OEHHA portion of the civil penalty payment in the amount of \$2,250.00 shall be made payable to
11 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
12 delivered as follows:

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

20 Attn: Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street, MS #19B
24 Sacramento, CA 95814

25 The Shefa portion of the civil penalty payment in the amount of \$750.00 shall be made
26 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
27 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
28 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 \$18,000.00 payable to the "Law Office of Daniel N. Greenbaum,"

1 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
2 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Public Release**

5 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant
6 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
7 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
8 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,
9 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and
10 Sally Beauty Holdings, Inc. (“**Releasee**”) to whom Defendant directly or indirectly exports,
11 distributes or sells the Covered Products, based on failure to warn of alleged exposures to DEHP
12 from Covered Products manufactured, sold, or distributed for sale in California by Defendant prior
13 to the Effective Date. The release in this Section 4.1 applies to all Covered Products that Defendant
14 manufactured, distributed, or sold prior to the Effective Date, regardless of the date the Releasee
15 distributes or sells the Covered Products.

16 Compliance with the terms of this Consent Judgment shall constitute compliance with
17 Proposition 65 by Defendant and the Releasee with respect to DEHP in Covered Products
18 manufactured, sold, or distributed on and after the Effective Date.

19 **4.2 Shefa’s Individual Release of Claims**

20 In further consideration of the promises and agreements herein contained, Shefa, on its own
21 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
22 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
23 legal action, and releases all claims that it may have against Defendant and the Releasee, including,
24 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
25 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
26 fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP from
27 Covered Products manufactured, sold, or distributed for sale by Defendant prior to the Effective
28

1 Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not releases on
2 behalf of the public.

3 **4.3 Defendant's Release of Shefa**

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

9 **4.4 Release of Unknown Claims**

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

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

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

1 Releasee.

2 **5. COURT APPROVAL**

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

4 **6. GOVERNING LAW**

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

13 **7. NOTICE**

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

18 To Defendant:

19 Tim Swickard
20 Greenberg Tuarig, LLP
21 1201 K. Street, Suite 1100
Sacramento, CA 95814

To Shefa:

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

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

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

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

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

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.

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.

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.

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.

1 AGREED TO:

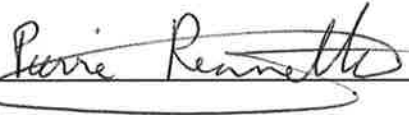
AGREED TO:

2
3 Date: 4/18/19

Date: 04-12-2019

4
5 By: 

6
7 SHEFA LMV, INC.

By: 

DEFENDANT OLIVIA GARDEN, INC.

~~PROPOSED~~ JUDGMENT

Please note that on , 2019 at am/pm, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Olivia Garden, Inc. came for hearing before this Court in Department 4, the Honorable Christopher K. Lui 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.

Date



Judge of the Superior Court